

# VIRGINIA ACTS OF ASSEMBLY -- 1999 RECONVENED SESSION

## CHAPTER 966

*An Act to amend and reenact § 13.1-1027 of the Code of Virginia, relating to contributions of members of certain limited liability companies.*

[S 1194]

Approved April 7, 1999

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

**1. That § 13.1-1027 of the Code of Virginia is amended and reenacted as follows:**

§ 13.1-1027. Contributions.

A. The contributions of a member to a limited liability company may be in cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.

B. Except as provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the limited liability company records required to be kept by § 13.1-1028, of such contribution that has not been made.

C. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

D. The articles of organization or an operating agreement may provide in writing that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating his interest in the limited liability company to that of nondefaulting members, a forced sale of his interest in the limited liability company, forfeiture of his interest in the limited liability company, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his interest in the limited liability company by appraisal or by formula and redemption or sale of his interest in the limited liability company at such value, or other penalty or consequence.

E. No promise by a member to contribute to a limited liability company is enforceable unless set out in a writing signed by the member.

*F. The contributions of a corporation to a limited liability company of which such corporation is a member may be in the form of an asset for which an application for a project requiring a certificate has been approved by the Commissioner pursuant to the provisions of Title 32.1. No further approval by such Commissioner shall be required as a condition to the validity of the member's contribution of such an asset to the limited liability company if (i) both the member and the limited liability company have their principal offices within the same city or county of the Commonwealth, (ii) such contributing member owns at least one-third of the membership interests of the limited liability company, and (iii) the assets contributed by such member to the limited liability company comprise not more than ten percent of such assets of the member.*