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SENATE BILL NO. 794

Offered January 10, 2007

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A BILL to amend and reenact §§ 13.1-1002, 13.1-1020, 13.1-1123, and 58.1-811 of the Code of Virginia, relating to limited liability companies; membership interests; professional limited liability companies and professional corporations; state recordation tax exemptions.

Patron—Stosch

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1002, 13.1-1020, 13.1-1123, and 58.1-811 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

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

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

"Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association that is organized and existing under this chapter, or that has become a domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.3, even though also

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59 being a non-United States entity organized under laws other than the laws of the Commonwealth, or that
60 has become a domestic limited liability company of the Commonwealth pursuant to § 56-1, even though
61 also being a limited liability company organized under laws other than the laws of the Commonwealth,
62 or that has become a domestic limited liability company of the Commonwealth pursuant to
63 § 13.1-1010.1, Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of this title, or, effective on and after
64 November 1, 2006, Article 14 (§ 13.1-1074 et seq.) of Chapter 12 of this title. A limited liability
65 company's status for federal tax purposes shall not affect its status as a distinct entity organized and
66 existing under this chapter.

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

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

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

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

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

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

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

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

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

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

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

95 § 13.1-1020. Parties to actions.

96 A member of a limited liability company, *solely by reason of being a member*, is not a proper party
97 to a proceeding by or against a limited liability company, except where (i) the object is to enforce a
98 member's right against or liability to the limited liability company or (ii) as provided in Article 8
99 (§ 13.1-1042 et seq.) of this chapter.

100 § 13.1-1123. Coordination with other provisions of Virginia Code.

101 For purposes of *all sections of this Code other than sections in Chapter 7 (§ 13.1-542 et seq.) and in*
102 *this chapter*, whenever the term "professional corporation" is used, that term shall be deemed to include
103 a professional limited liability company and wherever the terms "shareholder," "employee," "officer" or
104 "agent" are used those terms shall be deemed to include, as appropriate, the terms member, manager,
105 employee and agent.

106 § 58.1-811. Exemptions.

107 A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate
108 or lease of real estate:

109 1. To an incorporated college or other incorporated institution of learning not conducted for profit,
110 where such real estate is intended to be used for educational purposes and not as a source of revenue or
111 profit;

112 2. To an incorporated church or religious body or to the trustee or trustees of any church or religious
113 body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively
114 for religious purposes, or for the residence of the minister of any such church or religious body;

115 3. To the United States, the Commonwealth, or to any county, city, town, district or other political
116 subdivision of the Commonwealth;

117 4. To the Virginia Division of the United Daughters of the Confederacy;

118 5. To any nonstock corporation organized exclusively for the purpose of owning or operating a
119 hospital or hospitals not for pecuniary profit;

120 6. To a corporation upon its organization by persons in control of the corporation in a transaction

which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333 or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, *limited partnership, business trust*, or limited liability company upon ~~a merger or consolidation of to which two or more such entities are parties,~~ *corporations, partnerships or limited liability companies*, or in a reorganization within the meaning of § 368 (a) (1) (C) and (F) of the Internal Revenue Code as amended, *or to the surviving entity of a conversion of one such entity into another such entity, or to any such entity that has domesticated into or out of the Commonwealth;*

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a security trust defined in § 55-58.1, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument; or

14. When the grantor is an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means, located in a county with a population of not less than 28,500 and not more than 28,650 or a city with a population of not less than 66,000 and not more than 70,000.

B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:
1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § 57-16.1;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision; or

5. Securing a loan made by an organization described in subdivision 14 of subsection A of this section.

C. The tax imposed by § 58.1-802 shall not apply to any:

1. Transaction described in subdivisions 6 through 13 of subsection A of this section;

2. Instrument or writing given to secure a debt;

3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;

4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district or other political subdivision thereof;

5. Conveyance of real estate to the Commonwealth or any county, city, town, district or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § 58.1-802; or

6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or

182 grantors and a grantee or grantees when no consideration has passed between the parties. Such deed
183 shall state therein that it is a deed of gift.

184 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the
185 Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

186 F. The taxes imposed by §§ 58.1-801, 58.1-802, 58.1-807, 58.1-808 and 58.1-814 shall not apply to
187 (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any
188 lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or
189 lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural
190 or open space areas.

191 G. The words "trustee" or "trustees," as used in subdivision 2 of subsection A, subdivision 2 of
192 subsection B, and subdivision 6 of subsection C, include the trustees mentioned in § 57-8 and the
193 ecclesiastical officers mentioned in § 57-16.

194 H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual
195 right, if the release is contained within a single deed that performs more than one function, and at least
196 one of the other functions performed by the deed is subject to the recordation tax.

197 I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement,
198 release, or other document recorded in connection with a concession pursuant to the Public-Private
199 Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.