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HOUSE BILL NO. 2474

House Amendments in [] — February 1, 1997

A BILL to amend and reenact §§ 13.1-603, 13.1-722, 13.1-766.1, 13.1-1002, 13.1-1010.1, 13.1-1010.2, 13.1-1011, 13.1-1014, 13.1-1023, 13.1-1029, 13.1-1030, 13.1-1038.1, 13.1-1040, 13.1-1046, 13.1-1060, 13.1-1064, 13.1-1067, 13.1-1070, 13.1-1072, 13.1-1073, 50-37.3, 50-73.1, 50-73.48:1, 50-73.48:3, 50-73.48:4, 50-73.57:2 and 50-73.130 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 13.1-1010.3, relating to limited liability entities.

Patron—Diamonstein

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-603, 13.1-722, 13.1-766.1, 13.1-1002, 13.1-1010.1, 13.1-1010.2, 13.1-1011, 13.1-1014, 13.1-1023, 13.1-1029, 13.1-1030, 13.1-1038.1, 13.1-1040, 13.1-1046, 13.1-1060, 13.1-1064, 13.1-1067, 13.1-1070, 13.1-1072, 13.1-1073, 50-37.3, 50-73.1, 50-73.48:1, 50-73.48:3, 50-73.48:4, 50-73.57:2 and 50-73.130 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 13.1-1010.3 as follows:

§ 13.1-603. Definitions.

In this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of merger, except a certificate of merger with a subsidiary pursuant to § 13.1-719, consolidation, serial designation, reduction or correction. It excludes articles of exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of amendment or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of amendment or merger.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of this Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of this Commonwealth, even though also being a corporation organized under laws other than the laws of this Commonwealth.

"Deliver" includes mail.

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ 13.1-672.1 et seq.) of Chapter 9 of this title, a foreign corporation.

"Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or personal representative of a deceased shareholder, or any other shareholder, but only to the extent the acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

"Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

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

"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 this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.

"Effective date of notice" is defined in § 13.1-610.

"Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

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60 "Entity" includes corporation and foreign corporation; nonstock corporation; profit and not-for-profit
61 unincorporated association; business trust, estate, partnership, trust, and two or more persons having a
62 joint or common economic interest; and state, United States and foreign government.

63 "Foreign corporation" means a corporation authorized by law to issue shares, organized under laws
64 other than the laws of this Commonwealth.

65 "Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

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

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

71 "*Foreign registered limited liability partnership*" has the same meanings as specified in §§ 50-2 and
72 50-73.79.

73 "Government subdivision" includes authority, county, district, and municipality.

74 "Includes" denotes a partial definition.

75 "Individual" includes the estate of an incompetent or deceased individual.

76 "Means" denotes an exhaustive definition.

77 "Notice" is defined in § 13.1-610.

78 "Person" includes individual and entity.

79 "Principal office" means the office, in or out of this Commonwealth, where the principal executive
80 offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or
81 out of this Commonwealth, so designated by the board of directors. The designation of the principal
82 office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of
83 this chapter.

84 "Proceeding" includes civil suit and criminal, administrative, and investigatory action conducted by a
85 governmental agency.

86 "Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654
87 et seq.) of this chapter on which a corporation determines the identity of its shareholders for purposes of
88 this chapter.

89 "Share" means the unit into which the proprietary interests in a corporation are divided.

90 "Shareholder" means the person in whose name shares are registered in the records of the
91 corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on
92 file with a corporation, or the beneficial owner of shares held in a voting trust.

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

96 "Subscriber" means a person who subscribes for shares in a corporation, whether before or after
97 incorporation.

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

100 "Voting group" means all shares of one or more classes or series that under the articles of
101 incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a
102 meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote
103 generally on the matter are for that purpose a single voting group.

104 § 13.1-722. Merger or share exchange with foreign corporation, or domestic or foreign limited
105 liability company, partnership or limited partnership.

106 A. One or more foreign corporations or domestic or foreign limited liability companies, *partnerships*
107 or limited partnerships may merge with one or more domestic corporations, and a foreign corporation
108 may enter into a share exchange with a domestic corporation, if:

109 1. In a merger:

110 a. The merger is permitted by the laws of the state or country under whose law each foreign
111 corporation, limited liability company, *partnership* or limited partnership is incorporated, organized or
112 formed, and each such foreign corporation, limited liability company, *partnership* or limited partnership
113 complies with those laws in effecting the merger;

114 b. Each domestic limited liability company party to the merger complies with the applicable
115 provisions of Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of Title 13.1;

116 c. *Each domestic partnership party to the merger complies with the applicable provisions of Article 9*
117 *(§ 50-73.124 et seq.) of Chapter 2.2 of Title 50;*

118 d. Each domestic limited partnership party to the merger complies with the applicable provisions of
119 Article 7.1 (§ 50-73.48:1 et seq.) of Chapter 2.1 of Title 50; and

120 ~~e.~~ e. A domestic or foreign corporation or limited liability company is the surviving entity of the
121 merger;

2. In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

3. The foreign corporation or domestic or foreign limited liability company complies with § 13.1-720 if it is the surviving foreign corporation or domestic or foreign limited liability company of the merger or acquiring corporation of the share exchange. The articles of merger filed with the Commission by the surviving domestic or foreign corporation or limited liability company in accordance with § 13.1-720 shall contain, in addition to the information required by § 13.1-720, the name of the state or country under whose law each foreign corporation or domestic or foreign limited liability company, *partnership* or limited partnership planning to merge is incorporated, organized or formed and the name of the state or country of incorporation or organization of the surviving domestic or foreign corporation or limited liability company. The articles of merger may contain a statement that the merger is permitted by the state or country under whose law each foreign corporation, limited liability company, *partnership* or limited partnership party to the merger is incorporated, organized or formed, and that each foreign corporation, limited liability company, *partnership* or limited partnership has complied with that law in effecting the merger. If such a statement is included in the articles of merger, the surviving limited liability company or corporation shall not be required to file with the Commission any copy of a duly authenticated instrument of merger that would otherwise be required pursuant to § 13.1-766.1 or § 13.1-1060, as the case may be; and

4. Each domestic corporation complies with the applicable provisions of §§ 13.1-716 through 13.1-719 and the surviving corporation of the merger or acquiring corporation of the share exchange complies with § 13.1-720.

B. Upon a merger's taking effect, the surviving foreign corporation or domestic or foreign limited liability company in the merger, and, upon a share exchange's taking effect in which the plan of share exchange places the responsibility for dissenters' rights on the acquiring corporation, the acquiring foreign corporation in the share exchange, each is deemed:

1. To appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

2. To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Article 15 (§ 13.1-729 et seq.) of this chapter.

C. This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

D. No corporation that is required by law to be a domestic corporation, may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States or another country, shall also be a domestic corporation of this Commonwealth.

E. If a foreign corporation or a domestic or foreign limited liability company is the surviving entity of a merger, the surviving foreign corporation or domestic or foreign limited liability company shall be considered a surviving corporation for the purposes of § 13.1-721 A.

§ 13.1-766.1. Merger of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation authorized to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or country under whose laws it is incorporated, and such corporation is the surviving entity of the merger, it shall, within thirty days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws such merger was effected.

B. Whenever a foreign corporation authorized to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign corporation, limited liability company, *partnership* or limited partnership shall, if not continuing to transact business in this Commonwealth, within thirty days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws such merger or consolidation was effected, and comply in behalf of the predecessor corporation with the provisions of § 13.1-767. If ~~the~~ a surviving or resulting corporation or limited liability company, *registered limited liability partnership* or limited partnership is to continue to transact business in this Commonwealth and has not received a certificate of authority to transact business in the Commonwealth or registered as a foreign limited liability company under § 13.1-1052, *as a foreign registered limited liability partnership under § 50-73.138 or 50-43.7* or as a foreign limited partnership under § 50-73.54,

183 then, within such thirty days, it shall deliver to the Commission an application, if a foreign corporation,
 184 for a certificate of authority to transact business in this Commonwealth, if a foreign limited liability
 185 company, for registration as a foreign limited liability company, *if a foreign registered limited liability*
 186 *partnership, for registration as a foreign registered limited liability partnership*, or, if a foreign limited
 187 partnership, for registration as a foreign limited partnership, together with a duly authenticated copy of
 188 the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of
 189 incorporation, certificate of limited partnership, *partnership certificate, statement of registered limited*
 190 *liability partnership* or articles of organization and all amendments thereto, duly authenticated by the
 191 Secretary of State or other official having custody of corporate, limited partnership, *registered limited*
 192 *liability partnership* or limited liability company records in the state or country under whose laws it is
 193 incorporated, formed or organized.

194 C. Upon the merger or consolidation of a foreign corporation with one or more foreign corporations,
 195 *partnerships*, limited partnerships or limited liability companies, all property in this Commonwealth
 196 owned by any of the foreign corporations, *partnerships*, limited partnerships or limited liability
 197 companies shall pass to the surviving or resulting foreign corporation, limited liability company or
 198 limited partnership except as otherwise provided by the laws of the state or country by which it is
 199 governed, but only from and after the time when a duly authenticated copy of the instrument of merger
 200 or consolidation is filed with the Commission.

201 § 13.1-1002. Definitions.

202 As used in this chapter:

203 "Articles of organization" means all documents constituting, at any particular time, the articles of
 204 organization of a limited liability company. It includes the original articles of organization, the original
 205 certificate of organization issued by the Commission, and all amendments to the articles of organization.
 206 When the articles of organization have been restated pursuant to any articles of amendment, it includes
 207 only the restated articles of organization and any subsequent amendments to the restated articles of
 208 organization, but does not include the articles of amendment accompanying the restated articles of
 209 organization.

210 "Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title
 211 11 of the United States Code.

212 "Commission" means the State Corporation Commission of Virginia.

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

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

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

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

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

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

225 "Foreign limited liability company" means an entity that is an unincorporated association organized
 226 under laws other than the laws of this Commonwealth, and that affords to each of its members, pursuant
 227 to the laws under which it is organized, limited liability with respect to the liabilities of the entity.

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

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

233 "*Foreign registered limited liability partnership*" has the same meanings as specified in §§ 50-2 and
 234 50-73.79.

235 "Limited liability company" or "domestic limited liability company" means an entity that is an
 236 unincorporated association [~~; without perpetual duration, ;~~] that is organized and existing under this
 237 chapter.

238 "~~Majority in interest~~" means a majority of the profits interests and a majority of the capital interests
 239 of a limited liability company.

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

243 "Manager-managed limited liability company" means a limited liability company that is managed by
 244 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.

"Principal office" means the office, in or out of this Commonwealth, where the principal executive offices of a domestic or foreign limited liability company are located.

"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.

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

§ 13.1-1010.1. Conversion of partnership to limited liability company.

A. A ~~general partnership governed by the provisions of Title 50 or a limited partnership formed under the provisions of Chapter 2.1 (§ 50-73.1 et seq.) of Title 50~~ domestic or foreign partnership or limited partnership may convert to a limited liability company by filing articles of organization that meet the requirements of § 13.1-1011 and include the following:

1. The name of the former ~~general~~ partnership or limited partnership; ~~and~~

2. The date and place of filing of the initial certificate or statement of partnership ~~or~~, certificate of limited partnership or similar filing document of the former ~~general~~ partnership or limited partnership; ~~and~~

3. *If the former partnership or limited partnership is a registered limited liability partnership, the date and place of filing of the initial registration as or statement of registered limited liability partnership.*

B. The terms and conditions of a conversion of a ~~general partnership~~ or limited partnership to a limited liability company shall be approved by the partners in the manner provided in the partnership's partnership agreement for amendments to the partnership agreement or, if no such provision is made in a partnership agreement, by all the partners.

C. A general partner who becomes a member of a limited liability company as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect *to the same extent that the general partner is liable for that obligation before the conversion takes effect.* The general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member or manager of a limited liability company, as the case may be, as provided in this chapter.

§ 13.1-1010.2. Effect of conversion; entity unchanged.

A. A general or limited partnership that has been converted pursuant to § 13.1-1010.1 shall be deemed for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

1. All property owned by the converting general or limited partnership remains vested in the converted entity;

2. All obligations of the converting general or limited partnership continue as obligations of the converted entity; and

3. An action or proceeding pending against the converting general or limited partnership may be continued as if the conversion had not occurred.

C. In the case of a *domestic* limited partnership that has been converted pursuant to § 13.1-1010.1, the articles of organization filed pursuant to § 13.1-1010.1 shall serve as a certificate of cancellation of the converting limited partnership, *and in the case of a domestic partnership that has been converted pursuant to § 13.1-1010.1, the articles of organization filed pursuant to § 13.1-1010.1 shall, if applicable, serve as a statement of dissolution and a statement of cancellation of registration of the domestic partnership.*

§ 13.1-1010.3. Domestication of non-United States entities.

306 A. Any non-United States entity may become domesticated as a limited liability company by
307 complying with subsection [~~F E~~] of this section and filing articles of organization that meet the
308 requirements of § [§ 13.1-1003 and] 13.1-1011 and include the following:

309 1. The name of the non-United States entity immediately prior to the filing of the articles of
310 organization;

311 2. The date on which and the jurisdiction in which the non-United States entity was first formed,
312 incorporated, organized, created or otherwise came into being;

313 3. The jurisdiction that constituted the seat, siege social, or principal place of business or central
314 administration of the non-United States entity, or any equivalent thereto under applicable law,
315 immediately prior to the filing of the articles of organization.

316 B. A non-United States entity that has been domesticated pursuant to this section shall be deemed for
317 all purposes the same entity that existed before the domestication.

318 C. Upon the effective date and time of the certificate or organization:

319 1. The non-United States entity shall be domesticated as a limited liability company, and the limited
320 liability company shall thereafter be subject to all of the provisions of this chapter, except that
321 notwithstanding subsection B of § 13.1-1004, the existence of the limited liability company shall be
322 deemed to have commenced on the date the non-United States entity commenced its existence in the
323 jurisdiction in which the non-United States entity was first formed, incorporated, organized, created or
324 otherwise came into being;

325 2. All property owned by the non-United States entity remains vested in the domesticated entity;

326 3. All obligations of the non-United States entity continue as obligations of the domesticated entity;
327 and

328 4. An action or proceeding pending against the non-United States entity may be continued as if the
329 conversion had not occurred.

330 D. The filing of articles of organization shall not affect the choice of law applicable to the
331 non-United States entity, except that from the effective date of the time of the domestication, the law of
332 the Commonwealth of Virginia, including the provisions of this chapter, shall apply to the non-United
333 States entity to the same extent as if the non-United States entity had been organized as a limited
334 liability company on the effective date of the certificate of organization.

335 E. The terms and conditions of a domestication of a non-United States entity as a limited liability
336 company shall be approved in the manner provided for by the document, instrument, agreement or other
337 writing, as the case may be, governing the internal affairs of the non-United States entity in the conduct
338 of its business or by applicable law other than the law of this Commonwealth, as appropriate.

339 § 13.1-1011. Articles of organization.

340 A. The articles of organization shall set forth:

341 1. A name for the limited liability company that satisfies the requirements of § 13.1-1012;

342 2. The post-office address, including the street and number, if any, of the limited liability company's
343 initial registered office, the name of the city or county in which it is located, the name of its initial
344 registered agent at that office, and that the agent is either (i) a resident of Virginia and either a member
345 or manager of the limited liability company or a member of the Virginia State Bar or (ii) a professional
346 corporation or professional limited liability company registered under § 54.1-3902; and

347 3. The post-office address, including the street and number, if any, of the principal office of the
348 limited liability company, which may be the same as the registered office, but need not be within this
349 Commonwealth; and

350 4. ~~The latest date on which the limited liability company is to be dissolved and its affairs wound up -~~

351 B. The articles of organization may set forth any other matter that under this chapter is permitted to
352 be set forth in an operating agreement of a limited liability company.

353 C. The articles of organization need not set forth any of the powers enumerated in this chapter.

354 § 13.1-1014. Amendment of articles of organization.

355 A. A limited liability company may amend its articles of organization at any time to add or change a
356 provision that is required or permitted in the articles ~~or~~, to delete a provision not required in the articles,
357 or to restate the articles.

358 B. For an amendment to the articles of organization of a limited liability company to be adopted, the
359 amendment shall be approved, unless the articles of organization require a greater vote, by a majority
360 vote of the members entitled to vote thereon.

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

363 1. The name of the limited liability company;

364 2. The text of each amendment adopted, or if the amendments are a restatement of the articles of
365 organization, restate articles of organization;

366 3. The date of each amendment's adoption; and

367 4. A statement that the amendment was adopted by a vote of the members in accordance with this

chapter.

If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment. *If the articles of amendment contain a restatement of the articles of organization, the restated articles of organization supersede the original articles of organization and all prior amendments to them.*

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

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

§ 13.1-1023. Operating agreement.

A. Authority.

1. The members of a limited liability company may enter into any operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of this Commonwealth or the articles of organization.

2. *If a limited liability company has only one member, an operating agreement shall be deemed to include:*

a. Any writing signed by the member, without regard to whether the writing constitutes an agreement, that relates to the affairs of the limited liability company and the conduct of its business.

b. Any agreement, regardless of whether the agreement is in writing, between the member and the limited liability company, that relates to the affairs of the limited liability company and the conduct of its business, provided that the limited liability company has a manager that is a person other than the member.

B. Adoption and amendment.

1. An operating agreement must initially be agreed to by all of the members. Unless the articles of organization or a written operating agreement specifically requires otherwise, an operating agreement need not be in writing.

2. If the articles of organization or an operating agreement does not provide for the method by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement.

C. Enforcement of operating agreement.

1. A court of equity may enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

2. As an alternative to injunctive or other equitable relief, when the provisions of § 13.1-1047 are applicable, the court may order dissolution of the limited liability company.

§ 13.1-1029. Sharing of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, ~~in the manner~~ *on the basis* provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the limited liability company records required to be kept pursuant to § 13.1-1028, of the contributions made by each member to the extent they have been received by the limited liability company.

§ 13.1-1030. Sharing of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, ~~in the manner~~ *on the basis* provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, distributions shall be made on the basis of the value, as stated in the limited liability company records required to be kept pursuant to § 13.1-1028, of the contributions made by each member to the extent they have been received by the limited liability company.

§ 13.1-1038.1. Admission of members.

A. Subject to subsection B, a person may become a member in a limited liability company:

1. In the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with an operating agreement or, if the operating agreement does not so provide, upon the consent of ~~all members~~ *a majority of the managers of a manager-managed limited liability company or a majority vote of the members of a member-managed limited liability company;* and

2. In the case of an assignee of a membership interest, as provided in subsection A of § 13.1-1040.

B. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in an operating agreement or, if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

§ 13.1-1040. Right of assignee to become member.

A. Except as otherwise provided in writing in the articles of organization or an operating agreement, an assignee of an interest in a limited liability company may become a member only by the consent of *a majority of the member-managers (other than the assignor member) of a manager-managed limited liability company of which one or more members is a manager, or by a majority in interest vote of the remaining members (other than the assignor member) of any other limited liability company.*

B. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement and this chapter. An assignee who becomes a member also is liable for any obligations of his assignor to make contributions and return distributions as provided in Articles 5 (§ 13.1-1022 et seq.) and 6 (§ 13.1-1029 et seq.) of this chapter. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to him at the time he or it became a member.

C. If an assignee of an interest in a limited liability company becomes a member, the assignor is not released from his liability under §§ 13.1-1027 and 13.1-1036 to the limited liability company.

§ 13.1-1046. Dissolution; generally.

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

1. At the time or on the happening of ~~the~~ *any* events specified in writing in the articles of organization or an operating agreement;

2. Upon the unanimous written consent of the members;

3. Except as otherwise provided in writing in the articles of organization or an operating agreement, upon the death, resignation, retirement, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event that terminates the continued membership of a member in the limited liability company, unless within six months after the event the limited liability company is continued by the consent of a majority ~~in interest~~ *of the remaining member-managers of a manager-managed limited liability company of which one or more members is a manager or by a majority vote* of the remaining members of ~~the any other~~ limited liability company; or

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

5. *Automatic cancellation of its certificate pursuant to § 13.1-1064.*

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

A. Whenever a foreign limited liability company authorized to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or country under whose laws it is organized, and that limited liability company is the surviving entity of the merger, it shall, within thirty days after the merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under whose laws the merger was effected.

B. Whenever a foreign limited liability company authorized to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or country under the laws of which it is organized, and that limited liability company is not the surviving entity of the merger, the surviving *partnership*, limited liability company, limited partnership or corporation shall, if not continuing to transact business in this Commonwealth, within thirty days after such merger becomes effective, deliver to the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under whose laws the merger was effected, and comply in behalf of the predecessor limited liability company with § 13.1-1056. If ~~the~~ *a surviving registered limited liability partnership*, limited liability company, limited partnership or corporation is to continue to transact business in this Commonwealth and has not registered as a foreign *registered limited liability partnership*, limited liability company or limited partnership or received a certificate of authority to transact business in this Commonwealth as a foreign corporation, as the case may be, it shall, within thirty days after the merger becomes effective, deliver to the Commission an application, if a *foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership*, foreign limited liability company, for registration as a foreign limited liability company, if a foreign limited partnership, for registration as a foreign limited partnership, or, if a foreign corporation, for a certificate of authority to transact business in this Commonwealth, together with a duly authenticated copy of the instrument of merger and also a copy of its *partnership certificate, statement of registered limited liability partnership*, articles of organization, certificate of limited partnership or articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of *registered limited*

liability partnership, limited liability company, limited partnership or corporate records in the state or country under whose laws it is organized, formed or incorporated.

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

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

A. Any domestic or any foreign limited liability company failing to pay the annual registration fee into the state treasury within the time prescribed in § 13.1-1062 shall incur a penalty thereon of twenty-five dollars which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalties and liabilities imposed by law.

B. If any domestic or foreign limited liability company fails to pay on or before October 1 of the year assessed the annual registration fee, the Commission shall mail notice to the limited liability company of impending cancellation of its certificate of organization or certificate of registration, as the case may be. The certificate shall be automatically canceled if any annual registration fee is unpaid as of December 31 of that year. A domestic limited liability company whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 9 (§ 13.1-1046 et seq.) of this chapter.

C. No member, manager or other agent of a limited liability company shall have any personal obligation for any liabilities of the limited liability company, whether such liabilities arise in contract, tort or otherwise, solely by reason of the failure or refusal of that limited liability company to pay the annual registration fee or by reason of the cancellation of the limited liability company's certificate of organization or certificate of registration, as applicable, pursuant to subsection B of this section.

D. A domestic or foreign limited liability company whose certificate of organization or certificate of registration has been canceled pursuant to subsection B of this section may be relieved of the cancellation, and its certificate of organization or certificate of registration shall be reinstated by paying, not later than two years following the date of cancellation, the annual registration fee required by § 13.1-1062, together with the late fee imposed by subsection A of this section; a reinstatement fee of \$100; and all registration fees and penalties that were due before the certificate was canceled and would have become due had the certificate not been canceled. If the name of the limited liability company is not available at the time of reinstatement, as a precondition to reinstatement the limited liability company, if domestic, shall file an amendment to its articles of organization to change its name, or if foreign, shall adopt a designated name, to satisfy the requirements of § 13.1-1012.

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

§ 13.1-1067. Property title records.

A. Whenever by (i) amendment to the articles of organization pursuant to § 13.1-1014, (ii) certificate of correction of the application for registration of a foreign limited liability company pursuant to § 13.1-1055, ~~or~~ (iii) conversion of a general partnership or limited partnership to a limited liability company pursuant to § 13.1-1010.1, or (iv) domestication of a non-United States entity as a limited liability company pursuant to § 13.1-1010.3, the name of any domestic or foreign limited liability company is changed or a general or limited partnership or non-United States entity is converted to limited liability company form, the clerk of the Commission, upon request, shall issue a certificate that recites the change of name or conversion. The certificate may be admitted to record in the deed books, in accordance with § 17-60, 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 ten dollars to the clerk of the court, but no tax shall be due thereon.

B. Whenever by merger of a domestic or foreign limited liability company with one or more domestic or foreign limited liability companies, partnerships, limited partnerships ~~or~~, corporations or other entities pursuant to Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of this title or to the laws of a foreign jurisdiction, or by conversion of any entity to a foreign limited liability company pursuant to the

552 *laws of a foreign jurisdiction*, a domestic or foreign limited liability company succeeds to the ownership
553 of or any interest in real estate, and when such domestic or foreign limited liability company furnishes
554 the Commission with a certificate of merger issued by the Commission or a similar certificate *of merger*
555 *or conversion* issued by any competent authority of the jurisdiction under which any such foreign
556 limited liability company is organized, the clerk of the Commission, upon request, shall issue a
557 certificate that recites the succession to ownership of or interest in real estate. The certificate may be
558 admitted to record in the deed books, in accordance with § 17-60, of any recording office within the
559 jurisdiction of which any property of the limited liability company is located in order to maintain the
560 continuity of title records. The person filing the certificate shall pay a fee of ten dollars to the clerk of
561 the court, but no tax shall be due thereon.

562 § 13.1-1070. Merger.

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

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

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

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

574 3- 4. Each domestic corporation that is a party to the merger complies with the applicable provisions
575 of Article 12 (§ 13.1-716 et seq.) of Chapter 9 of Title 13.1;

576 4- 5. The merger is permitted by the laws under which each foreign limited liability company,
577 *foreign partnership*, foreign limited partnership and foreign corporation party to the merger is organized,
578 formed or incorporated, and each such foreign limited liability company, *partnership*, limited partnership
579 or corporation complies with those laws in effecting the merger;

580 5- 6. No member of a domestic limited liability company that is a party to the merger will, as a
581 result of the merger, become personally liable for the liabilities or obligations of any other person or
582 entity unless that member approves the plan of merger or otherwise consents to becoming personally
583 liable;

584 6- 7. In the case of a merger of a limited liability company to which one or more domestic or
585 foreign corporations are parties, a domestic or foreign corporation or limited liability company party to
586 the merger is the surviving entity of the merger.

587 B. The plan of merger shall set forth:

588 1. The name of each domestic or foreign limited liability company, *partnership*, limited partnership
589 or corporation planning to merge and the name of the surviving domestic or foreign limited liability
590 company, *partnership*, limited partnership or corporation into which each other domestic or foreign
591 limited liability company, *partnership*, limited partnership or corporation plans to merge;

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

596 3. The terms and conditions of the merger; and

597 4. The manner and basis of converting the membership interests of each domestic limited liability
598 company, the partnership interests of each domestic *partnership* or limited partnership and the shares of
599 each domestic corporation party to the merger into membership interests, partnership interests, shares,
600 obligations or other securities of the surviving or any other domestic or foreign limited liability
601 company, *partnership*, limited partnership or corporation or into cash or other property in whole or in
602 part, and the manner and basis of converting rights to acquire the membership interests of each domestic
603 *partnership* or limited liability company, the partnership interests of each domestic limited partnership
604 and the shares of each domestic corporation party to the merger into rights to acquire membership
605 interests, partnership interests, shares, obligations or other securities of the surviving or any other
606 domestic or foreign limited liability company, *partnership*, limited partnership or corporation or into
607 cash or other property in whole or in part.

608 C. The plan of merger may set forth:

609 1. If a domestic limited liability company is to be the surviving entity, amendments to the articles of
610 organization or an operating agreement of that limited liability company;

611 2. If the merger is not to be effective upon the issuance of the certificate of merger described in
612 § 13.1-1072 C by the Commission, the future effective date or time of the merger; and

613 3. Other provisions relating to the merger.

§ 13.1-1072. Articles of merger.

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

1. The plan of merger;

2. If the surviving entity of the merger is a foreign limited liability company not registered with the Commission under § 13.1-1052, a foreign limited partnership not registered with the Commission under § 50-73.54 *a foreign registered limited liability partnership not registered with the Commission under § 50-73.138 or § 50-43.7*, or a foreign corporation without a certificate of authority issued by the Commission under § 13.1-759, the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was organized, formed or incorporated;

3. A statement that the plan of merger was adopted by *each domestic partnership party to the merger in accordance with § 50-73.128*, by each domestic limited liability company party to the merger in accordance with § 13.1-1071 and by each domestic limited partnership party to the merger in accordance with § 50-73.48:2; and

4. If a domestic corporation is a party to the merger, any additional information required by § 13.1-720.

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

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

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

§ 13.1-1073. Effect of merger.

When a merger takes effect:

1. The separate existence of every domestic limited liability company that is a party to the merger except the surviving domestic limited liability company, if any, ceases;

2. The title to all real estate and other property owned by each domestic limited liability company party to the merger is vested in the surviving domestic or foreign limited liability company, *partnership*, limited partnership or corporation without reversion or impairment;

3. The surviving domestic or foreign limited liability company, *partnership*, limited partnership or corporation has all liabilities of each domestic limited liability company party to the merger;

4. A proceeding pending by or against any domestic limited liability company party to the merger may be continued as if the merger had not occurred, or the surviving domestic or foreign limited liability company, *partnership*, limited partnership or corporation may be substituted in the proceeding for the domestic limited liability company whose existence ceased;

5. If a domestic limited liability company is the surviving entity of the merger, the articles of organization and operating agreement of that limited liability company are amended to the extent provided in the plan of merger; and

6. The former holders of membership interests of every domestic limited liability company party to the merger are entitled only to the rights provided in the plan of merger.

§ 50-37.3. (Repealed effective January 1, 2000) Property title records of certain limited partnerships.

A. Whenever by (i) amendment to the certificate of limited partnership pursuant to § 50-73.12, (ii) certificate of correction of the application for registration of a foreign limited partnership pursuant to § 50-73.57 or (iii) conversion of a general partnership to limited partnership form pursuant to § 50-73.11:1, the name of any domestic or foreign limited partnership is changed, or a general partnership is converted to limited partnership form, the Clerk of the Commission, upon request, shall issue a certificate which recites such change of name or conversion. Such certificate may be admitted to

675 record in the deed books, in accordance with § 17-60, of any court's recording office within the
676 jurisdiction of which any real estate of the limited partnership is located in order to maintain the
677 continuity of title records. The person filing such certificate shall pay a fee of ten dollars to the clerk of
678 the court, but no tax shall be due thereon.

679 B. Whenever by merger of a domestic or foreign limited partnership with one or more domestic or
680 foreign limited partnerships or limited liability companies or foreign corporations *or other entities*
681 pursuant to Article 7.1 (§ 50-73.48:1 et seq.) of Chapter 2.1 of this title or to the laws of a foreign
682 jurisdiction, *or by conversion of any entity to a foreign general or limited partnership pursuant to the*
683 *laws of a foreign jurisdiction*, a domestic or foreign *general or* limited partnership succeeds to the
684 ownership of or any interest in real estate, and when such domestic or foreign *general or* limited
685 partnership furnishes the Commission with a certificate of merger issued by the Commission or a similar
686 certificate *of merger or conversion* issued by any competent authority of the jurisdiction under which
687 any such foreign *general or* limited partnership is formed, the Clerk of the Commission, upon request,
688 shall issue a certificate which recites such succession to ownership of or interest in real estate. The
689 certificate may be admitted to record in the deed books, in accordance with § 17-60, of any court's
690 recording office within the jurisdiction of which any such real estate of the *general or* limited
691 partnership is located in order to maintain the continuity of title records. The person filing such
692 certificate shall pay a fee of ten dollars to the clerk of the court, but no tax shall be due thereon.

693 § 50-73.1. Definitions.

694 As used in this chapter, unless the context otherwise requires:

695 "Certificate of limited partnership" means the certificate referred to in § 50-73.11, and the certificate
696 as amended or restated.

697 "Commission" means the State Corporation Commission.

698 "Contribution" means any cash, property, services rendered, or a promissory note or other binding
699 obligation to contribute cash or property or to perform services, which a partner contributes to a limited
700 partnership in his capacity as a partner.

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

702 "Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

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

706 "Event of withdrawal of a general partner" means an event that causes a person to cease to be a
707 general partner as provided in § 50-73.28.

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

709 "Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

710 "Foreign limited partnership" means a partnership formed under the laws of any state or jurisdiction
711 other than this Commonwealth and having as partners one or more general partners and one or more
712 limited partners.

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

717 "*Foreign registered limited liability partnership*" has the same meanings as specified in §§ 50-2 and
718 50-73.79.

719 "General partner" means a person who has been admitted to a limited partnership as a general partner
720 in accordance with the partnership agreement and named in the certificate of limited partnership as a
721 general partner.

722 "Limited partner" means a person who has been admitted to a limited partnership as a limited partner
723 in accordance with the partnership agreement.

724 "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more
725 persons under the laws of this Commonwealth and having one or more general partners and one or more
726 limited partners.

727 "Liquidating trustee" means a person, other than a general partner, but including a limited partner,
728 who carries out the winding up of a limited partnership as provided in this chapter.

729 "Partner" means a limited or general partner.

730 "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs
731 of a limited partnership and the conduct of its business.

732 "Partnership interest" means a partner's share of the profits and losses of a limited partnership and
733 the right to receive distributions of partnership assets.

734 "Person" means an individual, partnership, limited partnership (domestic or foreign), trust, estate,
735 association, corporation or any other legal or commercial entity.

736 "State" means a state, territory, or possession of the United States, the District of Columbia, or the

Commonwealth of Puerto Rico.

§ 50-73.48:1. Merger.

A. Pursuant to a written plan of merger, a domestic limited partnership that has filed a certificate of limited partnership with the Commission in accordance with § 50-73.11, § 50-73.11:1 or, § 50-73.77 or § 50-73.125 may merge with one or more domestic or foreign *partnerships*, limited partnerships, limited liability companies or corporations if:

1. The merger is not prohibited by the partnership agreement of any domestic limited partnership that is a party to the merger, and each domestic limited partnership party to the merger approves the plan of merger in accordance with § 50-73.48:2 and complies with the terms of its partnership agreement;

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

3. Each domestic limited liability company that is a party to the merger complies with the applicable provisions of Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of Title 13.1;

3. 4. Each domestic corporation that is a party to the merger complies with the applicable provisions of Article 12 (§ 13.1-716 et seq.) of Chapter 9 of Title 13.1;

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

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

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

B. The plan of merger shall set forth:

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

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

3. The terms and conditions of the merger; and

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

C. The plan of merger may set forth:

1. If a domestic limited partnership is to be the surviving entity, amendments to the certificate of limited partnership or partnership agreement of that limited partnership;

2. If the merger is not to be effective upon the issuance of the certificate of merger described in subsection C of § 50-73.48:3 by the Commission, the future effective date or time of the merger; and

3. Other provisions relating to the merger.

§ 50-73.48:3. Articles of merger.

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

1. The plan of merger;

2. If the surviving entity of the merger is a *foreign limited liability partnership not registered with the Commission under § 50-73.138 or 50-43.7*, a foreign limited partnership not registered with the Commission under § 50-73.54, a foreign limited liability company not registered with the Commission

798 under § 13.1-1052 or a foreign corporation without a certificate of authority issued by the Commission
799 under § 13.1-759, the address, including street and number, if any, of its principal office under the laws
800 of the jurisdiction in which it was formed, organized or incorporated;

801 3. A statement that the plan of merger was adopted by *each domestic partnership party to the*
802 *merger in accordance with § 50-73.128*, each domestic limited partnership party to the merger in
803 accordance with § 50-73.48:2 and by each domestic limited liability company party to the merger in
804 accordance with § 13.1-1071; and

805 4. If a domestic corporation is a party to the merger, any additional information required by
806 § 13.1-720.

807 B. If a foreign *partnership*, limited partnership, limited liability company or corporation is a party to
808 the merger, the articles of merger may contain a statement that the merger is permitted by the state or
809 country under whose law that *partnership* or limited partnership is formed, that limited liability
810 company is organized or that corporation is incorporated and that the foreign *partnership*, limited
811 partnership, limited liability company or corporation has complied with that law in effecting the merger.
812 If such a statement is included in the articles of merger, ~~the~~ a surviving limited partnership, limited
813 liability company or corporation shall not be required to file with the Commission any copy of a duly
814 authenticated instrument of merger that would otherwise be required pursuant to § 13.1-766.1,
815 § 13.1-1060 or § 50-73.57:2, as the case may be.

816 C. If the Commission finds that the articles of merger comply with the requirements of law and that
817 all required fees have been paid, it shall issue a certificate of merger. The certificate of merger shall
818 become effective when issued unless the plan of merger specifies a future effective date, in which case
819 the certificate of merger shall be effective on the earlier of (i) that date or (ii) the date that is fifteen
820 days after the date on which the Commission issues the certificate of merger.

821 D. A certificate of merger shall act as a certificate of cancellation as described in § 50-73.13 for a
822 domestic limited partnership that is not the surviving entity of the merger, and that partnership's
823 certificate of limited partnership shall be cancelled upon the effective date of the certificate of merger.

824 § 50-73.48:4. Effect of merger.

825 When a merger takes effect:

826 1. The separate existence of every domestic limited partnership that is a party to the merger except
827 the surviving domestic limited partnership, if any, ceases;

828 2. The title to all real estate and other property owned by each domestic limited partnership party to
829 the merger is vested in the surviving domestic or foreign *partnership*, limited partnership, limited
830 liability company or corporation without reversion or impairment;

831 3. The surviving domestic or foreign *partnership*, limited partnership, limited liability company or
832 corporation has all liabilities of each domestic limited partnership party to the merger;

833 4. A proceeding pending by or against any domestic limited partnership party to the merger may be
834 continued as if the merger had not occurred, or the surviving domestic or foreign *partnership*, limited
835 partnership, limited liability company or corporation may be substituted in the proceeding for the
836 domestic limited partnership whose existence ceased;

837 5. If a domestic limited partnership is the surviving entity of the merger, the certificate of limited
838 partnership and partnership agreement of that limited partnership is amended to the extent provided in
839 the plan of merger; and

840 6. The former holders of partnership interests of every domestic limited partnership party to the
841 merger are entitled only to the rights provided in the plan of merger.

842 § 50-73.57:2. Merger of foreign limited partnership authorized to transact business in Commonwealth.

843 A. Whenever a foreign limited partnership authorized to transact business in this Commonwealth is a
844 party to a merger permitted by the laws of the state or country under whose laws it is formed, and that
845 limited partnership is the surviving entity of the merger, it shall, within thirty days after the merger
846 becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by
847 the Secretary of State or other official having custody of limited partnership records in the state or
848 country under whose laws the merger was effected.

849 B. Whenever a foreign limited partnership authorized to transact business in this Commonwealth is a
850 party to a merger permitted by the laws of the state or country under the laws of which it is formed,
851 and that limited partnership is not the surviving entity of the merger, the surviving *partnership*, limited
852 partnership, limited liability company or corporation shall, if not continuing to transact business in this
853 Commonwealth, within thirty days after the merger becomes effective, deliver to the Commission a copy
854 of the instrument of merger duly authenticated by the Secretary of State or other official having custody
855 of limited partnership records in the state or country under whose laws the merger was effected, and
856 comply in behalf of the predecessor limited partnership with § 50-73.58. If ~~the~~ a surviving *registered*
857 *limited liability partnership*, limited partnership, limited liability company or corporation is to continue
858 to transact business in this Commonwealth and has not registered with the Commission *as a foreign*
859 *registered limited liability partnership* under §§ 50-73.138 or 50-43.7, as a foreign limited partnership

under § 50-73.54 or as a foreign limited liability company under § 13.1-1052 or received a certificate of authority to transact business in this Commonwealth as a foreign corporation, as the case may be, it shall, within thirty days after the merger becomes effective, deliver to the Commission an application, *if a foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership*, if a foreign limited partnership, for registration as a foreign limited partnership, if a foreign limited liability company, for registration as a foreign limited liability company, or, if a foreign corporation, for a certificate of authority to transact business in this Commonwealth, together with a duly authenticated copy of the instrument of merger and also a copy of its *partnership certificate, statement of registered limited liability partnership*, certificate of limited partnership, articles of organization or articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of *registered limited liability partnership*, limited partnership, limited liability company or corporate records in the state or country under whose laws it is formed, organized or incorporated.

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

§ 50-73.130 Property title records.

A. Whenever by (i) amendment to the certificate of limited partnership pursuant to § 50-73.13, (ii) certificate of correction of the application for registration of a foreign limited partnership pursuant to § 50-73.58, (iii) conversion of a general partnership to limited partnership form pursuant to §§ 50-73.125 and 50-73.112, or (iv) conversion of a limited partnership to general partnership form pursuant to § 50-73.126, the name of any domestic or foreign limited partnership is changed, a general partnership is converted to limited partnership form, or a limited partnership is converted to general partnership form, the clerk of the Commission, upon request, shall issue a certificate that recites the change of name or conversion. The certificate may be admitted to record in the deed books, in accordance with § 17-60, of any court's recording office within the jurisdiction of which any real estate of the partnership or limited partnership is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of ten dollars to the clerk of the court, but no tax shall be due thereon.

B. Whenever by merger of a domestic or foreign general or limited partnership with one or more domestic or foreign general or limited partnerships ~~or~~, limited liability companies or corporations *or other entities* pursuant to Article 7.1 (§ 50-73.48:1 et seq.) of Chapter 2.1 or Article 9 (§ 50-73.124 et seq.) of this chapter or to the laws of a foreign jurisdiction, *or by conversion of any entity to a foreign general or limited partnership pursuant to the laws of a foreign jurisdiction* a domestic or foreign partnership or limited partnership succeeds to the ownership of or any interest in real estate, and when the domestic or foreign partnership or limited partnership furnishes the Commission with a certificate of merger issued by the Commission or a similar certificate *of merger or conversion* issued by any competent authority of the jurisdiction under which any such foreign partnership or limited partnership is formed, the clerk of the Commission, upon request, shall issue a certificate that recites the succession to ownership of or interest in real estate. The certificate may be admitted to record in the deed books, in accordance with § 17-60, of any court's recording office within the jurisdiction of which any such real estate of the general partnership or limited partnership is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of ten dollars to the clerk of the court, but no tax shall be due thereon.