

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 13.1-1002, 13.1-1020, 13.1-1123, and 58.1-811 of the Code of Virginia,*
 3 *relating to limited liability companies; membership interests; professional limited liability companies*
 4 *and professional corporations; state recordation tax exemptions.*

5 [S 794]

6 Approved

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

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

10 § 13.1-1002. Definitions.

11 As used in this chapter:

12 "Articles of organization" means all documents constituting, at any particular time, the articles of
 13 organization of a limited liability company. It includes the original articles of organization, the original
 14 certificate of organization issued by the Commission, and all amendments to the articles of organization.
 15 When the articles of organization have been restated pursuant to any articles of amendment, it includes
 16 only the restated articles of organization and any subsequent amendments to the restated articles of
 17 organization, but does not include the articles of amendment accompanying the restated articles of
 18 organization.

19 "Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title
 20 11 of the United States Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

50 "Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and
 51 50-73.79.

52 "Limited liability company" or "domestic limited liability company" means an entity that is an
 53 unincorporated association that is organized and existing under this chapter, or that has become a
 54 domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.3, even though also
 55 being a non-United States entity organized under laws other than the laws of the Commonwealth, or that
 56 has become a domestic limited liability company of the Commonwealth pursuant to § 56-1, even though

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

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

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

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

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

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

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

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

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

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

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

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

91 § 13.1-1020. Parties to actions.

92 A member of a limited liability company, *solely by reason of being a member*, is not a proper party
93 to a proceeding by or against a limited liability company, except where (i) the object is to enforce a
94 member's right against or liability to the limited liability company or (ii) as provided in Article 8
95 (§ 13.1-1042 et seq.) of this chapter.

96 § 13.1-1123. Coordination with other provisions of Virginia Code.

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

102 § 58.1-811. Exemptions.

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

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

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

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

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

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

116 6. To a corporation upon its organization by persons in control of the corporation in a transaction
117 which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it

118 exists at the time of the conveyance;

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

122 8. To the surviving or new corporation, partnership, *limited partnership*, *business trust*, or limited
123 liability company upon a merger or consolidation of ~~to which~~ two or more *such entities are parties*,
124 ~~corporations, partnerships or limited liability companies~~, or in a reorganization within the meaning of
125 § 368 (a) (1) (C) and (F) of the Internal Revenue Code as amended;

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

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

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

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

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

146 14. When the grantor is an organization exempt from taxation under § 501 (c) (3) of the Internal
147 Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect
148 or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise
149 would be unable to afford to buy a home through conventional means, located in a county with a
150 population of not less than 28,500 and not more than 28,650 or a city with a population of not less than
151 66,000 and not more than 70,000.

152 B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

153 1. Given by an incorporated college or other incorporated institution of learning not conducted for
154 profit;

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

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

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

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

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

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

165 2. Instrument or writing given to secure a debt;

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

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

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

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

175 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or
176 grantors and a grantee or grantees when no consideration has passed between the parties. Such deed
177 shall state therein that it is a deed of gift.

178 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the

179 Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

180 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
181 (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any
182 lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or
183 lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural
184 or open space areas.

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

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

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