

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 13.1-1002, 13.1-1004, 13.1-1005, 13.1-1012, 13.1-1051, 13.1-1061, 13.1-1062, 13.1-1064, 13.1-1065, and 13.1-1067 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 12 of Title 13.1 an article numbered 16, consisting of sections numbered 13.1-1088 through 13.1-1099.27, relating to limited liability companies; protected series; establishment of protected series by a limited liability company; limits on the liability of assets of a protected series.

[H 2272]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1002, 13.1-1004, 13.1-1005, 13.1-1012, 13.1-1051, 13.1-1061, 13.1-1062, 13.1-1064, 13.1-1065, and 13.1-1067 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 12 of Title 13.1 an article numbered 16, consisting of sections numbered 13.1-1088 through 13.1-1099.27, as follows:

§ 13.1-1002. Definitions.

As used in this chapter:

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company. The articles of organization include the original articles of organization, the original certificate of organization issued by the Commission, and all amendments to the articles of organization. When the articles of organization have been restated pursuant to any articles of restatement, amendment, domestication, or merger, the articles of organization include only the restated articles of organization without the articles of restatement, amendment, domestication, or merger.

"Assignee" means a person to which all or part of a membership interest has been transferred, whether or not the transferor is a member.

"Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

"Commission" means the State Corporation Commission of Virginia.

"Contribution" means any cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in his capacity as a member.

"Distribution" means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests.

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

"Domestic corporation" has the same meaning as specified in § 13.1-603.

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

"Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in § 13.1-803.

"Domestic other business entity" means a partnership, limited partnership, business trust, stock corporation, or nonstock corporation that is formed, organized, or incorporated under the laws of the Commonwealth.

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

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

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by the recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) shall have the meaning set forth in that section.

"Eligible interests" means, as to a partnership, partnership interest as specified in § 50-73.79; as to a limited partnership, partnership interest as specified in § 50-73.1; as to a business trust, the beneficial interest of a beneficial owner as specified in § 13.1-1226; as to a stock corporation, shares as specified in § 13.1-603; or, as to a nonstock corporation, membership interest as specified in § 13.1-803.

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

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

"Foreign limited liability company" means an entity, excluding a foreign business trust, that is an unincorporated organization that is organized under laws other than the laws of the Commonwealth and that is denominated by that law as a limited liability company, and that affords to each of its members, pursuant to the laws under which it is organized, limited liability with respect to the liabilities of the entity.

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

"Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in § 13.1-803.

"Foreign other business entity" means a partnership, limited partnership, business trust, stock corporation, or nonstock corporation that is formed, organized, or incorporated under the laws of a state or jurisdiction other than the Commonwealth.

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

"Foreign protected series" means a protected series established by a foreign series limited liability company and having attributes comparable to a protected series established under Article 16 (§ 13.1-1088 et seq.). The term applies whether or not the law under which the foreign series limited liability company is organized refers to "protected series" or "series."

"Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and 50-73.79.

"Foreign series limited liability company" means a foreign limited liability company having at least one foreign protected series.

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

"Jurisdiction," when used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

"Jurisdiction of formation" means the jurisdiction whose law governs the internal affairs of a person.

"Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated organization organized and existing under this chapter, or that has become a domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.3 as it existed prior to its repeal, even though also being a non-United States entity organized under laws other than the laws of the Commonwealth, or that has become a domestic limited liability company of the Commonwealth pursuant to § 56-1, even though also being a non-United States entity organized under laws other than the laws of the Commonwealth, or that has become a domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.1 as it existed prior to its repeal, or that has become a domestic limited liability company of the Commonwealth pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9, Article 17.1 (§ 13.1-944.1 et seq.) of Chapter 10, Article 14 (§ 13.1-1074 et seq.) or Article 15 (§ 13.1-1081 et seq.) of this chapter, or Article 12 (§ 13.1-1264 et seq.) of Chapter 14. A limited liability company's status for federal tax purposes shall not affect its status as a distinct entity organized and existing under this chapter.

"Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.

"Manager-managed limited liability company" means a limited liability company that is managed by a manager or managers as provided for in its articles of organization or an operating agreement.

"Member" means a person that has been admitted to membership in a limited liability company as provided in § 13.1-1038.1 and that has not ceased to be a member.

"Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.

"Membership interest" or "interest" means a member's share of the profits and the losses of the limited liability company and the right to receive distributions of the limited liability company's assets.

"Non-United States entity" means a foreign limited liability company (other than one formed under the laws of a state), or a corporation, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business, including a partnership, formed, incorporated, organized, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

"Operating agreement" means an agreement of the members as to the affairs of a limited liability company and the conduct of its business, or a writing or agreement of a limited liability company with

one member that satisfies the requirements of subdivision A 2 of § 13.1-1023.

"Person" has the same meaning as specified in § 13.1-603. *"Person" includes a protected series.*

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign limited liability company are located or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the limited liability company. The designation of the principal office in the most recent statement of change filed pursuant to § 13.1-1018.1 shall be conclusive for the purpose of this chapter.

"Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

"Protected series," except in the term "foreign protected series," means a person established under § 13.1-1095.

"Record," when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Series limited liability company," except in the term "foreign series limited liability company," means a limited liability company having at least one protected series.

"Sign" means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic symbol, sound, or process.

"State," when referring to a part of the United States, includes a state, commonwealth and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

"Transfer" includes an assignment, a conveyance, a sale, a lease, an encumbrance including a mortgage or security interest, a gift, and a transfer by operation of law.

"United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

§ 13.1-1004. Issuance of certificate by Commission; recordation of documents.

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the provisions of this chapter and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. The existence of a limited liability company *or a protected series* shall begin at the time the Commission issues a certificate of organization *or certificate of protected series designation* unless a later date and time are specified as provided by subsection D ~~of this section~~. The certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the person(s) forming the limited liability company have been complied with and that the limited liability company has been formed under this chapter.

C. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

D. 1. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission *or a statement filed with the Commission pursuant to Article 16 (§ 13.1-1088 et seq.)* and the articles ~~state~~ *or statement states* that the certificate shall become effective at a later time and date specified in the articles *or statement*. In that event, the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

2. Notwithstanding subdivision 1 ~~of this subsection~~, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles *or statement* to which the certificate relates file a request for cancellation with the Commission, and the Commission, by order, cancels the certificate.

3. Notwithstanding subdivision 1 ~~of this subsection~~, for purposes of §§ 13.1-1012 ~~and~~, 13.1-1054, *and 13.1-1096*, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

E. Notwithstanding any other provision of law to the contrary, the Commission shall have the power to act upon a petition filed by a limited liability company *or protected series* at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person without authority to act for the limited liability company.

§ 13.1-1005. Fees.

- 179 The Commission shall charge and collect the following fees:
- 180 1. For filing any one of the following, the fee shall be \$100:
- 181 a. Articles of organization.
- 182 b. An application for registration as a foreign limited liability company.
- 183 c. Articles of entity conversion to convert a ~~domestic corporation~~ to a limited liability company *to a*
- 184 *domestic business trust or to convert a domestic partnership or limited partnership to a limited liability*
- 185 *company.*
- 186 d. Articles of domestication.
- 187 e. *A statement of protected series designation.*
- 188 f. *An application for registration as a foreign protected series.*
- 189 2. For filing any one of the following, the fee shall be \$25:
- 190 a. Articles of amendment.
- 191 b. Articles of cancellation.
- 192 c. Articles of correction referred to in § 13.1-1011.1, a copy of an amendment or correction referred
- 193 to in § 13.1-1055, or an amended application for registration referred to in § 13.1-1055, provided that an
- 194 amended application shall not require a separate fee when it is filed with a copy of an amendment or a
- 195 correction referred to in § 13.1-1055.
- 196 d. A copy of an instrument of merger of a foreign limited liability company referred to in
- 197 § 13.1-1060.
- 198 e. Articles of merger.
- 199 f. *Articles of entity conversion to convert a limited liability company to a domestic corporation, in*
- 200 *addition to a charter fee ascertained in accordance with § 13.1-615.1.*
- 201 g. A copy of an instrument of entity conversion of a foreign limited liability company holding a
- 202 certificate of registration to transact business in the Commonwealth.
- 203 ~~g.~~ h. Articles of restatement.
- 204 ~~h.~~ i. Articles of organization surrender.
- 205 ~~i.~~ j. An application for a certificate of cancellation ~~of~~ *to cancel a certificate of registration as a*
- 206 *foreign limited liability company.*
- 207 k. *A statement of designation change pursuant to § 13.1-1095 or 13.1-1096.*
- 208 l. *A statement of designation cancellation.*
- 209 m. *An application for a certificate of cancellation to cancel a certificate of registration as a foreign*
- 210 *protected series.*
- 211 3. For filing any one of the following, the fee shall be \$10:
- 212 a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign
- 213 limited liability company *or any protected series thereof.*
- 214 b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability
- 215 company *or any protected series thereof.*
- 216 4. For issuing a certificate pursuant to § 13.1-1067 *or 13.1-1099*, \$6 for each certificate.
- 217 **§ 13.1-1012. Name.**
- 218 A. A limited liability company name shall contain the words "limited company" or "limited liability
- 219 company" or their abbreviations "L.C.," "LC," "L.L.C.," or "LLC."
- 220 B. A limited liability company name shall not contain:
- 221 1. Any word, abbreviation, or combination of characters that states or implies the limited liability
- 222 company is a corporation ~~or~~, a limited partnership, *or a protected series of a series limited liability*
- 223 *company;* or
- 224 2. Any word or phrase the use of which is prohibited by law for such company.
- 225 C. Except as authorized by subsection D, a limited liability company name shall be distinguishable
- 226 upon the records of the Commission from:
- 227 1. The name of a domestic limited liability company or a foreign limited liability company registered
- 228 to transact business in the Commonwealth;
- 229 2. A limited liability company name reserved under § 13.1-1013;
- 230 3. The designated name adopted by a foreign limited liability company because its real name is
- 231 unavailable for use in the Commonwealth;
- 232 4. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws
- 233 of the Commonwealth or authorized to transact business in the Commonwealth;
- 234 5. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;
- 235 6. The designated name adopted by a foreign corporation, whether issuing shares or not issuing
- 236 shares, because its real name is unavailable for use in the Commonwealth;
- 237 7. The name of a domestic business trust or a foreign business trust registered to transact business in
- 238 the Commonwealth;
- 239 8. A business trust name reserved under § 13.1-1215;

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

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

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

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

D. A domestic limited liability company may apply to the Commission for authorization to use a name that is not distinguishable upon its records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying limited liability company.

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

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

§ 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 the Commonwealth:

1. ~~The~~ *Except as provided in §§ 13.1-1099.8 and 13.1-1099.10, 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*

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 the Commonwealth.

However, a foreign limited liability company holding a valid certificate of registration to transact business in 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 the Commonwealth.

§ 13.1-1061. Annual registration fees to be assessed and collected by Commission; application of payment.

The Commission shall assess and collect the annual registration fees imposed by this chapter. When the Commission receives payment of a registration fee assessed against a domestic or foreign limited liability company, *or any protected series thereof*, such payment shall be applied against any unpaid registration fees previously assessed against such limited liability company *or protected series*, including any penalties incurred thereon, beginning with the assessment that has remained unpaid for the longest period of time.

§ 13.1-1062. Assessment of annual registration fees; annual registration fees to be paid by domestic and foreign limited liability companies.

A. Each domestic limited liability company ~~and~~, *each protected series*, each foreign limited liability company registered to transact business in the Commonwealth, *and each foreign protected series registered to transact business in the Commonwealth* shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was organized, *established*, or registered to transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee of \$50, provided that the initial annual registration fee to be paid by a domestic limited liability company created by entity conversion shall be due in the year after the calendar year in which it converted.

The annual registration fee shall be imposed irrespective of any specific license tax or other tax or fee imposed by law upon the *domestic or foreign* limited liability company *or any protected series thereof* for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts.

B. Each year, the Commission shall ascertain from its records each domestic limited liability company ~~and~~, *each protected series*, each foreign limited liability company registered to transact business in the Commonwealth, *and each foreign protected series registered to transact business in the Commonwealth*, as of the first day of the second month next preceding the month in which it was

organized, *established*, or registered to transact business in the Commonwealth, and, except as provided in subsection A, shall assess against each such limited liability company *and each such protected series* the annual registration fee herein imposed.

C. At the discretion of the Commission, the annual registration fee due date for a limited liability company may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of limited liability companies as equally as practicable throughout the year on a monthly basis.

D. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each domestic and foreign limited liability company *and each protected series thereof*.

E. Any domestic limited liability company that has ceased to exist in the Commonwealth because of the issuance of a certificate of cancellation of existence, certificate of organization surrender, or certificate of entity conversion, ~~or any protected series that has been canceled~~, any foreign limited liability company that has obtained a certificate of cancellation, *or any foreign protected series that has obtained a certificate of cancellation*, effective on or before its annual registration fee due date pursuant to subsection A in any year, shall not be required to pay the annual registration fee for that year. Any domestic or foreign limited liability company that has merged, effective on or before its annual registration fee due date pursuant to subsection A in any year, into a surviving domestic or foreign corporation, limited liability company, business trust, limited partnership, or partnership that files with the Commission an authenticated copy of the instrument of merger on or before such date, shall not be required to pay the annual registration fee for that year. Any foreign limited liability company that has converted, effective on or before its annual registration fee due date pursuant to subsection A in any year, to a different entity type that files with the Commission an authenticated copy of the instrument of entity conversion on or before such date, shall not be required to pay the annual registration fee for that year. The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

F. Registration fee assessments that have been paid shall not be refunded.

G. The fees paid into the state treasury under this section and the fees collected under § 13.1-1005 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by the Commission as it deems necessary to defray the costs of the Commission and of the office of the clerk of the Commission in supervising, implementing, administering and enforcing the provisions of this chapter. The projected excess of fees collected over the costs of administration and enforcement so incurred shall be paid into the general fund prior to the close of each fiscal year, based on the unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

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

A. Any domestic or foreign limited liability company, *or any protected series thereof*, that fails to pay the annual registration fee into the state treasury within the time prescribed in § 13.1-1062 shall incur a penalty 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 penalty or liability imposed by law.

B. The Commission shall mail to 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 existence or certificate of registration, as the case may be.

C. *The Commission shall mail to each protected series and each foreign protected series 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 its impending cancellation or the impending cancellation of its certificate of registration, as the case may be.*

§ 13.1-1065. Payment of fees, fines, penalties, and interest prerequisite to Commission action; refunds.

A. The Commission shall not file or issue with respect to any domestic or foreign limited liability company any document or certificate specified in this chapter, except a statement of change pursuant to § 13.1-1016, a statement of resignation pursuant to § 13.1-1017, and a statement of change pursuant to § 13.1-1018.1, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such limited liability company. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign limited liability company that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the limited liability company's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign

limited liability company until the annual registration fee has been paid by or on behalf of that limited liability company.

B. *The Commission shall not file or issue with respect to any protected series or foreign protected series any document or certificate specified in this chapter until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such protected series. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a protected series or foreign protected series that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the protected series' annual registration fee payment in any year.*

C. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment.

§ 13.1-1067. Property title records.

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign limited liability company, *or any protected series thereof*, has changed or corrected its name, merged into a domestic or foreign limited liability company, corporation, business trust, limited partnership or partnership, converted ~~into~~ *to or from* a domestic or foreign corporation, business trust, limited partnership or partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any court's office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign limited liability company *or foreign protected series* has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign limited liability company's *or foreign protected series'* jurisdiction of ~~organization formation~~ may be admitted to record in the deed books, in accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

Article 16.

Protected Series.

§ 13.1-1088. Definitions.

As used in this article, unless the context requires a different meaning:

"After a merger" or "after the merger" means when a merger under § 13.1-1099.16 becomes effective and afterwards.

"Asset" means property:

1. In which a series limited liability company or protected series has rights; or

2. As to which the series limited liability company or protected series has the power to transfer rights.

"Associated asset" means an asset that meets the requirements stated in § 13.1-1099.2.

"Associated member" means, with respect to a protected series, a member that meets the requirements stated in § 13.1-1099.3.

"Before a merger" or "before the merger" means before a merger under § 13.1-1099.16 becomes effective.

"Continuing protected series" means a protected series of a surviving company that continues in uninterrupted existence after a merger under § 13.1-1099.16.

"Merging company" means a limited liability company that is party to a merger under § 13.1-1099.16.

"Non-associated asset" means:

1. An asset of a series limited liability company that is not an associated asset of the series limited liability company; or

2. Any asset of a protected series of the series limited liability company that is not an associated asset of the protected series.

"Non-surviving company" means a merging company whose separate existence ceases after a merger under § 13.1-1099.16.

"Principal office of the protected series" means the office, in or out of the Commonwealth, where the

principal executive offices of a protected series of a domestic or foreign series limited liability company are located or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the protected series. The designation of the principal office of a protected series in the most recent statement of change filed pursuant to § 13.1-1018.1 and subsection G of § 13.1-1095 shall be conclusive for the purpose of this chapter.

"Protected series assignee" means a person to which all or part of a protected series membership interest of a protected series of a series limited liability company has been transferred, other than the series limited liability company. "Protected series assignee" includes a person that owns a protected series membership interest as a result of ceasing to be an associated member of a protected series.

"Protected series manager" means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed pursuant to the operating agreement, this article, and other provisions of this chapter.

"Protected series membership interest" means the share of the profits and losses of a protected series and the right to receive distributions.

"Relocated protected series" means a protected series of a non-surviving company which, after a merger under § 13.1-1099.16, continues in uninterrupted existence as a protected series of the surviving company.

"Surviving company" means a merging company that is the survivor of a merger under § 13.1-1099.16.

"Survivor" has the same meaning as specified in § 13.1-1069.1.

§ 13.1-1089. Nature of protected series.

A protected series of a series limited liability company is a person distinct from:

1. The series limited liability company, subject to subsection C of § 13.1-1090, subdivision 1 of § 13.1-1099.11, and § 13.1-1099.12;

2. Another protected series of the series limited liability company;

3. A member of the series limited liability company, whether or not the member is an associated member of the protected series;

4. A protected series assignee of any protected series of the series limited liability company; and

5. An assignee of a membership interest of the series limited liability company.

§ 13.1-1090. Powers and duration of protected series.

A. A protected series of a series limited liability company has the capacity to sue and be sued in its own name.

B. Except as otherwise provided in subsections C and D, a protected series of a series limited liability company has the same powers and purpose as the series limited liability company.

C. A protected series of a series limited liability company ceases to exist not later than when the series limited liability company ceases to exist.

D. A protected series of a series limited liability company shall not:

1. Be a member of the series limited liability company;

2. Establish a protected series; or

3. Except as permitted by a law of the Commonwealth other than this article, have any purpose or power that the law of the Commonwealth other than this article prohibits a limited liability company from doing or having.

§ 13.1-1091. Governing law.

The law of the Commonwealth governs:

1. The internal affairs of a protected series of a series limited liability company, including:

a. Relations among any associated members of the protected series;

b. Relations among the protected series and (i) any associated member, (ii) the protected series manager, or (iii) any protected series assignee;

c. Relations between any associated member and (i) the protected series manager or (ii) any protected series assignee;

d. The rights and duties of a protected series manager;

e. Governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

f. Procedures and conditions for becoming an associated member or protected series assignee;

2. The relations between a protected series of a series limited liability company and each of the following:

a. The series limited liability company;

b. Another protected series of the series limited liability company;

c. A member of the series limited liability company that is not an associated member of the protected series;

d. A protected series manager that is not a protected series manager of the protected series; and

e. A protected series assignee that is not a protected series assignee of the protected series;
 3. The liability of a person for a debt, obligation, or other liability of a protected series of a series limited liability company if the debt, obligation, or liability is asserted solely by reason of the person being or acting as:
 a. An associated member, protected series assignee, or protected series manager of the protected series;
 b. A member of the series limited liability company that is not an associated member of the protected series;
 c. A protected series manager that is not a protected series manager of the protected series;
 d. A protected series assignee that is not a protected series assignee of the protected series;
 e. A manager of the series limited liability company; or
 f. An assignee of a membership interest of the series limited liability company;
 4. The liability of a series limited liability company for a debt, obligation, or other liability of a protected series of the series limited liability company if the debt, obligation, or liability is asserted solely by reason of the series limited liability company:
 a. Having a statement of protected series designation or a statement of designation change filed with the Commission;
 b. Being or acting as a protected series manager of the protected series;
 c. Having the protected series be or act as a manager of the series limited liability company; or
 d. Owning a protected series assignable interest of the protected series; and
 5. The liability of a protected series of a series limited liability company for a debt, obligation, or other liability of the series limited liability company or of another protected series of the series limited liability company if the debt, obligation, or liability is asserted solely by reason of:
 a. The protected series:
 (1) Being a protected series of the series limited liability company or having as a protected series manager the series limited liability company or another protected series of the series limited liability company; or
 (2) Being or acting as a protected series manager of another protected series of the series limited liability company or a manager of the series limited liability company; or
 b. The company owning a protected series membership interest of the protected series.
§ 13.1-1092. Relation of operating agreement, this article, and the other articles of this chapter.
 A. Except as otherwise provided in this section and subject to §§ 13.1-1093 and 13.1-1094, the operating agreement of a series limited liability company governs:
 1. The internal affairs of a protected series, including:
 a. Relations among any associated members of the protected series;
 b. Relations among the protected series and (i) any associated member of the protected series, (ii) any protected series manager, and (iii) any protected series assignee;
 c. Relations between any associated member and (i) any protected series manager or (ii) any protected series assignee;
 d. The rights and duties of a protected series manager;
 e. Governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and
 f. Procedures and conditions for becoming an associated member or protected series assignee;
 2. The relations among the protected series of a series limited liability company, the series limited liability company, and any other protected series of the series limited liability company; and
 3. Relations between:
 a. The protected series, its protected series manager, any associated member of the protected series, or any protected series assignee of the protected series; and
 b. A person in the person's capacity as:
 (1) A member of the series limited liability company who is not an associated member of the protected series;
 (2) A protected series assignee or protected series manager of another protected series; or
 (3) An assignee of the series limited liability company.
 B. If the provisions of this chapter other than in this article restrict the power of an operating agreement to affect a matter, the restriction applies to a matter under this article according to the rules stated in § 13.1-1094.
 C. If the law of the Commonwealth other than this article contains a prohibition, limitation, requirement, condition, or other constraint pertaining to a limited liability company, a member, a manager, or other agent of the limited liability company, or an assignee of the limited liability company, except as otherwise provided in the law of the Commonwealth other than this article, the restriction applies according to the rules stated in § 13.1-1094.

D. Except as otherwise provided in § 13.1-1093, if the operating agreement of a series limited liability company does not provide for a matter described in subsection A in a manner permitted by this article, the matter is determined in accordance with the following rules:

1. To the extent that this article addresses the matter, this article governs; and
2. To the extent that this article does not address the matter, the provisions of this chapter other than in this article govern the matter according to the rules stated in § 13.1-1094.

§ 13.1-1093. Additional limitations on operating agreement.

A. An operating agreement shall not vary the effect of:

1. This section;
2. Section 13.1-1089;
3. Subsection A of § 13.1-1090;
4. Subsection B of § 13.1-1090 to provide a protected series a power in addition to the powers provided to a limited liability company under the other articles of this chapter;
5. The limitations stated in subsection C or D of § 13.1-1090;
6. Section 13.1-1091;
7. Section 13.1-1092;
8. Section 13.1-1094;
9. Section 13.1-1095, except to vary the manner in which a limited liability company approves establishing a protected series;
10. Section 13.1-1096;
11. Section 13.1-1099.2;
12. Section 13.1-1099.3;
13. Subsection A or B of § 13.1-1099.4;
14. Subsection C, F, or G of § 13.1-1099.5;
15. Section 13.1-1099.7, except to decrease or eliminate a limitation of liability stated in § 13.1-1099.7;
16. Section 13.1-1099.8;
17. Section 13.1-1099.9;
18. Section 13.1-1099.10;
19. Subdivisions 1, 4, and 5 of § 13.1-1099.11;
20. Section 13.1-1099.12, except to designate a different person to manage winding up;
21. Section 13.1-1099.13;
22. Sections 13.1-1099.14 through 13.1-1099.20;
23. Sections 13.1-1099.21, 13.1-1099.22, and 13.1-1099.23;
24. Sections 13.1-1099.25 and 13.1-1099.26; or
25. A provision of this article pertaining to:
 - a. A registered office or registered agent; or
 - b. The Commission, including provisions pertaining to records authorized or required to be delivered to the Commission for filing under this article or chapter.

B. An operating agreement shall not unreasonably restrict the duties and rights under § 13.1-1099.6 but may impose reasonable restrictions on the availability and use of information obtained under § 13.1-1099.6 and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

§ 13.1-1094. Rules for applying other articles of this chapter to specified provisions of this article.

A. Except as otherwise provided in subsection B and § 13.1-1093, the following rules apply in applying § 13.1-1092, subsections C and F of § 13.1-1099.5, subdivision 4a of § 13.1-1099.11, subsection A of § 13.1-1099.12, and subdivision 2 of § 13.1-1099.13:

1. A protected series of a series limited liability company is deemed to be a limited liability company that is organized separately from the series limited liability company and distinct from the series limited liability company and any other protected series of the series limited liability company;
2. An associated member of the protected series is deemed to be a member of the series limited liability company;
3. A protected series assignee of the protected series is deemed to be an assignee of the series limited liability company;
4. A protected series membership interest of the protected series is deemed to be a membership interest of the series limited liability company;
5. A protected series manager is deemed to be a manager of the series limited liability company;
6. An asset of the protected series is deemed to be an asset of the series limited liability company, whether or not the asset is an associated asset of the protected series; and
7. Any creditor or other obligee of the protected series is deemed to be a creditor or obligee of the series limited liability company.

B. Subsection A does not apply if its application would:

1. Vary § 13.1-1023, subsection B or C of § 13.1-1092, or § 13.1-1093; or

2. Require the Commission to:

a. Accept for filing a type of record that this chapter expressly does not authorize or require a person to deliver to the Commission for filing; or

b. Make or deliver a record that neither this article nor any other provision of this chapter authorizes or requires the Commission to make or deliver.

§ 13.1-1095. Protected series designation; amendment.

A. A limited liability company may establish a protected series. A proposal to establish a protected series shall be approved by the affirmative vote or consent of all members.

B. To establish a protected series, a limited liability company shall deliver to the Commission for filing a statement of protected series designation setting forth:

1. The name of the limited liability company;

2. The name of the protected series being established;

3. The post office address of the principal office of the protected series; and

4. A statement that the establishment of the protected series was approved by the affirmative vote or consent of all members of the limited liability company.

C. If the Commission finds that the statement of protected series designation complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of protected series designation.

D. A series limited liability company may amend a statement of a protected series designation that has not been canceled. For an amendment to a statement of protected series designation to be adopted, the amendment shall be approved by the affirmative vote or consent of all members.

E. To amend a statement of protected series designation, a series limited liability company shall deliver to the Commission for filing a statement of designation change setting forth:

1. The name of the series limited liability company;

2. The name of the protected series to which the designation change applies;

3. The text of each change to the statement of protected series designation; and

4. A statement that the amendment was approved by the affirmative vote or consent of all members of the series limited liability company.

F. If the Commission finds that the statement of protected series designation change complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of designation change.

G. Notwithstanding subsection D, a series limited liability company may change the address of the principal office of a protected series of the series limited liability company on the records of the Commission by filing a statement of change pursuant to § 13.1-1018.1, except that the statement of change shall also set forth the name of the protected series and, in lieu of the address of the current and new principal office of the series limited liability company, the address of the current and new principal office of the protected series.

§ 13.1-1096. Name.

A. Except as otherwise provided in subsection B, the name of a protected series shall comply with the provisions of § 13.1-1012.

B. The name of a protected series of a series limited liability company shall:

1. Begin with the name of the series limited liability company, including any word or abbreviation required by subsection A of § 13.1-1012 to designate that the series limited liability company is a limited liability company; and

2. Contain the phrase "protected series" or the abbreviation "P.S." or "PS."

C. If a series limited liability company changes its name, the series limited liability company shall deliver to the Commission for filing a statement of designation change for each protected series of the series limited liability company pursuant to subsection D of § 13.1-1095.

§ 13.1-1097. Registered office and registered agent.

A. The registered office and registered agent in the Commonwealth for a series limited liability company are the registered office and registered agent in the Commonwealth for each protected series of the series limited liability company.

B. A person that ceases to be the registered agent for a series limited liability company ceases to be the registered agent for each protected series of the series limited liability company.

C. A person that ceases to be the registered agent for a protected series of a series limited liability company, other than a protected series that has been canceled, ceases to be the registered agent of the series limited liability company and of any other protected series of the series limited liability company.

D. Except as otherwise agreed by a series limited liability company and its registered agent, the agent is not obligated to distinguish between a process, notice, demand, or other record concerning the

series limited liability company and a process, notice, demand, or other record concerning a protected series of the series limited liability company.

§ 13.1-1098. Service of process, notice, or demand.

A. A protected series of a series limited liability company may be served with any process, notice, or demand required or permitted by law by:

1. Serving the series limited liability company that established the protected series;
2. Serving the registered agent of the protected series; or
3. Other means authorized by any law of the Commonwealth other than as specified in this article.

B. Service of process, notice, or demand on a series limited liability company is notice to each protected series of the series limited liability company of service of the process, notice, or demand and the contents thereof.

C. Service of process, notice, or demand on a protected series of a series limited liability company is notice to the series limited liability company and any other protected series of the series limited liability company of service of the process, notice, or demand and the contents thereof.

D. Service of process, notice, or demand on a foreign series limited liability company is notice to each foreign protected series of the foreign series limited liability company of the process, notice, or demand and the contents thereof.

E. Service of a process, notice, or demand on a foreign protected series of a foreign series limited liability company is notice to the foreign series limited liability company and any other foreign protected series of the foreign series limited liability company of service of the process, notice, or demand and the contents thereof.

§ 13.1-1099. Effectiveness of notice.

Notice to a person under subsection B, C, D, or E of § 13.1-1098 is effective against the person whether or not the process, notice, or demand identifies the person if the process, notice, or demand identifies the person so long as the process, notice, or demand names as a party and identifies:

1. The series limited liability company or a protected series of the series limited liability company; or
2. The foreign series limited liability company or a foreign protected series of the foreign series limited liability company.

§ 13.1-1099.1. Annual registration fees.

The Commission shall assess and collect from each protected series and each foreign protected series whose existence or registration to transact business in Virginia has not been canceled an annual registration fee in accordance with Article 11 (§ 13.1-1061 et seq.). The provisions of §§ 13.1-1050.2, 13.1-1056.1, and 13.1-1066 shall apply to each protected series and each foreign protected series, as the case may be.

§ 13.1-1099.2. Associated assets.

A. Only an asset of a protected series may be an associated asset of the protected series. Only an asset of a series limited liability company may be an associated asset of the series limited liability company.

B. An asset of a protected series is an associated asset of the protected series only if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

1. Identify the asset and distinguish it from any other assets of the protected series, any assets of the series limited liability company, and any assets of any other protected series of the series limited liability company;

2. Determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and

3. If the protected series acquired the asset from the series limited liability company or another protected series of the series limited liability company, determine any consideration paid, the payor, and the payee.

C. An asset of a series limited liability company is an associated asset of the series limited liability company only if the series limited liability company creates and maintains records that state the name of the series limited liability company and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

1. Identify the asset and distinguish it from any other assets of the series limited liability company and any assets of any protected series of the series limited liability company;

2. Determine when and from what person the series limited liability company acquired the asset or how the asset otherwise became an asset of the series limited liability company; and

3. If the series limited liability company acquired the asset from a protected series of the series limited liability company, determine any consideration paid, the payor, and the payee.

D. The records and recordkeeping required by subsections B and C may be organized by specific

listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

E. To the extent permitted by the law of the Commonwealth other than this article, a series limited liability company or a protected series of the series limited liability company may hold an associated asset directly or indirectly, through a representative, nominee, or similar arrangement, except that:

1. A protected series shall not hold an associated asset in the name of the series limited liability company or another protected series of the series limited liability company; and

2. The series limited liability company may not hold an associated asset in the name of a protected series of the series limited liability company.

§ 13.1-1099.3. Associated members.

A. Only a member of a series limited liability company may be an associated member of a protected series of the series limited liability company.

B. A member of a series limited liability company becomes an associated member of a protected series of the series limited liability company if the operating agreement or a procedure established by the operating agreement states:

1. That the member is an associated member of the protected series;

2. The date on which the member became an associated member; and

3. Any protected series membership interest the associated member has in connection with becoming or being an associated member.

C. If a person that is an associated member of a protected series of a series limited liability company is dissociated from the series limited liability company, the person ceases to be an associated member of the protected series.

§ 13.1-1099.4. Protected series membership interests.

A. A protected series membership interest of a protected series of a series limited liability company shall be owned initially by an associated member of the protected series or the series limited liability company.

B. If a protected series of a series limited liability company has no associated members when established, the series limited liability company owns the protected series membership interests in the protected series.

C. In addition to acquiring a protected series membership interest under subsection B, a series limited liability company may acquire a protected series membership interest through a transfer from another person or as provided in the operating agreement.

D. Except for subdivision A 3 of § 13.1-1094, a provision of this article that applies to a protected series assignee of a protected series of a series limited liability company applies to the series limited liability company in its capacity as an owner of a protected series membership interest of the protected series. A provision of the operating agreement of a series limited liability company that applies to a protected series assignee of a protected series of the series limited liability company applies to the series limited liability company in its capacity as an owner of a protected series membership interest of the protected series.

§ 13.1-1099.5. Management.

A. A protected series may have more than one protected series manager.

B. If a protected series has no associated members, the series limited liability company is the protected series manager.

C. Section 13.1-1094 shall be applicable to the determination of any duties of a protected series manager of a protected series of a series limited liability company to:

1. The protected series;

2. Any associated member of the protected series; and

3. Any protected series assignee of the protected series.

D. Solely by reason of being or acting as a protected series manager of a protected series of a series limited liability company, a person owes no duty to:

1. The series limited liability company;

2. Another protected series of the series limited liability company; or

3. Another person in that person's capacity as:

a. A member of the series limited liability company that is not an associated member of the protected series;

b. A protected series assignee or protected series manager of another protected series; or

c. An assignee of the series limited liability company.

E. An associated member of a protected series of a series limited liability company has the same rights as any other member of the series limited liability company to vote on or consent to an amendment to the series limited liability company's operating agreement or any other matter being decided by the members, whether or not the amendment or matter affects the interests of the protected

series or the associated member.

F. Sections 13.1-1042 through 13.1-1045 apply to a protected series in accordance with § 13.1-1094.

G. An associated member of a protected series is an agent for the protected series with power to bind the protected series to the same extent that a member of a limited liability company is under subdivision A 1 of § 13.1-1021.1 an agent for the series limited liability company with statutory power to bind the company.

§ 13.1-1099.6. Right of person not associated member of protected series to information concerning protected series.

A. A member of a series limited liability company that is not an associated member of a protected series of the series limited liability company has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a member that is not a manager of a manager-managed limited liability company has a right to information concerning the limited liability company under subsection B of § 13.1-1028 or other applicable law.

B. A person formerly an associated member of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a person dissociated as a member of a manager-managed limited liability company has a right to information concerning the limited liability company under subsection B of § 13.1-1028 or other applicable law.

C. If an associated member of a protected series dies, the legal representative of the deceased associated member has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that the legal representative of a deceased member has a right to information concerning the limited liability company under subsection B of § 13.1-1028 or other applicable law.

D. A protected series manager of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a manager of a manager-managed limited liability company has a right to information concerning the limited liability company under subsection B of § 13.1-1028 or other applicable law.

§ 13.1-1099.7. Limitations on liability.

A. A person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

1. A protected series of a series limited liability company solely by reason of being or acting as:

a. An associated member, protected series manager, or protected series assignee of the protected series; or

b. A member, manager, or an assignee of the series limited liability company; or

2. A series limited liability company solely by reason of being or acting as an associated member, protected series manager, or protected series assignee of a protected series of the series limited liability company.

B. Subject to § 13.1-1099.10, the following rules apply:

1. A debt, obligation, or other liability of a series limited liability company is solely the debt, obligation, or liability of the series limited liability company.

2. A debt, obligation, or other liability of a protected series is solely the debt, obligation, or liability of the protected series.

3. A series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a protected series of the series limited liability company solely by reason of the protected series being a protected series of the series limited liability company or the series limited liability company:

a. Being or acting as a protected series manager of the protected series;

b. Having the protected series manage the series limited liability company; or

c. Owning a protected series membership interest of the protected series.

4. A protected series of a series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the series limited liability company or another protected series of the series limited liability company solely by reason of:

a. Being a protected series of the series limited liability company;

b. Being or acting as a manager of the series limited liability company or a protected series manager of another protected series of the series limited liability company; or

c. Having the series limited liability company or another protected series of the series limited liability company be or act as a protected series manager of the protected series.

§ 13.1-1099.8. Claim seeking to disregard limitation of liability.

A. Except as otherwise provided in subsection B, a claim seeking to disregard a limitation in § 13.1-1099.7 is governed by the principles of law and equity, including a principle providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, that

would apply if each protected series of a series limited liability company were a limited liability company formed separately from the series limited liability company and distinct from the series limited liability company and any other protected series of the series limited liability company.

B. The failure of a series limited liability company or a protected series to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground to disregard a limitation in subsection A of § 13.1-1099.7 but may be a ground to disregard a limitation in subsection B of § 13.1-1099.7.

C. This section applies to a claim seeking to disregard a limitation of liability applicable to a foreign series limited liability company or foreign protected series and comparable to a limitation stated in § 13.1-1099.7, if:

1. The claimant is a resident of the Commonwealth or transacting business or registered to transact business in the Commonwealth; or

2. The claim is to establish or enforce a liability arising under a law of the Commonwealth other than this chapter or from an act or omission in the Commonwealth.

§ 13.1-1099.9. Remedies of judgment creditor of associated member or protected series assignee.

Any provision of § 13.1-1041.1 that provides or restricts remedies available to a judgment creditor of a member of a limited liability company or owner of a membership interest of the series limited liability company applies to a judgment creditor of:

1. An associated member or protected series assignee of a protected series; or

2. A series limited liability company, to the extent the series limited liability company owns a protected series membership interest of a protected series.

§ 13.1-1099.10. Enforcement of claim against non-associated asset.

A. As used in this section:

"Enforcement date" means 12:01 a.m. on the date on which a claimant first serves process on a series limited liability company or protected series of the series limited liability company in an action seeking to enforce under this section a claim against an asset of the series limited liability company or protected series by attachment, levy, or other action.

"Incurrence date" means, subject to subsection B of § 13.1-1099.20, the date on which a series limited liability company or protected series of the series limited liability company incurred the liability giving rise to a claim that a claimant seeks to enforce under this section.

B. If a claim against a series limited liability company or a protected series of the series limited liability company has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following rules:

1. A judgment against the series limited liability company may be enforced against an asset of a protected series of the series limited liability company if the asset:

a. Was a non-associated asset of the protected series on the incurrence date; or

b. Is a non-associated asset of the protected series on the enforcement date.

2. A judgment against a protected series may be enforced against an asset of the series limited liability company if the asset:

a. Was a non-associated asset of the series limited liability company on the incurrence date; or

b. Is a non-associated asset of the series limited liability company on the enforcement date.

3. A judgment against a protected series may be enforced against an asset of another protected series of the series limited liability company if the asset:

a. Was a non-associated asset of the other protected series on the incurrence date; or

b. Is a non-associated asset of the other protected series on the enforcement date.

C. In addition to any other remedy provided by law or equity, if a claim against a series limited liability company or a protected series of the series limited liability company has not been reduced to a judgment and law other than this article permits a prejudgment remedy by attachment, levy, or other action, the court may apply subsection B as a prejudgment remedy.

D. In a proceeding under this section, the party asserting that an asset is or was an associated asset of a series limited liability company or a protected series of the series limited liability company has the burden of proof on the issue.

E. This section applies to an asset of a foreign series limited liability company or foreign protected series of the foreign series limited liability company if:

1. The asset is real or tangible property located in the Commonwealth;

2. The claimant is a resident of the Commonwealth or transacting business or registered to transact business in the Commonwealth, or the claim under this section is to enforce a judgment, or to seek a pre-judgment remedy, pertaining to a liability arising from law of the Commonwealth other than this article or an act or omission in the Commonwealth; and

3. The asset is not identified in the records of the foreign series limited liability company or foreign protected series of the foreign series limited liability company in a manner comparable to the manner

911 required by § 13.1-1099.2.

912 **§ 13.1-1099.11. Events causing dissolution of protected series.**

913 A protected series of a series limited liability company is dissolved, and its activities and affairs
914 shall be wound up, upon the:

915 1. Dissolution of the series limited liability company;

916 2. Occurrence of an event or circumstance the operating agreement states causes dissolution of the
917 protected series;

918 3. Affirmative vote or consent of all the members;

919 4. Entry of a court order dissolving the protected series on application by an associated member or
920 protected series manager of the protected series:

921 a. In accordance with § 13.1-1094; and

922 b. To the same extent, in the same manner, and on the same grounds the court would enter an order
923 dissolving a limited liability company on application by a member of or a person managing the limited
924 liability company;

925 5. Entry by the court of an order dissolving the protected series on application by the series limited
926 liability company or a member of the series limited liability company on the ground that the conduct of
927 all or substantially all the activities and affairs of the protected series is illegal;

928 6. Automatic cancellation of its existence pursuant to §§ 13.1-1050.2 and 13.1-1099.1; or

929 7. Automatic or involuntary cancellation of the existence of the series limited liability company that
930 established the protected series pursuant to § 13.1-1050.2 or 13.1-1050.3.

931 **§ 13.1-1099.12. Winding up dissolved protected series; voluntary cancellation.**

932 A. Subject to subsection B and in accordance with § 13.1-1094:

933 1. A dissolved protected series shall wind up its activities and affairs in the same manner that a
934 limited liability company winds up its affairs under Article 9 (§ 13.1-1046 et seq.); and

935 2. Judicial supervision or other judicial remedy is available in the winding up of the protected series
936 to the same extent, in the same manner, and under the same conditions that apply under Article 9
937 (§ 13.1-1046 et seq.) in the winding up of a limited liability company.

938 B. When the affairs of a protected series have been wound up, the series limited liability company
939 that established the protected series shall deliver to the Commission for filing a statement of designation
940 cancellation setting forth:

941 1. The name of the protected series;

942 2. The identification number issued by the Commission to the protected series;

943 3. The name of the series limited liability company that established the protected series;

944 4. The effective date of the certificate of protected series designation;

945 5. A statement that the protected series has completed the winding up its affairs; and

946 6. Any other information that the associated members of the protected series determine to include
947 therein, including the reason for the filing of the statement of designation cancellation.

948 C. If the Commission finds that the statement of designation cancellation complies with the
949 requirements of law and that all required fees have been paid, it shall by order issue a certificate of
950 designation cancellation, canceling the protected series' existence. Upon the effective date of such
951 certificate, the existence of the protected series shall cease, except for the purpose of suits, other
952 proceedings, and appropriate actions by members as provided in this chapter.

953 D. A series limited liability company does not complete its winding up until each of its protected
954 series has completed its winding up.

955 **§ 13.1-1099.13. Waiver of cancellation upon dissolution; reinstatement of series limited liability
956 company.**

957 A. If after dissolution the members of a series limited liability company waive the right to have the
958 series limited liability company's affairs wound up and its existence canceled:

959 1. Each protected series of the series limited liability company ceases winding up; and

960 2. The provisions of § 13.1-1047.1 stating the results of the waiver apply to each protected series of
961 the series limited liability company in accord with § 13.1-1094.

962 B. A protected series that has ceased to exist may have its existence reinstated in accordance with
963 § 13.1-1050.4 as if it were a limited liability company, provided that the series limited liability company
964 that established the protected series is in existence.

965 **§ 13.1-1099.14. Protected series may not be party to entity transaction.**

966 A protected series may not:

967 1. Be a party to a merger;

968 2. Convert to a different type of entity;

969 3. Domesticate as a protected series under the laws of a foreign jurisdiction; or

970 4. Be a party to or be formed, organized, established, or created in a transaction substantially like a
971 merger, interest exchange, conversion, or domestication.

§ 13.1-1099.15. Restrictions on entity transaction involving a series limited liability company or a foreign series limited liability company.

- A. A series limited liability company may not:
1. Convert to a different type of entity;
 2. Domesticate as a foreign limited liability company pursuant to the provisions of Article 14 (§ 13.1-1074 et seq.); or
 3. Except as otherwise provided in § 13.1-1099.16, be a party to or the surviving company of a merger.
- B. A foreign series limited liability company may not domesticate as a Virginia limited liability company pursuant to the provisions of Article 14 (§ 13.1-1074 et seq.).

§ 13.1-1099.16. Merger authorized; parties restricted.

A series limited liability company may be party to a merger in accordance with Article 13 (§ 13.1-1069.1 et seq.), this section, and §§ 13.1-1099.17 through 13.1-1099.20 only if:

1. Each party to the merger is a limited liability company; and
2. The surviving company is not created in the merger.

§ 13.1-1099.17. Plan of merger.

In a merger under § 13.1-1099.16, the plan of merger shall:

1. Comply with § 13.1-1070;
2. Include the manner and basis of converting the protected series membership interests in the canceled protected series in the manner set forth in subdivisions C 4 and 5 of § 13.1-1070; and

3. State:

a. For any protected series of a non-surviving series limited liability company, whether after the merger the protected series will be a relocated protected series or be dissolved, wound up, and canceled;

b. For any protected series of the surviving series limited liability company that exists before the merger, whether after the merger the protected series will be a continuing protected series or be dissolved, wound up, and canceled;

c. For each relocated protected series, its new name; and

d. For any protected series to be established by the surviving company as a result of the merger, the name of the protected series and the post office address of its principal office.

§ 13.1-1099.18. Articles of merger.

In a merger under § 13.1-1099.16, the articles of merger shall:

1. Comply with § 13.1-1072 and include a plan of merger that complies with the provisions of § 13.1-1099.17;

2. Be accompanied by the following records, each to become effective when the merger becomes effective:

a. For a protected series of a merging company being canceled as a result of the merger, a statement of designation cancellation;

b. For a protected series of a non-surviving company which after the merger will be a relocated protected series:

(1) A statement of relocation that contains the name of the non-surviving company and the name of the protected series before and after the merger; and

(2) A statement of protected series designation; and

c. For a protected series being established by the surviving company as a result of the merger, a statement of protected series designation; and

3. A statement presented with articles of merger pursuant to this section may be filed with the Commission without payment of the fee specified in § 13.1-1005.

§ 13.1-1099.19. Effect of merger.

When a merger under § 13.1-1099.16 becomes effective, in addition to the effects stated in § 13.1-1073:

1. As provided in the plan of merger, each protected series of each merging company which was established before the merger:

a. Is a relocated protected series or continuing protected series; or

b. Is dissolved, wound up, and canceled;

2. Any protected series to be established as a result of the merger is established;

3. Any relocated protected series or continuing protected series is the same person without interruption as it was before the merger;

4. All property of a relocated protected series or continuing protected series continues to be vested in the protected series without transfer, reversion, or impairment;

5. All debts, obligations, and other liabilities of a relocated protected series or continuing protected series continue as debts, obligations, and other liabilities of the protected series;

6. Except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of a relocated protected series or continuing protected series remain in the protected series;

7. The new name of a relocated protected series may be substituted for the former name of the protected series in any pending action or proceeding;

8. If provided in the plan of merger:

a. A person becomes an associated member or protected series assignee of a relocated protected series or continuing protected series;

b. A person becomes an associated member of a protected series established by the surviving company as a result of the merger;

c. Any change in the rights or obligations of a person in the person's capacity as an associated member or protected series assignee of a relocated protected series or continuing protected series takes effect; and

d. Any consideration to be paid to a person that before the merger was an associated member or protected series assignee of a relocated protected series or continuing protected series is due; and

9. Any person that is a member of a relocated protected series becomes a member of the surviving company, if not already a member.

§ 13.1-1099.20. Application of § 13.1-1099.10 after merger.

A. A creditor's right that existed under § 13.1-1099.10 immediately before a merger under § 13.1-1099.16 may be enforced after the merger in accordance with the following rules:

1. A creditor's right that existed immediately before the merger against the surviving company, a continuing protected series, or a relocated protected series continues without change after the merger.

2. A creditor's right that existed immediately before the merger against a non-surviving company:

a. May be asserted against an asset of the non-surviving company that vested in the surviving company as a result of the merger; and

b. Does not otherwise change.

3. Subject to subsection B, the following rules apply:

a. In addition to the remedy stated in subdivision 1, a creditor with a right under § 13.1-1099.10 that existed immediately before the merger against a non-surviving company or a relocated protected series may assert the right against:

(1) An asset of the surviving company, other than an asset of the non-surviving company that vested in the surviving company as a result of the merger;

(2) An asset of a continuing protected series;

(3) An asset of a protected series established by the surviving company as a result of the merger;

(4) If the creditor's right was against an asset of the non-surviving company, an asset of a relocated protected series; or

(5) If the creditor's right was against an asset of a relocated protected series, an asset of a relocated protected series.

b. In addition to the remedy stated in subdivision 2, a creditor with a right that existed immediately before the merger against the surviving company or a continuing protected series may assert the right against:

(1) An asset of a relocated protected series; or

(2) An asset of a non-surviving company that vested in the surviving company as a result of the merger.

B. For the purposes of subdivision A 3 and subdivisions B 1a, B 2a, and B 3a of § 13.1-1099.10, the incurrence date is deemed to be the date on which the merger becomes effective.

C. A merger under § 13.1-1099.16 does not affect the manner in which § 13.1-1099.10 applies to a liability incurred after the merger.

§ 13.1-1099.21. Governing law; foreign series limited liability companies and foreign protected series.

The law of the jurisdiction of formation of a foreign series limited liability company governs:

1. The internal affairs of a foreign protected series of the foreign series limited liability company, including:

a. Relations among any associated members of the foreign protected series;

b. Relations between the foreign protected series and:

(1) Any associated member;

(2) The protected series manager; or

(3) Any protected series assignee;

c. Relations between any associated member and:

(1) The protected series manager; and

(2) Any protected series assignee;

- 11094 d. The rights and duties of a protected series manager;
 11095 e. Governance decisions affecting the activities and affairs of the foreign protected series and the
 11096 conduct of those activities and affairs; and
 11097 f. Procedures and conditions for becoming an associated member or protected series assignee;
 11098 2. Relations between the foreign protected series and:
 11099 a. The foreign series limited liability company;
 11100 b. Another foreign protected series of the foreign series limited liability company;
 11101 c. A member of the foreign series limited liability company that is not an associated member of the
 11102 foreign protected series;
 11103 d. A foreign protected series manager that is not a protected series manager of the protected series;
 11104 e. A foreign protected series assignee that is not a foreign protected series assignee of the protected
 11105 series; and
 11106 f. An assignee of a membership interest of the foreign series limited liability company;
 11107 3. Except as otherwise provided in §§ 13.1-1099.8 and 13.1-1099.10, the liability of a person for a
 11108 debt, obligation, or other liability of a foreign protected series of a foreign series limited liability
 11109 company if the debt, obligation, or liability is asserted solely by reason of the person being or acting
 11110 as:
 11111 a. An associated member, protected series assignee, or protected series manager of the foreign
 11112 protected series;
 11113 b. A member of the foreign series limited liability company that is not an associated member of the
 11114 foreign protected series;
 11115 c. A protected series manager of another foreign protected series of the foreign series limited
 11116 liability company;
 11117 d. A protected series assignee of another foreign protected series of the foreign series limited liability
 11118 company;
 11119 e. A manager of the foreign series limited liability company; or
 11120 f. An assignee of a membership interest of the foreign series limited liability company; and
 11121 4. Except as otherwise provided in §§ 13.1-1099.8 and 13.1-1099.10:
 11122 a. The liability of the foreign series limited liability company for a debt, obligation, or other liability
 11123 of a foreign protected series of the foreign series limited liability company if the debt, obligation, or
 11124 liability is asserted solely by reason of the foreign protected series being a foreign protected series of
 11125 the foreign series limited liability company or the foreign series limited liability company:
 11126 (1) Being or acting as a foreign protected series manager of the foreign protected series;
 11127 (2) Having the foreign protected series manage the foreign series limited liability company; or
 11128 (3) Owning a protected series membership interest of the foreign protected series; and
 11129 b. The liability of a foreign protected series for a debt, obligation, or other liability of the foreign
 11130 series limited liability company or another foreign protected series of the foreign series limited liability
 11131 company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series:
 11132 (1) Being a foreign protected series of the foreign series limited liability company or having the
 11133 foreign series limited liability company or another foreign protected series of the foreign series limited
 11134 liability company be or act as a foreign protected series manager of the foreign protected series; or
 11135 (2) Managing the foreign series limited liability company or being or acting as a foreign protected
 11136 series manager of another foreign protected series of the foreign series limited liability company.
 11137 **§ 13.1-1099.22. No attribution of activities constituting transacting business or for establishing**
 11138 **jurisdiction.**
 11139 In determining whether a foreign series limited liability company or foreign protected series of the
 11140 foreign series limited liability company transacts business in the Commonwealth or is subject to the
 11141 personal jurisdiction of the courts of the Commonwealth:
 11142 1. The activities and affairs of the foreign series limited liability company are not attributable to a
 11143 foreign protected series of the foreign series limited liability company solely by reason of the foreign
 11144 protected series being a foreign protected series of the foreign series limited liability company; and
 11145 2. The activities and affairs of a foreign protected series are not attributable to the foreign series
 11146 limited liability company or another foreign protected series of the foreign series limited liability
 11147 company solely by reason of the foreign protected series being a foreign protected series of the foreign
 11148 series limited liability company.
 11149 **§ 13.1-1099.23. Registration of foreign series limited liability company and foreign protected series;**
 11150 **amended application; voluntary cancellation; reinstatement.**
 11151 A. A foreign series limited liability company shall obtain from the Commission a certificate of
 11152 registration to transact business in the Commonwealth before any foreign protected series of the foreign
 11153 series limited liability company is registered to transact business in the Commonwealth. In addition to
 11154 the requirements for registration in § 13.1-1052, the foreign series limited liability company shall

1155 include an attachment to its application that lists the name of each foreign protected series of the
1156 foreign series limited liability company and the jurisdiction under whose law each is established.

1157 B. Except as otherwise provided in this section and subject to §§ 13.1-1099.8 and 13.1-1099.10, the
1158 provisions of Article 10 (§ 13.1-1051 et seq.) governing foreign limited liability companies apply to a
1159 foreign protected series as if the foreign protected series were a foreign limited liability company
1160 organized separately from the foreign series limited liability company that established the foreign
1161 protected series and distinct from the foreign series limited liability company and any other foreign
1162 protected series of the foreign series limited liability company.

1163 C. An application by a foreign protected series for a certificate of registration to transact business in
1164 the Commonwealth shall meet the requirements of § 13.1-1052 and shall also include:

1165 1. The name, jurisdiction of formation, and post office address of the principal office of the foreign
1166 protected series applying for registration; and

1167 2. The name and jurisdiction of formation of the foreign series limited liability company that
1168 established the foreign protected series.

1169 D. The registered agent and registered office of a foreign protected series shall be the same as the
1170 foreign series limited liability company that established the foreign protected series.

1171 E. The name of a foreign protected series applying for a certificate of registration or registered to
1172 transact business in the Commonwealth shall comply with § 13.1-1096. A foreign protected series may
1173 comply with § 13.1-1096 pursuant to § 13.1-1054.

1174 F. The requirement in § 13.1-1055 to amend an application for registration of a foreign limited
1175 liability company shall be applicable to a foreign protected series that has a certificate of registration to
1176 transact business in the Commonwealth.

1177 G. Whenever the certificate of registration to transact business in the Commonwealth of a foreign
1178 series limited liability company is canceled, any certificate of registration to transact business in the
1179 Commonwealth issued to a foreign protected series of the foreign series limited liability company that
1180 established the foreign protected series shall thereupon be automatically canceled.

1181 H. A foreign protected series whose certificate of registration to transact business in the
1182 Commonwealth has been canceled may have its certificate of registration reinstated in accordance with
1183 § 13.1-1056.3 as if it were a foreign limited liability company, provided that the foreign series limited
1184 liability company that established the foreign protected series has a certificate of registration in effect.

1185 1. A foreign protected series registered to transact business in the Commonwealth may apply to the
1186 Commission for a certificate of cancellation to cancel its certificate of registration as a foreign
1187 protected series. The application shall be on a form prescribed and furnished by the Commission, which
1188 shall set forth:

1189 1. The name of the foreign protected series, the name of the foreign series limited liability company
1190 that established the foreign protected series, the name of the jurisdiction of formation of the foreign
1191 series limited liability company, and the identification number issued by the Commission to the foreign
1192 series limited liability company;

1193 2. If applicable, a statement that the foreign series limited liability company that established the
1194 foreign protected series was a party to a merger permitted by the laws of its jurisdiction of formation
1195 and that it was not the surviving entity of the merger, or has converted to another type of entity under
1196 the laws of its jurisdiction of formation;

1197 3. That the foreign protected series is not transacting business in the Commonwealth and that it
1198 surrenders its registration to transact business in the Commonwealth;

1199 4. That the foreign protected series revokes the authority of its registered agent to accept service on
1200 its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding
1201 based on a cause of action arising during the time it was registered to transact business in the
1202 Commonwealth;

1203 5. A mailing address to which the clerk of the Commission may mail a copy of any process served
1204 on the clerk under subdivision 4; and

1205 6. A commitment to notify the clerk of the Commission in the future of any change in the mailing
1206 address of the foreign protected series.

1207 J. The Commission shall not issue a certificate of cancellation to any foreign protected series unless
1208 the foreign protected series files with the Commission a statement certifying that the foreign protected
1209 series has filed returns and has paid all state taxes to the time of the statement, or a statement that no
1210 returns are required to be filed or taxes are required to be paid. In that case the foreign protected
1211 series may file returns and pay taxes before they would otherwise be due. If the Commission finds that
1212 the application complies with the requirements of law and all required fees have been paid, it shall
1213 issue a certificate of cancellation canceling the certificate of registration.

1214 K. Service of process on the clerk of the Commission is service of process on a foreign protected
1215 series whose certificate of registration has been canceled pursuant to this section. Service upon the clerk

shall be made in accordance with § 12.1-19.1, and service upon the foreign protected series may be made in any other manner permitted by law.

§ 13.1-1099.24. Disclosure required when foreign series limited liability company or foreign protected series subject to proceeding.

A. Not later than 30 days after becoming a party to a proceeding before a civil, criminal, administrative, or other adjudicative tribunal of the Commonwealth or a tribunal of the United States located in the Commonwealth:

1. A foreign series limited liability company shall disclose to each other party the name and the street and mailing addresses of:

a. Each foreign protected series of the foreign series limited liability company; and

b. Each foreign protected series manager of and an agent for service of process for each foreign protected series of the foreign series limited liability company; and

2. A foreign protected series of a foreign series limited liability company shall disclose to each other party the name and the street and mailing addresses of:

a. The foreign series limited liability company that established the foreign protected series, each person managing the foreign series limited liability company, and an agent for service of process for the foreign series limited liability company; and

b. Any other foreign protected series of the foreign series limited liability company and each protected series manager of and an agent for service of process for the other protected series.

B. If a foreign series limited liability company or foreign protected series challenges the personal jurisdiction of the tribunal, the requirement that the foreign series limited liability company or foreign protected series make disclosure under subsection A is tolled until the tribunal determines whether it has personal jurisdiction.

C. If a foreign series limited liability company or foreign protected series does not comply with subsection A, a party to the proceeding may:

1. Request the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules; or

2. Bring a separate proceeding in the tribunal to enforce subsection A.

§ 13.1-1099.25. Uniformity of application and construction.

In applying and construing this article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Protected Series Act.

§ 13.1-1099.26. Effect on certain actions.

This article does not affect an action commenced, proceeding brought, or right accrued before July 1, 2020.

§ 13.1-1099.27. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) but does not modify, limit, or supersede § 101 of that Act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103 of that Act (15 U.S.C. § 7003 (b)).

2. That the provisions of this act shall become effective on July 1, 2020.