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## SENATE BILL NO. 933

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on January 17, 2005)

(Patron Prior to Substitute— Senator Stosch)

A *BILL to amend and reenact §§ 8.01-220.1:1, 13.1-1002, 13.1-1005, 13.1-1010.3, 13.1-1014, 13.1-1015, 13.1-1022, 13.1-1023, 13.1-1038.1, 13.1-1064, and 58.1-513 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 12 of Title 13.1 a section numbered 13.1-1014.1, relating to limited liability companies.*

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

**1. That §§ 8.01-220.1:1, 13.1-1002, 13.1-1005, 13.1-1010.3, 13.1-1014, 13.1-1015, 13.1-1022, 13.1-1023, 13.1-1038.1, 13.1-1064, and 58.1-513 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 2 of Chapter 12 of Title 13.1 a section numbered 13.1-1014.1, as follows:**

§ 8.01-220.1:1. Civil immunity for officers, partners, members, managers, trustees and directors of certain tax exempt organizations.

A. Directors, *partners, members, managers*, trustees and officers of organizations exempt from income taxation under § 501 (c) or § 528 of the Internal Revenue Code who serve without compensation shall be immune from civil liability for acts taken in their capacities as officers, *partners, members, managers*, trustees or directors of such organizations.

B. In any proceeding against a director, *partner, member, manager*, trustee or officer of an organization exempt from income taxation under § 501 (c) or § 528 of the Internal Revenue Code who receives compensation, the damages assessed for acts taken in his capacity as an officer, *partner, member, manager*, trustee or director and arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer, *partner, member, manager*, trustee or director during the ~~twelve~~ 12 months immediately preceding the act or omission for which liability was imposed. As used herein "compensation" shall mean payment for services over and above per diem and expenses.

C. The liability of an officer, *partner, member, manager*, trustee or director shall not be limited as provided in this section if the officer, *partner, member, manager*, trustee or director engaged in willful misconduct or a knowing violation of the criminal law or if liability derives from the operation of a motor vehicle, or from the violation of a fiduciary obligation imposed during the period of declarant control by § 55-79.74.

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

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

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

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

"Electronic transmission" means any form of communication, not directly involving the physical

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60 transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient  
61 thereof, and that may be directly reproduced in paper form by such a recipient through an automated  
62 process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic  
63 Transactions Act shall have the meaning set forth in such section.

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

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

66 "Foreign limited liability company" means an entity, excluding a foreign business trust, that is an  
67 unincorporated association organized under laws other than the laws of this Commonwealth, and that  
68 affords to each of its members, pursuant to the laws under which it is organized, limited liability with  
69 respect to the liabilities of the entity.

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

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

75 "Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and  
76 50-73.79.

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

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

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

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

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

90 "Membership interest" or "interest" means, *except as otherwise provided in the articles of*  
91 *organization or an operating agreement*, a member's share of the profits and the losses of the limited  
92 liability company and the right to receive distributions of the limited liability company's assets.

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

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

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

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

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

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

109 § 13.1-1005. Fees.

110 The Commission shall charge and collect the following fees:

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

112 a. Articles of organization.

113 b. An application for registration as a foreign limited liability company.

114 c. Articles of reinstatement.

115 d. Articles of entity conversion.

116 2. For filing any one of the following, the fee shall be \$25:

117 a. Articles of amendment.

118 b. A certificate of cancellation with respect to a domestic or foreign limited liability company.

119 c. Articles of correction referred to in § 13.1-1011.1 or a certificate of correction referred to in  
120 § 13.1-1055.

121 d. A copy of an instrument of merger of a foreign limited liability company referred to in

§ 13.1-1060.

e. Articles of merger.

f. A copy of an instrument of entity conversion of a foreign limited liability company holding a certificate of registration to transact business in the Commonwealth.

g. *Articles of restatement.*

3. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign limited liability company.

b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company.

4. For issuing a certificate pursuant to § 13.1-1067, \$6 for each certificate.

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Unless otherwise agreed, or as required under applicable non-Virginia law, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets. The domestication shall not be deemed to constitute a dissolution of the non-United States entity and shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company. If, following domestication, a non-United States entity that has become domesticated as a limited liability company continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited liability company and the non-United States entity shall, for all purposes of the laws of the Commonwealth of Virginia, constitute a single entity formed, organized, incorporated, created or otherwise having come into being, as applicable, and exist under the laws of the Commonwealth of Virginia and the laws of such foreign country or other foreign jurisdiction.

§ 13.1-1014. Amendment of articles of organization.

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

B. For an amendment to the articles of organization of a limited liability company to be adopted, the

183 amendment shall be approved, unless the articles of organization require a greater vote, by a majority  
184 vote of the members entitled to vote thereon, provided that if the limited liability company has been  
185 formed without any members and no members have been admitted, an amendment may be adopted by  
186 *the persons named as a manager in the articles of organization or, if there are no members or*  
187 *managers, by the persons who formed the limited liability company under § 13.1-1010.*

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

190 1. The name of the limited liability company;

191 2. The text of each amendment adopted; ~~or, if the amendments are a restatement of the articles of~~  
192 ~~organization, restated articles of organization;~~

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

194 4. A statement that the amendment was adopted by a vote of the members, *by the managers* or by  
195 the persons who formed the limited liability company in accordance with this chapter.

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

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

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

207 § 13.1-1014.1. *Restatement of articles of organization.*

208 A. *A limited liability company may restate its articles of organization at any time.*

209 B. *The restatement may include one or more amendments to the articles of organization.*

210 C. *For a restatement of the articles of organization of a limited liability company to be adopted, the*  
211 *restatement shall be approved, unless the articles of organization require a greater vote, by a majority*  
212 *vote of the members entitled to vote thereon, provided that if the limited liability company has been*  
213 *formed without any members and no members have been admitted, a restatement may be adopted by the*  
214 *persons named as a manager in the articles of organization or, if there are no members or managers,*  
215 *by the persons who formed the limited liability company under § 13.1-1010.*

216 D. *A limited liability company restating its articles of organization shall file with the Commission*  
217 *articles of restatement setting forth the name of the limited liability company and the text of the restated*  
218 *articles of organization together with a certificate setting forth:*

219 1. *The name of the limited liability company immediately prior to restatement;*

220 2. *The date of adoption of the restated articles of organization;*

221 3. *Whether the restatement contains an amendment or amendments to the articles of organization;*  
222 *and*

223 4. *A statement that the restatement was adopted by a vote of the members, by the managers or by*  
224 *the persons who formed the limited liability company in accordance with this chapter.*

225 E. *If the Commission finds that the articles of restatement comply with the requirements of law and*  
226 *that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of*  
227 *restatement is effective, the restated articles of organization supersede the original articles of*  
228 *organization and all amendments to the original articles of organization.*

229 F. *The Commission may certify restated articles of organization as the articles of organization*  
230 *currently in effect without including the information set forth in the certificate required by subsection D.*

231 § 13.1-1015. Registered office and registered agent.

232 A. Each domestic limited liability company and each foreign limited liability company registered  
233 pursuant to Article 10 (§ 13.1-1051 et seq.) of this chapter shall continuously maintain in the  
234 Commonwealth:

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

236 2. A registered agent who shall be either:

237 a. An individual who is a resident of the Commonwealth and is ~~either~~ (i) a member or manager of  
238 the limited liability company, (ii) a member or manager of a limited liability company that is a member  
239 or manager of the limited liability company, (iii) an officer or director of a corporation that is a member  
240 or manager of the limited liability company, (iv) a general partner of a general or limited partnership  
241 that is a member or manager of the limited liability company, (v) a trustee of a trust that is a member  
242 or manager of the limited liability company, or (vi) a member of the Virginia State Bar, and whose  
243 business office is identical with the registered office; or

244 b. A domestic or foreign stock or nonstock corporation, limited liability company or registered

limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the limited liability company or foreign limited liability company at its last known address any process, notice or demand that is served on the registered agent.

§ 13.1-1022. Management of limited liability company.

A. Except to the extent that the articles of organization or an operating agreement provides in writing for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

B. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, the members of a limited liability company shall vote in proportion to their contributions to the limited liability company, as adjusted from time to time, and a majority vote of the members of a limited liability company shall consist of the vote or other approval of members having a majority share of the voting power of all members.

C. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of the members.

D. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company have the power and authority to delegate to one or more other persons the members' rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or *manager of* the limited liability company, and to delegate by a management agreement or other agreement with, or otherwise to, other persons. Such persons may be denominated as officers of the limited liability company without being deemed to have the status of a manager, unless designated as a manager in the articles of organization or an operating agreement.

E. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company may take action permitted or required to be taken by the members without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. A consent transmitted by a member by electronic transmission shall be deemed to be signed for the purposes of this section. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy.

F. The articles of organization or an operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the articles of organization or an operating agreement may provide, and may make provision for the future creation in the manner provided in the articles of organization or an operating agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members.

G. The articles of organization, an operating agreement, or a plan of merger may provide that dissenters' rights with respect to a membership interest shall be available for any class or group of members in connection with any amendment of an operating agreement, any merger in which the limited liability company is a party, any conversion of the limited liability company to another business form, any transfer to or domestication in any other jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets.

§ 13.1-1023. Operating agreement.

A. Authority.

1. The members of a limited liability company may enter into any operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of ~~this~~ the Commonwealth or the articles of organization. *An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth in the operating agreement.*

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

a. Any writing signed by the member, without regard to whether the writing constitutes an

306 agreement, that relates to the affairs of the limited liability company and the conduct of its business.

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

311 B. Adoption and amendment.

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

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

318 3. *If the articles of organization or the operating agreement provide for the manner by which an  
319 operating agreement may be amended, including by requiring the approval of a person who is not a  
320 party to the articles of organization or requiring the satisfaction of conditions, an operating agreement  
321 may be amended only in that manner or as otherwise permitted by law; provided that (i) the approval  
322 of any person may be waived by that person and (ii) any conditions may be waived by all persons for  
323 whose benefit the conditions were intended.*

324 C. Enforcement of operating agreement.

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

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

329 § 13.1-1038.1. Admission of members.

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

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

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

336 3. In the case of a limited liability company that has no members as of the commencement of its  
337 existence under § 13.1-1004, as provided in any writing signed by both the initial member or members  
338 and the person who formed the limited liability company under § 13.1-1010; and

339 4. In the case of a limited liability company the last remaining member of which has dissociated, (i)  
340 as provided in a writing executed by the ~~personal representative~~ successor in interest of that member,  
341 who may provide for the admission of the ~~personal representative~~ successor in interest or its nominee or  
342 designee to the limited liability company as a member, effective as of the occurrence of the event that  
343 caused the dissociation of the last remaining member, provided that the articles of organization or an  
344 operating agreement may provide that the ~~personal representative~~ successor in interest of the last  
345 remaining member shall be obligated to agree in writing to the admission of the ~~personal representative~~  
346 successor in interest of that member or its nominee or designee to the limited liability company as a  
347 member, effective as of the occurrence of the event that caused the dissociation of the last remaining  
348 member, or (ii) in the manner provided for in the articles of organization or an operating agreement,  
349 effective as of the occurrence of the event that caused the dissociation of the last remaining member,  
350 pursuant to a provision of the articles of organization or an operating agreement that specifically  
351 provides for the admission of a member to the limited liability company after there is no longer a  
352 remaining member of the limited liability company.

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

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

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

357 C. A person may be admitted to a limited liability company as a member of the limited liability  
358 company and may receive a membership interest in the limited liability company without making a  
359 contribution or being obligated to make a contribution to the limited liability company. Unless otherwise  
360 provided in the articles of organization or an operating agreement:

361 1. A person may be admitted to a limited liability company as a member of the limited liability  
362 company without acquiring a membership interest in the limited liability company; and

363 2. A person may be admitted as the sole member of a limited liability company without making a  
364 contribution or being obligated to make a contribution to the limited liability company or without  
365 acquiring a membership interest in the limited liability company.

366 § 13.1-1064. Penalty for failure to timely pay annual registration fees or file statement of change.

367 A. Any domestic or any foreign limited liability company failing to pay the annual registration fee

into the state treasury within the time prescribed in § 13.1-1062 shall incur a penalty thereon of \$25, which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalties and liabilities imposed by law.

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

2. If any domestic or foreign limited liability company whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited liability company of impending cancellation of its certificate of organization or certificate of registration, as the case may be. If the limited liability company fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the certificate shall be automatically canceled as of that day. A domestic limited liability company whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 9 (§ 13.1-1046 et seq.) of this chapter.

3. If the certificate of a domestic limited liability company is canceled pursuant to subdivisions 1 or 2, its properties and affairs shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its ~~partners~~ members; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its members or interest holders according to their respective rights and interests.

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

D. A domestic or foreign limited liability company whose certificate of organization or certificate of registration has been canceled pursuant to subsection B of this section or § 13.1-1056 may be relieved of the cancellation, and its certificate of organization or certificate of registration shall be reinstated (i) by paying, not later than five years following the date of cancellation, the annual registration fee required by § 13.1-1062, together with the late fee imposed by subsection A of this section; a reinstatement fee of \$100; and all registration fees and penalties that were due before the certificate was canceled and would have become due had the certificate not been canceled; and (ii) by filing a duly authenticated copy of any amendments made to the articles of organization by a foreign limited liability company and any mergers entered into by a foreign limited liability company, from the date of cancellation pursuant to subsection B of this section to the date of reinstatement. If the name of the limited liability company is not available at the time of reinstatement, as a precondition to reinstatement the limited liability company, if domestic, shall file an amendment to its articles of organization to change its name, or if foreign, shall adopt a designated name, to satisfy the requirements of § 13.1-1012.

E. If the domestic or foreign limited liability company complies with the provision of, and pays the fees required by, subsection D of this section, the Commission shall reinstate the certificate of organization or certificate of registration of the limited liability company. A domestic or foreign limited liability company whose certificate of organization or certificate of registration is reinstated within five years after the date on which it was canceled pursuant to subsection B of this section or § 13.1-1056 shall be deemed not to have had its certificate of organization or certificate of registration canceled. In that event, the reinstated domestic or foreign limited liability company resumes carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that domestic or foreign limited liability company or a member, manager or other agent after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

§ 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this

429 article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an  
430 easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years  
431 following the year in which the credit is taken.

432 B. Any tax credits that arise under this article from the donation of land or an interest in land made  
433 by a pass-through tax entity such as a trust, estate, partnership, limited liability ~~corporation~~ company or  
434 partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such  
435 entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder  
436 and/or beneficiary, as the case may be, in proportion to their interest in such entity in the event that  
437 income, deductions and tax liability pass through such entity to such member, manager, partner,  
438 shareholder and/or beneficiary or as set forth in the agreement of said entity. Such tax credits shall not  
439 be claimed by both the entity and the member, manager partner, shareholder and/or beneficiary for the  
440 same donation.

441 C. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable  
442 credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount  
443 of credit under this article shall file a notification of such transfer to the Department in accordance with  
444 procedures and forms prescribed by the Tax Commissioner.

445 D. To the extent included in and not otherwise subtracted from federal adjusted gross income  
446 pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any  
447 amount of gain or income recognized by a taxpayer on the application of a tax credit under this article  
448 against a Virginia income tax liability.

449 E. The transfer of the credit and its application against a tax liability shall not create gain or loss for  
450 the transferor or the transferee of such credit.

451 F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S  
452 corporation, may appoint a tax matters representative, who shall be a general partner, member/manager  
453 or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall  
454 be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits  
455 have been allocated or transferred by the entity under this article with respect to those credits. In the  
456 event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners,  
457 members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part,  
458 such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall  
459 first make written demand for payment of any additional tax, together with interest and penalties, from  
460 the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner  
461 shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18  
462 (§ 58.1-1800 et seq.) of this title.