

Virginia Nonstock Corporation Act

Title 13.1, Chapter 10

§ 13.1-801. Short title.

This chapter shall be known as the "Virginia Nonstock Corporation Act."

(Code 1950, § [13.1-201](#); 1956, c. 428; 1985, c. 522.)

§ 13.1-802. Reservation of power.

The General Assembly of Virginia shall have power to amend or repeal all or part of this chapter at any time, and all domestic and foreign corporations subject to this chapter shall be governed by the amendment or repeal.

(Code 1950, § 13.1-291; 1956, c. 428; 1985, c. 522.)

§ 13.1-803. Definitions.

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

"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, consolidation or correction. When the articles of incorporation have been restated pursuant to any articles of amendment or merger, it includes only the restated articles of incorporation without the accompanying articles of amendment or merger.

"Board of directors" means the group of persons vested with the management of the business of the corporation irrespective of the name by which such group is designated, and "director" means a member of the board of directors.

"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.

"Corporation" or "domestic corporation" means a corporation not issuing shares of stock irrespective of the nature of its business to be transacted, organized under this chapter or existing pursuant to the laws of this Commonwealth on January 1, 1986, or merged with a corporation of this Commonwealth in such manner as thereby to become a domestic corporation of this Commonwealth, even though also remaining a corporation of another state.

"Deliver" includes mail.

"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. For purposes of §§ [13.1-841](#) and [13.1-865](#), a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

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

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

"Foreign corporation" means a corporation not issuing shares and organized under laws other than the laws of this Commonwealth.

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

"Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

"Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

"Person" includes individual and entity.

"Principal office" means the office, in or out of this Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of this Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § [13.1-936](#) shall be conclusive for purposes of this chapter.

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

"Record date" means the date established under Article 7 (§ [13.1-837](#) et seq.) of this chapter on which a corporation determines the identity of its members for purposes of this chapter.

"Transact business" includes the conduct of affairs by any corporation that is not organized for profit.

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

(Code 1950, § 13.1-202; 1956, c. 428; 1985, c. 522; 1997, c. 801; 2002, c. 285.)

§ [13.1-804](#). **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 corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the state or country under whose law the corporation is incorporated, which are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be executed in the name of the corporation:

1. By the chairman or any vice-chairman of the board of directors, or the president, or any other of its officers authorized to act on behalf of the corporation;

2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. Any annual report required to be filed by § [13.1-936](#) shall be executed in the name of the corporation by an officer or director listed in the report.

H. 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. The document may but need not contain:

1. The corporate seal;

2. An attestation by the secretary or an assistant secretary;

3. An acknowledgment, verification, or proof.

I. 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.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any charter or entrance fee or registration fee required by this chapter or by § [13.1-936.1](#).

K. 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](#).

(1985, c. 522; 1986, c. 231; 1995, c. 70; 2000, c. 995.)

§ [13.1-805](#). **Issuance of certificate by Commission; recordation of documents.**

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the requirements of law and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

(Code 1950, § 13.1-288; 1956, c. 428; 1982, c. 375; 1984, c. 295; 1985, c. 522; 1986, c. 231; 1987, c. 183; 1988, c. 405; 1989, c. 152.)

§ [13.1-806](#). **Effective time and date of document.**

A. A certificate issued by the Commission becomes effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event the certificate shall become effective at the time and date so specified, so long as the effective date is not more than fifteen days after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall become effective when accepted for filing unless otherwise provided for in this chapter.

B. Notwithstanding the provisions of subsection A of this section, any certificate that has a delayed effective time and date shall not become effective if prior to the effective time and date the parties to the articles to which the certificate relates file a request for cancellation with the Commission and the Commission, by order, cancels the certificate.

C. Notwithstanding subsection A of this section, for purposes of §§ [13.1-829](#) and [13.1-924](#), any certificate that has a delayed effective date shall be deemed to become effective when the certificate is issued.

(1985, c. 522.)

§ [13.1-807](#). **Correcting filed articles.**

A. The board of directors of a domestic or foreign corporation may authorize correction of any articles filed with the Commission if the articles (i) contain an incorrect statement or (ii) were defectively executed, attested, sealed, verified, or acknowledged.

B. Articles are corrected:

1. By preparing articles of correction that describe the articles to be corrected, including their effective date, and that correct the incorrect statement or defective execution; and

2. By filing the articles of correction with the Commission.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction shall be accepted by the Commission when received more than nine days after the effective date of the certificate relating to the articles to be corrected.

(1985, c. 522.)

§ **13.1-808. Evidentiary effect of copy of filed document.**

A certificate attached to a copy of any document admitted to the records of the Commission, bearing the signature of the clerk or an assistant clerk of the Commission and the seal of the Commission, is conclusive evidence that the document has been admitted to the records of the Commission.

(1985, c. 522.)

§ **13.1-809. Certificate of good standing.**

A. Anyone may apply to the Commission for a certificate of good standing for a domestic or foreign corporation.

B. The certificate shall state that the corporation is in good standing in this Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in this Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the laws of this Commonwealth, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) the foreign corporation is authorized to transact business in this Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in this Commonwealth shall be deemed to be in good standing if:

1. 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;
2. An annual report required by § [13.1-936](#) has been delivered to and accepted by the Commission; and
3. No certificate of dissolution, certificate of withdrawal, or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name has been issued or such certificate or prohibition no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this Commonwealth.

(1985, c. 522; 1988, c. 405; 1993, c. 60; 2006, c. 663.)

§ [13.1-810](#). **Notice.**

For purposes of this chapter:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

B. Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where the notice is intended to be given, or by radio, television or other form of public broadcast communication.

C. Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

D. Written notice to a domestic corporation or a foreign corporation authorized to transact business in this Commonwealth, may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet filed an annual report, in its application for a certificate of authority.

E. Except as provided in subsections B and C of this section, written notice, if in a comprehensible form, becomes effective at the earliest of the following:

1. When received;

2. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or

3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

F. Oral notice becomes effective when communicated if communicated in a comprehensible manner.

G. If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

(1985, c. 522.)

§ **13.1-811. Penalty for signing false documents.**

It shall be unlawful for any person to sign a document which he knows is false in any material respect with intent that the document be delivered to the Commission for filing. Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

(Code 1950, § 13.1-295; 1958, c. 506; 1975, c. 500; 1985, c. 522.)

§ **13.1-812. Unlawful to transact or offer to transact business as corporation unless authorized.**

It shall be unlawful for any person, firm or association to transact business in this Commonwealth as a corporation or to offer or advertise to transact business in this Commonwealth as a corporation unless the alleged corporation is either a Virginia corporation or a foreign corporation authorized to transact business in Virginia. Any person who, individually or as a member of a firm or association, violates this section shall be guilty of a Class 1 misdemeanor.

(Code 1950, § 13.1-296; 1958, c. 565; 1981, c. 320; 1985, c. 522.)

§ **13.1-813. Rehearing and finality of Commission action; injunctions.**

The Commission shall have no power to grant a rehearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a member or director, filed with the Commission and the corporation within ten days after the effective date of the certificate, in which the member or director asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the member or director, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

No court within or without Virginia shall have jurisdiction to enjoin or delay the holding of any meeting of directors or members for the purpose of authorizing or consummating any amendment, merger or dissolution, or the execution or filing with the Commission of any articles or other documents for such purpose, except for fraud. No court within or without Virginia,

except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

(Code 1950, § 13.1-287; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ [13.1-814](#). Shares of stock and dividends prohibited.

A corporation shall not issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors or officers, except that a corporation may make distributions to another nonprofit corporation that is a member of such corporation or has the power to appoint one or more of its directors. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, including pensions, may confer benefits upon its members in conformity with its purposes, and may make distributions to its members or others as permitted by this Act upon dissolution or final liquidation and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

(Code 1950, § 13.1-229; 1956, c. 428; 1985, cc. 380, 522.)

§ [13.1-815](#). Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect filing fees, the charter fees and entrance fees imposed by law. 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 which is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this chapter, except the report required by § [13.1-936](#), a statement of change pursuant to § [13.1-834](#) or [13.1-926](#), and a statement of resignation pursuant to § [13.1-835](#) or [13.1-927](#), until all fees, charges, 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 corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is prior to the due date of the corporation's annual registration payment in any year. Except as hereinafter provided, the issuance of a certificate of termination of corporate existence pursuant to § [13.1-913](#) shall not have the effect of releasing any obligation that has accrued in favor of this Commonwealth on account of such assessment.

Any domestic corporation that has ceased to exist because of the issuance of a certificate of termination of corporate existence or certificate of incorporation surrender or any foreign corporation that has obtained a certificate of withdrawal, effective prior to its annual report due date pursuant to subsection C of § [13.1-936](#) in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation that has merged, effective prior to its annual report due date pursuant to subsection C of § [13.1-936](#) in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the

Commission the certificate of merger prior to such date, shall not be required to pay the registration fee for that year. The Commission shall enter an order withdrawing and canceling the registration fee assessments above specified remaining unpaid. Registration fee assessments that have been paid shall not be refunded.

(Code 1950, § 13.1-284; 1956, c. 428; 1985, c. 522; 1988, c. 405; 1989, c. 152; 1997, c. 216; 2003, c. 374; 2006, c. 659.)

§ **13.1-815.1. Charter and entrance fees for corporations.**

A. Every domestic corporation, upon the granting of its charter, shall pay a \$50 fee into the state treasury, and every foreign corporation without capital stock shall pay \$50 into the state treasury for its certificate of authority to conduct its affairs in this Commonwealth.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in this Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation. If no charter or entrance fee has been heretofore paid to this Commonwealth, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business.

(1988, c. 405; 2003, c. 374.)

§ **13.1-816. Fees for filing documents or issuing certificates.**

The Commission shall charge and collect the following fees:

1. For filing any one of the following, the fee shall be \$25:
 - a. Articles of incorporation, domestication, or incorporation surrender.
 - b. Articles of amendment or restatement.
 - c. Articles of merger.
 - d. Articles of correction.
 - e. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.
 - f. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.
 - g. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
 - h. A copy of articles of merger or consolidation of a foreign corporation holding a certificate of

authority to transact business in the Commonwealth.

i. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

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

- a. An application to reserve a corporate name.
- b. A notice of transfer of a reserved corporate name.
- c. An application for use of an indistinguishable name.
- d. Articles of dissolution.
- e. Articles of revocation of dissolution.
- f. Articles of termination of corporate existence.
- g. A statement of withdrawal of a foreign corporation.

3. For issuing a certificate of change of name the fee shall be \$5.

(Code 1950, §§ 13.1-285, 13.1-286.1; 1956, c. 428; 1958, c. 564; 1964, c. 551; 1972, c. 579; 1975, c. 500; 1981, c. 522; 1982, c. 460; 1984, c. 294; 1985, c. 522; 1987, c. 183; 1988, c. 405; 1995, c. 368; 2003, c. 374; 2004, c. 274.)

§ [13.1-817](#).

Repealed by Acts 1991, c. 123.

§ [13.1-818](#). **Incorporators.**

One or more persons may act as incorporators of a corporation by signing and filing articles of incorporation with the Commission.

(Code 1950, § 13.1-230; 1956, c. 428; 1968, c. 42; 1975, c. 500; 1985, c. 522.)

§ [13.1-819](#). **Articles of incorporation.**

A. The articles of incorporation shall set forth:

- 1. A corporate name for the corporation that meets the requirements of § [13.1-829](#).
- 2. If the corporation is to have no members, a statement to that effect.

3. If the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting or denying the right to vote.

4. If the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed, and a designation of ex officio directors, if any.

5. The address of its initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is located), and the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth.

B. The articles of incorporation may set forth:

1. The names and addresses of the persons who are to serve as the initial directors.

2. Any provisions not inconsistent with law:

a. Stating the purpose or purposes for which the corporation is organized.

b. Regarding the management or regulation of the business of the corporation.

c. Defining, limiting and regulating the powers of the corporation, its directors and its members.

d. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

C. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

D. Except as provided in subsection A of § [13.1-855](#), whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

(Code 1950, § 13.1-231; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1982, c. 182; 1985, c. 522; 1986, c. 622; 1993, c. 113; 2000, c. 162; 2001, cc. 517, 541.)

§ [13.1-820](#). Issuance of certificate of incorporation.

If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation.

When the certificate of incorporation becomes effective, the corporate existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and

that the corporation has been incorporated under this chapter.

(Code 1950, §§ 13-223, 13-224, 13.1-232, 13.1-233; 1956, c. 428; 1985, c. 522.)

§ **13.1-821. Liability for preincorporation transactions.**

All persons purporting to act as or on behalf of a corporation, but knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also knew that there was no incorporation.

(1985, c. 522.)

§ **13.1-822. Organization of corporation.**

A. After incorporation:

1. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by adopting bylaws, appointing officers and carrying on any other business brought before the meeting.

2. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

a. To elect a board of directors and complete the organization of the corporation; or

b. To elect directors who shall complete the organization of the corporation.

B. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

C. An organizational meeting may be held in or out of this Commonwealth.

(Code 1950, § 13.1-234; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ **13.1-823. Bylaws.**

A. The initial bylaws of the corporation shall be adopted by its incorporators or board of directors.

B. The bylaws of a corporation may contain any provision for the regulation or management of the business of the corporation that is not inconsistent with law or the articles of incorporation.

(Code 1950, §§ 13-234, 13.1-212; 1956, c. 428; 1985, c. 522.)

§ **13.1-824. Emergency bylaws.**

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the corporation during the emergency, including:

1. Procedures for calling a meeting of the board of directors;
2. Quorum requirements for the meeting; and
3. Designation of additional or substitute directors.

B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

C. Corporate action taken in good faith in accordance with the emergency bylaws:

1. Binds the corporation; and
2. May not be used to impose liability on a corporate director, officer, employee or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

(Code 1950, § 13.1-212.1; 1962, c. 102; 1975, c. 500; 1985, c. 522.)

§ **13.1-825. Purposes.**

Every corporation incorporated under this chapter has the purpose of engaging in any lawful purpose or purposes, unless:

1. A statute requires the corporation to issue shares or one of the purposes of the corporation is to conduct the business of a public service company other than a sewer company; or
2. A more limited purpose is (i) set forth in the articles of incorporation or (ii) required to be set forth in the articles of incorporation by any other laws of this Commonwealth.

(Code 1950, § 13.1-204; 1956, c. 428; 1958, c. 564; 1960, c. 296; 1971, Ex. Sess., c. 98; 1985, c. 522.)

§ **13.1-826. General powers.**

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business, including, without limitation, power to:

1. Sue and be sued, complain and defend, in its corporate name.

2. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.
3. Purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.
4. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
5. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and with, shares or other interests in, or obligations of, any other domestic or foreign corporations organized for any purpose, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof; and to guarantee the payment of any bonds or other obligations of any association, partnership, or individual or any other domestic or foreign corporation organized for any purpose.
6. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
7. Lend money, invest and reinvest its funds, and hold real and personal property as security for repayment.
8. Transact its business, locate offices and exercise the powers granted by this chapter within or without this Commonwealth.
9. Elect directors and appoint officers, employees and agents of the corporation, define their duties, fix their compensation and lend them money and credit.
10. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this Commonwealth, for managing or regulating the business of the corporation.
11. Make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes.
12. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive and compensation plans for any or all of the current or former directors, officers, employees and agents of the corporation or any of its subsidiaries.
13. Insure for its benefit the life of any director, officer or employee of the corporation and continue such insurance after the relationship terminates.
14. Cease its corporate activities and surrender its corporate franchise.
15. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a banking corporation, an insurance corporation, a savings and loan association or a credit union shall have power to enter into partnership agreements, joint ventures, or other association of any kind with other corporations, whether organized under the laws of this Commonwealth or otherwise, or with any individual or individuals.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings institutions, credit unions, industrial loan associations or other special types of corporations shall not be deemed repealed or amended by any provision of this chapter except where specifically so provided.

D. Each corporation which is deemed a private foundation (as defined in § 509 of the Internal Revenue Code), unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing (as defined in § 4941 (d) of the Internal Revenue Code), retain any excess business holdings (as defined in § 4943 (c) of the Internal Revenue Code), make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures (as defined in § 4945 (d) of the Internal Revenue Code). This subsection shall apply to any corporation organized under this chapter after December 31, 1969; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508 (e) (2) (B) or (C) of the Internal Revenue Code shall apply, or unless the board of directors of such corporation shall elect that such restrictions as are contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

(Code 1950, § 13.1-204.1; 1975, c. 500; 1985, c. 522; 1996, c. 77.)

§ [13.1-827](#). Emergency powers.

A. In anticipation of or during any emergency defined in subsection D of this section, the board of directors of a corporation may:

1. Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent.
2. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

B. During an emergency defined in subsection D of this section, unless emergency bylaws provide otherwise:

1. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.
2. One or more officers of the corporation present at a meeting of the board of directors may be

deemed by a majority of the directors present at the meeting to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

C. Corporate action taken in good faith during an emergency under this section to further the ordinary business of the corporation:

1. Binds the corporation; and
2. May not be used to impose liability on a corporate director, officer, employee or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

(1985, c. 522.)

§ **13.1-828. Ultra vires.**

A. Except as provided in subsection B of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

B. A corporation's power to act may be challenged:

1. In a proceeding by a member or a director against the corporation to enjoin the act; or
2. In a proceeding by the corporation, directly, derivatively or through a receiver, trustee, or other legal representative, against incumbent or former officers, directors, employees or agents of the corporation; or
3. In a proceeding against a corporation before the Commission.

C. In a proceeding by a member or a director under subdivision 1 of subsection B of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

(Code 1950, § 13.1-206; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ **13.1-829. Corporate name.**

A. The corporate name shall not contain any word or phrase that indicates or implies that it is organized for the purpose of conducting any business other than a business which it is authorized to conduct.

B. Except as authorized by subsection C of this section, a corporate name shall be distinguishable upon the records of the Commission from:

1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of this Commonwealth or authorized to transact business in this Commonwealth;

2. A corporate name reserved or registered under § [13.1-631](#), [13.1-632](#), [13.1-830](#) or [13.1-831](#);
3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in this Commonwealth;
4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in this Commonwealth;
5. A limited liability company name reserved under § [13.1-1013](#);
6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in this Commonwealth;
7. The name of a domestic business trust or a foreign business trust registered to transact business in this Commonwealth;
8. A business trust name reserved under § [13.1-1215](#);
9. The designated name adopted by a foreign business trust because its real name is unavailable for use in this Commonwealth;
10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in this Commonwealth;
11. A limited partnership name reserved under § [50-73.3](#); and
12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in this Commonwealth.

C. A domestic corporation 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 B of this section. The Commission shall authorize use of the name applied for if:

1. 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 corporation.
2. [Repealed.]

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

E. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection B, shall not consider any word, phrase, abbreviation, or designation required or permitted under § [13.1-544.1](#), subsection A of § [13.1-630](#), subsection A of § [13.1-1012](#), § [13.1-1104](#), subdivision 1 of § [50-73.2](#), and subdivision A 2 of § [50-73.78](#) to be contained in the name of a business entity formed or organized under the laws of this Commonwealth or authorized or registered to transact business in this

Commonwealth.

(Code 1950, § 13.1-207; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 232; 2003, c. 592; 2005, c. 379.)

§ [13.1-830](#). **Reserved name.**

A. Any person or foreign or domestic corporation may apply to the Commission to reserve the exclusive use of a corporate name, including a designated name for a foreign corporation whose corporate name is not available. If the Commission finds that the name applied for is available, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved corporate name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved corporate name may transfer the reservation to another person or corporation by delivering to the Commission a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

(Code 1950, § 13.1-207.1; 1975, c. 500; 1985, c. 522; 2006, c. 505.)

§ [13.1-831](#). **Registered name.**

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by § [13.1-924](#), if the name is distinguishable upon the records of the Commission from the corporate names that are not available under subsection B of § [13.1-829](#).

B. A foreign corporation registers its corporate name, or its corporate name with any additions required by § [13.1-924](#), by:

1. Filing with the Commission (i) an application setting forth the name of the corporation, or its corporate name with any addition required by § [13.1-924](#), the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such corporation is in good standing (or a document of similar import) from the state or country of incorporation, executed by the official who has custody of the records pertaining to corporations; and

2. Paying to the Commission a registration fee of twenty dollars. Except as provided in subsection E of this section, registration is effective for one year after the date an application is filed.

C. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

D. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the sixty-day period preceding the date of expiration of the registration, a renewal application which complies with subsection B of this section, and by paying a renewal fee of twenty dollars. The renewal application becomes effective when filed in accordance with this section and, except as provided in subsection E of this section, renews the

registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

E. A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in this Commonwealth under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact business in this Commonwealth or consents to the authorization of another foreign corporation to transact business in this Commonwealth under the registered name.

F. A foreign corporation which has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission and by paying a fee of ten dollars.

(Code 1950, § 13.1-207.2; 1975, c. 500; 1981, c. 522; 1985, c. 522; 1995, c. 114; 2002, c. 607.)

§ **13.1-832. Property title records.**

Whenever by merger or amendment to the articles of incorporation the name of any domestic or foreign corporation is changed or another domestic or foreign corporation succeeds to the ownership of its property, a certificate reciting such change or succession shall be issued by the clerk of the Commission upon request and such certificate, or if such corporation is not a domestic corporation or a foreign corporation authorized to transact business in this Commonwealth, a similar certificate by any competent authority of the state of incorporation, 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 corporation is located in order to maintain the continuity of title records upon paying a fee of ten dollars to the clerk of the court, but no tax shall be due thereon.

(Code 1950, § 13.1-289; 1956, c. 428; 1985, c. 522; 1996, c. 282.)

§ **13.1-833. Registered office and registered agent.**

A. Each corporation shall continuously maintain in this Commonwealth:

1. A registered office which may be the same as any of its places of business;
2. A registered agent, who shall be:
 - a. An individual who is a resident of this Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with such registered office; or
 - b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this 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 corporation at its last known address any process, notice or demand that is served on the registered agent.

(Code 1950, § 13.1-208; 1956, c. 428; 1976, c. 4; 1985, c. 522; 1993, c. 113; 2000, c. 162; 2001, cc. 517, 541.)

§ **13.1-834. Change of registered office or registered agent.**

A. A corporation may change its registered office or registered agent, or both, upon filing in the office of the Commission a statement on a form supplied by the Commission that sets forth:

1. The name of the corporation;
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 county or city 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 corporation shall be in compliance with the requirements of § [13.1-833](#).

B. A statement of change shall forthwith be filed in the office of the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § [13.1-833](#).

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 § [13.1-833](#), 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 shall recite that a copy of the statement has been mailed to the corporation on whose behalf it is to be filed.

(Code 1950, § 13.1-209; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1976, c. 4; 1985, c. 522; 1986, c. 622; 1987, c. 183; 1988, c. 405; 2003, c. 597.)

§ **13.1-835. Resignation of registered agent.**

A. A registered agent may resign his agency appointment by signing and filing with the

Commission his statement of resignation accompanied by his certification that he has mailed a copy thereof to the principal office of the corporation by certified mail. The statement may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(1985, c. 522.)

§ **13.1-836. Service on corporation.**

A. The registered agent of a corporation is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a corporation shall fail to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § [12.1-19.1](#).

C. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

(Code 1950, §§ 13-12, 13-14, 13.1-210; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 622; 1991, c. 672; 2001, cc. 517, 541.)

§ **13.1-837. Members.**

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws. A corporation may issue certificates evidencing membership therein. Memberships shall not be transferable. Members shall not have voting or other rights except as provided in the articles of incorporation or if the articles of incorporation so provide, in the bylaws. Members of any corporation existing on January 1, 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by amendment of the articles of incorporation.

(Code 1950, § 13.1-211; 1956, c. 428; 1958, c. 564; 1982, c. 182; 1985, c. 522.)

§ **13.1-838. Annual meeting.**

A. A corporation shall hold annually at a time stated in or fixed in accordance with the bylaws a meeting of the members.

B. Annual meetings of members may be held at such place, either in or out of this

Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ **13.1-839. Special meeting.**

A. A corporation shall hold a special meeting of members on call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws. In the absence of a provision in the articles of incorporation or bylaws stating who may call a special meeting of members, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

B. If not otherwise fixed under § [13.1-840](#) or § [13.1-844](#), the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

C. Special members' meetings may be held at such place in or out of this Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

D. Only business within the purpose or purposes described in the meeting notice required by subsection C of § [13.1-842](#) may be conducted at a special members' meeting.

(Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ **13.1-840. Court-ordered meeting.**

A. The circuit court of the city or county where a corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, may, after notice to the corporation, summarily order a meeting to be held:

1. On petition of any member of the corporation entitled to participate in an annual meeting if an annual meeting was not held within fifteen months after its last annual meeting or, if there has been no annual meeting, the date of its incorporation; or

2. On petition of a member who signed a demand for a special meeting that satisfies the requirements of § [13.1-839](#) if:

a. Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

b. The special meeting was not held in accordance with the notice.

B. The court may fix the time and place of the meeting, determine the members entitled to

participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(1985, c. 522.)

§ [13.1-841](#). **Action without meeting.**

A. Action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting and without action by the board of directors if the action is taken by all of the members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed by all of the members entitled to vote on the action, and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any action taken by unanimous written consent shall be effective according to its terms when all consents are in possession of the corporation. A member may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time that all consents are in the possession of the corporation. Action taken under this section is effective as of the date specified therein, provided that the consent states the date of execution by each member.

B. If not otherwise determined under § [13.1-844](#), the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection A of this section.

C. A consent signed under this section has the effect of a unanimous vote of voting members, and may be described as such in any articles or document filed with the Commission under this chapter.

D. If this chapter requires that notice of proposed action be given to nonvoting members and the action is to be taken by unanimous consent of the voting members, the corporation shall give its nonvoting members written notice of the proposed action at least ten days before the action is taken. The notice shall contain or be accompanied by the same material that under this chapter would have been required to be sent to nonvoting members in a notice of meeting at which the proposed action would have been submitted to the members for action.

(Code 1950, § 13.1-216; 1956, c. 428; 1985, c. 522.)

§ [13.1-842](#). **Notice of meetings.**

A. 1. A corporation shall give members written notice of the date, time and place of each annual and special members' meeting. Such notice shall be given, either personally or by mail, no less than ten nor more than sixty days before the date of the meeting except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, a proposed sale of assets pursuant to § [13.1-900](#) or the dissolution of the corporation shall be given not less than twenty-five nor more than sixty days before the meeting.

2. In lieu of delivering notice as specified in subdivision 1 of this subsection, the corporation may publish such notice at least once a week for two successive calendar weeks in a newspaper published in the city or county in which the registered office is located, or having a general circulation therein, the first publication to be not more than sixty days, and the second not less

than seven days, before the date of the meeting.

3. In lieu of delivering notice as specified in subdivision 1 of this subsection, the corporation may give members written notice of the date, time and place of each annual and special members' meeting by a form of electronic transmission consented to by the member to whom the notice is given. A notice given by a form of electronic transmission shall be given as far in advance of the meeting as would be required if the notice was delivered as specified in subdivision 1 of this subsection. Any such consent of a member shall be revocable by the member by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

4. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to each member entitled to vote at such meeting.

B. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § [13.1-840](#) or § [13.1-844](#), the record date for determining members entitled to notice of and to vote at an annual or special meeting is the close of business on the day before the effective date of the notice to the members.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed by the bylaws, however, the notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

F. Notice given pursuant to subdivision A 3 of this section shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the member has consented to receive notice; (ii) if by electronic mail, when directed to the record address of the member or to such other electronic mail address at which the member has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the member of such specific posting when such notice is directed to an address at which the member has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (iv) if by any other form of electronic transmission, when consented to by the member. An affidavit of the secretary or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(Code 1950, § 13.1-214; 1956, c. 428; 1958, c. 564; 1960, c. 214; 1985, c. 522; 1986, c. 529; 2002, c. 285.)

§ [13.1-843](#). **Waiver of notice of meetings.**

A. A member may waive any notice required by this chapter, the articles of incorporation or bylaws before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the member entitled to such notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A member who attends a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

(Code 1950, § 13.1-215; 1956, c. 428; 1985, c. 522.)

§ **13.1-844. Record date.**

A. The bylaws may fix or provide the manner of fixing in advance the record date for one or more voting groups in order to make a determination of members for any purpose. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

B. A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members.

C. A determination of members entitled to notice of or to vote at a members' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

(1985, c. 522.)

§ **13.1-845. Members' list for meeting.**

A. The officer or agent having charge of the record of members of a corporation shall make, at least ten days before each meeting, a complete list of the members, with the address of each. Where members are entitled to vote the list shall be arranged by voting group and within each voting group by class.

B. For a period of ten days prior to the meeting, the list of members shall be subject to inspection by any member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting for the purposes thereof. The

original record of members shall be prima facie evidence as to who are the members entitled to examine such list or records or to vote at any meeting of members. The right of the member of a corporation to inspect such list prior to a meeting shall be subject to the limitations set forth in subsection C of § [13.1-933](#).

C. If the requirements of this section have not been substantially complied with, the meeting shall, on the demand of any member in person or by proxy, be adjourned until the requirements are complied with. Refusal or failure to prepare or make available the members' list does not affect the validity of action taken at the meeting prior to the making of any such demand, but any action taken by the members after the making of any such demand shall be invalid and of no effect.

(1985, c. 522.)

§ [13.1-846. Voting entitlement of members.](#)

A. Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation or if the articles of incorporation so provide, in the bylaws.

B. When directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail. If authorized by the board of directors, any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.

C. Unless the articles of incorporation provide otherwise, in the election of directors every member, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the member has a right to vote.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

(Code 1950, § 13.1-217; 1956, c. 428; 1975, c. 500; 1982, c. 182; 1985, c. 522; 2002, c. 285.)

§ [13.1-847. Proxies.](#)

A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy. In either event, the vote of the member or the member's proxy may be submitted by electronic transmission if authorized as provided in subsection B of § [13.1-846](#).

B. Without limiting the manner in which a member may authorize another person or persons to act for him as proxy pursuant to subsection A of this section, the following shall constitute a valid means by which a member may grant such authority:

1. A member may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the member or his authorized officer, director, employee or agent signing such writing or causing his signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

2. A member may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which the inspectors of election can determine that the telegram, cablegram or other electronic transmission was authorized by the member. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors, or if there are no inspectors, such other persons making that determination, shall specify the information upon which they relied.

3. Any copy, facsimile telecommunications or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy becomes effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A creditor of the corporation who extended its credit under terms requiring the appointment; or
2. An employee of the corporation whose employment contract requires the appointment.

E. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

F. An appointment made irrevocable under subsection D of this section is revoked when the interest with which it is coupled is extinguished.

G. Subject to § [13.1-848](#) and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

H. Any fiduciary who is entitled to vote any shares may vote such shares by proxy.

(1985, c. 522; 1999, c. 101; 2002, c. 285.)

§ [13.1-848](#). **Corporation's acceptance of votes.**

A. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent,

waiver, or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is a domestic or foreign corporation, association, estate, trust or partnership and the name signed purports to be that of an officer, partner or agent of the entity;
2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or
3. The name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment.

C. Notwithstanding the provisions of subdivision 2 of subsection B, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for voting, or for the execution and delivery of proxies for voting, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished the corporation.

D. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

E. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(1985, c. 522.)

§ 13.1-849. Quorum and voting requirements for voting groups of members.

A. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter or the articles of incorporation. Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with

respect to that matter.

B. Once a member is present at a meeting it is deemed present for quorum purposes for the remainder of the meeting and for adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

C. Less than a quorum may adjourn a meeting.

D. The election of directors is governed by § [13.1-852](#).

(Code 1950, § 13.1-219; 1956, c. 428; 1985, c. 522.)

§ [13.1-850](#). **Action by single and multiple voting groups.**

A. If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § [13.1-849](#).

B. If the articles of incorporation or this chapter provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § [13.1-849](#). Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

(1985, c. 522.)

§ [13.1-851](#). **Change in quorum or voting requirements.**

A. The articles of incorporation may provide for a lesser or greater quorum requirement for members or voting groups of members than required by this chapter.

B. An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement shall meet the quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect.

(Code 1950, § 13.1-218; 1956, c. 428; 1985, c. 522; 1986, c. 321.)

§ [13.1-852](#). **Voting for directors; cumulative voting.**

A. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

B. Members do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that "all of a designated voting group of members are entitled to cumulate their votes for directors" (or words of similar import) means that the members designated are entitled to multiply the number of votes they are entitled to

cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

D. Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or
2. A member who has the right to cumulate his votes gives notice to the secretary of the corporation not less than forty-eight hours before the time set for the meeting of his intent to cumulate his votes during the meeting. If one member gives this notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

(Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522.

§ 13.1-852.1. Member or director agreements.

A. An agreement among the members or the directors of a corporation that complies with this section is effective among the members or directors and the corporation, even though it is inconsistent with one or more of the other provisions of this chapter in that it:

1. Eliminates the board of directors or restricts the discretion or powers of the board of directors;
2. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
3. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among them, including use of weighted voting rights or director proxies;
4. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation, or among any of them;
5. Transfers to one or more members, directors or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members;
6. Requires dissolution of the corporation at the request of one or more of its members or directors, in the case of a corporation that has no members or in which the members have no voting rights, or upon the occurrence of a specified event or contingency; or
7. Otherwise governs the exercise of corporate power or the management of the business and affairs of the corporation or the relationship among the members, the directors and the corporation, or among any of them and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement; or

b. Set forth in a written agreement that is signed by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement;

2. Subject to amendment only by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the amendment, unless the agreement provides otherwise; and

3. If the agreement is set forth in the articles of incorporation or bylaws, the agreement shall be valid for an unlimited duration unless otherwise amended by the members or the directors, as the case may be. If the agreement is set forth in a written agreement, the agreement shall be valid for ten years, unless the agreement provides otherwise.

C. The existence of a membership agreement authorized by this section shall be noted conspicuously on the front or back of each certificate evidencing membership, if any. The failure to note the existence of the agreement on the certificate shall not affect the validity of the agreement or any action taken pursuant to it.

D. An agreement authorized by this section shall cease to be effective when the corporation has more than 300 members of record. If the agreement authorized by this section ceases to be effective for any reason, the board of directors may adopt an amendment to the articles of incorporation or bylaws, without member action, in the case of a corporation that has members, to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any member for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in a failure to observe the corporate formalities otherwise applicable to matters governed by the agreement.

G. Incorporators or subscribers for memberships may act as members or directors with respect to an agreement authorized by this section if no members have been elected or appointed or, in the case of a corporation that has no members, no directors are elected or holding office when the agreement was made.

H. No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

(1991, c. 132; 1997, c. 217.)

§ [13.1-853](#). Requirement for and duties of board of directors.

A. Each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522.)

§ **13.1-854. Qualification of directors.**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this Commonwealth or a member of the corporation unless the articles of incorporation or bylaws so prescribe.

(Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522.)

§ **13.1-855. Number and election of directors.**

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The members may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors. If a bylaw states a fixed number of directors and the board of directors has the right to amend the bylaw, it may by amendment to the bylaw increase or decrease the number of directors, but to the extent that the corporation has members with voting privileges only the members may increase or decrease by more than thirty percent the number of directors last elected by the members.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the members or the board of directors. However, to the extent that the corporation has members with voting privileges, only the members may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors shall be elected or appointed in the manner provided in the articles of incorporation. If the corporation has members with voting privileges, directors shall be elected at the first annual members' meeting and at each annual meeting thereafter unless their terms are staggered under § [13.1-858](#).

E. No individual shall be named or elected as a director without his prior consent.

(Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522.)

§ **13.1-856. Election of directors by certain classes of members.**

If the articles of incorporation authorize dividing the members into classes, the articles may also authorize the election of all or a specified number of directors by the members of one or more authorized classes. Each class entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

(1985, c. 522.)

§ **13.1-857. Terms of directors generally.**

A. In the absence of a provision in the articles of incorporation fixing a term of office, the term of office for a director shall be one year.

B. The directors constituting the initial board of directors shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation.

C. A decrease in the number of directors does not shorten an incumbent director's term.

D. In the absence of a provision in the articles of incorporation, the term of a director elected by the board of directors to fill a vacancy expires at the next members' meeting at which directors are elected.

E. Except in the case of ex-officio directors, despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

(Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1986, c. 529; 2004, c. 303.)

§ **13.1-858. Uniformity of terms of directors.**

A. The articles of incorporation may provide for dividing the total number of directors into groups, and the terms of office of the several groups need not be uniform.

B. If the articles of incorporation permit cumulative voting, any provision establishing terms of directors shall provide that at least three directors shall be elected at each annual members' meeting.

(Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 140; 1989, c. 419.)

§ **13.1-859. Resignation of directors.**

A. A director may resign at any time by delivering written notice to the board of directors, its chairman, the president, or the secretary.

B. A resignation is effective when the notice is delivered unless the notice specifies a later

effective date. If a resignation is made effective at the later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with the Commission as a director of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation of a director, a corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office.

(1985, c. 522; 1991, c. 124.)

§ **13.1-860. Removal of directors.**

A. The members may remove one or more directors with or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only with cause.

B. If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him constitutes a majority of the votes entitled to be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. If a corporation has no members, a director may be removed pursuant to procedures set forth in the articles of incorporation or bylaws, and if none are provided, a director may be removed by such vote as would suffice for his election.

E. A director may be removed only at a meeting called for the purpose of removing him. The meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

F. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office.

(Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 177; 1991, c. 124.)

§ **13.1-861. Judicial review of elections.**

Any member or director aggrieved by an election of directors may, after reasonable notice to the corporation and each director whose election is contested, apply for relief to the circuit court in the county or city in which the principal office of the corporation is located, or if none in this Commonwealth, where its registered office is located. The court shall proceed forthwith in a summary way to hear and decide the issues and thereupon to determine the persons elected or order a new election or grant such other relief as may be equitable. Pending decision, the court may require the production of any information and may by order restrain any person from

exercising the powers of a director if such relief is equitable.

(Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522.)

§ **13.1-862. Vacancy on board of directors.**

A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase:

1. The members may fill the vacancy;
2. The board of directors may fill the vacancy; or
3. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of members, only the members of that voting group are entitled to vote to fill the vacancy if it is filled by the members.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of § [13.1-859](#) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

D. The corporation may file an amended annual report with the Commission indicating the filling of a vacancy.

(Code 1950, § 13.1-222; 1956, c. 428; 1985, c. 522; 1991, c. 124.)

§ **13.1-863. Compensation of directors.**

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

(1985, c. 522.)

§ **13.1-864. Meetings of board of directors.**

A. The board of directors may hold regular or special meetings in or out of this Commonwealth.

B. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

(Code 1950, § 13.1-225; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ [13.1-865. Action without meeting of board of directors.](#)

A. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents stating the action taken, signed by each director either before or after the action taken, and included in the minutes or filed with the corporate records reflecting the action taken.

B. Action taken under this section becomes effective when the last director signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(1985, c. 522.)

§ [13.1-866. Notice of directors' meetings.](#)

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

C. Notwithstanding any provision of this chapter to the contrary, a notice of the date, time, place or purpose of a regular or special meeting of the board of directors may be given by a form of electronic transmission consented to by the director to whom the notice is given. Any such consent of a director shall be revocable by the director by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the director has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the director has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the director of such specific posting when such notice is directed to an address at which the director has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (d) if by any other form of electronic transmission, when consented to by the director. An affidavit of the secretary or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(1985, c. 522; 2002, c. 285.)

§ [13.1-867. Waiver of notice by director.](#)

A. A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

(1985, c. 522.)

§ **13.1-868. Quorum and voting by directors.**

A. Unless the articles of incorporation or bylaws require a greater or lesser number for the transaction of all business or any particular business, a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or
2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined by subsection A of this section.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (i) he objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or (ii) he votes against, or abstains from, the action taken.

E. Whenever this chapter requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of members.

(Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522; 1992, c. 471.)

§ **13.1-869. Committees.**

A. Unless the articles of incorporation or the bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them.

Each committee may have two or more members who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of directors to it shall be approved by the greater of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under § [13.1-868](#).

C. Sections [13.1-864](#) through [13.1-868](#), which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § [13.1-853](#), except that a committee may not:

1. Approve or recommend to members action that this Act requires to be approved by members, provided that the executive committee of the board of directors may exercise the authority of the board of directors to approve any amendment of the articles of incorporation if so authorized by the articles of incorporation;
2. Fill vacancies on the board or on any of its committees;
3. Amend articles of incorporation pursuant to § [13.1-885](#);
4. Adopt, amend, or repeal the bylaws;
5. Approve a plan of merger not requiring member approval.

E. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § [13.1-870](#).

(Code 1950, § 13.1-224; 1956, c. 428; 1975, c. 500; 1977, c. 435; 1985, c. 522.)

§ [13.1-870](#). General standards of conduct for directors.

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith judgment of the best interests of the corporation.

B. Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;
2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.

(1985, c. 522.)

§ **13.1-870.1. Limitation on liability of officers and directors; exception.**

A. Except as otherwise provided in this section, in any proceeding brought by or in the right of a corporation or brought by or on behalf of members of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence, or course of conduct shall not exceed the lesser of:

1. The monetary amount including the elimination of liability, specified in the articles of incorporation or, if approved by the members, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

2. The greater of (i) \$100,000, or (ii) the amount of the cash compensation received by the officer or director from the corporation during the twelve months immediately preceding the act or omission for which liability was imposed.

B. In any proceeding against an officer or director who receives compensation from a corporation exempt from income taxation under § 501 (c) of the Internal Revenue Code for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the corporation during the twelve months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an exempt corporation without compensation for his services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E. 1. Notwithstanding the provisions of this section, in any proceeding against an officer or director who receives compensation from a community association for his services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the twelve months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

2. The liability of an officer or director shall not be limited as provided in this subsection if the

officer or director engaged in willful misconduct or a knowing violation of the criminal law.

3. As used in this subsection, "community association" shall mean a corporation incorporated under this chapter which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the incorporated association.

(1987, cc. 59, 257; 1988, c. 561; 1989, c. 422.)

§ **13.1-870.2. Limitation on liability of officers and directors; additional exception.**

A. As used in this section, "community association" shall mean an unincorporated association or corporation which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the unincorporated association or corporation.

B. In any proceeding against an officer or director who receives compensation from a community association for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the twelve months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

(1989, c. 422.)

§ **13.1-871. Director conflicts of interests.**

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect personal interest. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction; or
2. The material facts of the transaction and the director's interest were disclosed to the members entitled to vote and they authorized, approved or ratified the transaction; or
3. The transaction was fair to the corporation.

B. For purposes of this section, a director of the corporation has an indirect personal interest in a transaction if (i) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction or (ii) another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation. A vote or consent of an entity in which the director has an

interest described in the preceding sentence is deemed to be a vote or consent of the director for purposes of this section.

C. For purposes of subdivision 1 of subsection A of this section, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no direct or indirect personal interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect personal interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect personal interest in the transaction does not affect the validity of any action taken under subdivision 1 of subsection A of this section if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

D. For purposes of subdivision 2 of subsection A of this section, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be cast by members whether or not present, that may be counted under this subsection. A director who has a direct or indirect personal interest in the transaction may not vote to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision 2 of subsection A of this section. His vote, however, may be counted in determining whether the transaction is approved under other sections of this Act. A majority of the members, whether or not present, who are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522.)

§ 13.1-872. Required officers.

A. A corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of § [13.1-804](#).

B. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have responsibility for preparing and maintaining custody of minutes of the directors' and members' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in the corporation.

(Code 1950, § 13.1-226; 1956, c. 428; 1982, c. 372; 1985, c. 522; 1994, c. 189.)

§ 13.1-873. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

(1985, c. 522.)

§ **13.1-874. Resignation and removal of officers.**

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, it may fill the pending vacancy before the effective date if the successor does not take office until the effective date.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation.

C. Any person who has resigned as an officer of a corporation, or whose name is incorrectly on file with the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office.

(Code 1950, § 13.1-227; 1956, c. 428; 1985, c. 522; 1990, c. 282; 1991, c. 124.)

§ **13.1-875. Definitions.**

In this article:

"Articles of incorporation" includes the bylaws of any corporation created by Act of the General Assembly.

"Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representatives of a director.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with

respect to a proceeding.

"Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an individual other than a director, as contemplated in § [13.1-881](#), the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

"Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(1985, c. 522.)

§ [13.1-876](#). **Authority to indemnify.**

A. Except as provided in subsection D of this section, a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

1. He conducted himself in good faith;
2. He believed:
 - a. In the case of conduct in his official capacity with the corporation, that his conduct was in the best interests of the corporation; and
 - b. In all other cases, that his conduct was at least not opposed to the best interests of the corporation; and
3. In the case of any criminal proceeding, he had no reasonable cause to believe that his conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of item b of subdivision 2 of subsection A of this section.

C. The termination of a proceeding by judgment, order, settlement or conviction is not of itself determinative that the director did not meet the standard of conduct described in this section.

D. A corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

2. In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

E. Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

§ [13.1-877](#). **Mandatory indemnification.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

§ [13.1-878](#). **Advance for expenses.**

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

1. The director furnishes the corporation a written statement of his good faith belief that he has met the standard of conduct described in § [13.1-876](#);

2. The director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

3. A determination is made that the facts then known to those making the determination would not preclude indemnification under this article.

B. The undertaking required by subdivision 2 of subsection A of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Determinations and authorizations of payments under this section shall be made in the manner specified in § [13.1-880](#).

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

§ [13.1-879](#).

Repealed by Acts 1987, cc. 59, 257.

§ [13.1-879.1](#). **Court orders for advances, reimbursement or indemnification.**

A. An individual who is made a party to a proceeding because he is or was a director of a corporation may apply to a court for an order directing the corporation to make advances or reimbursement for expenses, or to provide indemnification. Such application may be made to the court conducting the proceeding or to another court of competent jurisdiction.

B. The court shall order the corporation to make advances and/or reimbursement for expenses or to provide indemnification if it determines that the director is entitled to such advances, reimbursement or indemnification and shall also order the corporation to pay the director's reasonable expenses incurred to obtain the order.

C. With respect to a proceeding by or in the right of the corporation, the court may (i) order indemnification of the director to the extent of his reasonable expenses if it determines that, considering all the relevant circumstances, the director is entitled to indemnification even though he was adjudged liable to the corporation and (ii) also order the corporation to pay the director's reasonable expenses incurred to obtain the order of indemnification.

D. Neither (i) the failure of the corporation, including its board of directors, its independent legal counsel and its shareholders, to have made an independent determination prior to the commencement of any action permitted by this section that the applying director is entitled to receive advances and/or reimbursement or indemnification nor (ii) the determination by the corporation, including its board of directors, its independent legal counsel and its shareholders, that the applying director is not entitled to receive advances and/or reimbursement or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for advances for expenses, reimbursement or indemnification.

(1987, cc. 59, 257.)

§ **13.1-880. Determination and authorization of indemnification.**

A. A corporation may not indemnify a director under § [13.1-876](#) unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in § [13.1-876](#).

B. The determination shall be made:

1. By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

2. If a quorum cannot be obtained under subdivision 1 of this subsection, by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

3. By special legal counsel:

a. Selected by the board of directors or its committee in the manner prescribed in subdivision 1 or 2 of this subsection; or

b. If a quorum of the board of directors cannot be obtained under subdivision 1 of this subsection

and a committee cannot be designated under subdivision 2 of this subsection, selected by majority vote of the full board of directors, in which selection directors who are parties may participate; or

4. By the members, but directors who are at the time parties to the proceeding may not vote on the determination.

C. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subdivision 3 of subsection B of this section to select counsel.

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

§ 13.1-881. Indemnification of officers, employees and agents.

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation who is not a director is entitled to mandatory indemnification under § [13.1-877](#), and is entitled to apply for court-ordered indemnification under § [13.1-879.1](#), in each case to the same extent as a director; and

2. The corporation may indemnify and advance expenses under this article to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director.

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

§ 13.1-882. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against liability asserted against or incurred by him in that capacity or arising out of his status as a director, officer, employee or agent, whether or not the corporation would have power to indemnify him against the same liability under § [13.1-876](#) or § [13.1-877](#).

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

§ 13.1-883. Application of article.

A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of indemnification in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing the indemnity permitted or mandated by this article.

B. Any corporation shall have power to make any further indemnity, including indemnity with respect to a proceeding by or in the right of the corporation, and to make additional provision for advances and reimbursement of expenses, to any director, officer, employer or agent that may

be authorized by the articles of incorporation or any bylaw made by the members or any resolution adopted, before or after the event, by the members, except an indemnity against (i) his willful misconduct or (ii) a knowing violation of the criminal law. Unless the articles of incorporation, or any such bylaw or resolution expressly provides otherwise, any determination as to the right to any further indemnity shall be made in accordance with § [13.1-880](#) B. Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a person.

C. The provisions of this article and Article 8 (§ [13.1-853](#) et seq.) of this chapter shall apply to the same extent to any cooperative organized under the Code of Virginia.

D. No right provided to any person pursuant to this section may be reduced or eliminated by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 1987, cc. 59, 257; 1988, c. 561.)

§ [13.1-884](#). **Authority to amend articles of incorporation.**

A. A corporation may amend its articles of incorporation 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. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, purpose, or duration of the corporation.

(Code 1950, § 13.1-235; 1956, c. 428; 1985, c. 522.)

§ [13.1-885](#). **Amendment of articles of incorporation by directors.**

Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of at least two-thirds of the directors in office. The board may adopt one or more amendments at any one meeting.

(Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522.)

§ [13.1-886](#). **Amendment of articles of incorporation by directors and members.**

A. Where there are members having voting rights, a corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the members.

B. For the amendment to be adopted:

1. The board of directors shall recommend the amendment to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with

the amendment; and

2. The members entitled to vote on the amendment shall approve the amendment as provided in subsection E of this section.

C. The board of directors may condition its submission of the proposed amendment on any basis.

D. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#). The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

E. Unless this chapter or the board of directors, acting pursuant to subsection C of this section, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the proposed amendment by more than two-thirds of all the votes cast on the amendment by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the amendment by each voting group entitled to vote on the amendment at a meeting at which a quorum of the voting group exists.

(Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522.)

§ [13.1-887](#). **Voting on amendments by voting groups.**

The articles of incorporation may provide that members of a class are entitled to vote as a separate voting group on specified amendments of the articles of incorporation.

(1985, c. 522.)

§ [13.1-887.1](#). **Amendment prior to organization.**

When a corporation has not yet completed its organization and there are no members or directors, one or more amendments to the corporation's articles of incorporation may be adopted by a majority of the incorporators.

(2002, c. 607.)

§ [13.1-888](#). **Articles of amendment.**

A. A corporation amending its articles of incorporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;
2. The text of each amendment adopted;
3. The date of each amendment's adoption;

4. If an amendment was adopted:

a. By the incorporators, a statement to that effect, including the reason director approval and member approval were not required, and a statement of the fact that the amendment was approved by a majority of the incorporators; and

b. By the board of directors without member approval, a statement to that effect, including the reason member approval was not required, and a statement of the fact that the amendment received the vote of at least two-thirds of the directors in office;

5. If an amendment was approved by the members, either:

a. A statement that the amendment was adopted by unanimous consent of the members; or

b. A statement that the amendment was proposed by the board of directors and submitted to the members in accordance with this Act and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the amendment; and

(2) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

(Code 1950, §§ 13-226, 13-227, 13.1-237, 13.1-238; 1956, c. 428; 1966, c. 218; 1975, c. 500; 1985, c. 522; 2002, c. 607.)

§ [13.1-889](#). Restated articles of incorporation.

A. A corporation's board of directors may restate its articles of incorporation at any time with or without member action.

B. The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in § [13.1-886](#). If the restatement includes an amendment that does not require member approval, it shall be adopted as provided in § [13.1-885](#).

C. If the board of directors submits a restatement for member action, the corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment it would make in the articles.

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth the name of the corporation and the text of the restated articles of

incorporation together with a certificate setting forth:

1. The name of the corporation immediately prior to restatement;
2. The date of the restatement's adoption;
3. Whether the restatement contains an amendment to the articles and, if it does not, that the board of directors adopted the restatement;
4. If the restatement contains an amendment to the articles not requiring member approval, the information required by subdivision A 4 of § [13.1-888](#); and
5. If the restatement contains an amendment to the articles requiring member approval, the information required by subdivision A 5 of § [13.1-888](#).

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

F. The Commission may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection D of this section.

(1985, c. 522; 2002, c. 607.)

§ [13.1-890](#). Amendment of articles of incorporation pursuant to reorganization.

A. A corporation's articles of incorporation may be amended without action by the board of directors or members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by § [13.1-819](#).

B. The individual or individuals designated by the court shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;
2. The text of each amendment approved by the court;
3. The date of the court's order or decree approving the articles of amendment;
4. The title of the reorganization proceeding in which the order of decree was entered; and
5. A statement that the court had jurisdiction of the proceeding under federal statute.

C. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

(1985, c. 522.)

§ **13.1-891. Effect of amendment of articles of incorporation.**

An amendment of the articles of incorporation does not affect a cause of action existing in favor of or against the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

(Code 1950, § 13.1-239; 1956, c. 428; 1985, c. 522.)

§ **13.1-892. Amendment of bylaws by board of directors or members.**

A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or this chapter reserves this power exclusively to the members; or
2. The members in adopting or amending particular bylaws provide expressly that the board of directors may not amend or repeal that bylaw.

(1985, c. 522.)

§ **13.1-893. Bylaw provisions increasing quorum or voting requirements for directors.**

A. A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the members, only by the members;
2. If originally adopted by the board of directors, either by the members or by the board of directors.

B. A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the members or the board of directors.

C. Action by the board of directors under subdivision 2 of subsection A of this section to adopt or amend a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors shall meet the quorum requirement and be adopted by the vote required to take action under the quorum and voting requirement then in effect.

(1985, c. 522.)

§ [13.1-894. Merger.](#)

A. One or more corporations may merge into another corporation if the articles of incorporation of each of them could lawfully contain all the corporate powers and purposes of all of them. The board of directors of each corporation shall adopt and its members, if required by § [13.1-896](#), shall approve a plan of merger.

B. The plan of merger shall set forth:

1. The name of each corporation planning to merge, and the name of the surviving corporation into which each other corporation plans to merge; and
2. The terms and conditions of the merger.

C. The plan of merger may set forth:

1. Amendments to, or a restatement of, the articles of incorporation of the surviving corporation; and
2. Other provisions relating to the merger.

(Code 1950, § 13.1-240; 1956, c. 428; 1985, c. 522.)

§ [13.1-895. Action on plan by directors or members.](#)

A. Where the members of any merging corporation have voting rights, a plan of merger shall be adopted in the following manner:

1. The board of directors of such corporation party to the merger, after adopting a plan of merger, shall submit the plan of merger, except as provided in subdivision 7 of this subsection, for approval by its members.
2. For a plan of merger to be approved:
 - a. The board of directors shall recommend the plan of merger to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with the plan; and
 - b. The members shall approve the plan as provided in subdivision 5 of this subsection.
3. The board of directors may condition its submission of the proposed merger on any basis.
4. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy of the plan.

5. Unless this chapter or the board of directors, acting pursuant to subdivision 3 of this subsection, requires a greater vote, the plan of merger to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes cast on the plan by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

6. Voting by a class of members as a separate voting group is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would entitle the class to vote as a separate voting group on the proposed amendment under [§ 13.1-887](#).

7. Action by the members of the surviving corporation on a plan of merger is not required if:

a. The articles of incorporation of the surviving corporation will not differ from its articles before the merger; and

b. Each member of the surviving corporation will retain the identical designation, preferences, limitations, and relative rights, immediately after the effective date of the merger as held before.

B. Where any merging corporation has no members, or no members having voting rights, a plan of merger shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

C. Any plan of merger may contain a provision that the board of directors of each corporation party to the merger may amend the plan at any time prior to issuance of the certificate of merger. Where a plan of merger is required to be submitted to the members for their approval an amendment made subsequent to the submission of the plan to the members of any corporation party to the merger shall not (i) alter or change any of the terms and conditions of the plan if such alteration or change would adversely affect the members of any class of such corporation, or (ii) alter or change any term of the articles of incorporation of any corporation whose members shall approve the plan of merger. If articles of merger already have been filed with the Commission, amended articles of merger shall be filed with the Commission prior to the issuance of the certificate of merger.

D. Unless a plan of merger prohibits abandonment of the merger without member approval, after the merger has been authorized, and at any time prior to issuance of the certificate of merger, the merger may be abandoned, subject to any contractual rights, without further member action, in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the board of directors of each corporation party to the merger. Written notice of abandonment shall be filed with the Commission prior to the issuance of the certificate of merger.

(Code 1950, § 13.1-242; 1956, c. 428; 1985, c. 522; 2002, c. 607.)

§ [13.1-896](#). **Articles of merger.**

A. After a plan of merger is approved by the members, or adopted by the board of directors if

member approval is not required, the surviving corporation shall file with the Commission articles of merger executed by each party to the merger setting forth:

1. The plan of merger.

2. Where the members of any merging corporation have voting rights, then as to each such corporation, either:

a. A statement that the plan was adopted by the unanimous consent of the members; or

b. A statement that the plan was submitted to the members by the board of directors in accordance with this Act, and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

3. Where any merging corporation has no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

B. 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.

(Code 1950, §§ 13.1-243, 13.1-244; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2000, c. 53; 2003, c. 597.)

§ 13.1-897. Effect of merger.

When a merger takes effect:

1. Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

2. The title to all real estate and other property owned by each corporation party to the merger shall be taken and deemed to be transferred to and vested in the surviving corporation without reversion or impairment;

3. The surviving corporation has all liabilities of each corporation party to the merger;

4. A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

5. The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

6. The former members of every corporation party to the merger are entitled only to the rights provided in the articles of merger.

(Code 1950, § 13.1-245; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ **13.1-898. Merger with foreign corporation.**

A. One or more foreign corporations may merge with one or more domestic corporations if:

1. The merger is permitted by the laws of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

2. The foreign corporation complies with § [13.1-896](#) if it is the surviving corporation of the merger; and

3. Each domestic corporation complies with the applicable provisions of §§ [13.1-894](#) and [13.1-895](#) and the surviving corporation of the merger complies with § [13.1-896](#).

B. Upon a merger's taking effect, the surviving foreign corporation in the merger is deemed to appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce any obligation of each domestic corporation party to the merger.

C. 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 such other state, the United States or another country, shall also be a domestic corporation of this Commonwealth.

(Code 1950, § 13.1-242.1; 1960, c. 300; 1985, c. 522; 2002, c. 607.)

§ **13.1-898.1. Merger of nonstock and stock corporations.**

A. One or more nonstock corporations incorporated under this chapter may merge with one or more stock corporations incorporated under Chapter 9 (§ [13.1-601](#) et seq.) of this title. The surviving corporation may be or, pursuant to subdivision D 1, become a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation shall adopt and its shareholders, if required by § [13.1-718](#), shall approve, and the governing body of each nonstock corporation shall adopt and its members, if required by § [13.1-895](#), shall approve, the plan of merger.

C. The plan of merger shall set forth:

1. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

2. The terms and conditions of the merger and the mode of carrying the same into effect;

3. The manner and basis of converting the shares of each stock corporation and the membership interests of each nonstock corporation into shares, obligations or other securities of the surviving stock corporation or membership interests of the surviving nonstock corporation, and, if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving from such merger, the cash, other property, rights or securities of any other corporation or entity which the holders of shares of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, which cash, other property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving from such merger.

D. The plan of merger may set forth:

1. Amendments to, or a restatement of, the articles of incorporation of the surviving corporation; and

2. Other provisions relating to the merger.

E. The plan of merger required by subsection B, in the case of each nonstock corporation, shall be adopted and approved in the manner provided in this article and, in the case of each stock corporation, shall be adopted and approved in the manner provided in Article 12 (§ [13.1-715.1](#) et seq.) of Chapter 9 of this title.

F. After a plan of merger is approved by the shareholders and members, or adopted by the board of directors if shareholder and/or member approval is not required, the surviving corporation shall file with the Commission articles of merger setting forth:

1. The plan of merger;

2. If shareholder approval was not required, a statement to that effect, including the reason approval was not required;

3. If approval of the shareholders of one or more stock corporations party to the merger was required, with respect to each such corporation, either:

a. A statement that the plan of merger was adopted by the unanimous consent of the shareholders; or

b. A statement that the plan was submitted to the shareholders by the board of directors in accordance with the Virginia Stock Corporation Act (§ [13.1-601](#) et seq.), and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately

by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

4. If the members of any merging nonstock corporation have voting rights, then as to each such corporation, either:

a. A statement that the plan of merger was adopted by the unanimous consent of the members; or

b. A statement that the plan was submitted to the members by the board of directors in accordance with this chapter, and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

5. If any merging nonstock corporation has no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

G. 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.

(1994, c. 646; 2002, c. 607; 2005, c. 765.)

§ 13.1-898.2. Domestication.

A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of this Commonwealth shall govern the effect of domesticating in this Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated; and

2. The terms and conditions of the domestication.

D. The plan of domestication may include:

1. Subject to the provisions of subsection C, amendments to the articles of incorporation of the corporation following its domestication or a restatement of the articles of incorporation; and
2. Any other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. Where a plan of domestication is required to be submitted to the members for their approval, an amendment made subsequent to the submission of the plan to the members of the corporation shall not alter or change any of the terms and conditions of the plan if such alteration or change would adversely affect the members of any class of such corporation.

(2003, c. 374.)

§ [13.1-898.3](#). Action on plan of domestication by a domestic corporation.

A. When the members of a domestic corporation have voting rights, a plan of domestication shall be adopted in the following manner:

1. The board of directors of the corporation shall adopt the plan of domestication.
2. After adopting a plan of domestication, the board of directors shall submit the plan of domestication for approval by the members.
3. For a plan of domestication to be approved:
 - a. The board of directors shall recommend the plan to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with the plan; and
 - b. The members shall approve the plan as provided in subdivision 6 of this subsection.
4. The board of directors may condition its submission of the plan of domestication to the members on any basis.
5. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#) at which the plan of domestication is to be submitted for approval. The notice shall also state that a purpose of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.
6. Unless this chapter or the board of directors, acting pursuant to subdivision 4 of this subsection, requires a greater vote, the plan of domestication to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes cast on the plan by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this

subdivision or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

7. Voting by a class of members as a separate voting group is required on a plan of domestication if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would entitle the class to vote as a separate voting group on the proposed amendment under § [13.1-887](#).

B. When a domestic corporation has no members, or no members have voting rights, a plan of domestication shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2003, c. 374.)

§ [13.1-898.4](#). **Articles of domestication.**

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in this Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § [13.1-829](#);

2. The plan of domestication;

3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

B. The articles of domestication shall have attached articles of incorporation that comply with the requirements of this chapter.

C. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

D. The certificate of domestication shall become effective pursuant to § [13.1-806](#).

E. A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this chapter.

F. If the foreign corporation is authorized to transact business in this Commonwealth under Article 14 (§ [13.1-919](#) et seq.) of this chapter, its certificate of authority shall be cancelled automatically on the effective date of the certificate of domestication issued by the Commission.

(2003, c. 374.)

§ [13.1-898.5](#). Surrender of articles of incorporation upon domestication.

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;
2. The corporation's new jurisdiction of incorporation;
3. The plan of domestication;
4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of this Commonwealth;
5. Where the members of the corporation have voting rights, either:
 - a. A statement that the plan was adopted by the unanimous consent of the members; or
 - b. A statement that the plan was submitted to the members by the board of directors in accordance with this chapter, and a statement of:
 - (1) The existence of a quorum of each voting group entitled to vote separately on the plan; and
 - (2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;
6. Where the corporation has no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office;
7. A statement that the domestic corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in this Commonwealth;

8. A mailing address to which the clerk may mail a copy of any process served on him under subdivision 7; and

9. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

B. If the Commission finds that the articles of incorporation surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation surrender.

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § [13.1-921](#) together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

(2003, c. 374.)

§ [13.1-898.6](#). **Effect of domestication.**

A. When a foreign corporation's certificate of domestication in this Commonwealth becomes effective, with respect to that corporation:

1. The title to all real estate and other property remains in the corporation without reversion or impairment;

2. The liabilities remain the liabilities of the corporation;

3. A proceeding pending may be continued by or against the corporation as if the domestication did not occur;

4. The articles of incorporation attached to the articles of domestication constitute the articles of incorporation of the corporation; and

5. The corporation is deemed to:

a. Be incorporated under the laws of this Commonwealth for all purposes;

b. Be the same corporation as the corporation that existed under the laws of the jurisdiction or jurisdictions in which it was originally incorporated or formerly domiciled; and

c. Have been incorporated on the date it was originally incorporated or organized.

B. Any member or director of a foreign corporation that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the domestication.

(2003, c. 374.)

§ **13.1-898.7. Abandonment of domestication.**

A. Unless a plan of domestication of a domestic corporation prohibits abandonment of the domestication without member approval, after the domestication has been authorized, and at any time before the certificate of domestication filed in the other jurisdiction has become effective, the domestication may be abandoned without further member action in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the board of directors.

B. If a domestication is abandoned under subsection A after articles of incorporation surrender have been filed with the Commission but before the certificate of incorporation surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of incorporation surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign corporation into this Commonwealth is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective in this Commonwealth, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

(2003, c. 374.)

§ **13.1-899. Sale of assets in regular course of business and mortgage of assets.**

A. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business, or mortgage, pledge, or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business, on the terms and conditions and for the consideration determined by the board of directors.

B. Unless the articles of incorporation require it, approval by the members of a transaction described in subsection A of this section is not required.

(Code 1950, §§ 13-232, 13.1-246; 1956, c. 428; 1985, c. 522.)

§ **13.1-900. Sale of assets other than in regular course of business.**

A. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of

business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors adopts and its members approve the proposed transaction.

B. For a transaction to be authorized where there are members having voting rights:

1. The board of directors shall submit the proposed transaction to the members with its recommendation unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with the submission of the proposed transaction.
2. The members entitled to vote shall approve the transaction as provided in subdivision 5 of this subsection.
3. The board of directors may condition its submission of the proposed transaction on any basis.
4. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § [13.1-842](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a copy of the agreement pursuant to which the transaction will be effected.
5. Unless the board of directors, acting pursuant to subdivision 3 of this subsection, requires a greater vote, the transaction to be authorized shall be approved by more than two-thirds of all the votes cast on the transaction at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the transaction by each voting group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.
6. Unless the parties to the transaction have agreed otherwise, after a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further member action in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

C. For a transaction to be authorized where there are no members, or no members having voting rights, the proposed transaction shall be authorized upon receiving the vote of a majority of the directors in office.

(Code 1950, §§ 13-232, 13.1-246; 1956, c. 428; 1985, c. 522; 1991, c. 110.)

§ [13.1-901](#). Sale of certain real property by incorporated educational institutions.

In all cases where an incorporated educational institution, or its board of directors, or trustees, for its benefit, owns or holds more than 1,000 acres of land in one or more tracts outside of a city or incorporated town, such board of trustees or directors may, notwithstanding any provision in its charter, or in the deed, will or muniment of title under which such real estate is held, by a majority vote of all of the members of such board, sell and convey all of such real estate in excess of 1,000 acres, the portion to be sold to embrace both land and buildings as may be

determined by the board.

(Code 1950, § 13.1-246.1; 1973, c. 476; 1985, c. 522.)

§ **13.1-902. Dissolution by directors and members.**

A. Where there are members having voting rights, a corporation's board of directors may propose dissolution for submission to the members.

B. For a proposal to dissolve to be adopted:

1. The board of directors shall recommend dissolution to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and

2. The members entitled to vote shall approve the proposal to dissolve as provided in subsection E of this section.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

E. Unless the board of directors, acting pursuant to subsection C of this section, requires a greater vote, dissolution to be authorized shall be approved by more than two-thirds of all the votes cast on the proposal to dissolve at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast by each voting group entitled to vote on the proposed dissolution at a meeting at which a quorum of the voting group exists.

(Code 1950, § 13.1-248; 1956, c. 428; 1985, c. 522.)

§ **13.1-903. Dissolution by directors.**

Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(Code 1950, § 13.1-248; 1956, c. 428; 1985, c. 522.)

§ **13.1-904. Articles of dissolution.**

A. At any time after dissolution is authorized, the corporation may dissolve by filing with the Commission articles of dissolution setting forth:

1. The name of the corporation.
2. The date dissolution was authorized.
3. Where there are members having voting rights,
 - a. Either (i) a statement that dissolution was authorized by unanimous consent of the members, or (ii) a statement that the proposed dissolution was submitted to the members by the board of directors in accordance with this chapter; and
 - b. A statement of:
 - (1) The existence of a quorum of each voting group entitled to vote separately on dissolution; and
 - (2) Either the total number of votes cast for and against dissolution by each voting group entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution separately by each voting group and a statement that the number cast for dissolution by each voting group was sufficient for approval by that voting group.
4. Where there are no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the dissolution was authorized and a statement of the fact that dissolution was authorized by the vote of a majority of the directors in office.

B. If the Commission finds that the articles of dissolution comply with the requirements of law and that the corporation has paid all required fees and taxes imposed by laws administered by the Commission, it shall issue a certificate of dissolution.

A corporation is dissolved upon the effective date of the certificate of dissolution.

(Code 1950, §§ 13.1-252, 13.1-253; 1956, c. 428; 1974, c. 452; 1975, c. 500; 1985, c. 522; 2003, c. 596.)

§ 13.1-905. Revocation of dissolution.

A. A corporation may revoke its dissolution at any time prior to the effective date of its certificate of termination of corporate existence.

B. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless, where members have votes, that authorization permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by filing with the Commission articles of revocation of dissolution that set forth:

1. The name of the corporation;

2. The effective date of the dissolution that was revoked;
3. The date that the revocation of dissolution was authorized;
4. If the corporation's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
5. If member action was required to revoke the dissolution, the information required by subdivision 3 of subsection A of § [13.1-904](#).

D. If the Commission finds that the articles of revocation of dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of revocation of dissolution.

E. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

(Code 1950, § 13.1-251; 1956, c. 428; 1985, c. 522.)

§ [13.1-906](#). **Effect of dissolution.**

A. A dissolved corporation continues its corporate existence but may not transact any business except that appropriate to wind up and liquidate its business, including:

1. Collecting its assets;
2. Disposing of its properties;
3. Discharging or making provision for discharging its liabilities;
4. Distributing its remaining property; and
5. Doing every other act necessary to wind up and liquidate its business.

B. Dissolution of a corporation does not:

1. Transfer title to the corporation's property;
2. Subject its directors to standards of conduct different from those prescribed in § [13.1-870](#);
3. Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;
4. Prevent commencement of a proceeding by or against the corporation in its corporate name;

5. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

6. Terminate the authority of the registered agent of the corporation.

(1985, c. 522.)

§ **13.1-907. Distribution and plan of distribution of assets.**

A. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter or as a court may direct;
4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether issuing shares or not, as may be specified in a plan of distribution adopted as provided in this chapter or as a court may direct.

B. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution. A plan shall be adopted in accordance with the procedures established in § [13.1-902](#) or § [13.1-903](#), as the case may be.

(Code 1950, §§ 13-237, 13.1-249, 13.1-250; 1956, c. 428; 1985, c. 522.)

§ **13.1-908. Known claims against dissolved corporation.**

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall deliver to each of its known claimants written notice of the

dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;
2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;
3. Provide a mailing address where a claim may be sent;
4. State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim shall be delivered to the dissolved corporation; and
5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection B of this section and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or
2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within ninety days from the delivery of written confirmation of the claim to the dissolved corporation.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than sixty days after the delivery of written notice to the claimant pursuant to subsection B of this section.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision 2 of subsection C of this section, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing. The court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or may be still occurring.

(1985, c. 522.)

§ **13.1-909. Grounds for judicial dissolution.**

A. The circuit court in the city or county described in subsection C of this section may dissolve a corporation:

1. In a proceeding by a member or director if it is established that:

a. The directors are deadlocked in the management of the corporate affairs and irreparable injury to the corporation is threatened or being suffered, or the business of the corporation can no longer be conducted to the advantage of the members generally, because of the deadlock, and either that the members are unable to break the deadlock or there are no members having voting rights; or

b. The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent; or

c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

d. The corporate assets are being misapplied or wasted; or

e. The corporation is unable to carry out its purposes.

2. In a proceeding by a creditor if it is established that:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

3. In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

4. Upon application by the board of directors when it is established that circumstances make it impossible to obtain a representative vote by members on the question of dissolution and that the continuation of the business of the corporation is not in the interest of the members but it is desirable in their interest that the assets and business be liquidated.

5. When the Commission has instituted a proceeding for the involuntary termination of a corporate existence and entered an order finding that the corporate existence of the corporation should be terminated but that liquidation of its assets and business should precede the entry of an order of termination of corporate existence.

B. The circuit court in the city or county named in subsection C of this section shall have full power to liquidate the assets and business of the corporation at any time after the termination of corporate existence, pursuant to the provisions of this chapter or any laws of this Commonwealth in effect at any time prior to January 1, 1986, upon the application of any person, for good cause, with regard to any assets or business that may remain. The jurisdiction conferred by this clause may also be exercised by any such court in any city or county where any property may be situated whether of a domestic or of a foreign corporation that has ceased to exist.

C. Venue for a proceeding brought under this section lies in the city or county where the corporation's principal office is or was last located, or, if none in this Commonwealth, where its registered office is or was last located.

D. It is not necessary to make directors or members parties to a proceeding brought under this section unless relief is sought against them individually.

E. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with such powers and duties as the court may direct, take other action required to preserve the corporate assets where located, and carry on the business of the corporation until a full hearing can be held.

(Code 1950, §§ 13.1-257, 13.1-260, 13.1-261; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ **13.1-910. Receivership or custodianship.**

A. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage while the proceeding is pending, the business of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

B. The court may appoint an individual, a domestic corporation or foreign corporation, authorized to transact business in this Commonwealth, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

C. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

1. The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in his own name as receiver of the corporation in all courts of this Commonwealth;

2. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the business of the corporation in the best interests of its members and creditors.

D. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

E. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

(Code 1950, §§ 13.1-258, 13.1-259; 1956, c. 428; 1985, c. 522.)

§ **13.1-911. Decree for dissolution.**

A. If after a hearing the court determines that one or more grounds for judicial dissolution described in § [13.1-909](#) exists, it may enter a decree directing that the corporation shall be dissolved, and the clerk of the court shall deliver a certified copy of the decree to the

Commission, which shall enter an order of involuntary dissolution.

B. After the order of involuntary dissolution has been entered, the court shall direct the winding up and liquidation of the corporation's business in accordance with §§ [13.1-906](#) and [13.1-907](#) and the notification of claimants in accordance with § [13.1-908](#). When all of the assets of the corporation have been distributed, the court shall so advise the Commission, which shall enter an order of termination of corporate existence.

(Code 1950, §§ 13.1-262, 13.1-263; 1956, c. 428; 1985, c. 522.)

§ [13.1-912](#). **Articles of termination of corporate existence.**

A. When a corporation has distributed all of its assets and voluntary dissolution proceedings have not been revoked, it shall file articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;
2. That all the assets of the corporation have been distributed; and
3. That the dissolution of the corporation has not been revoked.

B. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of termination of corporate existence. Upon the issuance of such certificate, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter.

C. The statement "that all the assets of the corporation have been distributed" means that the corporation has divested itself of all its assets by the payment of claims or by assignment to a trustee or trustees as directed by § [13.1-907](#). If any certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § [55-210.7](#), pay his share to the State Treasurer as abandoned property on complying with all applicable requirements of § [55-210.12](#) except subdivision 4 of subsection B of that section.

(1985, c. 522; 1986, c. 529; 2004, c. 162.)

§ [13.1-913](#). **Termination of corporate existence by incorporators or initial directors.**

A majority of the initial directors or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that has not commenced to transact business may dissolve the corporation and terminate its corporate existence by filing with the Commission articles of termination of corporate existence that set forth:

1. The name of the corporation;

2. [Repealed.]
3. That the corporation has not commenced to transact business;
4. That no debt of the corporation remains unpaid;
5. That the net assets of the corporation remaining after winding up have been distributed; and
6. That a majority of the initial directors authorized the dissolution or that initial directors were not named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

(1985, c. 522; 1986, c. 234.)

§ **13.1-914. Automatic termination of corporate existence.**

A. If any domestic corporation fails to file the annual report required by this chapter in a timely manner, the Commission shall mail notice to it of impending termination of its corporate existence. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day of the fourth month immediately following its annual report due date each year, the corporate existence of such corporation shall automatically cease as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § [13.1-907](#).

B. 1. Any domestic corporation shall pay the annual registration fee required by law on or before the corporation's annual report due date determined in accordance with subsection C of § [13.1-936](#) of each year. If the corporation pays the annual registration fee for the year assessed after such date of that year, the corporation shall incur a penalty of ten dollars.

2. If any domestic corporation fails to pay by the due date of the year assessed the annual registration fee, the Commission shall mail notice to the corporation of impending termination of its corporate existence. The corporate existence of the corporation shall be automatically terminated if any such fee is unpaid as of the last day of the fourth month immediately following the due date of that year, and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business. After paying or adequately providing for the payment of all of its obligations, the trustees shall distribute the remainder of its assets in accordance with § [13.1-907](#).

C. If any domestic corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § [13.1-835](#) fails to file a statement of change pursuant to § [13.1-834](#) within thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that

day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed as specified in subdivision B 2 of this section.

(Code 1950, § 13.1-254; 1956, c. 428; 1970, c. 4; 1980, c. 185; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216; 2000, c. 52.)

§ 13.1-915. Involuntary termination of corporate existence.

The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in this Commonwealth as required by law; or (iii) has failed to file any document required by this chapter to be filed with the Commission.

Upon such termination the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with [§ 13.1-907](#).

Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

(Code 1950, § 13.1-256; 1956, c. 428; 1958, c. 506; 1968, c. 116; 1976, c. 350; 1985, c. 522; 1991, c. 310.)

§ 13.1-916. Reinstatement of corporation that has ceased to exist.

A corporation that has ceased to exist may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to [§ 13.1-911](#) and the circuit court's decree directing dissolution contains no provision for reinstatement of corporate existence. The Commission shall enter an order reinstating the corporate existence upon receiving an annual report together with payment of a reinstatement fee of \$10 plus all registration fees and penalties that were due before the corporation ceased to exist and that would have become due thereafter if the corporation had not ceased to exist. An annual report need not be submitted if such a report previously was filed during the calendar year in which reinstatement is sought. The application for reinstatement may be by letter signed by an officer or director of the corporation. The Commission shall assess the amounts that would have become due. Upon the entry by the Commission of an order of reinstatement, the corporate existence shall be deemed to have continued from the date of the termination of corporate existence, and any liability incurred by the corporation or a director, officer, or other agent after termination of corporate existence and before the reinstatement shall be determined as if the termination of corporate existence had never occurred. If the name of a corporation that has ceased to exist is not distinguishable upon the records of the Commission, the reinstated corporation shall not engage in business until it has amended its articles of incorporation to change its name to a name that is distinguishable upon the records of the Commission.

(Code 1950, § 13.1-255; 1956, c. 428; 1958, c. 564; 1976, c. 350; 1985, c. 522; 1986, c. 234; 1988, c. 405; 2004, c. 601; 2005, c. 379; 2006, c. 663.)

§ **13.1-917. Survival of remedy after termination of corporate existence.**

The termination of corporate existence shall not take away or impair any remedy available to or against such corporation, its directors, officers or members, for any right or claim existing, or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

(Code 1950, § 13.1-264; 1956, c. 428; 1985, c. 522.)

§ **13.1-918.**

Repealed by Acts 1988, c. 405.

§ **13.1-919. Authority to transact business.**

A. A foreign corporation may not transact business in this Commonwealth until it obtains a certificate of authority from the Commission.

B. The following activities, among others, do not constitute transacting business within the meaning of subsection A of this section:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
3. Maintaining bank accounts;
4. Selling through independent contractors;
5. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
6. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;
7. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;
8. Owning, without more, real or personal property;
9. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature; or

10. For a period of less than ninety consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution.

C. The list of activities in subsection B of this section is not exhaustive.

(Code 1950, §§ 13.1-265 to 13.1-265.2; 1956, c. 428; 1962, c. 239; 1980, c. 630; 1985, c. 522.)

§ **13.1-920. Consequences of transacting business without authority.**

A. A foreign corporation transacting business in this Commonwealth without a certificate of authority may not maintain a proceeding in any court of this Commonwealth until it obtains a certificate of authority.

B. Notwithstanding subsections A and C of this section, the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of its corporate acts or prevent it from defending any proceeding in this Commonwealth.

C. The successor to a foreign corporation that transacted business in this Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this Commonwealth until the foreign corporation or its successor obtains a certificate of authority.

D. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court shall further stay the proceeding until the foreign corporation or its successor obtains the certificate.

E. If a foreign corporation transacts business in this Commonwealth without a certificate of authority, each officer, director or employee who transacts any of such business in this Commonwealth knowing that a certificate of authority is required shall be liable for a penalty of not less than \$500 and not more than \$5,000. Any such penalty may be imposed by the Commission or by any court in the Commonwealth before which an action against the corporation may lie, after notice and opportunity to be heard both to the corporation and to the individual.

F. Suits, actions and proceedings may be begun against a foreign corporation that transacts business in this Commonwealth without a certificate of authority by serving process on any director, officer or agent of the corporation, or, if none can be found, on the clerk of the Commission. If any foreign corporation transacts business in this Commonwealth without a certificate of authority, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its attorney for service of process. Service shall be made on the clerk in accordance with § [12.1-19.1](#).

(Code 1950, §§ 13-218, 13.1-281; 1956, c. 428; 1981, c. 320; 1985, c. 522; 1986, c. 571; 1990, c. 325; 1991, c. 672.)

§ **13.1-921. Application for certificate of authority.**

A. A foreign corporation may apply to the Commission for a certificate of authority to transact

business in the Commonwealth. The application shall be made on forms prescribed and furnished by the Commission. The application shall set forth:

1. The name of the corporation, and if the corporation is prevented by § [13.1-924](#) from using its own name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § [13.1-924](#).
2. The name of the state or other jurisdiction under whose laws it is incorporated; and if the corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization or formation; and (iv) the entity identification number issued to it by the Commission.
3. The date of incorporation and the period of duration of the corporation.
4. The street address of the foreign corporation's principal office.
5. The address of the proposed registered office of the foreign corporation in the Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located), and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (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.
6. The names and usual business addresses of the current directors and officers of the foreign corporation.

B. The foreign corporation shall deliver to the Commission with the completed application a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper official having custody of corporate records in the state or other jurisdiction under whose laws it is incorporated.

C. If the Commission finds that such application complies with the requirements of law, and that all required fees have been paid, it shall issue a certificate of authority to transact business in the Commonwealth.

(Code 1950, §§ 13.1-269, 13.1-270; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1994, c. 348; 2001, cc. 517, 541; 2002, c. 607; 2004, c. 274.)

§ [13.1-922](#). Amended certificate of authority.

A. A foreign corporation authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Commission if it changes its corporate name or the state or country of its incorporation.

B. The requirements of § [13.1-921](#) for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this Commonwealth are amended, within thirty days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the proper official having custody of corporate records in the state or country under whose laws it is incorporated.

(Code 1950, §§ 13.1-275 to 13.1-277; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1986, c. 571; 1987, c. 431.)

§ [13.1-923](#). **Effect of certificate of authority.**

A. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this Commonwealth, subject, however, to the right of this Commonwealth to revoke the certificate as provided in this chapter.

B. A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall not be deemed to authorize it to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in this Commonwealth.

C. This Act does not authorize this Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this Commonwealth.

(Code 1950, §§ 13.1-266, 13.1-271; 1956, c. 428; 1985, c. 522.)

§ [13.1-924](#). **Corporate name of foreign corporation.**

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall not contain any word or phrase that indicates or implies that it is organized for the purpose of conducting any business other than a business that it is authorized to conduct.

2. Except as authorized by subsection B of this section, the name shall be distinguishable upon the records of the Commission from:

a. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of this Commonwealth or authorized to transact business in this Commonwealth;

b. A corporate name reserved or registered under § [13.1-631](#), [13.1-632](#), [13.1-830](#) or [13.1-831](#);

c. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in this Commonwealth;

d. The name of a domestic limited liability company or a foreign limited liability company

registered to transact business in this Commonwealth;

e. A limited liability company name reserved under § [13.1-1013](#);

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

g. The name of a domestic business trust or a foreign business trust registered to transact business in this Commonwealth;

h. A business trust name reserved under § [13.1-1215](#);

i. The designated name adopted by a foreign business trust because its real name is unavailable for use in this Commonwealth;

j. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in this Commonwealth;

k. A limited partnership name reserved under § [50-73.3](#); and

l. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in this Commonwealth.

B. If the corporate name of a foreign corporation does not satisfy the requirements of subsection A of this section, to obtain or maintain a certificate of authority to transact business in this Commonwealth, if its real name is unavailable, the foreign corporation may use a designated name that is available if it informs the Commission of the designated name.

C. A foreign corporation may apply to the Commission for authorization to use in this Commonwealth the name of another corporation, incorporated or authorized to transact business in this Commonwealth, that is not distinguishable upon its records from the name applied for. The Commission shall authorize use of the name applied for if:

1. 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 corporation.

2. [Repealed.]

D. If a foreign corporation authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, it shall not transact business or affairs in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authority under § [13.1-922](#).

E. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subdivision A 2, shall not consider any word, phrase, abbreviation, or designation required or permitted under § [13.1-544.1](#), subsection A of § [13.1-630](#), subsection A of § [13.1-1012](#), § [13.1-1104](#), subdivision 1 of § [50-73.2](#), and subdivision A 2 of § [50-73.78](#) to be contained in the name of a business entity formed or

organized under the laws of this Commonwealth or authorized or registered to transact business in this Commonwealth.

(Code 1950, §§ 13.1-267, 13.1-268, 13.1-277; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 232, 571; 2003, c. 592; 2005, c. 379.)

§ **13.1-925. Registered office and registered agent of foreign corporation.**

A. Each foreign corporation authorized to transact business in this Commonwealth shall continuously maintain in this Commonwealth:

1. A registered office which may be the same as any of its places of business.
2. A registered agent, who shall be:
 - a. An individual who is a resident of this Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or
 - b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this 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 corporation at its last known address any process, notice or demand served on the registered agent.

(Code 1950, § 13.1-272; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1994, c. 348; 2000, c. 162; 2001, cc. 517, 541.)

§ **13.1-926. Change of registered office or registered agent of foreign corporation.**

A. A foreign corporation authorized to transact business in this Commonwealth may change its registered office or registered agent by filing with the Commission a statement of change that sets forth:

1. The name of the foreign corporation.
2. The address of its current registered office.
3. If the current registered office is to be changed, the address of the new registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is to be located).

4. The name of its current registered agent.
 5. If its current registered agent is to be changed, the name of the new registered agent.
 6. That after the change or changes are made, the corporation shall be in compliance with the requirements of § [13.1-925](#).
- B. A new statement shall forthwith be filed by the corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § [13.1-925](#).
- 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 § [13.1-925](#), the registered agent or surviving entity shall forthwith file a statement as required above except that it need be signed only by the registered agent or the surviving entity and shall recite that a copy of the statement has been mailed to the corporation on whose behalf it is to be filed.

(Code 1950, § 13.1-273; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 622; 2003, c. 597.)

§ [13.1-927](#). **Resignation of registered agent of foreign corporation.**

- A. The registered agent of a foreign corporation may resign his agency appointment by signing and filing with the Commission his statement of resignation accompanied by his certification that he has mailed a copy thereof to the principal office of the corporation by certified mail. The statement of resignation may include a statement that the registered office is also discontinued.
- B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

(1985, c. 522.)

§ [13.1-928](#). **Service of process on foreign corporation.**

- A. The registered agent of a foreign corporation authorized to transact business in this Commonwealth shall be an agent of such corporation upon whom any process, notice, order or demand required or permitted by law to be served upon the corporation may be served. The registered agent may, by a written instrument acknowledged before a notary public, designate a natural person or persons in the registered agent's office upon whom any such process, notice, order or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.
- B. Whenever a foreign corporation authorized to transact business in this Commonwealth fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § [12.1-19.1](#).
- C. Nothing in this section shall limit or affect the right to serve any process, notice, order or

demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

(Code 1950, §§ 13-214 to 13-217, 13.1-274; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 571, 622; 1991, c. 672; 2001, cc. 517, 541.)

§ 13.1-928.1. Merger of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation authorized to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or country under whose laws it is incorporated, and such corporation is the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the Commission a copy of the articles of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws such merger was effected; however, the filing shall not be required when a foreign corporation merges with a domestic corporation, the foreign corporation's articles of incorporation are not amended by said merger, and the articles of merger filed on behalf of the domestic corporation pursuant to § [13.1-896](#) contain a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.

B. Whenever a foreign corporation authorized to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation is not the surviving corporation, or whenever such corporation is a party to a consolidation so permitted, the surviving or resulting corporation shall, if not continuing to transact business in this Commonwealth within thirty days after such merger or consolidation becomes effective, deliver to the Commission a duly authenticated copy of the instrument of merger or consolidation and comply in behalf of the predecessor corporation with the provisions of § [13.1-929](#). If the surviving or resulting corporation is to continue to transact business in this Commonwealth, within such thirty days, deliver to the Commission an application for a certificate of authority to transact business in this Commonwealth, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated.

C. Upon the merger or consolidation of two or more foreign corporations any one of which owns property in this Commonwealth, all such property shall pass to the surviving or resulting corporation except as otherwise provided by the laws of the state by which it is governed, but only from the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

(1986, c. 571; 1990, c. 283; 2006, c. 663.)

§ 13.1-928.2. Entity conversion of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation that is authorized to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of

entity conversion duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor corporation with the provisions of § [13.1-929](#); or

2. If the surviving or resulting entity is a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign corporation that is authorized to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign corporation shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

(2004, c. 274.)

§ [13.1-929](#). **Withdrawal of foreign corporation.**

A. A foreign corporation authorized to transact business in this Commonwealth may not withdraw from this Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in this Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on forms prescribed and furnished by the Commission and shall set forth:

1. The name of the foreign corporation and the name of the state or country under whose laws it is incorporated.

2. That the foreign corporation is not transacting business in this Commonwealth and that it surrenders its authority to transact business in this Commonwealth.

3. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this Commonwealth.

4. A mailing address to which the clerk may mail a copy of any process served on him under subdivision 3 of this subsection.

5. A commitment to notify in the future the clerk of the Commission of any change in the address of the corporation.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in this Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of this Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section and shall be made upon the clerk in accordance with § [12.1-19.1](#).

(Code 1950, §§ 13.1-278, 13.1-278.1; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 529; 1991, c. 672.)

§ [13.1-930](#). Automatic revocation of certificate of authority.

A. If any foreign corporation fails to file the annual report required by this chapter in a timely manner, the Commission shall mail notice to it of impending revocation of its certificate of authority to transact business in this Commonwealth. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day of the fourth month immediately following its annual report due date each year, the foreign corporation shall automatically cease to be authorized to transact business in this Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. 1. Any foreign corporation shall pay the annual registration fee required by law on or before the corporation's annual report due date determined in accordance with subsection C of § [13.1-936](#) of each year. If the corporation pays the annual registration fee for the year assessed after such date of that year, the corporation shall incur a penalty of ten dollars.

2. If any foreign corporation fails to pay by the due date of the year assessed the annual registration fee, the Commission shall mail notice to the corporation of impending revocation of its certificate of authority. The corporation shall automatically cease to be authorized to do business in this Commonwealth if any such fee is unpaid as of the last day of the fourth month immediately following the due date of that year, and its certificate of authority shall be automatically revoked.

C. If any foreign corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § [13.1-927](#) fails to file a statement of change pursuant to § [13.1-926](#) within thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of impending revocation of its certificate of authority. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending revocation notice was mailed, the corporation shall automatically cease to be authorized to transact business in this

Commonwealth and its certificate of authority shall be automatically revoked as of that day.

(Code 1950, § 13.1-279; 1956, c. 428; 1970, c. 4; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216; 2000, c. 52.)

§ **13.1-931. Revocation of certificate of authority by Commission.**

A. The certificate of authority to transact business in this Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;
2. Has failed to maintain a registered office or a registered agent in this Commonwealth as required by law;
3. Has failed to file any document required by this Act to be filed with the Commission; or
4. No longer exists, by virtue of dissolution, termination, merger or consolidation under the laws of the state or country of its incorporation.

B. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign corporation to transact business in this Commonwealth ceases on the date shown on the certificate revoking its certificate of authority.

D. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in this Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § [12.1-19.1](#).

E. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

(Code 1950, § 13.1-280; 1956, c. 428; 1958, c. 506; 1985, c. 522; 1991, c. 672; 1995, c. 76.)

§ **13.1-931.1. Reentry of foreign corporation whose certificate of authority has been surrendered or revoked.**

A foreign corporation whose certificate of authority issued by the Commission has been surrendered or revoked may apply to the Commission for reentry within five years thereafter unless the certificate of authority was revoked by order of the Commission upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law. The Commission shall enter an order reentering the certificate of authority upon receiving an annual report, together with payment of a reentry fee of \$10 plus all registration fees and penalties that were due before the certificate of authority was surrendered or revoked and that would have

become due thereafter if the corporation had not had its certificate of authority surrendered or revoked. The application for reentry may be by letter signed by an officer or director of the corporation. A corporation need not refile a copy of its charter or any amendment thereof that is then on file in the office of the Clerk of the Commission. After the authority of a foreign corporation to transact business in the Commonwealth has been surrendered or revoked, the Clerk shall retain in the files of his office the charter and amendments thereto filed by the corporation and its original application for authority to transact business for a period of five years. A duly authenticated copy of any amendments made to the articles of incorporation by a foreign corporation and any mergers entered into by a foreign corporation from the date of surrender or revocation of its certificate of authority to the date of application for reentry shall be filed with the application for reentry. If the name of a foreign corporation, whose certificate of authority issued by the Commission has been surrendered or revoked, is not distinguishable upon the records of the Commission at the time application is made for reentry, such foreign corporation shall adopt a designated name for use in the Commonwealth that is distinguishable upon the records of the Commission. Upon compliance with the provisions of this section the Commission shall enter an order reentering the certificate of authority to do business in the Commonwealth.

(1987, c. 431; 1988, c. 405; 2004, c. 274.)

§ [13.1-932](#). **Corporate records.**

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, if any.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation and all amendments to them currently in effect;
2. Its bylaws or restated bylaws and all amendments to them currently in effect;
3. Resolutions adopted by its board of directors creating one or more classes of members, and fixing their relative rights, preferences, and limitations;
4. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;
5. All written communications to members generally within the past three years;

6. A list of the names and business addresses of its current directors and officers; and
7. Its most recent annual report delivered to the Commission under § [13.1-936](#).

(Code 1950, § 13.1-228; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

§ **13.1-933. Inspection of records by members.**

A. Subject to subsection C of § [13.1-934](#), a member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § [13.1-932](#) if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

B. A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection C of this section and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection A of this section;

2. Accounting records of the corporation; and

3. The record of members.

C. A member may inspect and copy the records identified in subsection B of this section only if:

1. He has been a member for at least six months immediately preceding his demand;

2. His demand is made in good faith and for a proper purpose;

3. He describes with reasonable particularity his purpose and the records he desires to inspect; and

4. The records are directly connected with his purpose.

D. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

E. This section does not affect:

1. The right of a member to inspect records if the member is in litigation with the corporation, to the same extent as any other litigant; or

2. The power of a court, independently of this Act, to compel the production of corporate records for examination.

(1985, c. 522.)

§ **13.1-934. Scope of inspection right.**

A. A member's agent or attorney has the same inspection and copying rights as the member he represents.

B. The right to copy records under § [13.1-933](#) includes, if reasonable, the right to receive copies made by photographic or other means.

C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

D. The corporation may comply with a member's demand to inspect the record of members under subdivision 3 of subsection B of § [13.1-933](#) by providing him with a list of its members that was compiled no earlier than the date of the member's demand.

(1985, c. 522.)

§ **13.1-935. Court-ordered inspection.**

A. If a corporation does not allow a member who complies with subsection A of § [13.1-933](#) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections B and C of § [13.1-933](#) may apply to the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order if the member proves that the corporation refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

(1985, c. 522.)

§ **13.1-936. Annual report of domestic and foreign corporations.**

A. Each domestic corporation, and each foreign corporation authorized to transact business in this Commonwealth, shall file, within the time prescribed by this chapter, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated.

2. The address of the registered office of the corporation in this Commonwealth (including both (i) the post-office address with street and number, if any, and (ii) the name of the county or city in which it is located), and the name of its registered agent in this Commonwealth at such address.

3. The names and post-office addresses of the directors and the principal officers of the corporation.

B. The report shall be made on forms furnished by the Commission, and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission by the last day of the twelfth month next succeeding the date it was incorporated or authorized to transact business in this Commonwealth, and by such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than eleven months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

(Code 1950, §§ 13-9, 13-11, 13-32, 13-213, 13.1-282, 13.1-283; 1956, c. 428; 1958, c. 418; 1975, c. 500; 1981, c. 523; 1985, c. 522; 1987, c. 2; 1997, c. 216.)

§ **13.1-936.1. Annual registration fees for domestic and foreign corporations.**

A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in this Commonwealth shall pay into the state treasury by its due date each calendar year an annual registration fee of twenty-five dollars.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of conducting its affairs in this Commonwealth or upon its franchise, property or receipts. Nonstock corporations incorporated before 1970 which were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

B. The State Corporation Commission shall ascertain from its records each corporation authorized to conduct its affairs in this Commonwealth, as of the first day of the second month next preceding the month of the corporation's annual registration fee due date each year, and shall assess against each corporation the registration fee herein imposed. In any year in which a corporation's due date is extended pursuant to this chapter the registration fee assessment shall

be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the Clerk of the State Corporation Commission to the Comptroller and to each corporation.

C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed shall incur a penalty as provided in subdivision B 1 of § [13.1-914](#) or § [13.1-930](#), as the case may be, which shall be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the State Corporation Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the Clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters 5 (§ [13.1-501](#) et seq.) and 8 (§ [13.1-557](#) et seq.) and Article 6 (§ [55-142.1](#) et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

(1988, c. 405; 1991, c. 311; 1997, c. 216.)

§ [13.1-936.2](#). Collection of unpaid bills for registration fees.

The registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies and fees, by action in equity, in the name of the Commonwealth, in the appropriate circuit court. Venue shall be in accordance with § [8.01-261](#).

(1988, c. 405.)

§ [13.1-937](#). Application to existing corporations.

Unless otherwise provided, the provisions of this chapter shall apply to all domestic and foreign corporations existing at the time this chapter takes effect and their members. The charter of every corporation heretofore or hereafter organized in this Commonwealth shall be subject to the provisions of this chapter. In the case of foreign corporations, the certificate of authority to transact business in this Commonwealth issued by the Commission under any prior act of this Commonwealth shall continue in effect subject to the provisions hereof.

(Code 1950, §§ 13.1-203, 13.1-290, 13.1-290.1; 1956, c. 428; 1966, c. 387; 1975, c. 500; 1985, c. 522.)

§ [13.1-938](#). Application to certain social, patriotic and benevolent societies incorporated before year 1900; reports by such societies.

The charter of every social, patriotic and benevolent society incorporated by an act of the General Assembly of Virginia prior to the year 1900 for the purpose of perpetuating the memory of men in the military, naval and civil service of the Colonies and of the Continental Congress shall be deemed to have remained, and to be, in full force and effect notwithstanding the provisions of § [13.1-937](#) or any other statute enacted after January 1, 1950, or regulation pursuant thereto requiring the filing of any report or reports with the Commission. All such

reports which under such statutes should have been so filed shall be filed with the Commission on or before August 1, 1986. Such corporation hereafter shall be deemed to hold its charter subject to the provisions of the Constitution of Virginia now in effect, and the laws passed in pursuance thereof.

(1985, c. 522.)

§ [13.1-939](#). **Saving provision.**

A. Except as provided in subsection B of this section, the repeal of a statute by this Act does not affect:

1. The operation of the statute or any action taken under it before its repeal;
2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;
3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal;
4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors, under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this Act.

(Code 1950, § 13.1-292; 1956, c. 428; 1985, c. 522.)

§ [13.1-940](#).

Not set out. (1985, c. 522.)

§ [13.1-941](#).

Repealed by Acts 2002, ch. 607.

§ [13.1-941.01](#). **Conversion to a domestic stock corporation.**

A domestic nonstock corporation may convert to a domestic stock corporation by filing with the Commission articles of amendment to its articles of incorporation, approved in accordance with § [13.1-885](#) or § [13.1-886](#).

(2002, c. 607.)

§ [13.1-942](#). **Articles of amendment.**

A. A corporation converting to a stock corporation shall file with the Commission articles of amendment in accordance with § [13.1-888](#).

B. The articles of amendment shall set forth:

1. The name of the corporation, which satisfies the requirements of § [13.1-630](#);
2. The number of shares the corporation will be authorized to issue;
3. If more than one class of shares is to be authorized, the number of authorized shares of each class and a distinguishing designation for each class;
4. A provision or provisions, if any, defining or denying the preemptive right of shareholders to acquire unissued shares of the corporation;
5. A provision substituting the word "shareholders" or other appropriate language for "members" wherever "members" appears in the articles of incorporation;
6. Provisions not inconsistent with law which may be necessary to bring the corporation into compliance with Chapter 9 (§ [13.1-601](#) et seq.) of this title or which may be required for the regulation and governance of the corporation as a stock corporation; and
7. Such provisions, if any, which are permitted by § [13.1-619](#) to be included in articles of incorporation of a Virginia stock corporation.

C. If the Commission finds that the articles of amendment comply with the requirements of law and bring the articles of incorporation into compliance with the requirements for a Virginia stock corporation, and that all required fees have been paid, it shall issue a certificate of amendment.

(1989, c. 609.)

§ [13.1-943](#). **Fees.**

Upon the filing of the articles of amendment to convert to a stock corporation, in addition to the fees required by § [13.1-816](#) for filing articles of amendment, a corporation shall also pay a fee equal to that required for a newly chartered stock corporation authorized to issue the same number of shares, as set forth in subsection A of § [13.1-615.1](#).

(1989, c. 609.)

§ [13.1-944](#). **Controlling law and continuity.**

A. Upon the effective date of the certificate of amendment, the corporation shall be converted to a stock corporation, and thereafter be subject to the provisions of Chapter 9 (§ [13.1-601](#) et seq.) of this title.

B. The directors of the corporation at the time of conversion shall continue in office until their terms expire and new directors are elected by the shareholders.

(1989, c. 609.)

§§ [13.1-945](#). through 13.1-980.

Reserved.