

# VIRGINIA NONSTOCK CORPORATION ACT. (Selected Provisions)

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**Article 1.**

**General Provisions.**

**§ 13.1-801. Short title.**

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

**§ 13.1-802. Reservation of power to amend or repeal.**

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

**§ 13.1-803. Definitions. As used in this Act.**

"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 restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation without the accompanying articles of restatement, amendment, domestication, 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.

"Conspicuous" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text that is italicized, is in boldface, contrasting colors, or capitals, or is underlined is conspicuous.

"Corporation" or "domestic corporation" means a corporation not authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of the Commonwealth on January 1, 1986, or that, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth or that has become a domestic corporation of the Commonwealth pursuant to Article 11.1 (§ 13.1-898.2 et seq.) of this Act.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and if authorized in accordance with §13.1-810, by electronic transmission.

"Disinterested director" means a director who, at the time action is to be taken under § 13.1-871, 13.1-878, or 13.1-880, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment, or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § 13.1-878 or 13.1-880, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (a) nomination or election of the director to

the current board by any person, acting alone or participating with others, who is so interested in the matter or (b) service as a director of another corporation of which an interested person is also a director.

"Document" means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

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

"Domestic limited liability company" has the same meaning as specified in § 13.1-1002. "Domestic limited partnership" has the same meaning as specified in § 50-73.1.

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

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

"Effective date of notice" is defined in § 13.1-810.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of §13.1-810.

"Electronic transmission" or "electronically transmitted" means any form or process of

communication, not directly involving the physical transfer of paper or other tangible medium, that (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of §13.1-810.

"Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign stock corporation.

"Eligible interests" means interests or shares.

"Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A director may accept duties that make him also an employee.

"Entity" includes any domestic or foreign corporation; any domestic or foreign stock corporation; any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States, and any foreign government.

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

"Foreign corporation" means a corporation not authorized by law to issue shares, organized under laws other than the laws of the Commonwealth.

"Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

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

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

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

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

"Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than the Commonwealth.

"Government subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" means a natural person.

"Interest" means either or both of the following rights under the organic law of a foreign or domestic unincorporated entity:

1. The right to receive distributions from the entity either in the ordinary course or upon liquidation; or
2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

"Means" denotes an exhaustive definition.

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

"Membership interest" means the interest of a member in a domestic or foreign corporation, including voting and all other rights associated with membership.

"Organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where an organic document has been amended or restated, the term means the organic document as last amended or restated.

"Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or eligible entity.

"Person" includes an individual and an entity.

"Principal office" means the office, in or out of the 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 the 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 Act.

"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 Act on which a corporation determines the identity of its members and their membership interests for purposes of this Act. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

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

"Sign" or "signature" means, with present intent to authenticate or adopt a document: (i) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

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

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

"Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited liability company, limited partnership, or business trust.

"United States" includes any district, authority, bureau, commission, department, or any other agency of the United States.

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

"Voting power" means the current power to vote in the election of directors.

"Writing" or "written" means any information in the form of a document.

### **§ 13.1-804. Filing requirements.**

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 Act requires or permits to be filed with the Commission.

C. The document shall contain the information required by this Act. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. 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 signed in the name of the domestic or foreign corporation:

1. By the chairman or any vice-chairman of the board of directors, 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 signed in the name of the corporation by an officer or director listed in the report.

H. The person signing the document shall 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 a corporate seal, attestation, acknowledgment, or verification.

I. If, pursuant to any provision of this Act, 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 Act.

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this Act and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

L. Whenever a provision of this Act permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

1. The plan or filed document shall specify the nationally recognized news or information medium in which the facts may be found or otherwise state the manner in which the facts can be objectively ascertained. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

2. The facts may include:

a. Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

b. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

c. The terms of or actions taken under an agreement to which the corporation is a party, or any other agreement or document.

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-819 or Article 10 (§ 13.1-884 et seq.) or 11 (§ 13.1-894 et seq.) of this Act; and

b. "Plan" means a plan of merger.

4. The following terms of a plan or filed document may not be made dependent on facts outside the plan or filed document:

a. The name and address of any person required in a filed document;

b. The registered office of any entity required in a filed document;

c. The registered agent of any entity required in a filed document;

d. The number of members and designation of each class of members;

e. The effective date of a filed document; and

f. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document and that fact is not objectively ascertainable by reference to a source described in subdivision 2a or to a document that is a matter of public record, or if the affected members have not received notice of the fact from the corporation, then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the members.

6. The provisions of subdivisions 1, 2, and 5 of this subsection shall not be considered by the Commission in deciding whether the terms of a plan or filed document comply with the requirements of law.

**§ 13.1-804.1. Filing with the Commission pursuant to reorganization.**

A. Notwithstanding anything to the contrary contained in § 13.1-804, 13.1-819, 13.1-896, or 13.1-904, whenever, pursuant to any applicable statute of the United States relating to reorganizations of corporations, a plan of reorganization of a corporation has been confirmed by the decree or order of a court of competent jurisdiction, the corporation may, without action by the board of directors or members to carry out the plan of reorganization ordered or decreed by such court of competent jurisdiction under federal statute, put into effect and carry out the plan and decrees of the court relative thereto (i) through an amendment or amendments to the corporation's articles of incorporation containing terms and conditions permitted by this Act, (ii) through a plan of merger, or (iii) through dissolution.

B. The individual or individuals designated by the court shall file with the Commission articles of amendment, merger, or dissolution, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;
2. The text of each amendment, plan of merger, or dissolution approved by the court;
3. The date of the court's order or decree approving the articles of amendment, plan of merger, or dissolution;
4. The title of the reorganization proceeding in which the order or 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, merger, or dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, merger, or dissolution.

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.

**§ 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.

**§ 13.1-806. Effective time and date of document.**

A. A certificate issued by the Commission is 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 earlier of the time and date so specified or 11:59 p.m. on the 15th day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this Act.

B. Notwithstanding subsection A, 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, for purposes of §§ 13.1-829 and 13.1-924, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

**§ 13.1-807. Correcting filed articles.**

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were defectively executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;
2. A description of the articles to be corrected, including their effective date;
3. Each inaccuracy and defect that is to be corrected;
4. The correction of each inaccuracy and defect; and
5. A statement that the board of directors authorized the correction and the date of such authorization.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time 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 may be filed with the Commission more than 30 days after the effective date of the certificate relating to the articles to be corrected.

**§ 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 of the Commission or a member of the staff of the office of the clerk, which in either case may be in facsimile, and the seal of the Commission, which may be in facsimile, is conclusive evidence that the document has been admitted to the records of the Commission.

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

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

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

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in the Commonwealth;
  2. That (i) the domestic corporation is duly incorporated under the law of the 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 the 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 the 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 Act 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 the Commonwealth.

### **§ 13.1-810. Notice and other communication.**

For purposes of this chapter, except for notice to or from the Commission:

- 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. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication shall be in the English language. A notice or other communication may be given or sent by any method of delivery except that an electronic transmission shall be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by publication in 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 communication in the area where notice is intended to be given.
- C. Notice or other communication to a domestic or foreign corporation, authorized to transact business in the Commonwealth, may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.
- D. Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection K.
- E. Any consent under subsection D may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or other person responsible for the giving of notice or other communications. The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

F. Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

1. It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

2. It is in a form capable of being processed by that system.

G. Receipt of an electronic acknowledgement from an information processing system described in subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgement, by itself, does not establish that the content sent corresponds to the content received.

H. An electronic transmission is received under this section even if no individual is aware of its receipt.

I. Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

1. If in physical form, the earliest of when it is actually received or when it is left at:

a. A member's address shown on the corporation's record of members maintained by the corporation pursuant to subsection C of §13.1-932;

b. A director's residence or usual place of business;

c. The corporation's principal place of business; or

d. The corporation's registered office when left with the corporation's registered agent;

2. If mailed postage prepaid and correctly addressed to a member, upon deposit in the United States mail;

3. If mailed by United State mail postage prepaid and correctly addressed to a recipient other than a member, the earliest of when it is actually received or: (i) if sent by registered or certified mail, return receipt requested, the date shown on the receipt, signed by or on behalf of the addressee; or (ii) five days after it is deposited in the mail;

4. If an electronic transmission, when it is received as provided in subsection F; and

5. If oral, when communicated.

J. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in perceivable form and (ii) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

K. If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

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

A. 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.

B. Anyone who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

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

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

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

A. The Commission shall have no power to grant a hearing 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 10 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.

B. No court within or without the Commonwealth 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, domestication, or termination of corporate existence, or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection D of § 13.1-845 or for fraud. No court within or without the Commonwealth, 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.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation, or of its own motion to correct Commission records so as to eliminate the effects of clerical errors committed by its staff.

**§ 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.

**§ 13.1-814.1. Special provisions for community associations.**

A. As used in this section, "community association" shall mean a corporation incorporated under this chapter or under former Chapter 2 of this title 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 corporation.

B. Notwithstanding the requirements of §§ 13.1-851, 13.1-852, 13.1-855, 13.1-856, 13.1-857, 13.1-858 and 13.1-862, the provisions set forth in those sections need not be set forth in the articles of incorporation of a community association and shall be effective if set forth in the bylaws.

C. Notwithstanding the provisions of §§ 13.1-855, 13.1-856, 13.1-892 and 13.1-899, the provisions of the bylaws of any community association in existence on or before January 1, 1986, shall continue to govern (i) the procedures for and election of members of the board of directors, (ii) the amendment of the bylaws, (iii) the sale, release, exchange or disposition of all or substantially all of the corporation's property, whether or not in the usual and regular course of business, and (iv) the corporation's ability to mortgage, pledge, or dedicate to repayment of indebtedness, or otherwise encumber its property; provided, that the community association may, in accordance with its current articles of incorporation and bylaws, vote to amend its corporate documents to become subject to §§ 13.1-855, 13.1-856, 13.1-892 and 13.1-899.

*Article 4.*

*Purposes and Powers.*

**§ 13.1-825. Purposes.**

Every corporation incorporated under this Act has the purpose of engaging in any lawful activity, 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 law of the Commonwealth.

**§ 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 and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend, in its corporate name;
2. To 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. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
4. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
5. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal with shares or other interests in, or obligations of, any other entity;

6. To make contracts and guarantees, incur liabilities, borrow money, and issue its notes, bonds, and other obligations, which may be convertible into, or include the option to purchase, other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

7. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

8. To transact its business, locate offices, and exercise the powers granted by this chapter within or without the Commonwealth;

9. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

10. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth;

11. To make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes;

12. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;

13. To insure for its benefit the life of any of its directors, officers, or employees and to continue such insurance after the relationship terminates;

14. To make payments or donations or do any other act not inconsistent with this section or any other applicable law that furthers the business and affairs of the corporation;

15. To pay compensation or to pay additional compensation to any or all directors, officers, and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To 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 institution or a credit union shall have power to enter into partnership agreements, joint ventures or other associations of any kind with any person or persons. The foregoing limitations on banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company.

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 after December 31, 1969, under this chapter or under the Virginia Nonstock



Corporation Act (§ 13.1-201 et seq.) enacted by Chapter 428 of the Acts of Assembly of 1956; 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 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.

**§ 13.1-827. Emergency powers.**

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

1. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
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, 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; and
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 affairs of the corporation:

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

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.

**§ 13.1-828. Ultra vires.**

A. Except as provided in subsection B, 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;
2. In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former officer, director, employee, or agent 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 B 1 to enjoin an unauthorized corporate act, the court may enjoin or set aside the act and may award damages for loss, except anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

**Article 6.**  
**Office and Agent.**

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

A. Each corporation shall continuously maintain in the Commonwealth:

1. A registered office that may be the same as any of its places of business; and
2. A registered agent, who shall be:

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

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

**§ 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 of change 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 will 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 the 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, reciting that a copy of the statement has been mailed to the corporation on whose behalf it is to be filed.

**§ 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 a 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.

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

A. A corporation's registered agent 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 and may, by instrument in writing, authorize service of process by facsimile by the sheriff, provided acknowledgement of receipt of service is returned by facsimile to the sheriff. Whenever any person so designated by the registered agent accepts service of process or whenever service is by facsimile, a photographic copy of the instruments designating the person or authorizing the method of service and receipt shall be attached to the return.

B. Whenever a corporation fails to appoint or maintain a registered agent in the 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.

***Article 7.***

***Members and Meetings.***

**§ 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 interests therein. Membership interests 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.

**§ 13.1-838. Annual meeting.**

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

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

**§ 13.1-839. Special meeting.**

A. A corporation shall hold a special meeting of members:

1. 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; or
2. 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. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. 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.

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

E. 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.

**§ 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 the Commonwealth, where its registered office is located, may, after notice to the

corporation, order a meeting of members 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 15 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 30 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.

**§ 13.1-841. Corporate action without meeting.**

A.1. Corporate action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting and without prior notice if the corporate action is taken by all members entitled to vote on the corporate action, in which case no corporate action by the board of directors shall be required.

2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation of a corporation, corporate action required or permitted by this chapter to be taken at a meeting of members may be taken without a meeting and without prior notice, if the corporate action is taken by members who would be entitled to vote at a meeting of members having voting power to cast not fewer than the minimum number (or numbers, in the case of voting by voting groups) of votes that would be necessary to authorize or take the corporate action at a meeting at which all members entitled to vote thereon were present and voted.

3. The corporate action shall be evidenced by one or more written consents bearing the date of execution and describing the corporate action taken, signed by the members entitled to take such corporate action without a meeting and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any corporate action taken by written consent shall be effective according to its terms when the requisite consents are in possession of the corporation. Corporate action taken under this section is effective as of the date specified therein, provided the consent states the date of execution by each member.

B. If not otherwise determined under § 13.1-840 or 13.1-844, the record date for determining members entitled to take corporate action without a meeting is the date the first member signs the consent under subsection A. No written consent shall be effective to take the corporate action referred to therein unless, within 120 days after the earliest date of execution appearing on a consent delivered to the corporation in the manner required by this section, written consents sufficient in number to take corporate action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

C. For purposes of this section, written consent may be accomplished by one or more electronic transmissions, as defined in § 13.1-803. A consent signed under this section has the effect of a vote of voting members at a meeting and may be described as such in any document filed with the Commission under this chapter.

D. If corporate action is to be taken under this section by fewer than all of the members entitled to vote on the action, the corporation shall give written notice of the proposed corporate action, not less than five days before the action is taken, to all persons who are members on the record date and who are entitled to vote on the matter. The notice shall contain or be accompanied by the same material that under this chapter would have been required to be sent to members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

E. If this chapter requires that notice of proposed corporate action be given to nonvoting members and the corporate action is to be taken by consent of the voting members, the corporation shall give its nonvoting members written notice of the proposed action not less than five days before it 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 corporate action would have been submitted to the members for a vote.

F. Any person, whether or not then a member, may provide that a consent in writing as a member shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a member at such future time and (ii) the person did not revoke the consent prior to such future time.

**§ 13.1-842. Notice of meeting.**

A.1. A corporation shall notify members of the date, time and place of each annual and special members' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, domestication, a proposed sale of assets pursuant to § 13.1-900, or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

2. In lieu of delivering notice as specified in subdivision A 1, 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 60 days, and the second not less than seven days before the date of the 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 day before the effective date of the notice to 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 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 under § 13.1-844, however, not less than 10 days before the meeting date notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

**§ 13.1-843. Waiver of notice.**

A. A member may waive any notice required by this Act, 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 the notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A member's attendance at 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.

**§ 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 as the record date the date on which it takes such action or a future date.

B. A record date fixed under this section may not be more than 70 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.

**§ 13.1-844.1. Conduct of the meeting.**

A. At each meeting of members, a chairman shall preside. The chairman shall be appointed as provided in the articles of incorporation, bylaws, or, in the absence of such a provision, by the board of directors.

B. Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

C. The chairman of the meeting shall announce at the meeting when the polls will open and close for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the beginning of the meeting and to close upon the final adjournment of the meeting.

**§ 13.1-844.2. Remote participation in annual and special meetings.**

A. Members may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for members. Participation by means of remote communication shall be subject to such guidelines and procedures the board of directors adopts, and shall be in conformity with subsection B.

B. Members participating in a members' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a member; and
2. Provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

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

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of a members' meeting. If the board of directors fixes a different record date to determine the members entitled to vote at the meeting, a corporation shall also prepare an alphabetical list of the names of all its members who are entitled to vote at the meeting. A list shall be arranged by voting group, and show the address of each member.

B. The members' list for notice shall be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A members' list for voting shall be similarly available for inspection promptly after the record date for voting. A member, or the member's agent or attorney, is entitled on written demand to inspect and, subject to the requirements set forth in subsection C of § 13.1-933, to copy a list, during the regular business hours and at the member's expense, during the period it is available for inspection.

C. The corporation shall make the list of members entitled to vote available at the meeting, and any member, or the member's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

D. If the corporation refuses to allow a member, the member's agent, or the member's attorney to inspect a members' list before or at the meeting, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available a members' list does not affect the validity of action taken at the meeting.

**§ 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.

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.

**§ 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.

B. A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. 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 is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission 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 it credit under terms requiring the appointment;
2. An employee of the corporation whose employment contract requires the appointment; or
3. A party to a voting agreement created under § 13.1-852.2.



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 the proxy's authority under the appointment.

F. An appointment made irrevocable under subsection D 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 stated in the appointment form or electronic transmission, 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 membership interest may vote such membership interest by proxy.

### **§ 13.1-847.1. Voting procedures and inspectors of elections.**

A. A corporation may appoint one or more inspectors to act at a meeting of members in connection with determining voting results. Each inspector, before entering upon the discharge of his duties, shall certify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of his ability.

B. The inspectors shall (i) ascertain the number of members and the voting power of each, (ii) determine the number of the members represented at a meeting and the validity of proxy appointments and ballots, (iii) count all votes, (iv) determine, and retain for a reasonable period a record of the disposition of, any challenges made to any determination by the inspectors, and (v) certify their determination of the number of members represented at the meeting and their count of the votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties and may rely on information provided by such persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted. In any court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.

C. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in the Commonwealth, where its registered office is located, upon application by a member, shall determine otherwise.

D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with subsection B of § 13.1-847, ballots, and the regular books and records of the corporation. If the inspectors consider other reliable information for the limited purpose permitted herein, they shall specify, at the time that they make their certification pursuant to clause (v) of subsection B, the precise information that they considered, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for their belief that such information is accurate and reliable.

E. If authorized by the board of directors, any member vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the member or the member's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it may be determined that the electronic transmission was authorized by the member or the member's proxy. A member who votes by a ballot submitted by electronic transmission is deemed present at the meeting of members.

**§ 13.1-848. Corporation's acceptance of votes.**

A. If the name signed on a vote, ballot, 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, ballot, consent, waiver, or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, ballot, 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, ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is an entity 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, ballot, consent, waiver, or proxy appointment;
3. The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the membership interest in an order of the court by which such person was appointed has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
4. The name signed purports to be that of a beneficial owner or 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, ballot, consent, waiver, or proxy appointment; or
5. Two or more persons are the member as fiduciaries and the name signed purports to be the name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of subdivisions B 2 and 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of membership interests in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to count 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. Neither the corporation nor the person authorized to count votes, including an inspector under § 13.1-847.1, who accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § 13.1-847 is 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.

**§ 13.1-849. Quorum and voting requirements for voting groups.**

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 Act 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 represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any 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.

**§ 13.1-850. Action by single and multiple voting groups.**

A. If the articles of incorporation or this Act provides 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 Act 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.

**§ 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.

**§ 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 48 hours before the time set for the meeting of the member's intent to cumulate his votes during

the meeting. If one member gives such a notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

**Article 8.**

**Directors and Officers.**

**§ 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 other provisions of this Act in that it:

1. Eliminates the board of directors or, subject to the requirements of subsection A of § 13.1872, one or more officers, or restricts the discretion or powers of the board of directors or any one or more officers;
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 any of 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 the 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 the corporate powers 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 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. Valid for an unlimited duration, if the agreement is set forth in the articles of incorporation or bylaws, unless the agreement shall be otherwise amended by the members or the directors, as the case may be; or if the agreement is set forth in a written agreement, as set forth in the agreement except that the duration

of an agreement that became effective prior to July 1, 2015, remains 10 years unless the agreement provided otherwise or is subsequently amended to provide otherwise.

C. The existence of an 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 ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without member action, 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 the matters governed by the agreement.

G. Incorporators or subscribers for membership interests 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.

I. An agreement among the members or the directors of a corporation that is consistent with the other provisions of this chapter that does not comply with the provisions of this section shall nonetheless be effective among the members, the directors, and the corporation.

#### **§ 13.1-852.2. Voting agreements.**

A. Two or more members entitled to vote may provide for the manner in which they will vote by signing an agreement for that purpose.

B. A voting agreement created under this section is specifically enforceable.

#### **§ 13.1-853. Requirement for and duties of board of directors.**

A. Except as provided in an agreement authorized by § 13.1-852.1, each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized by § 13.1-852.1.

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

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

**§ 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.

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.

**§ 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.

**§ 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 terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected, or if there are no members or the corporation's members do not have voting rights, at the end of such other period as may be specified in the articles of incorporation.

C. The terms of all other directors expire at the next annual meeting of members following the directors' election unless their terms are staggered under § 13.1-858 or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.

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

E. 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 or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.

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

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

A. The articles of incorporation may provide for staggering the terms of directors by 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 staggered terms of directors shall provide that at least three directors shall be elected at each annual members' meeting.

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

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

**§ 13.1-860. Removal of directors.**

A. The members may remove one or more directors with or without cause, unless the articles of incorporation 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, unless the articles of incorporation require a greater vote, a director may be removed 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 or no members with voting rights, 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, if any.

**§ 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 the Commonwealth, in the county or city in which 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.

**§ 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 in the number of directors:

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.

**§ 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.

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

A. The board of directors may hold regular or special meetings in or out of the 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 participating 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.



**§ 13.1-865. Action without meeting of board of directors.**

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

B. Action taken under this section is 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 director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

D. Any person, whether or not then a director, may provide that a consent to action as a director shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

E. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

F. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

**§ 13.1-866. Notice of board 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.

**§ 13.1-867. Waiver of notice by director.**

A. A director may waive any notice required by this Act, 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.

**§ 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, or unless otherwise specifically provided in this Act, 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 under subsection A.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of 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:

1. The director objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or
2. He votes against, or abstains from, the action taken.

E. Except as provided in § 13.1-852.1, a director shall not vote by proxy.

F. Whenever this Act 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.

**§ 13.1-869. Committees.**

A. Unless the articles of incorporation or 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 shall 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 number 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;
2. Fill vacancies on the board or on any of its committees;
3. Amend the articles of incorporation pursuant to § 13.1-885;
4. Adopt, amend, or repeal the bylaws; or
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.

F. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation, the bylaws, or the resolution creating the committee provides otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting may unanimously appoint another director to act in place of the absent or disqualified member.

**§ 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 business judgment of the best interests of the corporation.

B. Unless a director 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 the director 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.

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

A. 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 12 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 12 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. The immunity provided by this subsection shall survive any termination, cancellation, or other discontinuance of the corporation.

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 12 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 Act that 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.

4. The immunity provided by this section shall survive any termination, cancellation, or other discontinuance of the community association.

**§ 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 12 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.

D. The immunity provided by this section shall survive any termination, cancellation, or other discontinuance of the community association.

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

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes him from being a disinterested director. 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;

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 subdivision A 1, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the committee. A transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the disinterested directors 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 who is not disinterested does not affect the validity of any action taken under subdivision A 1 if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

C. For purposes of subdivision A 2, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. The votes controlled by a director who is not disinterested may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2. The director's votes, 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, that 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.

#### **§ 13.1-871.1. Business opportunities.**

A. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

1. Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 1 of § 13.1-871, as if the decision being made concerned a director's conflict of interests transaction; or

2. Members' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 2 of § 13.1-871, as if the decision being made concerned a director's conflict of interests transaction.

B. In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ one of the procedures described in subsection A before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

#### **§ 13.1-872. Required officers.**

A. Except as provided in an agreement authorized by § 13.1-852.1, 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. The board of directors may elect individuals to fill one or more offices of the corporation. An 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.

**§ 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.

**§ 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 time. If a resignation is made effective at a later time, the corporation may fill the pending vacancy before the effective time if the successor does not take office until the effective time.

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. An officer's removal does not affect such officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

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, if any.

***Article 9.***

***Indemnification.***

**§ 13.1-875. Definitions.**

In this article:

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

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

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any 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 officer, as contemplated in § 13.1-881, the office in a corporation held by the officer. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

"Party" means 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, arbitratve, or investigative and whether formal or informal.

### **§ 13.1-876. Authority to indemnify.**

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

1. Conducted himself in good faith;

2. Believed:

a. In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

b. In all other cases, that his conduct was at least not opposed to its best interests; and

3. In the case of any criminal proceeding, that 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 subdivision A 2 b.

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

D. Unless ordered by a court under subsection C of § 13.1-879.1, a corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard under subsection A; or

2. In connection with any other proceeding charging improper personal benefit to the director, 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.

**§ 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.

**§ 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 the director furnishes the corporation a signed written undertaking, executed personally or on his behalf, to repay any funds advanced if he is not entitled to mandatory indemnification under § 13.1-877 and it is ultimately determined under § 13.1-879.1 or 13.1-880 that he has not met the relevant standard of conduct.

B. The undertaking required by subsection A 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. Authorizations of payments under this section shall be made by:

1. The board of directors:

a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection C of § 13.1-868, in which authorization directors who do not qualify as disinterested directors may participate; or

2. The members, but any membership interest under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

**§ 13.1-879. Repealed.**

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 a director of the 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, reimbursement, or both, 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 the director's 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 members, 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, reimbursement, or both, nor (ii) the determination by the corporation, including its board of directors, its independent legal counsel and its members, 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.

**§ 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 because he has met the relevant standard of conduct set forth in § 13.1-876.

B. The determination shall be made:

1. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

2. By special legal counsel:

a. Selected in the manner prescribed in subdivision 1 of this subsection; or

b. If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

3. By the members, but membership interests under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

C. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision B 2 to select counsel.

**§ 13.1-881. Indemnification of officers.**

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation 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 of the corporation to the same extent as to a director.

**§ 13.1-882. Insurance.**

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation, or who, while a director or officer of the corporation, 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, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by such person in that capacity or arising from

his status as a director or officer, whether or not the corporation would have power to indemnify him against the same liability under § 13.1-876 or 13.1-877.

**§ 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. A corporation, by a provision in its articles of incorporation or bylaws or in a resolution adopted or contract approved by its board of directors or members, may obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with §13.1-876 and advance funds to pay for or reimburse expenses in accordance with §13.1-878. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection C of §13.1-878 and subsection C of §13.1-880.

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 or officer 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) such person's willful misconduct, or (ii) a knowing violation of the criminal law. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed, unless the articles of incorporation or any such bylaw or resolution expressly provides otherwise, also to obligate the corporation to advance funds to pay for or reimburse expenses to the fullest extent permitted by law in accordance with §13.1-878 except that the applicable standard shall be conduct that does not constitute willful misconduct or a knowing violation of criminal law, rather than the standard of conduct prescribed in §13.1-876. 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 subsection B of § 13.1-880. 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 Act 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.

E. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

F. This article does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent who is not a director or officer.

***Article 10.***

***Amendment of Articles of Incorporation and Bylaws.***

**§ 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.

**§ 13.1-885. Amendment of articles of incorporation by directors.**

A. 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.

B. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

1. To delete the names and addresses of the initial directors;
2. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Commission;
3. To add, delete, or change a geographic attribution for the name; or
4. To make any other change expressly permitted by this Act to be made without member action.

**§ 13.1-886. Amendment of articles of incorporation by directors and members.**

A. Where there are members having voting rights, except where member approval of an amendment of the articles of incorporation is not required by this Act, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment shall be adopted by the board of directors;
2. After adopting the proposed amendment, the board of directors shall submit the amendment to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination; and
3. The members entitled to vote on the amendment shall approve the amendment as provided in subsection D.

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

C. 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.

D. Unless this Act or the board of directors, acting pursuant to subsection B, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the amendment by more than two-thirds of all the votes cast by that voting group. 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.

**§ 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.

**§ 13.1-887.1. Amendment prior to organization.**

When a corporation has not yet completed its organization, its board of directors or incorporators, in the event that there is no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

**§ 13.1-888. Articles of amendment.**

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

- a. The name of the corporation;
  2. The text of each amendment adopted or the information required by subdivision L 5 of § 13.1-804;
  3. The date of each amendment's adoption;
  4. If an amendment was adopted by the incorporators or the board of directors without member approval, a statement that the amendment was duly approved by the vote of at least two-thirds of the directors in office or by a majority of the incorporators, as the case may be, including the reason member and, if applicable, director approval was not required;
  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.

**§ 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 approval.
- B. The restatement may include one or more new amendments to the articles. If the restatement includes a new amendment requiring member approval, it shall be adopted and approved 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 approval, 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 new 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:

1. The name of the corporation immediately prior to restatement;
2. Whether the restatement contains a new amendment to the articles;
3. The text of the restated articles of incorporation or amended and restated articles of incorporation, as the case may be;
4. Information required by subdivision L 5 of § 13.1-804;
5. The date of the restatement's adoption;
6. If the restatement does not contain a new amendment to the articles, that the board of directors adopted the restatement;
7. If the restatement contains a new amendment to the articles not requiring member approval, the information required by subdivision A 4 of § 13.1-888; and
8. If the restatement contains a new 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 or amended and restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

F. The Commission may certify restated articles of incorporation or amended and restated articles of incorporation as the articles of incorporation currently in effect.

**§ 13.1-890. Repealed.**

Repealed by Acts 2007, c. 925, cl. 2.

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

An amendment to 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.

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

A. 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 § 13.1-893 reserves that power exclusively to the members; or

2. The members in repealing, adopting, or amending a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

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

A. A bylaw that increases a 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, unless the bylaws otherwise provide; or
2. If 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 increases a quorum or voting requirement for the board of directors may provide that it shall 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 subsection A to amend or repeal a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors shall be effective only if it meets the quorum requirement and is adopted by the vote required to take action under the quorum and voting requirement then in effect.

***Article 15.***

***General Provisions.***

**§ 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, all amendments to them currently in effect, and any notices to members referred to in subdivision L 5 of §13.1-804 regarding facts on which a filed document is dependent;
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.

**§ 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 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;
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 only if:

1. He has been a member of record 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 that 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.

**§ 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 by xerographic or other means, including copies through an electronic transmission if available and so requested by the member.

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, reproduction, and transmission of the records.

D. The corporation may comply with a member's demand to inspect the record of members under subdivision B 3 of § 13.1-933 by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

#### **§ 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.

#### **§ 1.1-935.1. Inspection of records by directors.**

A. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of his duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

B. The circuit court of the city or county where the corporation's principal office or, if none in the Commonwealth, its registered office is located may order inspection and copying of the books, records, and documents upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

C. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for his reasonable costs, including reasonable counsel fees, incurred in connection with the application if the director proves that the corporation refused inspection without a reasonable basis for doubt about the director's right to inspect the records demanded.

#### **§ 13.1-936. Annual report of domestic and foreign corporations.**

A. Each domestic corporation, and each foreign corporation authorized to transact business in the Commonwealth, shall file, within the time prescribed by this section, 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 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 registered agent in the Commonwealth at such address; and

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 the 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 11 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.