
Virginia Nonstock Corporation Act

**Code of Virginia
Title 13.1 Corporations**

**Chapter 10
Virginia Nonstock Corporation Act
(Select Provisions)**

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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 therein. Memberships shall not be transferable. Members shall not have voting or other rights except as provided in the articles of incorporation or if the articles of incorporation so provide, in the bylaws. Members of any corporation existing on January 1, 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by amendment of the articles of incorporation.

§ 13.1-838. Annual meeting.

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

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

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

§ 13.1-839. Special meeting.

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

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

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

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

§ 13.1-840. Court-ordered meeting.

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

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

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

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

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

B. The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

§ 13.1-841. Action without meeting.

A. Action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting and without action by the board of directors if the action is taken by all of the members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed by all of the members entitled to vote on the action, and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any action taken by unanimous written consent shall be effective according to its terms when all

consents are in possession of the corporation. A member may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time that all consents are in the possession of the corporation. Action taken under this section is effective as of the date specified therein, provided that the consent states the date of execution by each member.

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

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

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

§ 13.1-842. Notice of meetings.

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

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

3. In lieu of delivering notice as specified by subdivision 1 of this subsection, the corporation may give members written notice of the date, time and place of each annual and special members' meeting by a form of electronic transmission consented to by the member to whom notice is given. A notice given by a form of electronic transmission shall be given as far in advance of the meeting as would be required if the notice was delivered as specified in subdivision 1 of this subsection. Any such consent of a member shall be revocable by the member by written notice to the corporation. Any such consent

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shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

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

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

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

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

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

F. Notice given pursuant to subdivision A3 of this section shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the member has consented to receive notice; (ii) if by electronic mail, when directed to the record address of the member or to such other electronic mail address at which the member has consented to receive notice; (iii) if by posting on an electronic network together with a separate notice to the member of such specific posting when such notice is directed to an address at which the member has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (iv) if any other form of electronic transmission, when consented to by the member. An affidavit of the secretary or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

§ 13.1-843. Waiver of notice of meetings.

A. A member may waive any notice required by this chapter, the articles of incorporation or bylaws before or after the date and time of the meeting that is the

subject of such notice. The waiver shall be in writing, be signed by the member entitled to such notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A member who attends a meeting:

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

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

§ 13.1-844. Record date.

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

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

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

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

§ 13.1-845. Members' list for meeting.

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

B. For a period of ten days prior to the meeting, the list of members shall be subject to inspection by any member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting for the purposes thereof. The original record of members shall be prima facie evidence as to who are the members entitled to examine such list or records or to vote at any meeting of members.

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The right of the member of a corporation to inspect such list prior to a meeting shall be subject to the limitations set forth in subsection C of § 13.1-933.

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

§ 13.1-846. Voting entitlement of members.

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

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

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

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

§ 13.1-847. Proxies.

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

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

1. A member may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the member or his authorized officer,

director, employee or agent signing such writing or causing his signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

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

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

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

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

1. A creditor of the corporation who extended it credit under terms requiring the appointment; or

2. An employee of the corporation whose employment contract requires the appointment.

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

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

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

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

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

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

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

1. The member is a domestic or foreign corporation, association, estate, trust or partnership and the name signed purports to be that of an officer, partner or agent of the entity;

2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

3. The name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment.

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

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

E. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this

section are not liable in damages to the member for the consequences of the acceptance or rejection.

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

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

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

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

C. Less than a quorum may adjourn a meeting.

D. The election of directors is governed by § 13.1-852.

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

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

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

§ 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 forty-eight hours before the time set for the meeting of his intent to cumulate his votes during the meeting. If one member gives this notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

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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 of the other provisions of this chapter in that it:

1. Eliminates the board of directors or restricts the discretion or powers of the board of directors;

2. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

3. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among them, including use of weighted voting rights or director proxies;

4. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation, or among any of them;

5. Transfers to one or more members, directors or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members;

6. Requires dissolution of the corporation at the request of one or more of its members or directors, in the case of a corporation that has no members or in which the members have no voting rights, or upon the occurrence of a specified event or contingency; or

7. Otherwise governs the exercise of corporate power or the management of the business and affairs of the corporation or the relationship among the members, the directors and the corporation, or among any of them and is not contrary to public policy.

B. An agreement authorized by this section shall be:

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

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

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

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

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

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

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

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

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

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

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

A. Each corporation shall have a board of directors.

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

§ 13.1-854. Qualification of directors.

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

§ 13.1-855. Number and election of directors.

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

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

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

D. Directors shall be elected or appointed in the manner provided in the articles of incorporation. If the corporation has members with voting privileges, directors shall be

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

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

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

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

§ 13.1-858. Uniformity of terms of directors.

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

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

§ 13.1-859. Resignation of directors.

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

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

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

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

§ 13.1-860. Removal of directors.

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

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

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

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

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

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

§ 13.1-861. Judicial review of elections.

Any member or director aggrieved by an election of directors may, after reasonable notice to the corporation and each director whose election is contested, apply for relief to the circuit court in the county or city in which the principal office of the corporation is

located, or if none in this Commonwealth, where its registered office is located. The court shall proceed forthwith in a summary way to hear and decide the issues and thereupon to determine the persons elected or order a new election or grant such other relief as may be equitable. Pending decision, the court may require the production of any information and may by order restrain any person from exercising the powers of a director if such relief is equitable.

§ 13.1-862. Vacancy on board of directors.

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

1. The members may fill the vacancy;
2. The board of directors may fill the vacancy; or

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

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

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

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

§ 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 board of directors.

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

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

participating in a meeting by this means is deemed to be present in person at the meeting.

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

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

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

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

§ 13.1-866. Notice of directors' meetings.

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

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

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

posting on an electronic network together with separate notice to the director of such specific posting when such notice is directed to an address at which the director has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (d) if by any other form of electronic transmission, when consented to by the director. An affidavit of the secretary or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

§ 13.1-867. Waiver of notice by director.

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

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

§ 13.1-868. Quorum and voting by directors.

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

1. A majority of the fixed number of directors if the corporation has a fixed board size; or

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

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

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

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (i) he objects at the beginning of the meeting, or promptly upon

his arrival, to holding it or transacting specified business at the meeting; or (ii) he votes against, or abstains from, the action taken.

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

§ 13.1-869. Committees.

A. Unless the articles of incorporation or the bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

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

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

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

1. Approve or recommend to members action that this Act requires to be approved by members, provided that the executive committee of the board of directors may exercise the authority of the board of directors to approve any amendment of the articles of incorporation if so authorized by the articles of incorporation;

2. Fill vacancies on the board or on any of its committees;

3. Amend articles of incorporation pursuant to § 13.1-885;

4. Adopt, amend, or repeal the bylaws;

5. Approve a plan of merger not requiring member approval.

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

§ 13.1-870. General standards of conduct for directors.

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

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

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

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

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

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

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

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

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

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

B. In any proceeding against an officer or director who receives compensation from a corporation exempt from income taxation under § 501 (c) of the Internal Revenue Code for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the corporation during the twelve months immediately

preceding the act or omission for which liability was imposed. An officer or director who serves such an exempt corporation without compensation for his services shall not be liable for damages in any such proceeding.

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

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

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

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

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

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

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

B. In any proceeding against an officer or director who receives compensation from a community association for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the twelve months immediately preceding the act or omission for which liability was imposed. An

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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.

§ 13.1-871. Director conflicts of interests.

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

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

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

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

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

§ 13.1-872. Required officers.

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

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

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

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

§ 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 date. If a resignation is made effective at a later date and the corporation accepts the future effective date, it may fill the pending vacancy before the effective date if the successor does not take office until the effective date.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be

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removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation.

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

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

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Article 9. Indemnification

§ 13.1-875. Definitions.

In this article:

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

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

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

“Expenses” includes counsel fees.

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

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

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

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

§ 13.1-876. Authority to indemnify.

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

1. He conducted himself in good faith;
2. He believed:

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

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

3. In the case of any criminal proceeding, he had no reasonable cause to believe that his conduct was unlawful.

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

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

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

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

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

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

§ 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:

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

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

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

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

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

§ 13.1-879. Repealed by Acts 1987, cc. 59, 257.**§ 13.1-879.1. Court orders for advances, reimbursement or indemnification.**

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

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

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

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

§ 13.1-880. Determination and authorization of indemnification.

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

B. The determination shall be made:

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

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

3. By special legal counsel:

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

b. If a quorum of the board of directors cannot be obtained under subdivision 1 of this subsection and a committee cannot be designated under subdivision 2 of this subsection, selected by majority vote of the full board of directors, in which selection directors who are parties may participate; or

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

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

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

Unless limited by a corporation's articles of incorporation:

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

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

§ 13.1-882. Insurance.

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

§ 13.1-883. Application of article.

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

B. Any corporation shall have power to make any further indemnity, including indemnity with respect to a proceeding by or in the right of the corporation, and to make additional provision for advances and reimbursement of expenses, to any director, officer, employer or agent that may be authorized by the articles of incorporation or any bylaw made by the members or any resolution adopted, before or after the event, by the

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

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

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

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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.

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.

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

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

B. For the amendment to be adopted:

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

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

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

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

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

§ 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.

§ 13.1-888. Articles of amendment.

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

1. The name of the corporation;
2. The text of each amendment adopted;
3. The date of each amendment's adoption;
4. If an amendment was adopted by the incorporators or board of directors without member action, a statement to that effect and that member action 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 action.

B. The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in § 13.1-886.

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

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

1. Whether the restatement contains an amendment to the articles requiring member approval and, if it does not, that the board of directors adopted the restatement; or

2. If the restatement contains an amendment to the articles requiring member approval, the information required by § 13.1-888.

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

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

§ 13.1-890. Amendment of articles of incorporation pursuant to reorganization.

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

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

1. The name of the corporation;
2. The text of each amendment approved by the court;
3. The date of the court's order or decree approving the articles of amendment;
4. The title of the reorganization proceeding in which the order of decree was entered; and

5. A statement that the court had jurisdiction of the proceeding under federal statute.

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

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

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

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

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

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

1. The articles of incorporation or this chapter reserves this power exclusively to the members; or

2. The members in adopting or amending particular bylaws provide expressly that the board of directors may not amend or repeal that bylaw.

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

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

1. If originally adopted by the members, only by the members;

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

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

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

Chapter 10.

Virginia Nonstock Corporation Act

Article 15. Records and Reports

§ 13.1-932. Corporate records.

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, if any.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation and all amendments to them currently in effect;

2. Its bylaws or restated bylaws and all amendments to them currently in effect;

3. Resolutions adopted by its board of directors creating one or more classes of members, and fixing their relative rights, preferences, and limitations;

4. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

5. All written communications to members generally within the past three years;

6. A list of the names and business addresses of its current directors and officers; and

7. Its most recent annual report delivered to the Commission under § 13.1-936.

§ 13.1-933. Inspection of records by members.

A. Subject to subsection C of § 13.1-934, a member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § 13.1-932 if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

B. A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection C of this section and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection A of this section;

2. Accounting records of the corporation; and

3. The record of members.

C. A member may inspect and copy the records identified in subsection B of this section only if:

1. He has been a member for at least six months immediately preceding his demand;

2. His demand is made in good faith and for a proper purpose;

3. He describes with reasonable particularity his purpose and the records he desires to inspect; and

4. The records are directly connected with his purpose.

D. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

E. This section does not affect:

1. The right of a member to inspect records if the member is in litigation with the corporation, to the same extent as any other litigant; or

2. The power of a court, independently of this Act, to compel the production of corporate records for examination.

§ 13.1-934. Scope of inspection right.

A. A member's agent or attorney has the same inspection and copying rights as the member he represents.

B. The right to copy records under § 13.1-933 includes, if reasonable, the right to receive copies made by photographic or other means.

C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

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

§ 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.

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

A. Each domestic corporation, and each foreign corporation authorized to transact business in this Commonwealth, shall file, within the time prescribed by this chapter, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated.

2. The address of the registered office of the corporation in this Commonwealth (including both (i) the post-office address with street and number, if any, and (ii) the name of the county or city in which it is located), and the name of its registered agent in this Commonwealth at such address.

3. The names and post-office addresses of the directors and the principal officers of the corporation.

B. The report shall be made on forms furnished by the Commission, and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission by the last day of the twelfth month next succeeding the date it was incorporated or authorized to transact business in this Commonwealth, and by such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than eleven months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

§ 13.1-936.1. Annual registration fees for domestic and foreign corporations.

A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in this Commonwealth shall pay into the state treasury by its due date each calendar year an annual registration fee of twenty-five dollars.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of conducting its affairs in this Commonwealth or upon its franchise, property or receipts. Nonstock corporations incorporated before 1970 which were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

B. The State Corporation Commission shall ascertain from its records each corporation authorized to conduct its affairs in this Commonwealth, as of the first day of

the second month next preceding the month of the corporation's annual registration fee due date each year, and shall assess against each corporation the registration fee herein imposed. In any year in which a corporation's due date is extended pursuant to this chapter the registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the Clerk of the State Corporation Commission to the Comptroller and to each corporation.

C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed shall incur a penalty as provided in subdivision B 1 of § 13.1-914 or § 13.1-930, as the case may be, which shall be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the State Corporation Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the Clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 4 (§ 8.9-401 et seq.) of Title 8.9, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

§ 13.1-936.2. Collection of unpaid bills for registration fees.

The registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies and fees, by action in equity, in the name of the Commonwealth, in the appropriate circuit court. Venue shall be in accordance with § 8.01-261.