

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 8.9A-406, 8.9A-408, 13.1-603, 13.1-722, 13.1-1001.1, 13.1-1002, 13.1-1003, 13.1-1012, 13.1-1067, 13.1-1070, 13.1-1072, 13.1-1073, 50-73.1, 50-73.2, 50-73.48:1, 50-73.48:3, 50-73.48:4, 50-73.84, 50-73.128, 50-73.130, and 50-73.144 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 13.1-1010.4 and 13.1-1023.1, relating to limited liability companies; mergers by limited liability companies and other business entities with business trusts.

[S 861]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.9A-406, 8.9A-408, 13.1-603, 13.1-722, 13.1-1001.1, 13.1-1002, 13.1-1003, 13.1-1012, 13.1-1067, 13.1-1070, 13.1-1072, 13.1-1073, 50-73.1, 50-73.2, 50-73.48:1, 50-73.48:3, 50-73.48:4, 50-73.84, 50-73.128, 50-73.130, and 50-73.144 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 13.1-1010.4 and 13.1-1023.1 as follows:

§ 8.9A-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this title; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) and §§ 8.2A-303 and 8.9A-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in §§ 8.2A-303 and 8.9A-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

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(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b) (3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b) (3).

(h) Rule for individual under other law. This section is subject to law other than this title which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

(j) Inapplicability of subsection (d) to certain transactions. Subsection (d) does not apply to:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104(a) (1), as amended from time to time; or

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p (d) (4), as amended from time to time.

(k) *Inapplicability to partnership and limited liability company interests. This section does not apply to an interest in a partnership or limited liability company.*

(l) No inference regarding structured settlements. This section shall not be construed or interpreted to relieve or exempt any person or entity from any duties, obligations or rights imposed or provided by the Structured Settlement Protection Act (§ 59.1-475 et seq.), as amended from time to time.

§ 8.9A-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this title but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Inapplicability of subsection (a) to certain payment intangibles. Subsection (a) does not apply to:

(1) the sale of a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104 (a) (2), as amended from time to time, provided that no inference shall be drawn regarding the enforceability or nonenforceability under other law or any term in an agreement which prohibits, restricts, or requires consent to the sale of such claim or right described in 26 U.S.C. § 104 (a) (2);

(2) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104 (a) (1), as amended from time to time; or

(3) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p (d) (4), as amended from time to time.

(f) Inapplicability of subsection (c) to certain payment intangibles. Subsection (c) does not apply to:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104 (a) (1) or (2), as amended from time to time; or

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p (d) (4), as amended from time to time.

(g) *Inapplicability to partnership and limited liability company interests. This section does not apply to an interest in a partnership or limited liability company.*

§ 13.1-603. Definitions.

In this chapter:

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

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

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

"Commission" means the State Corporation Commission of Virginia.

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

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of this Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of this Commonwealth, even though also being a corporation organized under laws other than the laws of this Commonwealth, or which has become a domestic corporation of this Commonwealth pursuant to Article 12.1 (§ 13.1-722.2 et seq.) or Article 12.2 (§ 13.1-722.8 et seq.) of this chapter.

"Deliver" includes mail.

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

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

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

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

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

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

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

184 "Electronic transmission" means any form of communication, not directly involving the physical
185 transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient
186 thereof, and that may be directly reproduced in paper form by such a recipient through an automated
187 process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic
188 Transactions Act shall have the meaning set forth in such section. For purposes of §§ 13.1-657 and
189 13.1-685, a written consent and the signing thereof may be accomplished by one or more electronic
190 transmissions.

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

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

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

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

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

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

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

205 "Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and
206 50-73.79.

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

208 "Includes" denotes a partial definition.

209 "Individual" includes the estate of an incapacitated or deceased individual.

210 "Means" denotes an exhaustive definition.

211 "Notice" is defined in § 13.1-610.

212 "Person" includes individual and entity.

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

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

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

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

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

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

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

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

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

238 § 13.1-722. Merger or share exchange with foreign corporation, or domestic or foreign limited
239 liability company, partnership, limited partnership or business trust.

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

1. In a merger:

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

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

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

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

e. *Each domestic business trust party to the merger complies with the applicable provisions of Article 11 (§ 13.1-1257 et seq.) of Chapter 14 of this title; and*

f. A domestic or foreign corporation ~~or~~, limited liability company *or business trust* is the surviving entity of the merger;

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

3. The foreign corporation or domestic or foreign limited liability company *or business trust* complies with § 13.1-720 if it is the surviving foreign corporation or domestic or foreign limited liability company *or business trust* of the merger or acquiring corporation of the share exchange. The articles of merger filed with the Commission by the surviving domestic or foreign corporation ~~or~~, limited liability company *or business trust* in accordance with § 13.1-720 shall contain, in addition to the information required by § 13.1-720, the name of the state or country under whose law each foreign corporation or domestic or foreign limited liability company, partnership ~~or~~, limited partnership *or business trust* planning to merge is incorporated, organized or formed and the name of the state or country of incorporation or organization of the surviving domestic or foreign corporation ~~or~~, limited liability company *or business trust*. The articles of merger may contain a statement that the merger is permitted by the state or country under whose law each foreign corporation, limited liability company, partnership ~~or~~, limited partnership *or business trust* party to the merger is incorporated, organized or formed, and that each foreign corporation, limited liability company, partnership ~~or~~, limited partnership *or business trust* has complied with that law in effecting the merger. If such a statement is included in the articles of merger, the surviving limited liability company, *business trust* or corporation shall not be required to file with the Commission any copy of a duly authenticated instrument of merger that would otherwise be required pursuant to §§ 13.1-766.1 ~~or~~, § 13.1-1060 *or* § 13.1-1250, as the case may be; and

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

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

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

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

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

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

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

§ 13.1-1001.1. Construction.

A. Unless displaced by particular provisions of this chapter, the principles of law and equity

301 supplement this chapter.

302 *B. Sections 9-406 and 9-408 of the Uniform Commercial Code, including §§ 8.9A-406 and 8.9A-408,*
 303 *do not apply to any interest in a limited liability company, including all rights, powers and interests*
 304 *arising under the articles of organization or operating agreement of a limited liability company or this*
 305 *chapter. This provision prevails over §§ 8.9A-406 and 8.9A-408, and is expressly intended to permit the*
 306 *enforcement as a fundamental matter of contract among the members of a limited liability company of*
 307 *any provision of an operating agreement that would otherwise be ineffective under § 9-406 or § 9-408*
 308 *of the Uniform Commercial Code.*

309 *C. This chapter shall be construed in furtherance of the policies of giving maximum effect to the*
 310 *principle of freedom of contract and of enforcing operating agreements.*

311 § 13.1-1002. Definitions.

312 As used in this chapter:

313 "Articles of organization" means all documents constituting, at any particular time, the articles of
 314 organization of a limited liability company. It includes the original articles of organization, the original
 315 certificate of organization issued by the Commission, and all amendments to the articles of organization.
 316 When the articles of organization have been restated pursuant to any articles of amendment, it includes
 317 only the restated articles of organization and any subsequent amendments to the restated articles of
 318 organization, but does not include the articles of amendment accompanying the restated articles of
 319 organization.

320 "Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title
 321 11 of the United States Code.

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

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

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

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

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

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

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

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

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

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

342 (Effective until October 1, 2003) "Foreign limited liability company" means an entity that is an
 343 unincorporated association organized under laws other than the laws of this Commonwealth, and that
 344 affords to each of its members, pursuant to the laws under which it is organized, limited liability with
 345 respect to the liabilities of the entity.

346 (Effective October 1, 2003) "Foreign limited liability company" means an entity, excluding a foreign
 347 business trust as defined in ~~§ 13.1-1201~~, that is an unincorporated association organized under laws other
 348 than the laws of this Commonwealth, and that affords to each of its members, pursuant to the laws
 349 under which it is organized, limited liability with respect to the liabilities of the entity.

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

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

355 "Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and
 356 50-73.79.

357 "Limited liability company" or "domestic limited liability company" means an entity that is an
 358 unincorporated association that is organized and existing under this chapter. A limited liability
 359 company's status for federal tax purposes shall not affect its status as a distinct entity organized and
 360 existing under this chapter.

361 "Manager" or "managers" means a person or persons designated by the members of a limited liability

company to manage the limited liability company as provided in the articles of organization or an operating agreement.

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

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

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

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

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

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

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

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

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

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

§ 13.1-1003. 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 contain other information as well.

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 limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be executed in the name of the limited liability company:

1. By any manager or other person who has been delegated the right and power to manage the business and affairs of the limited liability company, or if no managers or such other persons have been selected, by any member of the limited liability company;

2. If the limited liability company has not been formed, *or has been formed without any members and no members have been admitted*, by ~~the person~~ *one or more of the persons forming or who formed* the limited liability company; or

3. If the limited liability company 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 signs. 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 pursuant to § 59.1-496.

§ 13.1-1010.4. *Conversions involving corporations and limited liability companies.*

A domestic corporation may become a domestic limited liability company, and a domestic limited

liability company may become a domestic corporation, pursuant to a plan of entity conversion adopted pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of this title.

§ 13.1-1012. Name.

A. A limited liability company name shall contain the words "limited company" or "limited liability company" or their abbreviations "L.C.," "LC," "L.L.C.," or "LLC."

B. A limited liability company name shall not contain:

1. The words "Corporation," "Incorporated," "Limited Partnership" or the abbreviations "Corp.," "Inc.," or "L.P." or "LP"; or

2. Any word or phrase the use of which is prohibited by law for such company.

C. Except as authorized by subsection D of this section, a limited liability company name shall be distinguishable upon the records of the Commission from:

1. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in this Commonwealth;

2. A limited liability company name reserved or registered under § 13.1-1013 of this chapter; and

3. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in this Commonwealth.

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

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

§ 13.1-1023.1. Remedies for breach of operating agreement by member.

An operating agreement may provide that:

1. A member who fails to perform in accordance with, or to comply with terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

2. At the time or upon the happening of events specified in the operating agreement, a member shall be subject to specified penalties or specified consequences.

The specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in subsection D of § 13.1-1027.

§ 13.1-1067. Property title records.

A. Whenever by (i) amendment to the articles of organization pursuant to § 13.1-1014, (ii) certificate of correction of the application for registration of a foreign limited liability company pursuant to § 13.1-1055, (iii) conversion of a general partnership or limited partnership to a limited liability company pursuant to § 13.1-1010.1, (iv) conversion of a corporation to a limited liability company where otherwise permitted by law, or (v) domestication of a non-United States entity as a limited liability company pursuant to § 13.1-1010.3, the name of any domestic or foreign limited liability company is changed or a general or limited partnership, corporation or non-United States entity is converted to limited liability company form, the clerk of the Commission, upon request, shall issue a certificate that recites the change of name or conversion. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any court's office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of ~~ten dollars~~ \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever by merger of a domestic or foreign limited liability company with one or more domestic or foreign limited liability companies, partnerships, limited partnerships, corporations, *business trusts* or other entities pursuant to Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of this title or to the laws of a foreign jurisdiction, or by conversion of any entity to a foreign limited liability company pursuant to the laws of a foreign jurisdiction, a domestic or foreign limited liability company succeeds to the ownership of or any interest in real estate, and when such domestic or foreign limited liability company furnishes the Commission with a certificate of merger issued by the Commission or a similar certificate of merger or conversion issued by any competent authority of the jurisdiction under which any such foreign limited liability company is organized, the clerk of the Commission, upon request, shall issue a certificate that recites the succession to ownership of or interest in real estate. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of ~~ten dollars~~ \$10 to the clerk of the court, but no tax shall be due thereon.

§ 13.1-1070. Merger.

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

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

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

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

4. *Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ 13.1-1257 et seq.) of Chapter 14 of this title;*

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

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

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

8. In the case of a merger of a limited liability company to which one or more domestic or foreign corporations are parties, a domestic or foreign corporation ~~or~~, limited liability company *or business trust* party to the merger is the surviving entity of the merger.

B. The plan of merger shall set forth:

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

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

3. The terms and conditions of the merger; and

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

C. The plan of merger may set forth:

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

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

3. Other provisions relating to the merger.

§ 13.1-1072. Articles of merger.

A. After a plan of merger is approved by each domestic or foreign limited liability company, partnership, limited partnership, *business trust* or corporation party to the merger, the surviving domestic or foreign limited liability company, partnership, limited partnership, *business trust* or corporation shall

file with the Commission articles of merger setting forth:

1. The plan of merger;

2. If the surviving entity of the merger is a foreign limited liability company not registered with the Commission under § 13.1-1052, a foreign limited partnership not registered with the Commission under § 50-73.54, a foreign registered limited liability partnership not registered with the Commission under § 50-73.138 or § 50-43.7, *a foreign business trust not registered with the Commission under § 13.1-1242*, or a foreign corporation without a certificate of authority issued by the Commission under § 13.1-759, the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was organized, formed or incorporated;

3. A statement that the plan of merger was adopted by each domestic partnership party to the merger in accordance with § 50-73.128, by each domestic limited liability company party to the merger in accordance with § 13.1-1071 ~~and~~, by each domestic limited partnership party to the merger in accordance with § 50-73.48:2, *and by each domestic business trust party to the merger in accordance with § 13.1-1258*; and

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

B. If a foreign limited liability company, partnership, limited partnership, *business trust* or corporation is a party to the merger, the articles of merger may contain a statement that the merger is permitted by the state or country under whose law that limited liability company is organized, that partnership ~~or~~, limited partnership *or business trust* is formed or that corporation is incorporated and that the foreign limited liability company, partnership, limited partnership, *business trust* or corporation has complied with that law in effecting the merger. If such a statement is included in the articles of merger, the surviving partnership, limited partnership, limited liability company, *business trust* or corporation shall not be required to file with the Commission any copy of a duly authenticated instrument of merger that would otherwise be required pursuant to §§ 13.1-766.1, 13.1-1060, *13.1-1250* or § 50-73.57:2.

C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. The certificate of merger shall become effective when issued unless the plan of merger specifies a future effective date, in which case the certificate of merger shall be effective on the earlier of (i) that date or (ii) the date that is ~~fifteen~~ 15 days after the date on which the Commission issues the certificate of merger.

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

§ 13.1-1073. Effect of merger.

When a merger takes effect:

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

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

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

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

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

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

§ 50-73.1. Definitions.

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

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

"Commission" means the State Corporation Commission.

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

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

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

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

"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.

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

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

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

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

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

"Foreign partnership" means an association of two or more persons to carry on as co-owners of 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.

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

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

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

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

"Partner" means a limited or general partner.

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

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

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

"State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

§ 50-73.2. Name.

The name of each limited partnership as set forth in its certificate of limited partnership:

1. Shall either: (i) contain the words "limited partnership" or "a limited partnership" or the abbreviation abbreviations "L.P." or "LP" or (ii) in the case of a limited partnership that is also a limited liability partnership, comply with the requirements of clause (ii) of subdivision A 2 of § 50-73.78;

2. May not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

3. [Repealed.]

4. Shall be distinguishable upon the records of the Commission from (i) the name of a domestic limited partnership or a foreign limited partnership registered pursuant to this chapter, (ii) a limited partnership name reserved under this chapter, and (iii) the designated name adopted by a foreign limited partnership because its real name is unavailable for use in this Commonwealth; and

5. May not contain the word "Corporation" or "Incorporated" or the abbreviation "Corp." or "Inc."

§ 50-73.48:1. Merger.

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

1. The merger is not prohibited by the partnership agreement of any domestic limited partnership that is a party to the merger, and each domestic limited partnership party to the merger approves the plan of

merger in accordance with § 50-73.48:2 and complies with the terms of its partnership agreement;

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

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

4. *Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ 13.1-1257 et seq.) of Chapter 14 of Title 13.1;*

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

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

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

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

B. The plan of merger shall set forth:

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

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

3. The terms and conditions of the merger; and

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

C. The plan of merger may set forth:

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

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

3. Other provisions relating to the merger.

§ 50-73.48:3. Articles of merger.

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

1. The plan of merger;

2. If the surviving entity of the merger is a foreign limited liability partnership not registered with the Commission under § 50-43.7 or § 50-73.138, a foreign limited partnership not registered with the Commission under § 50-73.54, a foreign limited liability company not registered with the Commission under § 13.1-1052, *a foreign business trust not registered with the Commission under § 13.1-1242* or a foreign corporation without a certificate of authority issued by the Commission under § 13.1-759, the

address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was formed, organized or incorporated;

3. A statement that the plan of merger was adopted by each domestic partnership party to the merger in accordance with § 50-73.128, each domestic limited partnership party to the merger in accordance with § 50-73.48:2, *each domestic business trust party to the merger in accordance with § 13.1-1258*, and by each domestic limited liability company party to the merger in accordance with § 13.1-1071; and

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

B. If a foreign partnership, limited partnership, limited liability company, *business trust* or corporation is a party to the merger, the articles of merger may contain a statement that the merger is permitted by the state or country under whose law that partnership or, limited partnership or *business trust* is formed, that limited liability company is organized or that corporation is incorporated and that the foreign partnership, limited partnership, limited liability company, *business trust* or corporation has complied with that law in effecting the merger. If such a statement is included in the articles of merger, a surviving limited partnership, limited liability company, *business trust* or corporation shall not be required to file with the Commission any copy of a duly authenticated instrument of merger that would otherwise be required pursuant to §§ 13.1-766.1, 13.1-1060, *13.1-1250* or § 50-73.57:2, as the case may be.

C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. The certificate of merger shall become effective when issued unless the plan of merger specifies a future effective date, in which case the certificate of merger shall be effective on the earlier of (i) that date or (ii) the date that is ~~fifteen~~ 15 days after the date on which the Commission issues the certificate of merger.

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

§ 50-73.48:4. Effect of merger.

When a merger takes effect:

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

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

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

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

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

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

§ 50-73.84. Law governing internal relations.

A. Except as provided in subsection B, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

B. The law of this Commonwealth shall govern relations among the partners and between the partners and the partnership, and the liability of partners for debts, obligations and liabilities chargeable to the partnership, in a partnership that has filed a statement of registration as a registered limited liability partnership in this Commonwealth.

C. *Sections 9-406 and 9-408 of the Uniform Commercial Code, including §§ 8.9A-406 and 8.9A-408, do not apply to any interest in a partnership, including all rights, powers, and interests arising under the partnership agreement of a partnership, Chapter 2.1 (§ 50-73.1 et seq.) of this title, or this chapter. This provision prevails over §§ 8.9A-406 and 8.9A-408, and is expressly intended to permit the enforcement as a fundamental matter of contract among the partners of a partnership of any provision of a partnership agreement that would otherwise be ineffective under § 9-406 or § 9-408 of the Uniform Commercial Code.*

§ 50-73.128. Merger of partnerships.

A. Pursuant to a written plan of merger approved as provided in subsection C, a partnership may be merged with one or more domestic or foreign partnerships, limited partnerships, limited liability

companies, *business trusts*, or corporations if:

1. The merger is not prohibited by the partnership agreement of any domestic partnership that is a party to the merger, and each domestic partnership party to the merger approves the plan of merger in accordance with subsection C of this section and complies with the terms of its partnership agreement;

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

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

4. *Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ 13.1-1257 et seq.) of Chapter 14 of Title 13.1;*

5. Each domestic corporation that is a party to the merger complies with the applicable provisions of Article 12 (§ 13.1-716 et seq.) of Chapter 9 or Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1; and

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

B. The plan of merger shall set forth:

1. The name of each partnership, limited partnership, limited liability company, *business trust*, or corporation that is a party to the merger;

2. The name of the surviving entity into which the other partnerships, limited partnerships, limited liability companies, *business trusts*, or corporations will merge;

3. Whether the surviving entity is a partnership, a limited partnership, a limited liability company, a *business trust*, or a corporation and the status of each partner;

4. The terms and conditions of the merger;

5. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

6. The street address of the surviving entity's chief executive office.

C. The plan of merger shall be approved:

1. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

2. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger takes effect on the later of:

1. The approval of the plan of merger by all parties to the merger, as provided in subsection C;

2. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

3. Any later effective date stated pursuant to subsection J of § 50-73.83 in a statement of merger filed pursuant to § 50-73.131 or, if no statement of merger is filed, any effective date specified in the plan of merger.

§ 50-73.130. Property title records.

A. Whenever by (i) amendment to the certificate of limited partnership pursuant to § 50-73.12, (ii) certificate of correction of the application for registration of a foreign limited partnership pursuant to § 50-73.58, (iii) conversion of a general partnership to limited partnership form pursuant to § 50-73.125, or (iv) conversion of a limited partnership to general partnership form pursuant to § 50-73.126, the name of any domestic or foreign limited partnership is changed, a general partnership is converted to limited partnership form, or a limited partnership is converted to general partnership form, the clerk of the Commission, upon request, shall issue a certificate that recites the change of name or conversion. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any court's recording office within the jurisdiction of which any real estate of the partnership or limited partnership is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of ~~ten dollars~~ \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever by merger of a domestic or foreign general or limited partnership with one or more domestic or foreign general or limited partnerships, limited liability companies, *business trusts*, or corporations or other entities pursuant to Article 7.1 (§ 50-73.48:1 et seq.) of Chapter 2.1 or Article 9 (§ 50-73.124 et seq.) of this chapter or to the laws of a foreign jurisdiction, or by conversion of any

entity to a foreign general or limited partnership pursuant to the laws of a foreign jurisdiction a domestic or foreign partnership or limited partnership succeeds to the ownership of or any interest in real estate, and when the domestic or foreign partnership or limited partnership furnishes the Commission with a certificate of merger issued by the Commission or a similar certificate of merger or conversion issued by any competent authority of the jurisdiction under which any such foreign partnership or limited partnership is formed, the clerk of the Commission, upon request, shall issue a certificate that recites the succession to ownership of or interest in real estate. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any court's recording office within the jurisdiction of which any such real estate of the general partnership or limited partnership is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of ~~ten dollars~~ \$10 to the clerk of the court, but no tax shall be due thereon.

§ 50-73.144. Application and construction.

A. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among States enacting it.

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 partnership agreements.*

2. That the provisions of this act that amend and reenact §§ 8.9A-406, 8.9A-408, 13.1-1001.1, 13.1-1003, 13.1-1012, 50-73.2, 50-73.84, and 50-73.144 of the Code of Virginia and that amend the Code of Virginia by adding sections numbered 13.1-1010.4 and 13.1-1023.1 shall become effective on July 1, 2003, and that all other provisions of this act shall become effective on October 1, 2003.