

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 450

An Act to amend and reenact §§ 13.1-1002, 13.1-1016, 13.1-1055, and 13.1-1065 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 12 of Title 13.1 a section numbered 13.1-1018.1, relating to registered offices and principal offices of limited liability companies.

[H 1957]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1002, 13.1-1016, 13.1-1055, and 13.1-1065 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 12 of Title 13.1 a section numbered 13.1-1018.1 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 being a non-United States entity organized under laws other than the laws of the Commonwealth, or that has become a domestic limited liability company of the Commonwealth pursuant to § 56-1, even though

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

"Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an 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 the Commonwealth, where the principal executive offices of a domestic or foreign limited liability company are located *or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the limited liability company. The designation of the principal office in the most recent statement of change filed pursuant to § 13.1-1018.1 shall be conclusive for the purpose of this chapter.*

"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.

Article 3.

Registered Office and Agent; *Principal Office*.

§ 13.1-1016. Change of registered office or registered agents.

A. A limited liability company or a foreign limited liability company registered pursuant to Article ~~10~~ *(§ 13.1-1061 13.1-1051 et seq.)* of this chapter may change its registered office or registered agent, or both, upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the limited liability company or foreign limited liability company;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post-office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the limited liability company or foreign limited liability company will be in compliance with the requirements of § 13.1-1015.

B. A statement of change shall forthwith be filed in the office of the Commission by a limited liability company or a foreign limited liability company registered pursuant to Article ~~10~~ *(§ 13.1-1061 13.1-1051 et seq.)* of this chapter whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-1015.

C. If (i) the business address of a registered agent changes to another place within this Commonwealth, (ii) the name of a registered agent changes, or (iii) a registered agent merges into an entity that is qualified to serve as a registered agent pursuant to § 13.1-1015, the registered agent or surviving entity shall forthwith file a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and must recite that a copy of the statement has been mailed to the limited liability company on whose behalf it is to be filed.

§ 13.1-1018.1. Change of principal office.

A limited liability company or a foreign limited liability company registered pursuant to Article 10

(§ 13.1-1051 et seq.) of this chapter may change its principal office upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the limited liability company or foreign limited liability company;
2. The address of its current principal office; and
3. The post office address, including the street and number, if any, of the new principal office.

§ 13.1-1055. (Effective April 1, 2009) Amendments; amended applications for registration.

A. Whenever the articles of organization or other constituent document of a foreign limited liability company that is registered to transact business in the Commonwealth is amended or corrected, the foreign limited liability company shall promptly file with the Commission a copy of the amendment or correction duly authenticated by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction of its organization.

B. If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the Commission an amended application for registration amending such statement or information. The amended application for registration shall be made on a form prescribed and furnished by the Commission.

C. Notwithstanding the provisions of subsection B, the manner by which a foreign limited liability company shall change its registered office or principal office is by filing a statement of change pursuant to § 13.1-1016 or 13.1-1018.1, as the case may be.

§ 13.1-1065. Payment of fees, fines, penalties, and interest prerequisite to Commission action; refunds.

A. The Commission shall not file or issue with respect to any domestic or foreign limited liability company any document or certificate specified in this chapter, except a statement of change pursuant to § 13.1-1016 ~~and~~, a statement of resignation pursuant to § 13.1-1017, ~~and a statement of change pursuant to § 13.1-1018.1~~, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such limited liability company. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign limited liability company that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the limited liability company's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign limited liability company until the annual registration fee has been paid by or on behalf of that limited liability company.

B. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment.

2. That the provisions of this act shall become effective on April 1, 2010.