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SENATE BILL NO. 512

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 26, 2002)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend and reenact §§ 13.1-1002 and 55-106.4 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 1-13.19:1 and by adding in Title 13.1 a chapter numbered 14, containing articles numbered 1 through 14, consisting of sections numbered 13.1-1200 through 13.1-1284, and to repeal Chapter 9 (§§ 6.1-343 through 6.1-351) of Title 6.1 of the Code of Virginia, relating to trusts; the Virginia Business Trust Act; real estate investment trusts; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1002 and 55-106.4 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 1-13.19:1 and by adding in Title 13.1 a chapter numbered 14, containing articles numbered 1 through 14, consisting of sections numbered 13.1-1200 through 13.1-1284, as follows:

§ 1-13.19:1. When "person" includes business trust.

Whenever the term "person" is defined to include both "corporation" and "partnership," such term shall be deemed to include "business trust."

§ 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. It includes 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 amendment, it includes only the restated articles of organization and any subsequent amendments to the restated articles of organization, but does not include the articles of amendment accompanying the restated articles of organization.

"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 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 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.

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

"Foreign limited liability company" means an entity, *excluding a foreign business trust as defined in § 13.1-1201*, that is an unincorporated association organized under laws other than the laws of this Commonwealth, 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 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 this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a foreign registered limited liability partnership.

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

"Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association that is organized and existing under this chapter. 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

60 operating agreement.

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

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

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

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

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

74 "Operating agreement" means an agreement of the members as to the affairs of a limited liability
75 company and the conduct of its business, or a writing or agreement of a limited liability company with
76 one member that satisfies the requirements of subdivision A 2 of § 13.1-1023.

77 "Person" has the same meaning as specified in § 13.1-603.

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

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

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

85 *CHAPTER 14.*
86 *VIRGINIA BUSINESS TRUST ACT.*

87 *Article 1.*

88 *General Provisions.*

89 *§ 13.1-1200. Short title.*

90 *This chapter shall be known as the Virginia Business Trust Act.*

91 *§ 13.1-1201. Definitions.*

92 *As used in this chapter:*

93 *"Articles of trust" means all documents constituting, at any particular time, the articles of trust of a*
94 *business trust. Articles of trust includes the original articles of trust, the original certificate of trust*
95 *issued by the Commission, and all amendments to the articles of trust. When the articles of trust have*
96 *been restated pursuant to any articles of amendment, the articles of trust includes only the restated*
97 *articles of trust and any subsequent amendments to the restated articles of trust, but does not include*
98 *the articles of amendment accompanying the restated articles of trust.*

99 *"Beneficial owner" means any owner of a beneficial interest in a business trust, the fact of ownership*
100 *to be determined and evidenced, whether by means of registration, the issuance of certificates or*
101 *otherwise, in conformity to the applicable provisions of the governing instrument of the business trust.*

102 *"Business trust" or "domestic business trust" means an unincorporated business, trust, or association*
103 *that:*

104 *A. Is governed by a governing instrument under which:*

105 *1. Property is or will be held, managed, administered, controlled, invested, reinvested, or operated*
106 *by a trustee for the benefit of persons as are or may become entitled to a beneficial interest in the trust*
107 *property; or*

108 *2. Business or professional activities for profit are carried on or will be carried on by one or more*
109 *trustees for the benefit of persons as are or may become entitled to a beneficial interest in the trust*
110 *property; and*

111 *B. Files articles of trust under § 13.1-1212.*

112 *C. "Business trust" includes, without limitation, any of the following entities that conform with*
113 *subsections A and B of this definition:*

114 *1. A trust of the type known at common law as a "business trust" or "Massachusetts trust;"*

115 *2. A trust qualifying as a real estate mortgage investment conduit under § 860 D of the United States*
116 *Internal Revenue Code of 1986, as amended, or under any successor provision;*

117 *3. A trust qualifying as a real estate investment trust under §§ 856 through 859 of the United States*
118 *Internal Revenue Code of 1986, as amended, or under any successor provision; or*

119 *4. A "real estate investment trust" or "trust" created under former Chapter 9 (§ 6-577 et seq.) of*
120 *Title 6 or former Chapter 9 (§ 6.1-343 et seq.) of Title 6.1.*

121 *"Commission" means the State Corporation Commission of Virginia.*

"Foreign business trust" means a business trust formed under the laws of any jurisdiction other than this Commonwealth and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

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

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

"Governing instrument" means a trust instrument that creates a business trust and provides for the governance of the affairs of the business trust and the conduct of its business, including, without limitation, a declaration of trust.

"Other business entity" means a corporation, a professional corporation, a general or limited partnership, a registered limited liability partnership, common law trust, a limited liability company, a professional limited liability company, or any other unincorporated business. "Other business entity" shall not include a business trust.

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

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

"Trustee" means a person appointed as a trustee in accordance with the governing instrument of a business trust. "Trustee" may include a beneficial owner of a business trust.

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

§ 13.1-1202. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may also contain other information.

D. The document shall be typewritten or printed. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A business trust name need not be in English if written in English letters or Arabic or Roman numerals. The articles of trust, duly authenticated by the official having custody of the applicable records in the state or other jurisdiction under whose law the business trust is formed, which are required of each foreign business trust, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be executed in the name of the business trust:

1. By a trustee or by an officer of the business trust;

2. If the business trust has not been formed, by the person forming the business trust; or

3. If the business trust is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he executes the document. Any signature may be a facsimile.

H. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

I. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee and any registration fee required by this chapter.

J. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information.

§ 13.1-1203. 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 business trust shall begin at the time the Commission issues a certificate of trust, unless a later date and time are specified as provided by subsection D. The certificate of trust shall be conclusive evidence that all conditions precedent required to be performed by the person or persons forming the business trust have been complied with and that the business trust has been formed under this chapter.

C. Whenever the Commission is directed to admit any document to record in its office, it shall cause

183 it to be spread upon its record books or to be recorded or reproduced in any other manner the
184 Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish
185 information from and provide access to any of its records by any means the Commission may deem
186 suitable.

187 D. 1. A certificate issued by the Commission is effective at the time such certificate is issued, unless
188 the certificate relates to articles filed with the Commission and the articles state that the certificate shall
189 become effective at a later time and date specified in the articles. In that event, the certificate shall
190 become effective at the earlier of the time and date so specified or at 11:59 p.m. on the fifteenth day
191 after the date on which the certificate is issued by the Commission. Any other document filed with the
192 Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

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

197 3. Notwithstanding subdivision 1 of this subsection, for purposes of §§ 13.1-1214 and 13.1-1244, any
198 certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

199 § 13.1-1204. Fees.

200 The Commission shall charge and collect the following fees:

201 A. For filing any one of the following, the fee shall be \$100:

202 1. Articles of trust.

203 2. An application for registration as a foreign business trust.

204 3. Articles of reinstatement.

205 4. Articles of domestication.

206 5. Articles of conversion.

207 B. For filing any one of the following, the fee shall be twenty-five dollars:

208 1. Articles of amendment.

209 2. Articles of cancellation with respect to a domestic or foreign business trust.

210 3. Articles of correction referred to in § 13.1-1213 or a certificate of correction referred to in
211 § 13.1-1245.

212 4. A copy of an instrument of merger of a foreign business trust referred to in §13.1-1250.

213 5. Articles of merger.

214 C. For filing any one of the following, the fee shall be ten dollars:

215 1. An application to reserve or to renew the reservation of a name for use by a domestic or foreign
216 business trust.

217 2. A notice of the transfer of a name reserved for use by a domestic or foreign business trust.

218 § 13.1-1205. Unlawful to sign false documents; penalty.

219 A. It shall be unlawful for any person to sign a document he knows is false in any material respect
220 with intent that the document be delivered to the Commission for filing under this chapter.

221 B. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

222 § 13.1-1206. Unlawful to transact or offer to transact business as a business trust; penalty.

223 A. It shall be unlawful for any person to transact business in this Commonwealth as a business trust
224 or to offer or advertise to transact business in this Commonwealth as a business trust unless the alleged
225 business trust is either a domestic business trust or a foreign business trust authorized to transact
226 business in this Commonwealth.

227 B. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

228 § 13.1-1207. Tax classification.

229 For purposes of any tax imposed by Title 58.1, a business trust shall be classified as a corporation,
230 an association, a partnership, a trust, a real estate investment trust, a regulated investment company or
231 otherwise, as shall be determined under the United States Internal Revenue Code of 1986, as amended,
232 or under any successor provision.

233 § 13.1-1208. Separate legal entity.

234 A business trust established in accordance with the provisions of this chapter is a separate legal
235 entity.

236 Article 2.

237 Formation.

238 § 13.1-1209. Purposes.

239 Every business trust formed under this chapter has the purpose of engaging in any lawful business,
240 except as otherwise may be provided by the law of this Commonwealth, unless a more limited purpose
241 is set forth in the articles of trust.

242 § 13.1-1210. Powers.

243 Unless the articles of trust provide otherwise, every business trust has the same powers as an
244 individual or any other entity to do all things necessary or convenient to carry out its business and

affairs, including, without limitation, the power:

1. To sue and be sued, complain and defend in its name;
2. To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
3. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
4. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other person;
5. To make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
6. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
7. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this Commonwealth;
8. To elect and appoint trustees, officers, employees and agents of the business trust, define their duties, fix their compensation, and lend them money and credit;
9. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit and incentive plans for all or any of the current or former beneficial owners, trustees, officers, employees, and agents of the business trust or any of its subsidiaries;
10. To make donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;
11. To make payments or donations or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the business trust;
12. To pay compensation, or to pay additional compensation, to any or all beneficial owners, trustees, officers and employees on account of services previously rendered to the business trust, whether or not an agreement to pay such compensation was made before such services were rendered;
13. To insure for its benefit the life of any of its beneficial owners, trustees, officers or employees, to insure the life of any beneficial owner for the purpose of acquiring at his death the interest owned by such beneficial owner and to continue such insurance after the relationship terminates;
14. To cease its activities and cancel its certificate of trust;
15. To enter into partnership agreements, joint ventures, or other associations of any kind with any person or persons;
16. To indemnify a trustee, officer, employee or any other person to the same extent as a corporation may indemnify any of the directors, officers, employees or agents of the corporation;
17. To transact any lawful business that a corporation, partnership, limited liability company or other business entity may conduct under the laws of the Commonwealth subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership, limited liability company or other business entity; and
18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the business trust is organized.

§ 13.1-1211. Formation.

One or more persons may form a business trust by signing and filing articles of trust with the Commission. Such person or persons need not be beneficial owners of the business trust after formation has occurred.

§ 13.1-1212. Articles of trust.

A. The articles of trust shall set forth:

1. A name for the business trust that satisfies the requirements of § 13.1-1215;
2. The post office address, including the street and number, if any, of the business trust's initial registered office, the name of the city or county in which it is located, the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of this Commonwealth and is a trustee or officer of the business trust, an officer or director of a corporation that is a trustee of the business trust, a general partner of a general or limited partnership that is a trustee of the business trust, a member or manager of a limited liability company that is a trustee of the business trust, a trustee of a business trust or other trust that is a trustee of the business trust, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth; and
3. The post office address, including the street and number, if any, of the principal office of the business trust, which may be the same as the registered office, but need not be within this

306 *Commonwealth.*

307 *B. The articles of trust may set forth any other matter that under this chapter is permitted to be set*
308 *forth in a governing instrument of a business trust.*

309 *C. The articles of trust need not set forth any of the powers enumerated in this chapter.*

310 *D. If the Commission finds that the articles of trust comply with the requirements of law and that all*
311 *required fees have been paid, it shall issue a certificate of trust.*

312 *§ 13.1-1213. Articles of correction.*

313 *A. A business trust may correct its articles of trust at any time to correct a name or address*
314 *specified in the articles of trust.*

315 *B. To correct its articles of trust, a business trust shall file with the Commission articles of*
316 *correction setting forth:*

317 *1. The name of the business trust; and*

318 *2. The text of each correction.*

319 *C. If the Commission finds that the articles of correction comply with the requirements of law and*
320 *that all required fees have been paid, it shall issue a certificate of correction.*

321 *§ 13.1-1214. Name.*

322 *A. The name of each business trust, as set forth in its articles of trust, may contain the following*
323 *words: "company," "association," "club," "foundation," "fund," "institute," "society," "union,"*
324 *"syndicate," or "trust," or abbreviations of like import.*

325 *B. A business trust name shall not contain:*

326 *1. The words or phrases "corporation," "professional corporation," "incorporated," "limited*
327 *company," "limited liability company," "professional limited liability company," "limited partnership,"*
328 *"registered limited liability partnership," "limited liability partnership," "registered limited liability*
329 *limited partnership," "limited liability limited partnership," "trust company," or the abbreviations*
330 *"Corp.," "Inc.," "L.C.," "LC," "L.L.C.," "LLC," "P.C.," "PC," "P.L.C.," "PLC," "P.L.L.C.," "PLLC,"*
331 *"L.P.," "LP," "R.L.L.P.," "RLLP," "L.L.P.," "LLP," "R.L.L.L.P.," "RLLLP," "L.L.L.P.," or "LLLP"; or*

332 *2. Any word or phrase the use of which is prohibited by law for such business trust.*

333 *C. Except as authorized by subsection D, a business trust name shall be distinguishable upon the*
334 *records of the Commission from:*

335 *1. The name of a domestic business trust or a foreign business trust registered to transact business*
336 *in this Commonwealth;*

337 *2. A business trust or other business entity name reserved or registered pursuant to this chapter or*
338 *Chapters 9 (§ 13.1-601 et seq.), 10 (§ 13.1-801 et seq.), 12 (§ 13.1-1000 et seq.), or 13 (§ 13.1-1100 et*
339 *seq.) of Title 13.1 or Chapter 2.1 (§ 50-73.1 et seq.) of Title 50; and*

340 *3. The designated name adopted by a foreign business trust because its real name is unavailable for*
341 *use in this Commonwealth.*

342 *D. A domestic business trust may apply to the Commission for authorization to use a name that is*
343 *not distinguishable upon its records from one or more of the names described in subsection C. The*
344 *Commission shall authorize use of the name applied for if the other domestic or foreign business trust*
345 *or other business entity consents to the use in writing and submits an undertaking in form satisfactory*
346 *to the Commission to change its name to a name that is distinguishable upon the records of the*
347 *Commission from the name of the applying business trust.*

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

350 *§ 13.1-1215. Reserved name.*

351 *A. A person may apply to the Commission to reserve the exclusive use of a business trust name,*
352 *including the designated name for a foreign business trust whose business trust name is not available*
353 *for use in this Commonwealth. If the Commission finds that the business trust name applied for is*
354 *available, it shall reserve the name for the applicant's exclusive use for a 120-day period.*

355 *B. The owner of a reserved business trust name may renew the reservation for successive periods of*
356 *120 days each.*

357 *C. The owner of a reserved business trust name may transfer the reservation to another person by*
358 *delivering to the Commission a notice of the transfer, executed by the applicant for whom the name was*
359 *reserved, and specifying the name and address of the transferee.*

360 *§ 13.1-1216. Amendment of articles of trust.*

361 *A. Except to the extent otherwise provided in this chapter, in the articles of trust or in the governing*
362 *instrument of the business trust, the sole trustee or a majority of the trustees may amend the articles of*
363 *trust of a business trust at any time to add or change a provision that is required or permitted in the*
364 *articles, or to delete a provision not required in the articles.*

365 *B. A business trust amending its articles of trust shall file with the Commission articles of*
366 *amendment setting forth:*

367 *1. The name of the business trust;*

- 368 2. The text of each amendment adopted;
 369 3. The date of each amendment's adoption; and
 370 4. A statement that the amendment was adopted in accordance with the articles of trust and the
 371 governing instrument of the business trust.
- 372 C. If the Commission finds that the articles of amendment comply with the requirements of law and
 373 that all required fees have been paid, it shall issue a certificate of amendment.
- 374 D. An amendment to the articles of the trust does not affect a cause of action existing against or in
 375 favor of the business trust, a proceeding to which the business trust is a party, or the existing rights of
 376 persons other than beneficial owners of the business trust. An amendment changing a business trust's
 377 name does not abate a proceeding brought by or against the business trust in its former name.
- 378 § 13.1-1217. Restatement of articles of trust.
- 379 A. Except to the extent otherwise provided in this chapter, in the articles of trust or in the governing
 380 instrument of the business trust, the sole trustee or a majority of the trustees may restate the articles of
 381 trust of a business trust at any time.
- 382 B. The restatement may include one or more amendments to the articles.
- 383 C. A business trust restating its articles of trust shall file with the Commission articles of restatement
 384 setting forth the name of the business trust and the text of the restated articles of trust together with a
 385 certificate setting forth:
- 386 1. The name of the business trust immediately prior to restatement;
 387 2. The date of the restatement's adoption; and
 388 3. A statement that the amendment was adopted in accordance with the articles of trust and the
 389 governing instrument of the business trust.
- 390 D. If the Commission finds that the articles of restatement comply with the requirements of law and
 391 that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of
 392 restatement is effective, the restated articles of trust supersede the original articles of trust and all
 393 amendments to them.
- 394 E. The Commission may certify restated articles of trust as the articles of trust currently in effect
 395 without including the certificate information required by subsection C.
- 396 § 13.1-1218. Existence.
- 397 A. Except to the extent otherwise provided in this chapter, in the articles of trust or in the governing
 398 instrument of the business trust, a business trust:
- 399 1. Shall have perpetual existence; and
 400 2. May not be terminated or revoked by a beneficial owner or other person except in accordance
 401 with the terms of the articles of trust or the governing instrument of the business trust.
- 402 B. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a
 403 business trust, the death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner shall
 404 not result in the termination or dissolution of a business trust.
- 405 C. In the event that a business trust does not have perpetual existence, a business trust is dissolved
 406 and its affairs shall be wound up in accordance with Article 8 (§ 13.1-1234 et seq.) of this chapter at
 407 the time or on the happening of events specified in the articles of trust or the governing instrument.
- 408 § 13.1-1219. Governing instrument.
- 409 A. A governing instrument of a business trust may:
- 410 1. Provide that a person shall become a beneficial owner and shall become bound by the governing
 411 instrument if such person, or a representative authorized by such person, orally, in writing, or by other
 412 action such as payment for a beneficial interest, complies with the conditions for becoming a beneficial
 413 owner set forth in the governing instrument or any other writing and acquires a beneficial interest;
 414 2. Consist of one or more agreements, instruments, or other writings and may include or incorporate
 415 a declaration of trust or bylaws containing provisions relating to the business of the business trust, the
 416 conduct of its affairs, and its rights or powers or the rights or powers of its trustees, beneficial owners,
 417 agents, or employees; and
 418 3. Contain any provision that is not inconsistent with law or with the information contained in the
 419 articles of trust.
- 420 B. A governing instrument may contain any provision relating to the management of the business and
 421 affairs of the business trust, and the rights, duties, and obligations of the trustees, beneficial owners,
 422 and other persons, that is not contrary to any provision or requirement of this chapter or the articles of
 423 trust and without limitation:
- 424 1. May provide for classes, groups, or series of trustees or beneficial owners, or classes, groups, or
 425 series of beneficial interests, having such relative rights, powers, and duties as the governing instrument
 426 may provide; and may make provision for the future creation in the manner provided in the governing
 427 instrument of additional classes, groups or series of trustees, beneficial owners, or beneficial interests,
 428 having the relative rights, powers, and duties as may from time to time be established, including rights,

429 powers, and duties senior or subordinate to existing classes, groups, or series of trustees, beneficial
 430 owners, or beneficial interests;

431 2. May establish or provide for the establishment of designated series of trustees, beneficial owners,
 432 or beneficial interests having separate rights, powers, or duties with respect to specified property or
 433 obligations of the business trust or profits and losses associated with specified property or obligations
 434 and, to the extent provided in the governing instrument, any series may have a separate business
 435 purpose or investment objective;

436 3. May provide for the taking of any action, including the amendment of the articles of trust or
 437 governing instrument, the accomplishment of a merger or consolidation, the appointment of one or more
 438 trustees, the sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the assets
 439 of the business trust or the assets of any series, or the dissolution of the business trust; or may provide
 440 for the taking of any action to create, under the provisions of the governing instrument, a class, group,
 441 or series of beneficial interests that was not previously outstanding, in any such case without the vote or
 442 approval of any particular trustee or beneficial owner, or class, group, or series of trustees or beneficial
 443 owners;

444 4. May grant to or withhold from all or certain trustees or beneficial owners, or a specified class,
 445 group, or series of trustees or beneficial owners, the right to vote, separately or with any or all other
 446 classes, groups, or series of trustees or beneficial owners, on any matter, such voting being on a per
 447 capita, number, financial interest, class, group, series, or any other basis;

448 5. May, if and to the extent that voting rights are granted under the governing instrument, set forth
 449 provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be
 450 voted on, method of giving such notice, waiver of any such notice, action by consent without a meeting,
 451 the establishment of record dates, quorum requirements, voting in person, by proxy or in any other
 452 manner, or any other matter with respect to the exercise of the right to vote;

453 6. May provide for the present or future creation of more than one business trust, including the
 454 creation of a future business trust to which all or any part of the assets, liabilities, profits, or losses of
 455 any existing business trust will be transferred, and for the conversion of beneficial interests in an
 456 existing business trust or series, into beneficial interests in the separate business trust or series;

457 7. May provide for the appointment, election, or engagement, either as agents or independent
 458 contractors of the business trust or as delegates of the trustees, of officers, employees, managers, or
 459 other persons who may manage the business and affairs of the business trust and may have the titles
 460 and the relative rights, powers, and duties as the governing instrument shall provide; and

461 8. May provide for restrictions on transfer of beneficial interests to maintain the business trust's
 462 status when it is dependent on the number or identity of its beneficial owners, to preserve exemptions
 463 under federal or state securities laws or for any other purpose.

464 Article 3.

465 Registered Office and Agent.

466 § 13.1-1220. Registered office and registered agent.

467 A. Each domestic business trust and each foreign business trust registered pursuant to Article 9
 468 (§ 13.1-1241 et seq.) of this chapter shall continuously maintain in this Commonwealth:

469 1. A registered office that may be the same as any of its places of business; and

470 2. A registered agent, who shall be either:

471 a. An individual who is a resident of this Commonwealth and is either (i) a trustee or officer of the
 472 business trust, (ii) an officer or director of a corporation that is a trustee of the business trust, (iii) a
 473 general partner of a general or limited partnership that is a trustee of the business trust, (iv) a member
 474 or manager of a limited liability company that is a trustee of the business trust, (v) a trustee of a
 475 business trust or other trust that is a trustee of the business trust, or (vi) a member of the Virginia State
 476 Bar, and whose business office is identical with the registered office; or

477 b. A domestic or foreign stock or nonstock corporation, limited liability company, registered limited
 478 liability partnership or business trust authorized to transact business in this Commonwealth, the business
 479 office of which is identical with the registered office; provided such a registered agent (i) shall not be
 480 its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary
 481 public, one or more natural persons at the office of the registered agent upon whom any process, notice
 482 or demand may be served and shall continuously maintain at least one such person at that office.
 483 Whenever any such person accepts service, a photographic copy of such instrument shall be attached to
 484 the return.

485 B. The sole duty of the registered agent is to forward to the domestic business trust or the foreign
 486 business trust at its last known address any process, notice or demand that is served on the registered
 487 agent.

488 § 13.1-1221. Change of registered office or registered agent.

489 A. A business trust or a foreign business trust registered pursuant to Article 9 (§ 13.1-1241 et seq.)
 490 of this chapter may change its registered office or registered agent, or both, upon filing in the office of

the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the business trust or foreign business trust;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the business trust or foreign business trust will be in compliance with the requirements of § 13.1-1220.

B. A statement of change shall forthwith be filed in the office of the Commission by a business trust or a foreign business trust registered pursuant to Article 9 (§ 13.1-1241 et seq.) of this chapter whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-1220.

C. If a registered agent changes his business address to another place within this Commonwealth, he shall change the address of the registered office of any business trust or foreign business trust of which he is a registered agent by filing a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent and shall recite that a copy of the statement has been mailed to the business trust.

§ 13.1-1222. Resignation of registered agent.

A. A registered agent may resign his agency appointment by signing and filing with the Commission a statement of resignation accompanied by his certification that he has mailed a copy thereof by certified mail to the principal office of the business trust or foreign business trust. The statement may also include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ 13.1-1223. Service on business trust.

A. A domestic or foreign business trust's registered agent is the business trust's agent for service of process, notice, or demand required or permitted by law to be served on the business trust. The registered agent may, by instrument in writing and acknowledged before a notary public, designate a person or persons in the office of the registered agent upon whom any such process, notice or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a domestic or foreign business trust fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the business trust upon whom service may be made in accordance with § 12.1-19.1.

C. This section does not prescribe the only means, or necessarily the required means, of serving a domestic or foreign business trust.

Article 4. Beneficial Owners.

§ 13.1-1224. Beneficial owners.

A. 1. A contribution of a beneficial owner to the business trust 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.

2. A person may become a beneficial owner of a business trust and may receive a beneficial interest in a business trust without making a contribution or being obligated to make a contribution to the business trust.

B. 1. Except as provided in the articles of trust or the governing instrument of the business trust, a beneficial owner is obligated to the business trust to perform any promise to contribute cash or property or to perform services, even if the beneficial owner is unable to perform because of death, disability, or any other reason.

2. Subject to the provisions of subdivision 3 of this subsection, if a beneficial owner does not make the required contribution of property or services, the beneficial owner is obligated at the option of the business trust to contribute cash equal to that portion of the agreed value, as stated in the records of the business trust, of the contribution that has not been made.

3. The option provided in subdivision 2 shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the business trust may have against the beneficial owner under the governing instrument or applicable law.

C. 1. A governing instrument may provide that the interest of any beneficial owner who fails to make any contribution that the beneficial owner is obligated to make shall be subject to specific penalties for, or specified consequences of, the failure.

552 2. The penalty or consequence may take the form of:
553 a. Reducing or eliminating the defaulting beneficial owner's proportionate interest in the business
554 trust or subordinating the beneficial owner's interest to that of the nondefaulting beneficial owners;
555 b. A forced sale of the beneficial owner's interest;
556 c. A forfeiture of the beneficial owner's interest;
557 d. A lending by other beneficial owners of the amount necessary to meet the defaulting beneficial
558 owner's commitment;
559 e. A fixing of the value of the defaulting beneficial owner's interest by appraisal or by formula, and
560 a redemption or sale of the defaulting beneficial owner's interest at that value; or
561 f. Any other penalty or consequence.
562 D. No promise of a beneficial owner to contribute to a business trust is enforceable unless set out in
563 a writing signed by the beneficial owner.
564 § 13.1-1225. Limited liability.
565 Except to the extent otherwise expressly provided in the governing instrument of the business trust,
566 the beneficial owners shall be entitled to the same limitation of personal liability extended to
567 shareholders of a Virginia corporation formed under Chapter 9 (§ 13.1-601 et seq.) of this title.
568 § 13.1-1226. Beneficial interests.
569 A. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a
570 business trust, a beneficial owner shall have an undivided beneficial interest in the property of the
571 business trust and shall share in the profits and losses of the business trust in the proportion (expressed
572 as a percentage) of the entire undivided beneficial interest in the business trust owned by the beneficial
573 owner. The governing instrument of a business trust may provide that the business trust or the trustees,
574 acting for and on behalf of the business trust, shall be deemed to hold beneficial ownership of any
575 income earned on securities owned by the business trust issued by any business entities formed,
576 organized or existing under the laws of any jurisdiction, including the laws of any foreign country.
577 B. 1. Except to the extent otherwise provided in the articles of trust or in the governing instrument of
578 a business trust, a beneficial owner has no interest in specific business trust property.
579 2. A creditor of the beneficial owner has no right to obtain possession of, or otherwise exercise legal
580 or equitable remedies with respect to, the property of the business trust.
581 C. A beneficial owner's beneficial interest in the business trust is personal property notwithstanding
582 the nature of the property of the business trust.
583 D. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a
584 business trust, a beneficial owner's beneficial interest in the business trust is freely transferable.
585 E. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a
586 business trust, at the time a beneficial owner becomes entitled to receive a distribution, the beneficial
587 owner has the status of, and is entitled to all remedies available to, a creditor of the business trust with
588 respect to the distribution. A governing instrument may provide for the establishment of record dates
589 with respect to allocations and distributions by a business trust.
590 F. A beneficial owner of a business trust does not have a vested property right resulting from any
591 provision of the articles of trust.
592 § 13.1-1227. Distributions to beneficial owners.
593 A. The trustees may authorize and the business trust may make distributions to its beneficial owners,
594 subject to restriction by the articles of trust or governing instrument and the limitation in subsection C.
595 B. If the trustees do not fix the record date for determining beneficial owners entitled to a
596 distribution, other than one involving a repurchase or reacquisition of beneficial interests, it is the date
597 the trustees authorize the distribution.
598 C. No distribution may be made if, after giving it effect:
599 1. The business trust would not be able to pay its debts as they become due in the usual course of
600 business; or
601 2. The business trust's total assets would be less than the sum of its total liabilities plus (unless the
602 articles of trust permit otherwise) the amount that would be needed, if the business trust were to be
603 dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of beneficial
604 interests whose preferential rights are superior to those receiving the distribution.
605 D. The trustees may base a determination that a distribution is not prohibited under subsection C
606 either on financial statements prepared on the basis of accounting practices and principles that are
607 reasonable in the circumstances or on a fair valuation or other method that is reasonable in the
608 circumstances.
609 E. The effect of a distribution under subsection C is measured:
610 1. In the case of a distribution by purchase, redemption, or other acquisition of the business trust's
611 beneficial interests, as of the earlier of (i) the date money or other property is transferred or debt
612 incurred by the business trust or (ii) the date the beneficial owners cease to be beneficial owners with
613 respect to the acquired beneficial interests;

2. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed;
 3. In all other cases, as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date payment is made if it occurs more than 120 days after the date of authorization.

F. A business trust's indebtedness to a beneficial owner incurred by reason of a distribution made in accordance with this section is at parity with the business trust's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

Article 5.

Trustees.

§ 13.1-1228. Trustee management; limitation on duties and liabilities of others.

A. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, the trustees shall choose and supervise the officers and employees of the business trust, and the business and affairs of the business trust shall be managed under the direction of the trustees.

B. Except to the extent provided in the governing instrument of a business trust, neither the power to give direction to a trustee or other persons nor the exercise by any person of a direction, including a beneficial owner, shall cause that person to have duties, including fiduciary duties, or liabilities relating to the business trust or to a beneficial owner, or cause any such person to be a trustee.

§ 13.1-1229. Trustee standards of conduct; trustee liability; restrictions on liability limitations in governing instrument.

A. A trustee shall discharge his duties as a trustee in accordance with the standards of conduct provided for directors of a Virginia corporation pursuant to §§ 13.1-690 and 13.1-691.

B. Subject to the provisions of subsection C, and except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, a trustee, when acting in such capacity, is not personally liable to any person other than the business trust or a beneficial owner for any act, omission, or obligation of the business trust or any trustee.

C. A trustee or officer of a business trust shall have no liability to the business trust or a beneficial owner for any act or omission greater than that of directors or officers of a Virginia corporation to the corporation as provided in Chapter 9 (§ 13.1-601 et seq.) of this title, including any elimination of liability provided for in the articles of trust or governing instrument.

§ 13.1-1230. Indemnification.

A. A business trust shall have the power to indemnify and hold harmless any trustee, officer, employee or agent from and against any and all claims and demands to the same extent as a director, officer, employee or agent of a Virginia corporation under Chapter 9 (§ 13.1-601 et seq.) of this title.

B. A trustee or officer of a business trust shall be entitled to mandatory indemnification to the same extent as a director or officer of a Virginia corporation under Chapter 9 (§ 13.1-601 et seq.) of this title.

C. A trustee or officer may apply for court-ordered indemnification in the same manner as a director or officer of a Virginia corporation pursuant to § 13.1-700.1.

D. A business trust may purchase and maintain insurance on behalf of an individual who is or was a trustee, officer, employee, or agent of the business trust, or who, while a trustee, officer, employee, or agent of the business trust, is or was serving at the request of the business trust as a director, officer, partner, trustee, employee, or agent of a foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the business trust would have power to indemnify him against the same liability under this section.

Article 6.

Legal Proceedings.

§ 13.1-1231. Capacity to sue and be sued; process; liabilities and obligations; attachment; seizure of certain assets.

A. A business trust may sue and be sued in its own name, and service of process on one of the trustees shall be sufficient to constitute service on the business trust.

B. A business trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly authorized agents of such trustees, in the performance of their respective duties under the governing instrument of the business trust, and for any damages to persons or property resulting from the negligence of such trustees or agents acting in the performance of such respective duties.

C. The property of a business trust is subject to attachment and execution as if the business trust was a Virginia corporation organized under Chapter 9 (§ 13.1-601 et seq.) of this title.

D. Notwithstanding the provisions of this section, in the event that the governing instrument of a business trust, including a business trust that is a registered investment company under the Investment Company Act of 1940, as amended, creates one or more series as provided in subsection B of

§ 13.1-1219, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held and accounted for separately from the other assets of the business trust, or any other series, and if the governing instrument so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of trust of the business trust, then the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the business trust generally or any other series, and, unless otherwise provided in the articles of trust or in the governing instrument, none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the business trust generally or any other series shall be enforceable against the assets of that series.

Article 7.

Derivative Actions.

§ 13.1-1232. Right of action.

A beneficial owner may bring a derivative proceeding in the right of a business trust to the same extent, and in the same manner, that a shareholder may bring a derivative proceeding under Chapter 9 (§ 13.1-601 et seq.) of this title.

§ 13.1-1233. Payment of and security for expenses.

On termination of a derivative proceeding, the court shall:

1. Order the business trust to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the business trust; or

2. Order the plaintiff or the plaintiff's attorney to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained arbitrarily, vexatiously or not in good faith.

Article 8.

Dissolution.

§ 13.1-1234. Dissolution generally.

A business trust 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 any events specified in writing in the articles of trust or a governing instrument;

2. Upon the unanimous written consent of the beneficial owners;

3. The entry of a decree of judicial dissolution under § 13.1-1235; or

4. Automatic cancellation of its certificate pursuant to § 13.1-1254.

§ 13.1-1235. Judicial dissolution.

On application by or for a beneficial owner, the circuit court of the city or county in which the registered office of the business trust is located may decree dissolution of a business trust if it is not reasonably practicable to carry on the business in conformity with the articles of trust and any governing instrument.

§ 13.1-1236. Winding up.

Unless otherwise provided in the articles of trust or in the governing instrument, upon the dissolution of a business trust, the trustees may wind up the business trust's affairs; however, the circuit court of the city or county in which the registered office of the business trust is located, on cause shown, may wind up the business trust's affairs on application of any beneficial owner, his legal representative, or assignee.

§ 13.1-1237. Distribution of assets upon dissolution.

Upon the winding up of a business trust, the assets of the business trust shall be distributed as follows:

1. To creditors, including beneficial owners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the business trust, other than for distributions to beneficial owners under § 13.1-1227;

B. Unless otherwise provided in the articles of trust or in the governing instrument, to the beneficial owners and former beneficial owners in satisfaction of liabilities for distributions under § 13.1-1227; and

C. Unless otherwise provided in the articles of trust or in the governing instrument, to the beneficial owners in the proportions in which the beneficial owners share in distributions.

§ 13.1-1238. Articles of cancellation.

A. Upon the completion of winding up of the business trust, articles of cancellation shall be filed with the Commission. The winding up of a business trust shall be completed when all debts, liabilities, and obligations of the business trust have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the business trust have been distributed to the beneficial owners. Articles of cancellation shall set forth:

1. The name of the business trust;
 2. The date of filing of the articles of trust and each amendment thereto;
 3. The reason for filing the articles of cancellation;
 4. The effective date (which shall be a date certain) of cancellation if it is not to be effective on the filing of the articles of cancellation, provided that any effective date other than the date of filing the articles of cancellation must be a date subsequent to the filing; and

5. Any other information the trustees determine to include therein.
 B. Unless otherwise provided in this chapter or in the articles of trust, articles of cancellation, (or a judicial decree of cancellation) are effective when accepted for filing by the Commission.

§ 13.1-1239. R—" einstatement.

A business trust that has filed articles of cancellation may be relieved of the cancellation and its certificate of trust shall be reinstated by filing articles of reinstatement in the form prescribed by the Commission not later than one year following the date of cancellation, together with payment of a reinstatement fee of \$100 and all registration fees and penalties that were due before the certificate of trust was canceled or that would have become due had the certificate of trust not been canceled. If the name of the business trust is not available at the time of reinstatement, as a condition to reinstatement, the articles of reinstatement shall contain an amendment to the articles of trust to change the business trust's name. If the business trust complies with the provisions of this section, the Commission shall reinstate the certificate of trust of the business trust, and the business trust shall be deemed not to have had its certificate of trust canceled. In that event, the reinstated business trust shall resume carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that business trust or a beneficial owner, trustee or other agent after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

§ 13.1-1240. Dissolution of series.

A. Except to the extent otherwise provided in the articles of trust or in the governing instrument of the business trust, a series established in accordance with § 13.1-1219 may be dissolved and its affairs wound up without causing the dissolution of the business trust or any other series. Unless otherwise provided in the articles of trust or in the governing instrument of the business trust, the dissolution, winding up, liquidation or termination of the business trust or any series thereof shall not affect the limitation of liability with respect to a series established in accordance with §§ 13.1-1219 and 13.1-1231. A series established in accordance with § 13.1-1219 is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument of the business trust. Except to the extent otherwise provided in the articles of trust or in the governing instrument of a business trust, the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner of such series shall not result in the termination or dissolution of such series and such series may not be terminated or revoked by a beneficial owner of such series or other person except in accordance with the terms of the governing instrument of the business trust.

B. Upon dissolution of a series of a business trust, the persons who under the governing instrument of the business trust are responsible for winding up such series' affairs may, in the name of the business trust and for and on behalf of the business trust and such series, take all actions with respect to the series as are permitted under § 13.1-1236 and shall provide for the claims and obligations of the series and distribute the assets of the series as provided under § 13.1-1237. Any person, including any trustee, who under the governing instrument is responsible for winding up such series' affairs and who has complied with § 13.1-1237 shall not be personally liable to the claimants of the dissolved series by reason of such person's actions in winding up the series.

Article 9.

Foreign Business Trusts.

§ 13.1-1241. Law governing.

Subject to the Constitution of this Commonwealth:

1. The laws of the state or other jurisdiction under which a foreign business trust is formed govern its formation and internal affairs and the liability of its beneficial owners and trustees; and

2. A foreign business trust may not be denied registration by reason of any difference between those laws and the laws of this Commonwealth.

However, a foreign business trust holding a valid registration in this Commonwealth shall have no greater rights and privileges than a domestic business trust. The registration shall not be deemed to authorize the foreign business trust to exercise any of its powers or purposes that a domestic business trust is forbidden by law to exercise in this Commonwealth.

§ 13.1-1242. Registration.

Before transacting business in this Commonwealth, a foreign business trust shall register with the Commission. In order to register, a foreign business trust shall deliver to the Commission an application for registration as a foreign business trust on forms prescribed and furnished by the Commission,

859 executed by a person with authority to do so under the laws of the state or other jurisdiction under
858 which the foreign business trust is formed, and setting forth:

857 1. The name of the foreign business trust and, if the business trust is prevented by § 13.1-1244 from
856 using its own name in this Commonwealth, a designated name that satisfies the requirements of
855 § 13.1-1244;

854 2. The state or other jurisdiction and date of its formation;

853 3. The post office address, including the street number, if any, of the registered office of the foreign
852 business trust in this Commonwealth, the name of the city or county in which the registered office is
851 located, the name of the registered agent at such office and a statement that the registered office and
850 registered agent comply with the requirements of § 13.1-1220;

849 4. A statement that the clerk of the Commission is irrevocably appointed the agent of the foreign
848 business trust for service of process if no registered agent has been appointed under subdivision 3 or, if
847 appointed, the registered agent's authority has been revoked or if the registered agent either has
846 resigned or cannot be found or served with the exercise of reasonable diligence;

845 5. The address of the office required to be maintained in the state or other jurisdiction of its
844 formation by the laws of that state or jurisdiction or, if not so required, of the principal officer of the
843 foreign business trust;

842 6. A copy of the articles of trust or other constituent documents filed in the foreign business trust's
841 state or other jurisdiction of formation authorizing it to do business in that state or other jurisdiction,
840 duly authenticated by the Secretary of State or other official having custody of the business trust records
839 in the state or other jurisdiction of its formation; and

838 7. A statement evidencing that the foreign business trust is a "foreign business trust" as defined in
837 § 13.1-1201.

836 § 13.1-1243. Issuance of registration.

835 A. If the Commission finds that an application for registration conforms to the provisions of this
834 article and all required fees have been paid, it shall:

833 1. File in its office the application; and

832 2. Issue a certificate of registration to transact business in this Commonwealth.

831 B. The certificate of registration shall be mailed to the person who filed the application or his
830 representative.

829 § 13.1-1244. Name.

828 A. No certificate of registration shall be issued to a foreign business trust unless the name of such
827 foreign business trust satisfies the requirements of § 13.1-1214.

826 B. If its real name is unavailable, the foreign business trust may use a designated name that is
825 available, and which satisfies the requirements of § 13.1-1214, if it informs the Commission of the
824 designated name.

823 § 13.1-1245. Changes and amendment.

822 If any statement in the application for registration of a foreign business trust was false when made
821 or any arrangements or other facts described have changed, making the application inaccurate in any
820 respect, the foreign business trust shall promptly file with the Commission a certificate correcting such
819 statement accompanied by a copy of the document, if any, effecting the correction or change duly
818 authenticated by the proper officer of the state or other jurisdiction of its formation.

817 § 13.1-1246. Cancellation of certificate of registration.

816 A. A foreign business trust may cancel its certificate of registration by delivering to the Commission
815 articles of cancellation on forms prescribed and furnished by the Commission that shall set forth:

814 1. The name of the foreign business trust and the name of the state or other jurisdiction under whose
813 jurisdiction it was formed;

812 2. That the foreign business trust is not transacting business in this Commonwealth and that it
811 surrenders its registration to transact business in this Commonwealth;

810 3. That the foreign business trust revokes the authority of its registered agent to accept service on its
809 behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding
808 based on a cause of action arising during the time it was authorized to transact business in this
807 Commonwealth;

806 4. A mailing address to which the clerk may mail a copy of any process served on him under
805 subdivision 3 of this subsection; and

804 5. A commitment to notify the clerk of the Commission in the future of any change in the mailing
803 address of the business trust.

802 B. If the Commission finds that the articles of cancellation conform to the provisions of this article
801 and all required fees have been paid, it shall file the articles and the certificate of registration shall be
800 canceled.

799 § 13.1-1247. Transaction of business without registration; civil penalty.

798 A. A foreign business trust transacting business in this Commonwealth shall not maintain any action,

suit, or proceeding in any court of this Commonwealth until it has registered in this Commonwealth.

B. The failure of a foreign business trust to register in this Commonwealth shall not impair the validity of any contract or act of the foreign business trust or prevent the foreign business trust from defending any action, suit, or proceeding in any court of this Commonwealth.

C. If a foreign business trust transacts business in this Commonwealth without a certificate of registration, each trustee, officer or employee of the business trust who does any such business in this Commonwealth knowing that a certificate of authority is required and has not been obtained shall be liable for a civil penalty of not less than \$500 and not more than \$5,000, which may be imposed by the Commission or by any court in the Commonwealth before which an action against the business trust may lie, after the business trust and the individual have been given notice and an opportunity to be heard. Civil penalties paid pursuant to this chapter shall be deposited to the credit of the Literary Fund.

D. A foreign business trust, by transacting business in this Commonwealth without registration, appoints the clerk of the Commission as its agent for service of process with respect to causes of action arising out of the transaction of business in this Commonwealth.

§ 13.1-1248. Actions by Attorney General.

The Attorney General may bring an action to restrain a foreign business trust from transacting business in this Commonwealth in violation of this article.

§ 13.1-1249. Transactions not constituting doing business.

A. The following activities of a foreign business trust, among others, do not constitute transacting business within the meaning of this article:

1. Maintaining, defending, or settling any proceeding;

2. Holding meetings of its beneficial owners or carrying on any other activities concerning its internal affairs;

3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign business trust's securities or maintaining trustees or depositaries with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;

7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;

8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;

9. Owning, without more, real or personal property;

10. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature; or

11. For a period of less than ninety consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films that are sent outside of the Commonwealth for processing, editing, marketing and distribution.

B. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under § 8.01-328.1.

C. The list of activities in subsection A of this section is not exhaustive. This section does not apply in determining the contacts or activities that may subject a foreign business trust to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

§ 13.1-1250. Merger of foreign business trust registered to transact business in Commonwealth.

A. Whenever a foreign business trust registered to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is organized, and that business trust 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 business trust records in the state or other jurisdiction under whose laws the merger was effected.

B. Whenever a foreign business trust registered to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is organized, and that business trust is not the surviving entity of the merger, the surviving entity 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 business trust records in the state or other jurisdiction under whose laws the merger was effected, and comply on behalf of the predecessor business trust with the provisions of § 13.1-1246. If the surviving entity is to continue to transact business in this Commonwealth and has not received a certificate of authority to transact business in this Commonwealth or registered as a foreign business entity it shall, within thirty days after the merger

921 becomes effective, deliver to the Commission an application (i) if a foreign business trust, for
922 registration as a foreign business trust, (ii) if a foreign limited liability company, for registration as a
923 foreign limited liability company, (iii) if a foreign limited partnership, for registration as a foreign
924 limited partnership or (iv) if a foreign corporation, for a certificate of authority to transact business in
925 this Commonwealth, together with a duly authenticated copy of the instrument of merger and also a
926 copy of its articles of trust, articles of organization, certificate of limited partnership or articles of
927 incorporation and all amendments thereto, duly authenticated by the secretary of state or other official
928 having custody of the business trust, limited liability company, limited partnership or corporate records
929 in the state or other jurisdiction under whose laws it is organized, formed or incorporated.

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

936 Article 10.

937 Annual Registration Fees.

938 § 13.1-1251. Annual registration fees to be assessed and collected by Commission; application of
939 payment.

940 The Commission shall assess and collect the annual registration fees imposed by this chapter. When
941 the Commission receives payment of a registration fee assessed against a domestic or foreign business
942 trust, such payment shall be applied against any unpaid registration fees previously assessed against
943 such business trust, including any penalties incurred thereon, beginning with the assessment that has
944 remained unpaid for the longest period of time.

945 § 13.1-1252. Annual registration fees to be paid by domestic and foreign business trusts.

946 A. Every domestic business trust, and every foreign business trust registered to transact business in
947 this Commonwealth, shall pay into the state treasury on or before September 1 in each year after the
948 calendar year in which it was formed or registered to transact business in this Commonwealth an
949 annual registration fee of fifty dollars.

950 B. The fees paid into the state treasury under this section and the fees collected under § 13.1-1204
951 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by
952 the Commission as it deems necessary to defray the costs of the Commission and of the office of the
953 clerk of the Commission in supervising, implementing, administering and enforcing the provisions of this
954 chapter. The projected excess of fees collected over the costs of administration and enforcement so
955 incurred shall be paid into the general fund prior to the close of each fiscal year, based on the
956 unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer
957 amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

958 § 13.1-1253. Assessment of annual registration fees and forwarding of statements.

959 The Commission shall ascertain from its records each domestic business trust and each foreign
960 business trust registered to transact business in this Commonwealth, as of July 1 of each year, and,
961 except as provided in subsection A of § 13.1-1252, shall assess against each such business trust the
962 annual registration fee imposed in § 13.1-1252. A statement of the assessment, when made, shall be
963 forwarded by the clerk of the Commission, before August 15, to the Comptroller and to each such
964 business trust.

965 § 13.1-1254. Penalty for failure to timely pay annual registration fees.

966 A. Any domestic or any foreign business trust failing to pay the annual registration fee into the state
967 treasury within the time prescribed in § 13.1-1252 shall incur a penalty thereon of twenty-five dollars,
968 which shall be added to the amount of the annual registration fee due. The penalty prescribed herein
969 shall be in addition to any other penalties and liabilities imposed by law.

970 B. If any domestic or foreign business trust fails to pay on or before October 1 of the year assessed
971 the annual registration fee, the Commission shall mail notice to the business trust of impending
972 cancellation of its certificate of trust or certificate of registration, as the case may be. The certificate
973 shall be automatically canceled if any annual registration fee is unpaid as of December 31 of that year.
974 A domestic business trust whose certificate has been canceled pursuant to this section is dissolved upon
975 cancellation and shall be wound up pursuant to Article 8 (§ 13.1-1234 et seq.) of this chapter.

976 C. No beneficial owner, trustee or other agent of a business trust shall have any personal obligation
977 for any liabilities of the business trust, whether such liabilities arise in contract, tort or otherwise, solely
978 by reason of the failure or refusal of that business trust to pay the annual registration fee or by reason
979 of the cancellation of the business trust's certificate of trust or certificate of registration, as applicable,
980 pursuant to subsection B of this section.

981 D. A domestic or foreign business trust whose certificate of trust or certificate of registration has
982 been canceled pursuant to subsection B of this section may be relieved of the cancellation, and its

certificate of trust 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 § 13.1-1252, 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 business trust is not available at the time of reinstatement, as a precondition to reinstatement, the business trust, if domestic, shall file an amendment to its articles of trust to change its name or, if foreign, shall adopt a designated name, to satisfy the requirements of § 13.1-1214.

E. If the domestic or foreign business trust complies with the provisions of, and pays the fees required by, subsection D of this section, the Commission shall reinstate the certificate of trust or certificate of registration of the business trust. A domestic or foreign business trust whose certificate of trust or 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 trust or certificate of registration canceled. In that event, the reinstated domestic or foreign business trust resumes carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that domestic or foreign business trust or a beneficial owner, trustee or other agent after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

§ 13.1-1255. Payment of fees, fines, penalties, and interest prerequisite to Commission action.

The Commission shall not file or issue with respect to any domestic or any foreign business trust any certificate referred to 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 business trust.

§ 13.1-1256. Collection by suit and of unpaid bills.

The provisions of §§ 13.1-775.1 and 58.1-2814, so far as they are applicable, shall apply to the annual registration fees and penalties imposed by this chapter.

Article 11.

Merger.

§ 13.1-1257. Authorization for merger.

Unless the governing instrument provides otherwise, a domestic business trust may merge with or into one or more business trusts or other business entities formed or organized or existing under the laws of Virginia or any other state or the United States or any foreign country or other foreign jurisdiction.

§ 13.1-1258. Approval.

A. Unless otherwise provided in the articles of trust or the governing instrument of a business trust, a merger shall be approved by each business trust that is to merge by the affirmative vote of the trustees and the holders of two-thirds of the outstanding beneficial interests of such business trust.

B. A merger need be approved only by the trustees of a successor business trust if:

1. The merger does not reclassify or change its outstanding beneficial interests or otherwise amend its articles of trust or governing instrument; and

2. The beneficial interests to be issued or delivered in the merger are not more than twenty percent of the beneficial interests of the same class or series outstanding immediately before the merger becomes effective.

C. The merger shall be approved by any other business entity party to the merger in the manner required by the articles of incorporation or charter, declaration of trust, partnership agreement, or other organizational document of the other business entity and the laws of the jurisdiction where the other business entity is organized.

§ 13.1-1259. Exchange of securities; termination or amendment of merger.

A. In connection with a merger, rights or securities of, or interests in, a business trust or other business entity that is a constituent party to the merger may be exchanged for or converted into cash, property, rights, or securities of, or interests in, the successor business trust or any other business entity, whether or not a party to the transaction. Notwithstanding prior approval, an agreement of merger may be terminated or amended under a provision for the termination or amendment contained in the agreement of merger.

§ 13.1-1260. Execution and filing of articles.

Articles of merger shall:

1. Be executed by each party to the articles in the manner required by § 13.1-1202;

2. Be filed with the Commission; and

3. Include the provisions required under § 13.1-1261.

§ 13.1-1261. Contents of articles.

Articles of merger shall state:

1. The name and jurisdiction of formation or organization of each of the business trusts or other

1044 business entities planning to merge and, as to each foreign entity, the date of its formation, and whether
1045 it is authorized to do business in this Commonwealth;

1046 2. That an agreement of merger has been approved and executed by each of the business trusts or
1047 other business entities planning to merge in the manner required by its governing instrument, articles of
1048 trust, articles of incorporation or charter, articles of organization or formation, certificate of limited
1049 partnership or other constituent documents and by the laws of the jurisdiction where it is organized;

1050 3. The name of the successor business trust or other business entity;

1051 4. Any amendment to the articles of incorporation or charter, certificate of limited partnership,
1052 articles of organization or formation of a limited liability company, articles of trust or governing
1053 instrument of the successor to be effected as part of the merger;

1054 5. The manner and basis of converting or exchanging issued shares of stock of the merging
1055 corporations, outstanding partnership interests of the merging general partnerships, outstanding
1056 partnership interests of the merging limited partnerships, outstanding membership interests of the
1057 merging limited liability companies, or shares of beneficial interest of the merging business trusts into
1058 different shares of stock of a corporation, partnership interests of a general partnership, partnership
1059 interests of a limited partnership, membership interests of a limited liability company, shares of
1060 beneficial interest of a business trust, or other consideration, and the treatment of any issued shares of
1061 stock of the merging corporations, partnership interests of the merging general partnerships, partnership
1062 interests of the merging limited partnerships, membership interests of the merging limited liability
1063 companies, or shares of beneficial interest of the merging business trusts not to be converted or
1064 exchanged;

1065 6. That the executed agreement of merger is on file at the principal place of business of the
1066 successor business trust or other business entity, and shall state the address of that principal place of
1067 business; and

1068 7. That a copy of the agreement of merger will be furnished by the successor business trust or other
1069 business entity, on request and without cost, to any beneficial owner of any business trust or any person
1070 holding an interest in any other business entity that is a party to the merger.

1071 8. If the Commission finds that the articles of merger comply with the requirements of law and that
1072 all required fees have been paid, it shall issue a certificate of merger.

1073 § 13.1-1262. Governing instrument.

1074 A. Notwithstanding anything to the contrary contained in the governing instrument of a business
1075 trust, a governing instrument of a business trust containing a specific reference to this section may
1076 provide that an agreement of merger approved in accordance with this article may:

1077 1. Effect any amendment to the governing instrument of the business trust; or

1078 2. Effect the adoption of a new governing instrument of the business trust if it is the successor trust
1079 in the merger.

1080 B. 1. Any amendment to the governing instrument of a business trust or adoption of a new governing
1081 instrument of the business trust made under this section shall be effective at the effective time or date of
1082 the merger.

1083 2. The provisions of this subsection shall not be construed to limit the accomplishment of a merger
1084 or of any of the matters referred to herein by any other means provided for in the governing instrument
1085 of a business trust or other agreement or as otherwise permitted by law, including that the governing
1086 instrument of any constituent business trust to the merger shall be the governing instrument of the
1087 successor trust.

1088 § 13.1-1263. Effect of merger.

1089 When a merger takes effect:

1090 1. The separate existence of each business trust, corporation, partnership, limited partnership, or
1091 limited liability company party to the merger, except the successor, ceases.

1092 2. The shares of beneficial interests of each business trust party to the merger that are to be
1093 converted or exchanged under the terms of the merger cease to exist, subject to the rights of an
1094 objecting beneficial owner under this article.

1095 3. In addition to any other purposes and powers set forth in the articles of merger, if the articles of
1096 merger provide, the successor has the purposes and powers of each party to the merger.

1097 4. The title to all real estate and other property of each party to the merger is vested in the
1098 successor business trust without further reservation or impairment.

1099 5. The successor has all the liabilities of each non-surviving party to the merger.

1100 6. A governing instrument or an agreement of merger may provide that contractual dissenter's rights
1101 with respect to a beneficial interest in a business trust shall be available for any class or group of
1102 beneficial owners or beneficial interests in connection with any amendment of a governing instrument,
1103 any merger in which the business trust is a constituent party to the merger or sale of all or substantially
1104 all of the business trust's assets.

1105

Domestication and Conversion.

§ 13.1-1264. Definitions.

As used in this article:

"Articles of organization" has the same meaning specified in § 13.1-1002.

"Converting entity" means the domestic or foreign business trust, corporation, limited liability company, limited partnership, partnership or other entity that adopts a plan of domestication or plan of entity conversion pursuant to this article.

"Corporation" and "domestic corporation" have the same meaning specified in § 13.1-603.

"Domestic entity" means a domestic corporation, limited liability company, limited partnership, partnership or other entity.

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

"Foreign entity" means a foreign business trust, corporation, limited liability company, limited partnership, partnership or other entity.

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

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

"Foreign partnership" has the same meaning specified in § 13.1-1002.

"Limited liability company" and "domestic limited liability company" have the same meaning specified in § 13.1-1002.

"Limited partnership" and "domestic limited partnership" have the same meaning specified in § 50-73.1.

"Member" has the same meaning specified in § 13.1-1002.

"Membership interest" or "interest" has the same meaning specified in § 13.1-1002.

"Other entity" means a domestic or foreign real estate investment trust or common law trust.

"Partnership" and "domestic partnership" mean 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.

"Surviving entity" means the domestic business trust that is in existence immediately after consummation of a domestication or an entity conversion pursuant to this article.

§ 13.1-1265. Domestication.

A. A foreign business trust, corporation, limited liability company, limited partnership, partnership or other entity may become a domestic business trust if the laws of the jurisdiction in which the foreign entity is formed authorize it to domesticate in another jurisdiction. The laws of this Commonwealth shall govern the effect of domesticating in this Commonwealth pursuant to this article.

B. A domestic business trust not required by law to be a domestic business trust may become a foreign business trust if the jurisdiction in which the business trust intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the business trust domesticates shall govern the effect of domesticating in that jurisdiction.

§ 13.1-1266. Plan of domestication.

A. The domesticating foreign entity shall adopt a plan of domestication setting forth:

1. A statement of the jurisdiction in which the domestic business trust or foreign entity is to be domesticated;

2. The terms and conditions of the domestication, provided, however, that such terms and conditions may not alter the ownership proportion or the relative rights, preferences and limitations of the interests of the beneficial owners except to the extent required to conform to the requirements of this chapter; and

3. For a foreign entity that is a converting entity, as an attachment incorporated by reference, the full text of the articles of trust of the domestic business trust as it will be in effect immediately after consummation of the conversion.

B. The plan of domestication may include:

1. Subject to the provisions of subsection A, amendments to the articles of trust of the business trust following its domestication or a restatement of the articles of trust; and

2. Any other provision relating to the domestication.

C. The plan of domestication may also include a provision that the management of the converting entity may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. An amendment made subsequent to the submission of the plan to the beneficial owners of the foreign entity, if required, shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the interests of the beneficial owners.

1167 § 13.1-1267. Action on plan of domestication by a domestic business trust.

1168 A. The plan of domestication shall be approved by the trustees of the domestic business trust in the
1169 manner provided in the business trust's governing instrument or articles of trust for amendments or, if
1170 no such provision is made in a governing instrument or articles of trust, by the sole trustee or a
1171 majority of the trustees of the business trust.

1172 B. The business trust shall notify each trustee, whether or not entitled to vote, and each member of a
1173 voting group of the proposed trustees' meeting at which the plan of domestication is to be submitted for
1174 approval. The notice, which shall be given no less than twenty-five nor more than sixty days before the
1175 meeting date, shall state that a purpose of the meeting is to consider the plan of domestication and shall
1176 contain or be accompanied by a copy of the plan.

1177 § 13.1-1268. Articles of domestication.

1178 A. After the domestication of a foreign entity is approved in the manner required by the laws of the
1179 jurisdiction in which the foreign entity is formed, the foreign entity shall file with the Commission
1180 articles of domestication setting forth:

1181 1. The name of the foreign entity immediately prior to the filing of the articles of domestication and,
1182 if that name is unavailable for use in this Commonwealth or the foreign entity desires to change its
1183 name in connection with the domestication, a name that satisfies the requirements of § 13.1-1214;

1184 2. The plan of domestication, including as an attachment to the plan, the full text of the articles of
1185 trust of the surviving entity that comply with the requirements of § 13.1-1212 as they will be in effect
1186 immediately after consummation of the domestication;

1187 3. The original jurisdiction, entity type and date of formation of the foreign entity, and each
1188 subsequent jurisdiction, entity type and date the foreign entity was domesticated in each such
1189 jurisdiction or converted to a new entity type, if any, prior to the filing of the articles of domestication;
1190 and

1191 4. A statement that the domestication is permitted by the laws of the jurisdiction in which the
1192 business trust is formed and that the business trust has complied with those laws in effecting the
1193 domestication.

1194 B. If the Commission finds that the articles of domestication comply with the requirements of law
1195 and that all required fees have been paid, it shall issue a certificate of domestication.

1196 C. The certificate of domestication shall become effective pursuant to § 13.1-1203.

1197 D. A foreign entity's existence as a domestic business trust shall begin when the certificate of
1198 domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive
1199 evidence that all conditions precedent required to be performed by the foreign business trust have been
1200 complied with and that the business trust has been formed under this chapter.

1201 E. If the foreign business trust is authorized to transact business in this Commonwealth under Article
1202 9 (§ 13.1-1241 et seq.) of this chapter, its certificate of authority shall be canceled automatically on the
1203 effective date of the certificate of domestication issued by the Commission.

1204 § 13.1-1269. Surrender of articles of trust upon domestication.

1205 A. Whenever a domestic business trust has adopted and approved, in the manner required by this
1206 article, a plan of domestication providing for the business trust to be domesticated under the laws of
1207 another jurisdiction, the business trust shall file with the Commission articles of trust surrender setting
1208 forth:

1209 1. The name of the business trust;

1210 2. The business trust's new jurisdiction of formation;

1211 3. The business trust's new entity type, if any;

1212 4. The plan of domestication;

1213 5. A statement that the articles of trust surrender are being filed in connection with the
1214 domestication of the business trust as a foreign entity to be formed under the laws of another
1215 jurisdiction and that the business trust is surrendering its charter under the laws of this Commonwealth;

1216 6. A statement that the plan was adopted by the business trust in accordance with § 13.1-1267;

1217 7. A statement that the domestic business trust revokes the authority of its registered agent to accept
1218 service on its behalf and appoints the clerk of the Commission as its agent for service of process in any
1219 proceeding based on a cause of action arising during the time it was formed in this Commonwealth;

1220 8. A mailing address to which the clerk may mail a copy of any process served on him under
1221 subdivision 7; and

1222 9. A commitment to notify the clerk of the Commission in the future of any change in the mailing
1223 address of the business trust.

1224 B. If the Commission finds that the articles of trust surrender comply with the requirements of law
1225 and that all required fees have been paid, it shall issue a certificate of trust surrender.

1226 C. The business trust shall automatically cease to be a domestic business trust when the certificate of
1227 trust surrender becomes effective.

1228 D. If the former domestic business trust intends to continue to transact business in the

Commonwealth, then, within thirty days after the effective date of the certificate of trust surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to the applicable provisions of the Code of Virginia for the resulting entity type of the former domestic business trust.

§ 13.1-1270. Effect of domestication.

A. When a foreign business trust's certificate of domestication in this Commonwealth becomes effective, with respect to that business trust:

1. The title to all real estate and other property remains in the business trust without reversion or impairment;

2. The liabilities remain the liabilities of the business trust;

3. A proceeding pending may be continued by or against the business trust as if the domestication did not occur;

4. The articles of trust attached to the articles of domestication constitute the articles of trust of the business trust; and

5. The business trust is deemed to:

a. Be formed under the laws of this Commonwealth for all purposes;

b. Be the same business trust as the business trust that existed under the laws of the jurisdiction or jurisdictions in which it was originally formed or formerly domiciled; and

c. Have been formed on the date it was originally formed or organized.

B. Any trustee of a foreign business trust that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the business trust is not released from those liabilities or obligations by reason of the domestication.

§ 13.1-1271. Abandonment of domestication.

A. Unless a plan of domestication of a domestic business trust prohibits abandonment of the domestication without approval of one or more voting groups, after the domestication has been authorized, and at any time before the certificate of domestication filed in the other jurisdiction has become effective, the domestication may be abandoned without further action by any voting group in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the trustees.

B. If a domestication is abandoned under subsection A after articles of trust surrender have been filed with the Commission but before the certificate of trust surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of trust surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign entity into a domestic business trust is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective in this Commonwealth, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

§ 13.1-1272. Entity conversion.

A. A domestic corporation, limited liability company, limited partnership, partnership and other entity may become a domestic business trust pursuant to a plan of entity conversion. Such a plan shall be adopted and approved by the domestic entity in accordance with the procedures of this article.

B. A domestic business trust may become a domestic entity pursuant to a plan of entity conversion that is authorized under the provisions of the Code regulating the business and affairs of the entity type to which the domestic business trust desires to convert.

§ 13.1-1273. Plan of entity conversion.

A. The converting domestic entity shall adopt a plan of entity conversion setting forth:

1. A statement of the domestic entity's intention to convert to a business trust;

2. The terms and conditions of the conversion, including the manner and basis of converting the shares or interests of the domestic entity into interests of the business trust, preserving the ownership proportion and relative rights, preferences, and limitations of each such share or interest;

3. As an attachment to the plan, the full text of the articles of trust of the business trust as it will be in effect immediately after consummation of the conversion; and

4. Any other provision relating to the conversion that may be desired.

B. In the case of a corporation that is a converting entity, the plan of entity conversion may also include a provision that the board of directors may amend the plan prior to the issuance of the certificate of entity conversion. An amendment made subsequent to the submission of the plan to the shareholders shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the corporation.

C. In the case of a limited liability company that is a converting entity, the plan of entity conversion may also include a provision that the plan of entity conversion may be amended prior to the issuance of the certificate of entity conversion. An amendment made subsequent to the submission of the plan to the members shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the membership interests of the limited liability company.

D. In the case of a limited partnership that is a converting entity, the plan of entity conversion may also include a provision that the plan of entity conversion may be amended prior to the issuance of the certificate of entity conversion. An amendment made subsequent to the submission of the plan to the limited partners shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the partnership interests of the limited partners.

§ 13.1-1274. Action on plan of entity conversion.

A. In the case of a corporation that is a converting entity:

1. The board of directors of the converting entity shall adopt the plan of entity conversion.

2. After adopting the plan of entity conversion, the board of directors shall submit the plan for approval by the shareholders.

3. For the conversion to be approved:

a. The board of directors shall recommend the plan to the shareholders unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the plan; and

b. The shareholders shall approve the plan as provided in subdivision 6.

4. The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

5. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658 at which the plan of entity conversion is to be submitted for approval. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

6. Unless this chapter or the board of directors, acting pursuant to subdivision 4, requires a greater vote, the plan of entity conversion shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

B. In the case of a limited liability company that is a converting entity, the plan of entity conversion shall be approved by the members of the limited liability company in the manner provided in the limited liability company's operating agreement or articles of organization for amendments or, if no such provision is made in an operating agreement or articles of organization, by the unanimous vote of the members of the limited liability company.

C. In the case of a limited partnership that is a converting entity, the plan of entity conversion shall be approved by the partners of the limited partnership in the manner provided in the limited partnership's partnership agreement or certificate of limited partnership for amendments or, if no such provision is made in a partnership agreement or certificate of limited partnership, by the unanimous vote of the partners of the limited partnership.

D. In the case of a partnership that is a converting entity, the plan of entity conversion shall be approved by the partners of the partnership in the manner provided in the partnership's partnership agreement for amendments or, if no such provision is made in the partnership agreement, by the unanimous vote of the partners of the partnership.

E. In the case of an other entity that is a converting entity, the plan of entity conversion shall be approved by the persons who have authority to approve the entity conversion in the manner provided in the other entity's governing instruments for amendments or, if no such provision is made in a governing instrument, by the unanimous vote of the persons who have authority to approve the entity conversion on behalf of the other entity.

§ 13.1-1275. Articles of entity conversion.

A. After the conversion of a domestic entity into a business trust has been adopted and approved as required by this article, the converting entity shall file with the Commission articles of entity conversion setting forth:

1. The name of the domestic entity immediately prior to the filing of the articles of entity conversion and the name to which the name of the domestic entity is to be changed, which name shall satisfy the requirements of § 13.1-1214;

2. The plan of entity conversion, including as an attachment to the plan, the full text of the articles of trust of the surviving entity that comply with the requirements of § 13.1-1212 as it will be in effect immediately after consummation of the conversion;

- 1352 3. If the converting entity is a corporation, a statement:
- 1353 a. That the plan was adopted by the unanimous consent of the shareholders; or
- 1354 b. That the plan was submitted to the shareholders by the board of directors in accordance with this
- 1355 chapter, and a statement of:
- 1356 (1) The designation, number of outstanding shares, and number of votes entitled to be cast by each
- 1357 voting group entitled to vote separately on the plan; and
- 1358 (2) Either the total number of votes cast for and against the plan by each voting group entitled to
- 1359 vote separately on the plan or the total number of undisputed votes cast for the plan separately by each
- 1360 voting group and a statement that the number cast for the plan by each voting group was sufficient for
- 1361 approval by that voting group;
- 1362 4. If the converting entity is a limited liability company, a statement that the plan was adopted by
- 1363 the members of the limited liability company in the manner provided in the limited liability company's
- 1364 operating agreement or articles of organization for amendments, or, if no such provision is made in an
- 1365 operating agreement or articles of organization, by the unanimous vote of the members of the limited
- 1366 liability company;
- 1367 5. If the converting entity is a limited partnership, a statement that the plan was adopted by the
- 1368 partners of the limited partnership in the manner provided in the limited partnership's partnership
- 1369 agreement or certificate of limited partnership for amendments, or, if no such provision is made in the
- 1370 partnership agreement or certificate of limited partnership, by the unanimous vote of the partners of the
- 1371 limited partnership;
- 1372 6. If the converting entity is a partnership, a statement that the plan was adopted by the partners of
- 1373 the partnership in the manner provided in the partnership's partnership agreement for amendments, or,
- 1374 if no such provision is made in the partnership agreement, by the unanimous vote of the partners of the
- 1375 partnership; and
- 1376 7. If the converting entity is an other entity, a statement that the plan was adopted by the other
- 1377 entity in the manner provided in the other entity's governing documents for amendments, or, if no such
- 1378 provision is made in the governing documents, by the unanimous vote of the persons who have authority
- 1379 to approve the entity conversion on behalf of the other entity.
- 1380 B. If the Commission finds that the articles of entity conversion comply with the requirements of law
- 1381 and that all required fees have been paid, it shall issue a certificate of entity conversion.
- 1382 § 13.1-1276. Effect of entity conversion.
- 1383 When an entity conversion under this article becomes effective, with respect to that entity:
- 1384 1. The title to all real estate and other property remains in the surviving entity without reversion or
- 1385 impairment;
- 1386 2. The liabilities remain the liabilities of the surviving entity;
- 1387 3. A proceeding pending may be continued by or against the surviving entity as if the conversion did
- 1388 not occur;
- 1389 4. The articles of trust attached to the articles of entity conversion constitute the articles of trust of
- 1390 the surviving entity;
- 1391 5. The shares or interests of the converting entity are reclassified into beneficial ownership interests
- 1392 in accordance with the plan of entity conversion; and the shareholders, members or partners of, or
- 1393 other persons having an ownership or beneficial interest in, the converting entity are entitled only to the
- 1394 rights provided in the plan of entity conversion or, in the case of a converting entity that is a
- 1395 corporation, to the rights, if any, they may have under subdivision A. 4. of § 13.1-730;
- 1396 6. The surviving entity is deemed to:
- 1397 a. Be a business trust for all purposes;
- 1398 b. Be the same entity without interruption as the converting entity that existed prior to the
- 1399 conversion; and
- 1400 c. Have been formed on the date that the converting entity was originally incorporated, organized or
- 1401 formed; and
- 1402 7. The converting entity shall cease to be a corporation, limited liability company, limited
- 1403 partnership, partnership or other entity, as the case may be, when the certificate of entity conversion
- 1404 becomes effective.
- 1405 § 13.1-1277. Abandonment of entity conversion.
- 1406 A. Unless a plan of entity conversion of a corporation prohibits abandonment of the conversion
- 1407 without shareholder approval, after the conversion has been authorized, and at any time before the
- 1408 certificate of entity conversion has become effective, the conversion may be abandoned without further
- 1409 shareholder action in accordance with the procedure set forth in the plan or, if none is set forth, in the
- 1410 manner determined by the board of directors.
- 1411 B. Unless the limited liability company's articles of organization, operating agreement or plan of
- 1412 entity conversion prohibits abandonment of the conversion after the conversion has been authorized, and

1413 at any time before the certificate of entity conversion has become effective, the conversion may be
1414 abandoned in the manner set forth in the plan or, if none is set forth, by majority vote of the members
1415 of the limited liability company.

1416 C. Unless the limited partnership's certificate of limited partnership, partnership agreement or plan
1417 of entity conversion prohibits abandonment of the conversion after the conversion has been authorized,
1418 and at any time before the certificate of entity conversion has become effective, the conversion may be
1419 abandoned in the manner set forth in the plan or, if none is set forth, by majority vote of the partners
1420 of the limited partnership.

1421 D. Unless the partnership's partnership agreement or plan of entity conversion prohibits
1422 abandonment of the conversion after the conversion has been authorized, and at any time before the
1423 certificate of entity conversion has become effective, the conversion may be abandoned in the manner
1424 set forth in the plan or, if none is set forth, by majority vote of the partners of the partnership.

1425 E. Unless the governing documents or plan of entity conversion of an other entity prohibits
1426 abandonment of the conversion after the conversion has been authorized, and at any time before the
1427 certificate of entity conversion has become effective, the conversion may be abandoned in the manner
1428 set forth in the plan or, if none is set forth, by majority vote of the persons who had authority to
1429 approve the entity conversion on behalf of the other entity.

1430 F. If an entity conversion is abandoned under subsection A, B, C, D or E after articles of entity
1431 conversion have been filed with the Commission but before the certificate of entity conversion has
1432 become effective, written notice that the entity conversion has been abandoned in accordance with this
1433 section shall be filed with the Commission prior to the effective date of the certificate of entity
1434 conversion. The notice shall take effect upon filing and the entity conversion shall be deemed abandoned
1435 and shall not become effective.

1436 Article 13.

1437 Reports and Records.

1438 § 13.1-1278. Trust records.

1439 A. A business trust shall keep minutes of all meetings of its beneficial owners and trustees, a record
1440 of all actions taken by the beneficial owners or trustees without a meeting, and a record of all actions
1441 taken by a committee of the trustees on behalf of the business trust.

1442 B. A business trust shall maintain appropriate accounting records.

1443 C. A business trust or its agent shall maintain a record of its beneficial owners, in a form that
1444 permits preparation of a list of the names and addresses of all beneficial owners, in alphabetical order
1445 by class and series, if any, of beneficial interests showing the number and class and series, if any, of
1446 beneficial interests held by each.

1447 D. A business trust shall maintain its records in written form or in another form capable of
1448 conversion into written form within a reasonable time.

1449 E. A business trust shall keep a copy of the following records:

1450 1. Its articles or restated articles of trust and all amendments to them currently in effect;

1451 2. Its governing instrument and all amendments to it currently in effect;

1452 3. Resolutions adopted by its trustees creating one or more classes or series of beneficial interests,
1453 and fixing their relative rights, preferences, and limitations, if beneficial interests issued pursuant to
1454 those resolutions are outstanding;

1455 4. The minutes of all meetings of beneficial owners, and records of all action taken by beneficial
1456 owners without a meeting, for the past three years;

1457 5. All written communications to beneficial owners generally within the past three years; and

1458 6. A list of the names and business addresses of its current trustees and officers.

1459 § 13.1-1279. Inspection of records by beneficial owners.

1460 A. Subject to subsection C of § 13.1-1280, a beneficial owner of a business trust is entitled to inspect
1461 and copy, during regular business hours at the business trust's principal office, any of the records of the
1462 business trust described in subsection E of § 13.1-1278 if he gives the business trust written notice of
1463 his demand at least five business days before the date on which he wishes to inspect and copy.

1464 B. A beneficial owner of a business trust is entitled to inspect and copy, during regular business
1465 hours at a reasonable location specified by the business trust, any of the following records of the
1466 business trust if the beneficial owner meets the requirements of subsection C of this section and gives
1467 the business trust written notice of his demand at least five business days before the date on which he
1468 wishes to inspect and copy:

1469 1. Excerpts from minutes of any meeting of the trustees, records of any action of a committee of the
1470 trustees while acting in or on behalf of the business trust, minutes of any meeting of the beneficial
1471 owners, and records of action taken by the beneficial owners or trustees without a meeting, to the extent
1472 not subject to inspection under subsection A of this section;

1473 2. Accounting records of the business trust; and

1474 3. The record of beneficial owners.

C. A beneficial owner may inspect and copy the records identified in subsection B of this section only if:

1. He has been a beneficial owner of record for at least six months immediately preceding his demand or is the holder of record of at least five percent of all of the outstanding beneficial interests;
2. His demand is made in good faith and for a proper purpose;
3. He describes with reasonable particularity his purpose and the records he desires to inspect; and
4. The records are directly connected with his purpose.

D. The right of inspection granted by this section may not be abolished or limited by a business trust's articles of trust or governing instrument.

E. This section shall not affect:

1. The right of a beneficial owner to inspect records, if the beneficial owner is in litigation with the business trust, to the same extent as any other litigant; or
2. The power of a court, independently of this chapter, to compel the production of trust records for examination.

§ 13.1-1280. Scope of inspection right.

A. A beneficial owner's agent or attorney has the same inspection and copying rights as the beneficial owner he represents.

B. The right to copy records under § 13.1-1279 includes, if reasonable, the right to receive copies made by photographic or other means.

C. The business trust may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the beneficial owner. The charge may not exceed the estimated cost of production or reproduction of the records.

D. The business trust may comply with a beneficial owner's demand to inspect the record of beneficial owners under subdivision 3 of subsection B of § 13.1-1279 by providing him with a list of its beneficial owners that was compiled no earlier than the date of the beneficial owner's demand.

§ 13.1-1281. Court-ordered inspection.

A. If a business trust does not allow a beneficial owner who complies with subsection A of § 13.1-1279 to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the business trust's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the business trust's expense upon application of the beneficial owner.

B. If a business trust does not within a reasonable time allow a beneficial owner to inspect and copy any other record, the beneficial owner who complies with subsections B and C of § 13.1-1269 may apply to the circuit court in the city or county where the business trust's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the business trust to pay the beneficial owner's costs, including reasonable counsel fees, incurred to obtain the order if the beneficial owner proves that the business trust refused inspection without a reasonable basis of doubt about the right of the beneficial owner to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding beneficial owner.

Article 14.

Miscellaneous.

§ 13.1-1282. Construction and application of chapter and governing instrument.

A. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

B. This chapter shall be construed in furtherance of the policies of giving maximum effect to the principle of freedom of contract and of enforcing governing instruments.

C. To the extent any provision of this chapter is inconsistent with the provisions of Sections 856 through 859 of the United States Internal Revenue Code of 1986, as amended, or any successor provision, such provisions of the Internal Revenue Code shall prevail with respect to any business trust formed under this chapter that also qualifies as a real estate investment trust under such provisions.

§ 13.1-1283. Reservation of power to amend or repeal.

The General Assembly shall have the power to amend or repeal all or part of this chapter at any time and all domestic and foreign business trusts subject to this chapter shall be subject to the amendment or repeal.

§ 13.1-1284. Application to existing real estate investment trusts and foreign business trusts.

Unless otherwise provided, the provisions of this chapter shall apply to all real estate investment trusts created under former Chapter 9 (§ 6-577 et seq.) of Title 6 and Chapter 9 (§ 6.1-343 et seq.) of

1536 *Title 6.1 as in effect immediately prior to the effective date of this chapter. The declaration of trust of*
1537 *every such real estate investment trust heretofore organized in this Commonwealth shall be subject to*
1538 *the provisions of this chapter.*

1539 § 55-106.4. Deed of real estate investment trust.

1540 Every deed ~~which~~ *that* is to be recorded conveying property to or from a *trust qualifying as a* real
1541 estate investment trust as ~~defined in § 6.1-344~~ shall include the complete address of the principal office
1542 of the trust. Failure to comply with the provisions of this section shall not invalidate any such deed.

1543 **2. That Chapter 9 (§§ 6.1-343 through 6.1-351) of Title 6.1 of the Code of Virginia is repealed.**

1544 **3. That except as provided in the following sentence, the repeal of any provision of Chapter 9**
1545 **(§§ 6.1-343 through 6.1-351) of Title 6.1 of the Code of Virginia by this act does not affect (i) the**
1546 **operation of such provision or any action taken under such provision before its repeal; (ii) any**
1547 **ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under**
1548 **such provision before its repeal; (iii) any violation of such provision, or any penalty, forfeiture or**
1549 **punishment incurred because of the violation, before its repeal; or (iv) any proceeding commenced,**
1550 **or reorganization or dissolution authorized by the trustees of a real estate investment trust under**
1551 **any such provision before its repeal, and the proceeding, reorganization or dissolution may be**
1552 **completed in accordance with such provision as if it had not been repealed. If a penalty or**
1553 **punishment imposed for violation of a provision repealed by this act is reduced by this act, the**
1554 **penalty or punishment if not already imposed shall be imposed in accordance with the provisions**
1555 **of Chapter 14 (§ 13.1-1200) of Title 13.1 as enacted by this act.**

1556 **4. That the provisions of this act shall become effective on October 1, 2003.**