LANGENBERG LAW OFFICE

2023

VIRGINIA STATUTES

VIRGINIA CONDOMINIUM ACT

PROPERTY OWNERS' ASSOCIATION ACT

NONSTOCK CORPORATION ACT

RESALE DISCLOSURE ACT

COMMON INTEREST COMMUNITY BOARD and OMBUDSMAN

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§ 55.1-1900. Definitions

As used in this chapter, unless the context requires a different meaning:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents to or interests in such real property, lawfully subject to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" means, collectively, the declaration, bylaws, and plats and plans recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification recorded with a condominium instrument shall be deemed an integral part of that condominium instrument. Once recorded, any amendment or certification of any condominium instrument shall be deemed an integral part of the affected condominium instrument if such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit.

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium.

"Conversion condominium" means a condominium containing structures that before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a portion of the common elements within which additional units or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium that a declarant may convert into one or more units or common elements, including limited common elements, in accordance with the provisions of the declaration and this chapter.

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of

its interest in a condominium unit not previously disposed of, including an institutional lender that may not have succeeded to or accepted any special declarant rights pursuant to § 55.1-1947;(ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), "declarant" does not include an institutional lender that acquires title by foreclosure or deed in lieu of foreclosure unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55.1-1947. "Declarant" does not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but does not include the transfer or release of security for a debt.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act has the meaning set forth in that section.

"Executive board" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and this chapter.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest in such land, within which no units are situated or to be situated is not

a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser that is in no way binding on the prospective purchaser and that may be canceled without penalty at the sole discretion of the prospective purchaser.

"Offer" means any inducement, solicitation, or attempt to encourage any person to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing that expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered shall be considered an "offer."

"Officer" means any member of the executive board or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value may be considered substantially identical within the meaning of §§ 55.1-1917 and 55.1-1918.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person, other than a declarant, that acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

"Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the plat and plans and rounded to the nearest whole number. Certain spaces within the units, including attic, basement, or garage space, may be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium; (ii) contract a contractable condominium; (iii) convert convertible land or convertible space or both;(iv) appoint or remove any officers of the unit owners' association or the executive board pursuant to subsection A of § 55.1-1943;(v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer, or the executive board; or (vi) maintain sales offices, management offices, model units, and signs pursuant to § 55.1-1929.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection D of § 55.1-1925.

"Unit owner" means one or more persons that own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest in the condominium extends for the entire balance of the unexpired term. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person holding an interest in a condominium unit solely as security for a debt.

1974, c. 416, § 55-79.41; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977;2001, c. 715;2002, c. 459;2003, c. 442;2008, cc. 851, 871;2015, cc. 93, 410;2019, c. 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1901. Application and construction of chapter

A. This chapter applies to all condominiums and to all horizontal property regimes or condominium projects. This chapter supersedes the Horizontal Property Act (§ 55.1-2000 et seq.), and no condominium shall be established under the Horizontal Property Act on or after July 1, 1974. This chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded prior to July 1, 1974. For the purposes of this chapter, as used in the Horizontal Property Act (§ 55.1-2000 et seq.):

"Apartment" corresponds to the term "unit."

"Co-owner" corresponds to the term "unit owner."

"Council of co-owners" corresponds to the term "unit owners' association."

"Developer" corresponds to the term "declarant."

"General common elements" corresponds to the term "common elements."

"Horizontal property regime" and "condominium project" correspond to the term "condominium."

"Master deed" and "master lease" correspond to the term "declaration" and are included in the term "condominium instruments."

B. This chapter does not apply to condominiums located outside the Commonwealth. Sections 55.1-1971, 55.1-1974 through 55.1-1982, and 55.1-1985 through 55.1-1989 apply to all contracts for the disposition of condominium units signed in the Commonwealth by any person, unless exempt under § 55.1-1972.

C. Subsection B of § 55.1-1955 and § 55.1-1982 do not apply to the declarant of a conversion condominium if that declarant is a proprietary lessees' association that, immediately before the creation of the condominium, owned fee simple title to or a fee simple reversionary interest in the real estate described pursuant to subdivision A 3 of § 55.1-1916.

1974, c. 416, § 55-79.40; 1982, c. 545; 1989, c. 63; 2006, c. 646;2019, c. 712.

§ 55.1-1902. Variation by agreement

Except as expressly provided in this chapter, provisions of this chapter shall not be varied by agreement, and rights conferred by this chapter shall not be waived. A declarant shall not act under power of attorney or use any other device to evade the limitations or prohibitions of this chapter or of the condominium instruments.

1982, c. 545, § 55-79.41:1; 2019, c. 712.

§ 55.1-1903. Separate assessments, titles, and taxation

Except as otherwise provided in this section, each condominium unit constitutes a separate parcel of real estate. If there is any unit owner other than the declarant, each unit, together with its common element interest, but excluding its common element interest in convertible land and in any withdrawable land within which the declarant has the right to create units or limited common elements, shall be separately assessed and taxed. Each convertible land and withdrawable land within which the declarant has the right to create units or limited common elements shall be separately assessed and taxed against the declarant.

1974, c. 416, § 55-79.42; 1986, c. 324; 2019, c. 712.

§ 55.1-1904. Association charges

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55.1-1964, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55.1-2316. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349 and may issue a cease and desist order pursuant to § 54.1-2352.

2015, c. 277, § 55-79.42:1; 2019, c. 712;2020, c. 592;2023, cc. 387, 388.

§ 55.1-1905. Local ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations

A. No zoning or other land use ordinance shall prohibit condominiums solely on the basis of the form of ownership, nor shall any condominium be treated differently by any zoning or other land use ordinance that would permit a physically identical project or development under a different form of ownership. Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.

B. Subdivision and site plan ordinances in any locality shall apply to any condominium in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership; however, the declarant need not apply for or obtain subdivision approval to record condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

C. During development of a condominium containing additional land or withdrawable land, phase lines created by the condominium instruments shall not be considered property lines for purposes of subdivision. If the condominium can no longer be expanded by the addition of additional land, then the owner of the land not part of the condominium shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the condominium, the condominium and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided that such land is subject to an approved site plan.

D. During the period of declarant control and as long as the declarant has the right to create

additional units or to complete the common elements, the declarant has the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including related conditional zoning proffers and agreements that do not create an affirmative obligation on the unit owners' association without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the declarant is not the owner of the land.

In accordance with subsection B of § 55.1-1956, once the declarant no longer has such authority, the executive board of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including related conditional zoning proffers and agreements that do not create an affirmative obligation on the declarant without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and occupancy permits, the unit owner, including the declarant if the declarant is the unit owner, shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land.

E. Localities may provide by ordinance that the declarant of a proposed conversion condominium that does not conform to the zoning, land use, and site plan regulations of the respective locality in which the property is located shall secure a special use permit, a special exception, or a variance, as the case may be, prior to such property's becoming a conversion condominium. The local authority shall grant a request for such a special use permit, special exception, or variance filed on or after July 1, 1982, if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. The local authority shall not unreasonably delay action on any such request. In the event of an approved conversion to condominium ownership, a locality, sanitary district, or other political subdivision may impose such charges and fees as are lawfully imposed by such locality, sanitary district, or political subdivision as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the locality, sanitary district, or political subdivision as a result of the conversion.

F. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.) or any local ordinances regulating design and construction of roads, sewer and water lines, stormwater management facilities, and other public infrastructure to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

1974, c. 416, § 55-79.43; 1975, c. 415; 1982, c. 663; 1991, c. 497; 2006, cc. 9, 317;2019, c. 712.

§ 55.1-1906. Eminent domain

A. If any portion of the common elements is taken by eminent domain, the award for such taking shall be paid to the unit owners' association, provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the order to the unit owner of the unit to which that limited common element was so

assigned at the time of the taking. If that limited common element was permanently assigned to more than one unit at the time of the taking, then the portion of the award attributable to the taking of such limited common element shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element that cannot be reassigned or that can be reassigned only with the consent of the unit owner of the unit to which it is assigned in accordance with § 55.1-1919.

B. If one or more units are taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter an order reflecting the reallocation of undivided interests produced by such taking, and the award shall include just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

C. 1. If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced, in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking.

2. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements, with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with subdivision 1.

3. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested by operation of subdivision 1 and not revested by operation of subdivision 2, as well as for that portion of his unit taken by eminent domain.

D. If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the unit owner of such unit for his entire undivided interest in the common elements and for his entire unit.

E. Votes in the unit owners' association, rights to future common surpluses, and liabilities for future common expenses not specially assessed, appertaining to any unit taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, with any units partially taken participating in such reallocation as though their voting strength in the unit owners' association had been reduced in proportion to the reduction in their undivided interests in the common elements, and the order of the court shall provide accordingly.

F. The order of the court shall require the recordation of such order among the land records of the county or city in which the condominium is located.

1974, c. 416, § 55-79.44; 1975, c. 415; 1982, c. 545; 1998, c. 32;2019, c. 712;2020, c. 592.

§ 55.1-1907. How condominium may be created

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections A and B of § 55.1-1920.

1974, c. 416, § 55-79.45; 2019, c. 712.

§ 55.1-1908. Release of liens

A. At the time of the conveyance to the first purchaser of a condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens affecting all of the condominium or a greater portion of the condominium than the condominium unit conveyed shall be paid and satisfied of record, or the declarant shall forthwith have such condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as the period of declarant control specified in § 55.1-1943 has expired and so long as the bylaws authorize such action. This subsection does not apply to any lien on more than one condominium unit in a condominium in which all units are restricted to nonresidential use and in which all unit owners whose condominium units will be subject to such lien expressly agree to assume or take subject to such lien.

B. If any lien, other than a deed of trust or mortgage, becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove his condominium unit from that lien by payment of the amount attributable to his condominium unit. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to subsection D of § 55.1-1964. Subsequent to such payment, discharge, or other satisfaction, the unit owner of that condominium unit shall be entitled to have that lien released as to his condominium unit in accordance with the provisions of § 55.1-341, and the unit owners' association shall not assess, or have a valid lien against, that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 55.1-1964 and 55.1-1966.

1974, c. 416, § 55-79.46; 1985, c. 107; 1992, c. 72; 1993, c. 667; 2019, c. 712.

§ 55.1-1909. Description of condominium units

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm if it sets forth the identifying number of that unit, the name of the condominium, the name of the county or city in which the condominium is situated, and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such

unit even if such interest is not defined or referred to in the description.

1974, c. 416, § 55-79.47; 1975, c. 415; 2019, c. 712.

§ 55.1-1910. Execution of condominium instruments

The declaration and bylaws, and any amendments to either made pursuant to § 55.1-1934, shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. The phrase "owners and lessees" in this section and in § 55.1-1926 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, any person whose land is subject to an easement included in the condominium, or, in the case of a leasehold condominium subject to any lease executed before July 1, 1962, any lessor of the submitted land who is not a declarant.

1974, c. 416, § 55-79.48; 1980, c. 702; 1984, c. 21; 1990, c. 831; 2019, c. 712.

§ 55.1-1911. Recordation of condominium instruments

All condominium instruments and all amendments and certifications of such condominium instruments shall be recorded in every county and city in which any portion of the condominium is located. The condominium instruments, amendments, and certifications shall set forth the county or city in which the condominium is located, the name of the condominium, and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk.

1974, c. 416, § 55-79.49; 1975, c. 415; 1982, c. 545; 2019, c. 712;2020, c. 592.

§ 55.1-1912. Construction of condominium instruments

Except to the extent otherwise provided by the condominium instruments:

1. The terms defined in § 55.1-1900 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context requires a different meaning.

2. To the extent that walls, floors, or ceilings are designated as the boundaries of the units or of any specified units, all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces of such walls, floors, or ceilings are part of such units, while all other portions of such walls, floors, or ceilings are a part of the common elements.

3. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions serving only that unit are a part of that unit, while any portions serving more than one unit or any portion of the common elements are a part of the common elements.

4. Subject to the provisions of subdivision 3, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of that unit.

5. Any shutters, awnings, doors, windows, window boxes, doorsteps, porches, balconies, patios, or other apparatus designed to serve a single unit, but located outside the boundaries of such unit, are limited common elements appertaining to that unit exclusively, except that if a single

unit's electrical master switch is located outside the designated boundaries of the unit, the switch and its cover are a part of the common elements.

1974, c. 416, § 55-79.50; 1982, cc. 206, 545; 2019, c. 712.

§ 55.1-1913. Complementarity of condominium instruments; controlling construction

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the condominium instruments, the declaration shall control; but particular provisions shall control more general provisions, except that a construction consistent with the statute shall in all cases control over any inconsistent construction.

1974, c. 416, § 55-79.51; 1975, c. 415; 2019, c. 712.

§ 55.1-1914. Validity of condominium instruments; discrimination prohibited

A. All provisions of the condominium instruments shall be deemed severable, and any unlawful provision of such condominium instruments shall be void.

B. No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units other than such units as may be restricted to residential use only.

1974, c. 416, § 55-79.52; 1975, c. 415; 1998, cc. 32, 454;2019, c. 712.

§ 55.1-1915. Compliance with condominium instruments

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association or by its executive board or any managing agent on behalf of such association or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55.1-1956. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section does not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a unit owner for nonpayment of assessments in which the unit owner has failed to pay assessments levied by the unit owners' association on more than one unit or such unit owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association or its executive board or any managing agent on behalf of

the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent unit owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the unit owners' association, whether any judicial proceedings are filed.

C. The condominium instruments may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the condominium is located or as mutually agreed by the parties.

1974, c. 416, § 55-79.53; 1975, c. 415; 1993, c. 667; 1996, c. 977;2012, c. 758;2014, c. 569;2019, c. 712.

§ 55.1-1916. Contents of declaration

A. The declaration for every condominium shall contain the following:

1. The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium."

2. The name of the county or city in which the condominium is located.

3. A legal description by metes and bounds of the land submitted in accordance with this chapter.

4. A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries.

5. A description or delineation of any limited common elements, other than those that are limited common elements by virtue of subdivision 5 of § 55.1-1912, showing or designating the unit or units to which each is assigned.

6. A description or delineation of all common elements not within the boundaries of any convertible lands that may subsequently be assigned as limited common elements, together with a statement that (i) they may be so assigned and a description of the method by which any such assignments shall be made in accordance with the provisions of § 55.1-1919 or (ii) once assigned, the conditions under which they may be unassigned and converted to common elements in accordance with § 55.1-1919.

7. The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 55.1-1917.

8. A statement of the extent of the declarant's obligation to complete improvements labeled "NOT YET COMPLETED" or to begin and complete improvements labeled "NOT YET BEGUN" on plats recorded pursuant to the requirements of this chapter. Such statement shall be specific as to the type and quality of materials to be used, the size or capacity of the improvements when material, and the time by which such improvements shall be completed.

9. Such other matters as the declarant deems appropriate.

B. If the condominium contains any convertible land, the declaration shall also contain the following:

1. A legal description by metes and bounds of each convertible land within the condominium.

2. A statement of the maximum number of units that may be created within each such convertible land.

3. A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created in such convertible land that may be occupied by units not restricted exclusively to residential use. Such statement is not required if none of the units on other portions of the submitted land are restricted exclusively to residential use.

4. A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used, and architectural style.

5. A description of all other improvements that may be made on each convertible land within the condominium.

6. A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created in such convertible land.

7. A description of the declarant's reserved right, if any, to create limited common elements within any convertible land or to designate common elements in such convertible land that may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land.

Plats and plans may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 1, 4, 5, 6, and 7.

C. If the condominium is an expandable condominium, the declaration shall also contain the following:

1. The explicit reservation of an option to expand the condominium.

2. A statement of any limitations on that option, including a statement as to whether the consent of any unit owners shall be required, and, if so, a statement as to the method by which such consent shall be ascertained, or a statement that there are no such limitations.

3. A time limit, not exceeding 10 years after the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, that will terminate that option prior to the expiration of the time limit so specified. After the expiration of any period of declarant control reserved pursuant to subsection A of § 55.1-1943, such time limit may be extended by an amendment to the declaration made pursuant to § 55.1-1934.

4. A legal description by metes and bounds of all land that may be added to the condominium, henceforth referred to as "additional land."

5. A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added and, if not, a statement of any limitations as to what portions may be added, or a statement that there are no such limitations.

6. A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds of such portions or regulating the order in which they may be added to the condominium.

7. A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard.

8. A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with subdivision 6, the declaration shall also state the maximum number of units that may be created on each such portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with subdivision 6, then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium.

9. A statement, with respect to the additional land and to any portion of such additional land that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created on such additional land that may be occupied by units not restricted exclusively to residential use. Such statement is not required if none of the units on the submitted land are restricted exclusively to residential use.

10. A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards.

11. A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made on such additional land, or a statement that no assurances are made in that regard.

12. A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created on such additional land, or a statement that no assurances are made in that regard.

13. A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium or to designate common elements in such additional land that may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards.

Plats and plans may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 4, 5, 6, 7, 10, 11, 12, and 13.

D. If the condominium is a contractable condominium, the declaration shall also contain the following:

1. The explicit reservation of an option to contract the condominium.

2. A statement of any limitations on that option, including a statement as to whether the consent of any unit owners shall be required, and, if so, a statement as to the method whereby such consent shall be ascertained, or a statement that there are no such limitations.

3. A time limit, not exceeding 10 years after the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, that will terminate that option prior to the expiration of the time limit so specified.

4. A legal description by metes and bounds of all land that may be withdrawn from the condominium, hereinafter referred to as "withdrawable land."

5. A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds or regulating the order in which they may be withdrawn from the condominium.

6. A legal description by metes and bounds of all of the submitted land to which the option to contract the condominium does not extend. This subdivision shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 55.1-1937.

Plats may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 4, 5, and 6.

E. If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth the county or city in which such lease is recorded and the deed book and page number where the first page of each such lease is recorded, and the declaration shall also contain the following:

1. The date upon which each such lease is due to expire.

2. A statement as to whether any land or improvements will be owned by the unit owners in fee simple and, if so, either (i) a description of the same, including a legal description by metes and bounds of any such land, or (ii) a statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease involved, or a statement that they shall have no such rights.

3. A statement of the rights the unit owners shall have to redeem any reversion, or a statement that they shall have no such rights.

After the recording of the declaration, no lessor who executed such declaration, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person designated in the declaration for the receipt of such rent and who otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder does not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

F. Wherever this section requires a legal description by metes and bounds of land that is

submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient description of any easements that are submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, as appropriate. In the case of each such easement, the declaration shall contain the following:

1. A description of the permitted use or uses.

2. If less than all of those entitled to the use of all of the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization.

3. If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the easement.

G. Wherever this section requires a legal description by metes and bounds of land that is submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estate in such lands. No such lands shall be shown on the same plat or plats showing other portions of the condominium but shall be shown instead on separate plats.

1974, c. 416, § 55-79.54; 1975, c. 415; 1977, c. 428; 1982, c. 545; 1993, c. 667; 1998, c. 32;2012, c. 520;2019, c. 712.

§ 55.1-1917. Allocation of interests in the common elements

A. The declaration may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55.1-1920 an undivided interest in the common elements proportionate to either the size or par value of each unit. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit or any undivided interest in the common elements, voting rights in the unit owners' association, or liability for common expenses assigned on the basis of such par value.

B. If the basis for allocation provided in subsection A is not used, then the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

C. The undivided interests in the common elements allocated in accordance with subsection A or B shall add up to 1 if stated as fractions or 100 percent if stated as percentages.

D. If, in accordance with subsection A or B, an equal undivided interest in the common elements is allocated to each unit, the declaration may state that fact and need not express the fraction or percentage so allocated.

E. Unless an equal undivided interest in the common elements is allocated to each unit, the

undivided interest allocated to each unit in accordance with subsection A or B shall be reflected by a table in the declaration, or by an exhibit to the declaration, containing three columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated to such units.

F. Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains is void.

G. The common elements shall not be subject to any action for partition until and unless the condominium is terminated.

1974, c. 416, § 55-79.55; 2019, c. 712.

§ 55.1-1918. Reallocation of interests in common elements

A. If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

1. Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections A and B of § 55.1-1920;or

2. Prohibits the creation of any units not described pursuant to subdivision B 6 of § 55.1-1916, in the case of convertible lands, and subdivision C 12 of § 55.1-1916, in the case of additional land, and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

B. Interests in the common elements shall not be allocated to any units to be created within any convertible land or within any additional land until plats and plans depicting the same are recorded pursuant to subsection C of § 55.1-1920. But simultaneously with the recording of such plats and plans, the declarant shall execute and record an amendment to the declaration reallocating undivided interests in the common elements so that the units depicted on such plats and plans shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded simultaneously with the declaration pursuant to subsections A and B of § 55.1-1920.

C. If all of a convertible space is converted into common elements, including limited common elements, then the undivided interest in the common elements appertaining to such space shall then appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced by such conversion.

D. In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium that reduces the number of units, then the undivided interest in the common elements appertaining to any units withdrawn from the condominium shall then appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such

other officer as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced by such contraction.

1974, c. 416, § 55-79.56; 2019, c. 712.

§ 55.1-1919. Assignments of limited common elements; conversion to common element

A. All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected by such amendment as evidenced by their execution of such amendment, except to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common element.

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to a common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer as the condominium instruments may specify. The officer to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by the unit owners concerned and recorded by an officer of the unit owners' association or his agent following payment by the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned only pursuant to subdivision A 6 of § 55.1-1916. The amendment to the declaration making such an assignment shall be prepared and executed by the declarant, the principal officer of the unit owners' association, or by such other officer as the condominium instruments may specify. Such amendment shall be recorded by the declarant or his agent, without charge to any unit owner, or by an officer of the unit owners' association or his agent following payment by the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded, and the recordation of such amendment shall be conclusive evidence that the method prescribed pursuant to subdivision A 6 of § 55.1-1916 was adhered to. A copy of the amendment shall be delivered to the unit owners of the units concerned. If executed by the declarant, such an amendment recorded prior to July 1, 1983, shall not be invalid because it was not prepared by an officer of the unit owners' association.

D. If the declarant does not prepare and record an amendment to the declaration to effect the assignment of common elements as limited common elements in accordance with rights reserved in the condominium instruments, but has reflected an intention to make such assignments in deeds conveying units, then the principal officer of the unit owners' association may prepare,
execute, and record such an amendment at any time after the declarant ceases to be a unit owner.

E. The declarant may unilaterally record an amendment to the declaration converting a limited common element appurtenant to a unit owned by the declarant into a common element as long as the declarant continues to own the unit.

1974, c. 416, § 55-79.57; 1983, c. 230; 1991, c. 497; 1998, c. 32;2019, c. 712;2020, c. 592. §

55.1-1920. Contents of plats and plans

A. There shall be recorded simultaneously with the declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements that are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise subject to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there is more than one such land, the plats shall label each such land with one or more letters or numbers different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands and shall label each such land as a withdrawable land. The plats shall show the location and dimensions of any additional lands and shall label each such land as an additional land. If, with respect to any portion, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portion, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the plats shall label each such land with one or more letters or numbers different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion of such submitted land is subject and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "NOT YET BEGUN" and which, if any, have been begun but have not been substantially completed by the use of the phrase "NOT YET COMPLETED." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and compliance with the provisions of this subsection by a licensed land surveyor, and the surveyor shall certify in such document or on the face of the plat that all units or portions of such units depicted on such plat pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

B. Plans shall also be recorded with the declaration. Such plans shall show every structure that contains or constitutes all or part of any unit and that is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions of the submitted units so depicted shall bear their identifying numbers. In addition, each convertible

space so depicted shall be labeled as convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of such structures, subject to the following exception: In the case of any such unit that does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified on their face or in another recorded document as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer, or licensed land surveyor, and such architect, engineer, or land surveyor shall certify on the plans or in the recorded document that all units or portions of the submitted units depicted on such plans have been substantially completed.

C. When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record, with regard to any structures on the land being converted or added, either plats of survey conforming to the requirements of subsection A and plans conforming to the requirements of subsection B, or certifications conforming to the certification requirements of such subsections of plats and plans previously recorded pursuant to § 55.1-1922.

D. Notwithstanding the provisions of subsections A and B, a time-share interest in a unit that has been subjected to a time-share instrument pursuant to § 55.1-2208 may be conveyed prior to substantial completion of that unit if (i) a completion bond has been filed in compliance with subsection B of § 55.1-1921 and remains in full force and effect until the unit is certified as substantially complete in accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring the time-share estate in the unit certifies to the purchaser in writing, based on information provided by the Common Interest Community Board, that the bond has been filed with the Common Interest Community Board.

E. When converting all or any portion of any convertible space into one or more units or limited common elements, the declarant shall record, with regard to the structure or portion of such structure constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer, or licensed land surveyor.

F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall show the identifying number of the unit to which it is assigned, if it has been assigned, unless the provisions of subdivision 5 of § 55.1-1912 make such designations unnecessary.

1974, c. 416, § 55-79.58; 1975, c. 415; 1984, c. 601; 1991, c. 497; 1999, c. 560;2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1921. Bond to insure completion of improvements

A. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the

declarant's obligation as stated in the declaration, of all improvements to the common elements of the condominium labeled in the plat or plats as "NOT YET COMPLETED" or "NOT YET BEGUN" located upon submitted land and which the declarant reasonably believes will not be substantially complete at the time of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation to complete such improvements in strict conformity with the plans and specifications for the same as described in the declaration.

B. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share interest is conveyed before the unit has been certified as substantially complete in accordance with subsections A and B of § 55.1-1920. The bond required by this subsection shall be conditioned upon the faithful performance of the declarant's obligation to complete such improvements in strict conformity with the plans and specifications for the same as described in the declaration.

C. All bonds required in this section shall be executed by a surety company authorized to transact business in the Commonwealth or by such other surety as is satisfactory to the Board.

D. The Board may promulgate reasonable regulations that govern the return of bonds submitted in accordance with this section.

1977, c. 428, § 55-79.58:1; 1988, c. 15; 1999, c. 560;2008, cc. 851, 871;2019, c. 712.

§ 55.1-1922. Preliminary recordation of plats and plans

Plats and plans previously recorded pursuant to subsections A, B, and C of § 55.1-1916 may be used in lieu of new plats and plans to satisfy in whole or in part the requirements of subsection B of § 55.1-1918, subsection B of § 55.1-1924, or § 55.1-1926 if certifications of such plats and plans are recorded by the declarant in accordance with subsections A and B of § 55.1-1920;and if such certifications are recorded, the plats and plans that they certify shall be deemed recorded pursuant to subsection C of § 55.1-1920 within the meaning of §§ 55.1-1918, 55.1-1924, and 55.1-1926. All condominium instruments for condominiums created prior to July 1, 1991, are hereby validated notwithstanding that the plats were prerecorded as if in compliance with this section and not recorded with amendments converting convertible land or adding additional land if the plats or subsequent amendments contained the required certifications.

1974, c. 416, § 55-79.59; 1991, c. 497; 2019, c. 712.

§ 55.1-1923. Easement for encroachments

To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or employees, and not to relieve the declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

1974, c. 416, § 55-79.60; 2019, c. 712.

§ 55.1-1924. Conversion of convertible lands

A. The declarant may convert all or any portion of any convertible land into one or more units or limited common elements subject to any restrictions and limitations that the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B of this section and subsection C of § 55.1-1920.

B. Simultaneously with the recording of plats and plans pursuant to subsection C of § 55.1-1920, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with subsection B of § 55.1-1918. Such amendment shall describe or delineate any limited common elements formed out of the convertible land, showing or designating the unit to which each is assigned.

C. All convertible lands shall be deemed a part of the common elements except for such portions of such convertible lands as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, the declarant alone shall be liable for real estate taxes assessed against the convertible land and any improvements on such convertible land and all other expenses in connection with that real estate, and no other unit owner and no other portion of the condominium shall be subject to a claim for payment of those taxes or expenses, and, unless the declaration provides otherwise, any income or proceeds from the convertible land and any improvements on such convertible land shall inure to the declarant. No such conversion shall occur after 10 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

1974, c. 416, § 55-79.61; 1975, c. 415; 1986, c. 324; 1991, c. 497; 1993, c. 45; 2012, c. 520;2019, c. 712.

§ 55.1-1925. Conversion of convertible spaces

A. The declarant may convert all or any portion of any convertible space into one or more units or common elements, including limited common elements, subject to any restrictions and limitations that the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B and subsection E of § 55.1-1920.

B. Simultaneously with the recording of plats and plans pursuant to subsection E of § 55.1-1920, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate any limited common elements formed out of the convertible space, showing or designating the unit to which each is assigned.

C. If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare and execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with subsection D of § 55.1-1933.

D. Any convertible space not converted in accordance with the provisions of this section, or any portion of such convertible space not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such convertible space, or portion of such convertible space, as though the same were a unit.

1974, c. 416, § 55-79.62; 1999, c. 560;2019, c. 712.

§ 55.1-1926. Expansion of condominium

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to subsection C of § 55.1-1920, together with an amendment to the declaration, duly executed by the declarant, including all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legal description by metes and bounds of the land added to the condominium and shall reallocate undivided interests in the common elements in accordance with the provisions of subsection B of
§ 55.1-1918. Such amendment may create convertible or withdrawable lands or both within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to subdivision D 3 of § 55.1-1916 and subsection C of §

55.1-1924.
1974, c. 416, § 55-79.63; 1975, c. 415; 2019, c. 712.

§ 55.1-1927. Contraction of condominium

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to subdivision D 5 of § 55.1-1916, then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit.

1974, c. 416, § 55-79.64; 2019, c. 712.

§ 55.1-1928. Easement to facilitate conversion and expansion

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter and for the purpose of doing all things reasonably necessary and proper in connection with making such improvements.

1974, c. 416, § 55-79.65; 2019, c. 712.

§ 55.1-1929. Easement to facilitate sales

The declarant and his duly authorized agents, representatives, and employees may maintain sales offices or model units on the submitted land if and only if the condominium instruments provide for maintaining such sales offices or model units and specify the rights of the declarant with regard to the number, size, location, and relocation of such sales offices or model units. Any such sales office or model unit that is not designated a unit by the condominium.

Instructions shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard to such sales office or model unit unless it is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

1974, c. 416, § 55-79.66; 2019, c. 712.

§ 55.1-1930. Declarant's obligation to complete and restore

A. No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either shall be binding as to any portion of either lawfully withdrawn from the condominium or never added to the condominium, except to the extent that the condominium instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done on such land or with regard to such land, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the condominium or any portion of such condominium, this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

B. The declarant shall complete all improvements labeled "NOT YET COMPLETED" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation and shall, in the case of every improvement labeled "NOT YET BEGUN" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

C. To the extent that damage is inflicted on any part of the condominium by any person utilizing the easements reserved by the condominium instruments or created by §§ 55.1-1928 and 55.1-1929, the declarant together with any person causing the same shall be jointly and severally liable for the prompt repair of such damage and for the restoration of the same to a condition compatible with the remainder of the condominium.

1974, c. 416, § 55-79.67; 1975, c. 415; 2019, c. 712.

§ 55.1-1931. Alterations within units

A. Except to the extent prohibited, restricted, or limited by the condominium instruments, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. However, no unit owner shall do anything that would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

B. If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures in such unit, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § 55.1-1932.

1974, c. 416, § 55-79.68; 2019, c. 712.

§ 55.1-1932. Relocation of boundaries between units

A. If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful that the condominium instruments may specify. The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

B. If the unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners of such units, and the amendment shall contain conveyancing between those unit owners. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

D. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate number of votes in the unit owners' association allocated to those units, an amendment to the bylaws shall reflect that reallocation and a proportionate reallocation of liability for common expenses as between those units.

E. Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted on such plats and plans shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer, or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with this section have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the unit owners of the units involved of all reasonable costs for the preparation, acknowledgment, and recordation of such instruments. Such instruments are effective when executed by the unit owners of the units involved and recorded, and the recordation of such instruments is conclusive evidence that the relocation of boundaries so effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Any relocation of boundaries between adjoining units shall be governed by this section and not by § 55.1-1933. Section 55.1-1933 shall apply only to such subdivisions of units as are intended to result in the creation of two or more new units in place of the subdivided unit.

1974, c. 416, § 55-79.69; 1991, c. 497; 2019, c. 712.

§ 55.1-1933. Subdivision of units

A. If the condominium instruments expressly permit the subdivision of any units, then such units may be subdivided in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful that the condominium instruments may specify. No unit shall be subdivided unless the condominium instruments expressly permit it.

B. If the unit owner of any unit that may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall hereinafter be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common element assigned to the subdivided unit exclusively should be assigned to one or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

D. An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit and shall reflect a proportionate allocation to the new units of the liability for common expenses formerly appertaining to the subdivided unit.

E. Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted on such plats and plans shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries of such units, if any, shall be identified on such plats and plans with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer, or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with this section have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the subdivider of all reasonable costs for the preparation, acknowledgment, and recordation of such instruments. Such instruments are effective when executed by the subdivider and recorded, and the recordation of such instruments is conclusive evidence that the subdivision so effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Notwithstanding the definition of "unit" found in § 55.1-1900 and the provisions of subsection D of § 55.1-1925, this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any

units formed by the conversion of all or any portion of any such convertible space, and any such unit shall be deemed a unit for the purposes of this section.

1974, c. 416, § 55-79.70; 1991, c. 497; 2019, c. 712.

§ 55.1-1934. Amendment of condominium instruments

A. If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and an amendment signed by the declarant is effective upon recordation. This section shall not be construed to nullify, limit, or otherwise affect the validity of enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. If any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than one year after the amendment is recorded.

D. Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment, or ratifications of such amendment, and the same is effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer as the condominium instruments may specify, that the requisite majority of the unit owners signed the amendment or ratifications of such amendment.

E. Except to the extent expressly permitted or expressly required by other provisions of this chapter or agreed to by 100 percent of the unit owners, no amendment to the condominium instruments shall change (i) the boundaries of any unit, (ii) the undivided interest in the common elements, (iii) the liability for common expenses, or (iv) the number of votes in the unit owners' association that appertains to any unit.

F. Notwithstanding any other provision of this section, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to correct a mathematical mistake, an inconsistency, or a scrivener's error or clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact, including recalculating the undivided interest in the common elements, the liability for common expenses or the number of votes in the unit owners' association appertaining to a unit, within five years after the recordation of the condominium instrument containing or creating such mistake, inconsistency, error, or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. Regardless of the date of recordation of the condominium instruments, the principal officer of the unit owners' association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the executive

board. All corrective amendments and supplements recorded prior to July 1, 1986, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

1974, c. 416, § 55-79.71; 1993, c. 667; 2019, c. 712.

§ 55.1-1935. Use of technology

A. Unless expressly prohibited by the condominium instruments, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using electronic means.

B. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any condominium instrument or any provision of this chapter.

D. Voting, consent to, and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic means provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

E. Subject to other provisions of law, no action required or permitted by any condominium instrument or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive board.

F. Any meeting of the unit owners' association, the executive board, or any committee may be held entirely or partially by electronic means, provided that the executive board has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to do so. The executive board shall determine whether any such meeting may be held entirely or partially by electronic means.

G. If any person does not have the capability or desire to conduct business using electronic means, the unit owners' association shall make available a reasonable alternative, at its expense, for such person to conduct business with the unit owners' association without use of such electronic means.

H. This section shall not apply to any notice related to an enforcement action by the unit owners' association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

2010, c. 432, § 55-79.71:1; 2019, c. 712;2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1936. Merger or consolidation of condominiums; procedure

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or

consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.

B. An agreement to merge or consolidate two or more condominiums pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, provided that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

D. If the condominium instruments of a condominium to be merged or consolidated require a vote or consent of mortgagees in order to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before such merger or consolidation is effective. No merger or consolidation shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. A vote or consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1941.

2014, c. 659, § 55-79.71:2; 2019, c. 712. §

55.1-1937. Termination of condominium

A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. An instrument terminating a condominium signed by the declarant is effective upon recordation of such instrument. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. Except in the case of a taking of all the units by eminent domain, if any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium may be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in this subsection.

C. Agreement of the required majority of unit owners to termination of the condominium shall be evidenced by their execution of a termination agreement, or ratifications of such agreement, and

such agreement is effective when a copy of the termination agreement is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer as the condominium instruments may specify, that the requisite majority of the unit owners signed the termination agreement or ratifications. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association appertain. Any unit owner acquiring a unit subsequent to approval of a termination agreement but prior to recordation of the termination agreement shall be deemed to have consented to the termination agreement. Upon approval of a termination agreement and until recordation of the termination agreement, a copy of the termination agreement shall be included with the resale certificate required by § 55.1-2309. The termination agreement shall specify a date after which the termination agreement is void if the termination agreement is not recorded. For the purposes of this section, an instrument terminating a condominium and any ratification of such instrument shall be deemed a condominium instrument subject to the provisions of § 55.1-1911.

D. A termination agreement may provide that all of the common elements and units of the condominium shall be sold or otherwise disposed of following termination. If, pursuant to the termination agreement, any property in the condominium is sold or disposed of following termination, the termination agreement shall set forth the minimum terms of the sale or disposition.

E. In the case of a master condominium that contains a unit that is a part of another condominium, a termination agreement for the master condominium shall not terminate the other condominium.

F. On behalf of the unit owners, the unit owners' association may contract for the disposition of property in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections B and C. If the termination agreement requires that any property in the condominium be sold or otherwise disposed of following termination, title to the property, upon termination, shall vest in the unit owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale or disposition. Until the termination has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of the unit owners as provided in subsection I. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the property, each unit owner or his successor in interest shall have an exclusive right to occupancy of the portion of the property that formerly constituted his unit. During the period that the unit owner or his successor in interest has the right to occupancy, each unit owner or his successor in interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium instruments.

G. If the property that constitutes the condominium is not sold or otherwise disposed of following termination, title to all the property in the condominium shall vest in the unit owners, upon termination, as tenants in common in proportion to the unit owners' respective interests as provided in subsection I. In such an event, any liens on a unit shall shift accordingly, and a lien may be enforced only against a unit owner's tenancy in common interest, but the lien shall not

encumber the entire property formerly constituting the condominium. While the tenancy in common exists, each unit owner or his successor in interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of property, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lien holders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a lien on the units immediately before termination.

I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and H shall be as follows:

1. Except as provided in subdivision 3, the respective interests of the unit owners shall be as set forth in the termination agreement.

2. Except as provided in subdivision 3, if the respective interests of the unit owners are based on the respective fair market values of their units, limited common elements, and common element interests immediately before the termination, the fair market values shall be determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which one quarter of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and their common element interests.

3. If the method of determining the respective interests of the unit owners in the proceeds of sale or disposition is other than the fair market values, then the association shall provide each unit owner with a notice stating the result of that method for his unit and, no later than 30 days after transmission of that notice, if 10 percent of the unit owners dispute the interest to be distributed to their units, those unit owners may require the association to obtain an independent appraisal of the condominium units. If the fair market value of the units of the objecting unit owners is at least 10 percent more than the amount that the unit owners would have received using the method agreed upon by the membership, then the association shall adjust the respective interests of the unit owners so that each unit owner's share is based on the fair market value for each unit. If the fair market value is less than 10 percent more than the amount that the objecting unit owners would have received using the agreed-upon method, then the agreed-upon method shall be implemented and the objecting unit owners shall receive the distribution less their pro rata share of the cost of their appraisal.

4. If the method of determining the respective interests of the unit owners cannot be implemented because any unit or limited common element is destroyed, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

5. Unless the termination agreement provides otherwise, each unit owner shall satisfy and cause

the release of any mortgage, deed of trust, lease, or other lien or encumbrance on his unit at the time required by the termination agreement.

J. Except as provided in subsection K, foreclosure of any mortgage, deed of trust, or other lien, or enforcement of a mortgage, deed of trust, or other lien or encumbrance against the entire condominium, shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

K. If a lien or encumbrance against a portion of the property that comprises the condominium has priority over the condominium instruments and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the property subject to the lien or encumbrance from the condominium.

1993, c. 667, § 55-79.72:1; 2019, c. 712;2020, cc. 592, 817;2023, cc. 387, 388.

§ 55.1-1938. Rights of mortgagees

No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association.

1993, c. 667, § 55-79.72:2; 2019, c. 712.

§ 55.1-1939. Statement of unit owner rights

Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § 55.1-1945, including records of all financial transactions;

2. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's ownership interest, except to the extent that the condominium instruments provide otherwise;

3. The right to have notice of any meeting of the executive board, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § 55.1-1949;

4. The right to have (i) notice of any proceeding conducted by the executive board or other tribunal specified in the condominium instruments against the unit owner to enforce any rule or regulation of the unit owners' association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as provided in § 55.1-1959, and the right of due process in the conduct of that hearing; and

5. The right to serve on the executive board if duly elected and a member in good standing of the

unit owners' association, except to the extent that the condominium instruments provide otherwise.

The rights enumerated in this section shall be enforceable by any unit owner pursuant to the provisions of § 55.1-1915.

2015, c. 286, § 55-79.72:3; 2019, c. 712.

§ 55.1-1940. Bylaws to be recorded with declaration; contents; unit owners' association; executive board; amendment of bylaws

A. Bylaws providing for governance of the condominium by an association of all of the unit owners shall be recorded simultaneously with the declaration. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive board. If there is to be such a board, the bylaws shall specify the powers and responsibilities of the board and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive board shall be filled by a vote of a majority of the remaining members of the executive board at a meeting of the executive board, even though the members of the executive board present at such meeting may constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting of the unit owners' association at which time a successor shall be elected by a vote of the unit owners. The bylaws may delegate to such board, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection C of § 55.1-1915.

D. In any case where an amendment to the declaration is required by subsection B, C, or D of § 55.1-1918, the person required to execute such amendment shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § 55.1-1920 or shall abolish the votes appertaining to former units, as appropriate. The amendment to the bylaws shall also reallocate rights to future common surpluses, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the amendment.

1974, c. 416, § 55-79.73; 1978, c. 332; 1993, c. 667; 1998, c. 32;2012, c. 758;2019, c. 712;2020, c. 592.

§ 55.1-1940.1. Termination and duration of certain management contracts

A management contract that contains an automatic renewal provision may be terminated by the unit owners' association or the common interest community manager at any time without cause upon not less than 60 days' written notice.

2023, c. 109.

§ 55.1-1941. Amendment to condominium instruments; consent of mortgagee

A. If any provision in the condominium instruments requires the written consent of a mortgagee in order to amend the condominium instruments, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address supplied by such mortgagee in a written request to the unit owners' association to receive notice of proposed amendments to the condominium instruments and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise. If the mortgagee has not supplied an address to the unit owners' association, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise.

B. Any amendment adopted without the required consent of a mortgagee shall be voidable only by an institutional lender that was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the one-year statute of limitations set forth in subsection C of § 55.1-1934 beginning on the date of recordation of the amendment.

C. Subsection A shall not apply to amendments that alter the priority of the lien of the mortgagee or that materially impair or affect the unit as collateral or the right of the mortgagee to foreclose on a unit as collateral.

D. Where the condominium instruments are silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the condominium instruments does not specifically affect mortgagee rights.

1993, c. 1, § 55-79.73:1; 1998, c. 32;2007, c. 675;2019, c. 712;2020, c. 817.

§ 55.1-1942. Reformation of declaration; judicial procedure

A. A unit owners' association may petition the circuit court in the county or city in which the condominium or the greater part of the condominium is located to reform the condominium instruments where the unit owners' association, acting through its executive board, has attempted to amend the condominium instruments regarding ownership of legal title of the common elements or real property using provisions outlined in the condominium instruments to resolve (i) ambiguities or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners or (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common elements or real property to:

1. Reform, in whole or in part, any provision of the condominium instruments; and

2. Correct mistakes or any other error in the condominium instruments that may exist with

respect to the declaration for any other purpose.

C. A petition filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change in such instruments, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that:

1. The unit owners' association has made three good faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant joins in the petition of the unit owners' association;

4. A copy of the petition is sent to all unit owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

D. Any mortgagee of a condominium unit in the condominium shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1941.

2014, c. 659, § 55-79.73:2; 2019, c. 712.

§ 55.1-1943. Control of condominium by declarant

A. The condominium instruments may authorize the declarant, or a managing agent or some other person selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or its executive board, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive board. The declarant, managing agent, or other person selected by the declarant to so appoint and remove officers or the executive board or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive board shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or, if not so specified, within such period as defined in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed,

whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § 55.1-1978 and described pursuant to subdivision A 4, B 2, or C 8 of § 55.1-1916.

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium; three years in the case of a condominium other than an expandable condominium, containing any convertible land; or two years in the case of any other condominium. Such time period shall begin upon settlement of the first unit to be sold in any portion of the condominium.

Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant.

Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § 55.1-1949 a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive board and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § 55.1-1955 and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest.

C. If entered into any time prior to the expiration of the period of declarant control, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract, or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement entered into on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its executive board upon not less than 90 days' written notice to the other party given not later than 60 days after the expiration of the period of declarant control. Any such contract or agreement may be renewed for periods not in excess of two years; however, at the end of any two-year period the unit owners' association or its executive board may terminate any further renewals or extensions of such contract or agreement. The provisions of this subsection shall not apply to any lease referred to in § 55.1-1910 or subject to subsection E of § 55.1-1916.

D. If entered into at any time prior to the expiration of the period of declarant control, any contract, lease, or agreement, other than those subject to the provisions of subsection C, may be entered into by or on behalf of the unit owners' association, its executive board, or the unit

owners as a group, if such contract, lease, or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

E. This section does not apply to any contract, incidental to the disposition of a condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments requiring that the unit owners be parties to such contracts.

F. If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter requires action by the unit owners' association, its executive board, or any officer.

G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the governing body of the locality in which the condominium is located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency designated by the local governing body shall advise the principal elected officer of the condominium unit owners' association of any outstanding violations of applicable building codes or local ordinances or other deficiencies of record.

H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver to the president of the unit owners' association or his designated agent (i) all unit owners' association books and records held by or controlled by the declarant, including minute books and all rules, regulations, and amendments to such rules and regulations that may have been promulgated; (ii) an accurate and complete statement of receipts and expenditures prepared using the accrual method of accounting from the date of the recording of the condominium instruments to the end of the regular accounting period immediately succeeding the first annual meeting of the unit owners, not to exceed 60 days from the date of the election; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans, if available; (iv) all association insurance policies that are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any;

(vi) contracts in which the association is a contracting party, if any; (vii) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property; and (viii) an inventory and description of stormwater facilities located on the common elements or which otherwise serve the condominium and for which the unit owners' association has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements for maintenance thereof.

The requirement for delivery of stormwater facility information required by clause (viii) shall be deemed satisfied by delivery to the association of a final site plan or final construction drawing showing stormwater facilities as approved by a local government jurisdiction and applicable recorded easements, or agreements if any, containing requirements for the maintenance, repair, or replacement of the stormwater facilities.

If the unit owners' association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information required by clauses (i),

(ii), (iv), and (vi).

I. This section shall be strictly construed to protect the rights of the unit owners.

1974, c. 416, § 55-79.74; 1975, c. 415; 1978, c. 332; 1980, c. 738; 1984, c. 601; 1985, c. 83; 1996, c. 977;2008, cc. 851, 871;2013, c. 599;2019, cc. 712, 724.

§ 55.1-1944. Deposit of funds

All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the unit owners' association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual unit owners' association basis.

2007, cc. 696, 712, § 55-79.74:01; 2019, c. 712.

§ 55.1-1945. Books, minutes, and records; inspection

A. The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the executive board held pursuant to subsection C of § 55.1-1949;

8. Documentation, correspondence or management or executive board reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or

9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, not to exceed the reasonable costs of materials and labor, incurred to provide such copies. Charges may be imposed only in accordance with a cost schedule adopted by the executive board in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

1980, c. 738, § 55-79.74:1; 1985, c. 75; 1989, c. 57; 1990, c. 662; 1992, c. 72; 1994, c. 463;1999, c. 594;2000, cc. 906, 919;2001, c. 419;2011, cc. 334, 361, 605;2014, c. 207;2018, c. 663;2019, c. 712; 2020, c. 592.

§ 55.1-1946. Management office

Unless the condominium instruments expressly provide otherwise, the unit owners' association shall not be prohibited from maintaining a management office on common elements or in one or more units in the condominium.

1982, c. 545, § 55-79.74:2; 2019, c. 712.

§ 55.1-1947. Transfer of special declarant rights

A. For the purposes of this section, "affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries,

owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person is controlled by a declarant if the declarant (a) is a general partner, officer, director, or employer of the person; (b) directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

B. No special declarant right may be transferred except by a document evidencing the transfer recorded in every county and city in which any portion of the condominium is located. The instrument shall not be effective unless executed by the transferee.

C. Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

1. The transferor shall not be relieved of any obligation or liability arising before the transfer and shall remain liable for warranty obligations imposed upon him by subsection B of § 55.1-1955. Lack of privity shall not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

2. If the successor to any special declarant right is an affiliate of a declarant, the transferor shall also be jointly and severally liable with the successor for any obligation or liability of the successor that relates to the condominium.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall also be liable for all obligations and liabilities relating to the retained special declarant rights and imposed on a declarant by this chapter or by the condominium instruments.

4. A transferor shall have no liability for any breach of a contractual or warranty obligation or for any other act or omission, arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

D. Except as otherwise provided by the mortgage or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, tax sale, judicial sale, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of any unit owned by a declarant or land subject to development rights:

1. A person acquiring title to all the land being foreclosed or sold shall, but only upon his request, succeed to all special declarant rights related to that land reserved by that declarant, or only to any rights reserved in the declaration pursuant to § 55.1-1929 and held by that declarant to maintain sales offices, management offices, model units, or signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

For the purposes of this subsection, "development rights" means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert

convertible land, or convert convertible space.

E. Upon foreclosure, sale by a trustee under a deed of trust, tax sale, judicial sale, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of all units and other land in the condominium owned by a declarant, (i) that declarant ceases to have any special declarant rights and (ii) any period of declarant control reserved under subsection A of § 55.1-1943 shall terminate, unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

F. The liabilities and obligations of any person who succeed to any special declarant right shall be as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the condominium instruments.

2. A successor to any special declarant right, other than a successor described in subdivisions 3 and 4, who is not an affiliate of a declarant shall be subject to all obligations and liabilities imposed by this chapter or the condominium instruments on a declarant that relate to his exercise or nonexercise of special declarant rights, or on his transferor, except for (i) misrepresentations by any prior declarant, (ii) warranty obligations as provided in subsection B of § 55.1-1955 on improvements made by any previous declarant or made before the condominium was created, (iii) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board, or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. Unless he is an affiliate of a declarant, a successor to only a right reserved in the declaration to maintain sales offices, management offices, model units, or signs shall not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except the liabilities and obligations arising under Article 4 (§ 55.1-1970 et seq.) as to disposition by that successor.

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection D may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right reserved by his transferor pursuant to subsection A of § 55.1-1943. Any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he shall not be subject to any liability or obligation as a declarant other than liability for his acts and omissions relating to the exercise of rights reserved under subsection A of § 55.1-1943.

G. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the condominium instruments.

1982, c. 545, § 55-79.74:3; 1991, c. 497; 1996, c. 977;2006, c. 646;2019, c. 712.

§ 55.1-1948. Declarants not succeeding to special declarant rights

A declarant who does not succeed to any special declarant rights shall be liable only to the extent of his actions for claims and obligations arising under this chapter or the condominium instruments.

1993, c. 667, § 55-79.74:4; 2019, c. 712.

§ 55.1-1949. Meetings of unit owners' association and executive board

A. 1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

2. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units, unless the unit owner has provided to such officer or his agent an address other than the address of the unit, or notice may be hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

3. In lieu of delivering notice as specified in subdivision 2, such officer or his agent may send notice by electronic means if consented to by the unit owner to whom the notice is given, provided that the officer or his agent certifies in writing that notice was sent and, if such electronic mail was returned as undeliverable, notice was subsequently sent by United States mail.

B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

2. Notice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

A unit owner may make a request to be notified on a continual basis of any such meetings, which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or email in the case of meetings of the executive board or (ii) by email in the case of meetings of any subcommittee or other committee of the executive board or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the (i) executive board or any

subcommittee or other committee of such board or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

3. Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board.

4. Any unit owner may record any portion of a meeting required to be open. The executive board or subcommittee or other committee of the executive board conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

5. Voting by secret or written ballot in an open meeting is a violation of this chapter except for the election of officers.

C. The executive board or any subcommittee or other committee of the executive board may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation, and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant to such condominium instruments for which a unit owner, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the executive board or subcommittee or other committee of the executive board, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section do not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period during each meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

1974, c. 416, § 55-79.75; 1978, c. 363; 1989, c. 58; 1990, c. 662; 1992, c. 72; 2000, c. 906;2001, c. 715;2003, cc. 404, 405, 442;2005, c. 353;2007, c. 675;2013, c. 275;2019, c. 712;2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1950. Distribution of information by members

A. The executive board shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive board regarding any matter concerning the unit owners' association.

B. Except as otherwise provided in the condominium instruments, the executive board shall not

require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

2001, c. 715, § 55-79.75:1; 2003, c. 405;2019, c. 712.

§ 55.1-1951. Display of the flag of the United States; necessary supporting structures; affirmative defense

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), no unit owners' association shall prohibit or otherwise adopt or enforce any policy restricting a unit owner from displaying upon property to which the unit owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code (4
U.S.C. § 1 et seq.) or any rule or custom pertaining to the proper display of the flag. A unit owners' association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property, provided that such restrictions are necessary to protect a substantial interest of the unit owners' association.

B. The unit owners' association may restrict the display of such flags in the common elements.

C. In any action brought by the unit owners' association under § 55.1-1959 for a violation of a flag restriction, the unit owners' association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the unit owners' association.

D. In any action brought by the unit owners' association under § 55.1-1959, the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitation pertaining to the flag of the United States or any flagpole or similar structure necessary to display the flag of the United States was not contained in the public offering statement or resale certificate, as appropriate, required pursuant to § 55.1-1976 or 55.1-2309.

2007, cc. 854, 910, § 55-79.75:2; 2010, cc. 166, 453;2019, c. 712;2023, cc. 387, 388. §

55.1-1951.1. Installation of solar energy collection devices

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No unit owners' association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the unit owners' association establishes such a prohibition. However, a unit owners' association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-2309 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation

prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the unit owners' association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The unit owners' association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the unit owners' association. A unit owners' association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

2006, c. 939, §§ 67-700, 67-701; 2008, c. 881;2009, c. 866;2013, c. 357;2014, c. 525;2020, cc. 272, 795;2021, Sp. Sess. I, c. 387;2023, cc. 387, 388.

§ 55.1-1952. Meetings of unit owners' association and executive board; quorums

A. Unless the condominium instruments otherwise provide or as specified in subsection H of § 55.1-1953, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than one-third of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 10 percent.

B. Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive board if persons entitled to cast one-half of the votes in that body are present at the beginning of such meeting.

C. On petition of the unit owners' association or any unit owner entitled to vote, the circuit court of the county or city in which the condominium or the greater part of such condominium is located may order an annual meeting of the unit owners' association be held for the purpose of the election of members of the executive board, provided that:

1. No annual meeting as required by § 55.1-1949 has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments; and

2. The unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years, which attempts have proven unsuccessful due to the failure to obtain a quorum.

The court may set the quorum for the meeting and enter other orders necessary to convene the meeting.

A unit owner filing a petition under this subsection shall provide a copy of the petition to the executive board at least 10 business days prior to filing.

1974, c. 416, § 55-79.76; 2003, c. 413;2015, cc. 214, 430;2019, c. 712;2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1953. Meetings of unit owners' association and executive board; voting by unit owners; proxies

A. The bylaws may may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55.1-1920 a number of votes in the unit owners' association proportionate to the undivided interest in the common elements appertaining to each such unit.

B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit

owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

C. Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. If more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. For purposes of this subsection, "person" is deemed to include any natural person having authority to execute deeds on behalf of any person, excluding natural persons, that is, either alone or in conjunction with another person, a unit owner.

D. The votes appertaining to any unit may be cast pursuant to a proxy duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such unit owners. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Except to the extent otherwise provided in the condominium instruments, any proxy is void if it is not dated, or if it purports to be revocable without the required notice. Any proxy shall be void if not signed by or on behalf of the unit owner. If the unit owner is more than one person, any such unit owner may object to the proxy at or prior to the meeting, whereupon the proxy shall be deemed revoked. Any proxy shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed.

E. Unless expressly prohibited by the condominium instruments, a unit owner may vote at a meeting of the unit owners' association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the executive board has adopted guidelines for such voting by electronic means. Unit owners voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

F. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

G. All votes appertaining to units owned by the unit owners' association shall be deemed present for quorum purposes at all duly called meetings of the unit owners' association and shall be deemed cast in the same proportions as the votes cast by unit owners other than the unit owners' association.

H. Except to the extent that the condominium instruments provide otherwise, the voting interest allocated to the unit or member that has been suspended by the unit owners' association or the executive board pursuant to the condominium instruments shall not be counted in the total number of voting interests used to determine the quorum for any meeting or vote under the condominium instruments.

1974, c. 416, § 55-79.77; 1980, c. 108; 1991, c. 497; 1993, c. 667; 1998, c. 32;2003, c. 442;2015, c. 214;2019, cc. 367, 712;2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1954. Officers

A. If the condominium instruments provide that any officer must be a unit owner, then any such officer who disposes of all of his units in fee shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy effective on or before the termination of his right of occupancy under such disposition.

B. If the condominium instruments provide that any officer must be a unit owner, then notwithstanding the provisions of subdivision 1 of § 55.1-1912, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person that is, either alone or in conjunction with another person, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection A were it a natural person holding such office.

1974, c. 416, § 55-79.78; 1991, c. 497; 2002, c. 520;2019, c. 712.

§ 55.1-1955. Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements and (ii) to the individual unit owner in the case of any unit or any part of such unit, except to the extent that the need for repairs, renovation, restoration, or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. To the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the damage, shall be liable for the prompt repair of such damage.

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee against structural defects each of the units for two years from the date each is conveyed and all of the common elements for two years. For each unit, the declarant shall also warrant that the unit is fit for habitation in the case of a residential unit and constructed in a workmanlike manner so as to pass without objection in the trade. The two-year warranty as to each of the common elements begins whenever that common element has been completed or, if later, (i) as to any common element within any additional land or portion of the additional land, at the time the first unit in that additional land is conveyed; (ii) as to any common element within any convertible land or portion of the convertible land, at the time the first unit in the

convertible land is conveyed; and (iii) as to any common element within any other portion of the condominium, at the time the first unit in that portion is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element that reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and that require repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. An action for breach of any warranty prescribed by this section shall begin within (i) five years after the date such warranty period began or (ii) one year after the formation of any warranty review committee pursuant to subsection B of § 55.1-1943, whichever occurs last. However, no such action shall be maintained against the declarant unless a written statement by the claimant, or his agent, attorney, or representative, of the nature of the alleged defect has been sent to the declarant by registered or certified mail at his last known address, as reflected in the records of the Common Interest Community Board, more than six months prior to the beginning of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time, not to exceed five months. Sending the notice required by this subsection shall toll the statute of limitations for beginning a breach of warranty action for a period not to exceed six months.

D. If the initial period of declarant control has been extended in accordance with subsection B of § 55.1-1943, the warranty review committee, referred to in this section as "the committee," shall have (i) subject to the provisions of subdivision 3, the irrevocable power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name of the unit owners' association any claims involving the declarant's warranty against structural defects with respect to all of the common elements and (ii) the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements pursuant to § 55.1-1964 if the committee determines that the assessments levied by the unit owners' association are insufficient to enable the committee reasonably to perform its functions pursuant to this subsection. The committee or the declarant shall notify the governing body of the locality in which the condominium is located of the formation of the committee within 30 days of its formation. Within 30 days after such notice, the local governing body or an agency designated by the local governing body shall advise the chair of the committee of any outstanding violations of applicable building codes, local ordinances, or other deficiencies of record. Members of the committee shall be insured, indemnified, and subject to liability to the same extent as officers or directors under the condominium instruments or applicable law. The unit owners' association shall provide sufficient funds reasonably necessary for the committee to perform the functions set out in this subsection and to:

1. Engage an independent architect, engineer, legal counsel, and such other experts as the committee may reasonably determine;

2. Investigate whether there exists any breach of the warranty as to any of the common elements. The committee shall document its findings and the evidence that supports such findings. Such findings and evidence shall be confidential and shall not be disclosed to the declarant without the consent of the committee; and

3. Assert or settle in the name of the unit owners' association any claims involving the declarant's

warranty on the common elements, provided that (i) the committee sends the declarant at least six months prior to the expiration of the statute of limitations a written statement pursuant to subsection C of the alleged nature of any defect in the common elements giving the declarant an opportunity to cure the alleged defect; (ii) the declarant fails to cure the alleged defect within a reasonable time; and (iii) the declarant control period or the statute of limitations has not expired.

E. Within 45 days after the formation of the committee, the declarant shall deliver to the chair of the committee (i) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (ii) all association insurance policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

1974, c. 416, § 55-79.79; 1975, c. 415; 1980, c. 386; 1982, c. 545; 1984, c. 347; 1987, c. 395; 2006, c. 646;2008, cc. 851, 871;2013, c. 599;2019, c. 712.

§ 55.1-1956. Control of common elements

A. Except to the extent prohibited, restricted, or limited by the condominium instruments, the unit owners' association shall have the power to:

1. Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the association arising under § 55.1-1955;

2. Make or cause to be made additional improvements on and as a part of the common elements;

3. Grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit that would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval; and

4. Acquire, hold, convey, and encumber title to real property, including condominium units, whether or not the association is incorporated.

B. Except to the extent prohibited, restricted, or limited by the condominium instruments, the executive board of the unit owners' association, if any, and if not, then the unit owners' association itself, has the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, including the right, in the name of the unit owners' association, to (i) grant easements through the common elements and accept easements benefiting all or any portion of the condominium; (ii) assert, through litigation or otherwise, defend against, compromise, adjust, and settle any claims or actions related to common elements, other than claims against or actions involving the declarant during any period of declarant control reserved pursuant to subsection A of § 55.1-1943;and (iii) apply for any governmental approvals under state and local law.

C. This section shall not be construed to prohibit the grant by the condominium instruments of other powers and responsibilities to the unit owners' association or its executive board.

1974, c. 416, § 55-79.80; 1975, c. 415; 1981, c. 146; 1982, c. 195; 1991, c. 497; 1993, c. 667; 1996,

c. 977;2019, c. 712.

§ 55.1-1957. Common elements; notice of pesticide application

The unit owners' association shall post notice of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least 48 hours prior to the application.

1999, c. 65, § 55-79.80:01; 2019, c. 712.

§ 55.1-1958. Tort and contract liability; judgment lien

A. An action for tort alleging a wrong done (i) by any agent or employee of the declarant or of the unit owners' association or (ii) in connection with the condition of any portion of the condominium that the declarant or the association has the responsibility to maintain shall be brought against the declarant or the association, as appropriate. No unit owner shall be precluded from bringing such an action by virtue of his ownership of an undivided interest in the common elements or by reason of his membership in the association or his status as an officer.

B. Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by § 55.1-1928 or 55.1-1929.

C. An action arising from a contract made by or on behalf of the unit owners' association or its executive board or the unit owners as a group shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to subsection A of § 55.1-1943. No unit owner shall be precluded from bringing such an action by reason of his membership in the association or his status as an officer.

D. A judgment for money against the unit owners' association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to subsection D of § 55.1-1964, but not against any other property of any unit owner. A unit owner who pays a percentage of the total amount due under such judgment equal to such unit owner's liability for common expenses fixed pursuant to subsection D of § 55.1-1964 shall be entitled to a release of any such judgment lien, and the association shall not be entitled to assess the unit for payment of the remaining amount due. Such judgment shall be otherwise subject to the provisions of § 8.01-458.

1975, c. 415, § 55-79.80:1; 1991, c. 497; 1992, c. 72; 1996, c. 977;2019, c. 712.

§ 55.1-1959. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules and regulations

A. Except as otherwise provided in this chapter, the executive board shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common elements and with respect to such other areas of responsibility assigned to the unit owners' association by the condominium instruments, except where expressly reserved by the condominium instruments to the unit owners. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed to the unit owners. At a special meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments, a majority of the votes cast at such meeting may repeal or amend any rule or regulation adopted by the executive board. Rules and regulations may be enforced by any method authorized by this

chapter.

B. The unit owners' association shall have the power, to the extent the condominium instruments or the condominium's rules and regulations expressly provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments that are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension does not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55.1-1949. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive board or such other tribunal as the condominium instruments or its adopted rules and regulations specify.

Notice of such hearing, including the actions that may be taken by the unit owners' association in accordance with this section, shall, at least 14 days in advance, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55.1-1949. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55.1-1949.

D. The amount of any charges assessed shall not exceed $50 for a single offense, or $10 per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § 55.1-1966. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The unit owners' association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium instruments or the condominium's adopted rules and regulations.

F. After the date an action is filed in the general district or circuit court by (i) the unit owners' association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

If the court rules in favor of the unit owners' association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the unit owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

In any action filed in general district court pursuant to this section, the court may enter default judgment against the unit owner on the sworn affidavit of the unit owners' association.

G. This section shall not be construed to prohibit the grant by the condominium instruments of other powers and responsibilities to the unit owners' association or its executive board.

1993, c. 667, § 55-79.80:2; 1997, cc. 173, 417;2000, cc. 846, 906;2002, c. 509;2011, cc. 372, 378; 2014, c. 784;2019, c. 712;2021, Sp. Sess. I, c. 131.

§ 55.1-1960. Limitation of occupancy of a unit

To the extent expressly provided in the condominium instruments, the unit owners' association may limit the number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable and shall comply with the provisions of applicable law, including the Virginia Fair Housing Law (§ 36-96.1 et seq.), the Uniform Statewide Building Code (§ 36-97 et seq.), and local ordinances.

1996, c. 888, § 55-79.80:3; 1998, c. 454;2019, c. 712.

§ 55.1-1960.1. Limitation of smoking in condominium

Except to the extent that the condominium instruments provide otherwise, the executive board may establish reasonable rules that restrict smoking in the condominium, including rules that prohibit smoking in the common elements and within units. Rules adopted pursuant to this section may be enforced in accordance with § 55.1-1959.

2021, Sp. Sess. I, c. 131.

§ 55.1-1961. Use of for sale sign in connection with resale

Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a real estate sign that does not comply with the requirements of the Real Estate Board. A unit owners' association may, however, prohibit the placement of signs in the common elements and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed.

1974, c. 416, § 55-79.97; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. 172;1997, c. 222;1998, cc. 32, 454, 463;1999, c. 263;2001, c. 556;2002, cc. 459, 509;2005, c. 415;2007, cc. 696, 712, 854, 910;2008, cc. 851, 871;2011, c. 334;2013, cc. 357 , 492;2014, c. 216;2015, c. 277;2016, c. 471;2017, cc. 393, 406;2018, c. 70;2019, c. 712.

§ 55.1-1962. Designation of authorized representative

Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization that includes the designated representative's name, contact information, and license number and the unit owner's signature. Notwithstanding the foregoing, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

1974, c. 416, § 55-79.97; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. 172;1997, c. 222;1998, cc. 32, 454, 463;1999, c. 263;2001, c. 556;2002, cc. 459, 509;2005, c. 415;2007, cc. 696, 712, 854, 910;2008, cc. 851, 871;2011, c. 334;2013, cc. 357 , 492;2014, c. 216;2015, c. 277;2016, c. 471;2017, cc. 393, 406;2018, c. 70;2019, c. 712;2022, cc. 65 , 66.

§ 55.1-1962.1. Electric vehicle charging stations permitted

A. Except to the extent that the condominium instruments provide otherwise, no unit owners' association shall prohibit any unit owner from installing an electric vehicle charging station for the unit owner's personal use within the boundaries of a unit or limited common element parking space appurtenant to the unit owned by the unit owner.

B. Notwithstanding any other provision of this chapter or the condominium instruments, the unit owners' association may prohibit a unit owner from installing an electric vehicle charging station if installation of the electric vehicle charging station is not technically feasible or reasonably practicable due to safety risks, structural issues, or engineering conditions.

C. The unit owners' association may require as a condition of approving installation of an electric vehicle charging station that the unit owner:

1. Provide detailed plans and drawings for installation of an electric vehicle charging station prepared by a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station.

2. Comply with applicable building codes or recognized safety standards.

3. Comply with reasonable architectural standards adopted by the unit owners' association that govern the dimensions, placement, or external appearance of the electric vehicle charging station.

4. Pay the costs of installation, maintenance, operation, and use of the electric vehicle charging station.

5. Indemnify and hold the unit owners' association harmless from any claim made by a contractor or supplier pursuant to Title 43.

6. Pay the cost of removal of the electric vehicle charging station and restoration of the area if the unit owner decides there is no longer a need for the electric vehicle charging station.

7. Separately meter, at the unit owner's sole expense, the utilities associated with such electric vehicle charging station and pay the cost of electricity and other associated utilities.

8. Engage the services of a licensed electrician or engineer familiar with the installation and core requirements of an electric vehicle charging station to install the electric vehicle charging station.

9. Obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, and use of the electric vehicle charging station and provide a certificate of insurance naming the unit owners' association as an additional insured on the unit owner's insurance policy for any claim related to the installation, maintenance, operation, or use of the electric vehicle charging station within 14 days after receiving the unit owners' association's approval to install such charging station.

10. Reimburse the unit owners' association for any increase in common expenses specifically attributable to the electric vehicle charging station installation, including the actual cost of any increased insurance premium amount, within 14 days' notice from the unit owners' association.

D. The conditions imposed pursuant to this section on unit owners for installation of an electric vehicle charging station shall run with title to the unit to which the limited common element parking space is appurtenant.

E. Any unit owner installing an electric vehicle charging station in a unit or on a limited common element parking space appurtenant to the unit owned by the unit owner shall indemnify and hold the unit owners' association harmless from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of the installation, maintenance, operation, or use of such electric charging station. A unit owners' association may require the unit owner to obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, or use of the electric vehicle charging station and require the unit owners' association to be included as a named insured on such policy.

2020, c. 1012.

§ 55.1-1963. Insurance

A. The condominium instruments may require the unit owners' association, or the executive board or managing agent on behalf of such association, to obtain:

1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements;

2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive board, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium; and

3. Such other policies as may be required by the condominium instruments, including workers' compensation insurance, liability insurance on motor vehicles owned by the unit owners' association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

B. Any unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the unit owners' association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the unit owners' association, or committed by any common interest community manager or employees of the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $1 million or the amount of reserve balances of the unit owners' association plus one-fourth of the aggregate annual assessment of such unit owners' association. The minimum coverage amount shall be$10,000. The executive board or common interest community manager may obtain such bond or insurance on behalf of the unit owners' association.

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of such obtainment and of any subsequent changes in or termination

of the policy shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § 55.1-1949.

1974, c. 416, § 55-79.81; 2000, c. 906;2003, c. 360;2004, c. 281;2007, cc. 696, 712;2008, cc. 851, 871;2019, c. 712.

§ 55.1-1964. Liability for common expenses; late fees

A. Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

B. To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against any condominium unit involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases. The executive board may impose reasonable user fees.

C. To the extent that the condominium instruments expressly so provide, (i) any common expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the unit owners shall be assessed equally against the condominium units involved and (ii) any common expenses paid or incurred in providing metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § 55.1-1953, those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

E. Except to the extent otherwise provided in the condominium instruments, if the executive board determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive board may levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive board shall give written notice to the unit owners stating the amount of, the reasons for, and the due date for payment of any additional assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

All unit owners shall be obligated to pay the additional assessment unless the unit owners by a majority of votes cast, in person or by proxy, at a meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments within 60 days of the delivery or mailing of the notice required by this subsection, rescind or reduce the additional assessment. No director or officer of the unit owners' association shall be liable for failure to perform his fiduciary duty if an additional assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the unit owners' association in accordance with this subsection. The unit owners' association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty due to the assessment for the necessary funds rescinded by the unit owners' association in accordance with this subsection.

F. Neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner.

G. All condominium instruments for condominiums created prior to January 1, 1981, are hereby validated notwithstanding noncompliance with the first sentence of subsection D if they provide instead that the amount of all common expenses not specially assessed pursuant to subsection A, B, or C shall be assessed against the condominium units in proportion to their respective undivided interests in the common elements.

H. Except to the extent that the condominium instruments or the association's rules or regulations provide otherwise, an executive board may impose a late fee, not to exceed the penalty provided for in § 58.1-3915, for any assessment or installment that is not paid within 60 days of the due date for payment of such assessment or installment.

1974, c. 416, § 55-79.83; 1977, c. 428; 1981, c. 180; 1984, cc. 27, 84, 601; 1992, c. 72; 1993, c. 667; 2003, c. 421;2013, c. 256;2014, c. 239;2019, c. 712.

§ 55.1-1965. Annual budget; reserves for capital components

A. Except to the extent provided in the condominium instruments, the executive board shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments, the executive board shall:

1. Conduct a study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1900 ;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1900;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of

accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-79.83:1; 2019, cc. 33, 44, 712.

§ 55.1-1966. Lien for assessments

A. The unit owners' association shall have a lien on each condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of such lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. In order to perfect the lien given by this section, the unit owners' association shall file a memorandum verified by the oath of the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, before the expiration of 90 days from the time the first such assessment became due and payable. The memorandum shall be filed in the clerk's office of the circuit court in the county or city in which such condominium is situated. The memorandum shall contain the following:

1. A description of the condominium unit in accordance with the provisions of § 55.1-1909.

2. The name or names of the persons constituting the unit owners of that condominium unit.

3. The amount of unpaid assessments currently due or past due together with the date when each fell due.

4. The date of issuance of the memorandum.

The clerk in whose office such memorandum is filed shall record and index the memorandum as provided in subsection B, in the names of the persons identified in such memorandum as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment enforcing such lien.

D. No action to enforce any lien perfected under subsection C shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such

lien in any action in which such petition may be properly filed shall be regarded as the institution of an action under this section. Nothing in this subsection shall extend the time within which any such lien may be perfected.

E. The judgment in an action brought pursuant to this section shall include reimbursement for costs and attorney fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, such lien shall be released in accordance with the provisions of § 55.1-339. Any lien that is not so released shall subject the lien creditor to the penalty set forth in subdivision B 1 of § 55.1-339. For the purposes of that section, the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55.1-1915.

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of such condominium unit, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a fee not exceeding$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

I. At any time after perfecting the lien pursuant to this section, the unit owners' association may sell the unit at public sale, subject to prior liens. For purposes of this section, the unit owners' association shall have the power both to sell and convey the unit and shall be deemed the unit owner's statutory agent for the purpose of transferring title to the unit. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The unit owners' association shall give notice to the unit owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the unit owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the unit. The notice shall further inform the unit owner of the right to bring a court action in the circuit court of the county or city where the condominium is located to assert the nonexistence of a debt or any other defense of the unit owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the unit owners' association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the condominium is located. The clerk in whose office such appointment is filed shall record and index the

appointment as provided in subsection C, in the names of the persons identified therein as well as in the name of the unit owners' association. The unit owners' association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the unit owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the unit. Those conditions are that the unit owner (a) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees.

4. In addition to the advertisement required by subdivision 5, the unit owners' association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, and shall include the name, address, and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the condominium unit to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the condominium unit secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the locality in which the condominium unit to be sold, or any portion of such unit, is located pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the condominium unit or some portion of such unit is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the condominium unit to be sold, which description need not be as extensive as that contained in the deed of trust but shall identify the condominium unit by street address, if any, or, if none, shall give the general location of the condominium unit with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the unit owners' association. The advertisement shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b, the unit owners' association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of a sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the condominium unit voidable by the court.

8. In the event of a sale, the unit owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell, or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 of this subsection and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the unit owners' association or its agent or attorney.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the condominium unit is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in connection with that sale.

c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns, provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the unit owner's equity, without actual notice of such encumbrance prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with special warranty of title. The trustee shall not be required to take possession of the condominium unit prior to the sale or to deliver possession of the unit to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309, and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55.1-1945 upon the written request of the prior unit owner, current unit owner, or any holder of a recorded lien against the unit at the time of the sale. The unit owners' association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a unit is made pursuant to this subsection and the accounting is made by the

trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is filed in the Court of Appeals or granted by the Supreme Court and an order is entered requiring such sale to be set aside.

1974, c. 416, § 55-79.84; 1975, c. 415; 1991, c. 497; 1992, c. 72; 1997, cc. 760, 766;2000, c. 906; 2004, cc. 778, 779, 786;2019, c. 712;2021, Sp. Sess. I, c. 489.

§ 55.1-1967. Notice of sale under deed of trust

In accordance with the provisions of § 15.2-979, the unit owners' association shall be given notice whenever a condominium unit becomes subject to a sale under a deed of trust. Upon receipt of such notice, the executive board, on behalf of the unit owners' association, shall exercise whatever due diligence it deems necessary with respect to the unit subject to a sale under a deed of trust to protect the interests of the unit owners' association.

2015, cc. 93, 410, § 55-79.84:01; 2019, c. 712.

§ 55.1-1968. Bond to be posted by declarant

A. The declarant of a condominium containing units that are required by this chapter to be registered with the Common Interest Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to $1,000 per unit, except that such sum shall not be less than $10,000, nor more than $100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than 10 percent of the units in the condominium or, if the declarant owns less than 10 percent of the units in the condominium, until the declarant is current in the payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided that such declarant is current in the payment of assessments.

B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth or by such other surety as is satisfactory to the Board, and such bond shall be conditioned upon the payment of all assessments levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

The Board may promulgate reasonable regulations that govern the return of bonds submitted in accordance with this section.

1977, c. 428, § 55-79.84:1; 1981, c. 480; 1984, c. 601; 1985, c. 107; 1988, c. 15; 1993, cc. 667, 900; 2008, cc. 851, 871;2019, c. 712.

§ 55.1-1969. Restraints on alienation

If the condominium instruments create any rights of first refusal or other restraints on free alienability of the condominium units, such rights and restraints are void unless the condominium instruments make provision for promptly furnishing to any unit owner or purchaser requesting such rights and restraints a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments make all such rights and restraints inapplicable to any disposition of a condominium unit in

contemplation of which such statement was requested. Any such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a fee not exceeding $25 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

1974, c. 416, § 55-79.85; 2019, c. 712.

§ 55.1-1970. Common Interest Community Board

This chapter shall be administered by the Common Interest Community Board.

1974, c. 416, § 55-79.86; 2008, cc. 851, 871;2019, c. 712.

§ 55.1-1971. General powers and duties of the Common Interest Community Board

A. The Common Interest Community Board shall prescribe reasonable regulations, which shall be adopted, amended, or repealed in compliance with law applicable to the administrative procedure of agencies of government. The regulations shall include provisions for advertising standards to assure full and fair disclosure, provisions for operating procedures, and other regulations as are necessary and proper to accomplish the purpose of this chapter.

B. The Common Interest Community Board by regulation or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to condominiums prior to its distribution.

C. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or Common Interest Community Board regulation or order, the Common Interest Community Board, with or without prior administrative proceedings, may bring an action in the circuit court of the county or city in which any portion of the condominium is located to enjoin the acts or practices and to enforce compliance with this chapter or any Common Interest Community Board regulation or order. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Common Interest Community Board is not required to post a bond in any court proceedings or prove that no other adequate remedy at law exists.

D. With respect to any lawful process served upon the Common Interest Community Board pursuant to the appointment made in accordance with subdivision A 1 of § 55.1-1975, the Common Interest Community Board shall forthwith cause the same to be sent by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in such application or the most recent annual report.

E. The Common Interest Community Board may intervene in any action involving the declarant. In any action by or against a declarant involving a condominium, the declarant shall promptly furnish the Common Interest Community Board notice of the action and copies of all pleadings.

F. The Common Interest Community Board may:

1. Accept registrations filed in other states or with the federal government;

2. Contract with similar agencies in the Commonwealth or other jurisdictions to perform investigative functions; and

3. Accept grants in aid from any governmental source.

G. The Common Interest Community Board shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, regulations, and common administrative practices.

1974, c. 416, § 55-79.98; 1981, c. 480; 2011, c. 605;2019, c. 712.

§ 55.1-1972. Exemptions from certain provisions of article

A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 55.1-1974 through 55.1-1979, subsections B and D of § 55.1-1982, and §§ 55.1-2308 and 55.1-2309 do not apply to:

1. Dispositions pursuant to court order;

2. Dispositions by any government or government agency;

3. Offers by the declarant on nonbinding reservation agreements;

4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units; or

5. A disposition of a unit by a sale at an auction where a current public offering statement or resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of §§ 55.1-1974 through 55.1-1983 shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

1974, c. 416, § 55-79.87; 1975, c. 415; 1984, c. 427; 1993, c. 667; 2007, c. 266;2012, c. 325;2015, c. 277;2019, c. 712;2023, cc. 387, 388.

§ 55.1-1973. Rental of units

A. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall:

1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § 55.1-1904;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of $50 during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55.1-1904;

4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit owners' association;

5. Charge any deposit from the unit owner or the tenant of the unit owner;

6. Have the authority to evict a tenant of any unit owner or to require any unit owner to execute a power of attorney authorizing the unit owners' association to so evict; or

7. Refuse to recognize a person designated by the unit owner as the unit owner's authorized representative under the provisions of § 55.1-1962. Notwithstanding any other provision of this subdivision, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

B. The unit owners' association may require the unit owner to provide the unit owners' association with the names and contact information of the tenants and authorized occupants under such lease and of any authorized agent of the unit owner and vehicle information for such tenants or authorized occupants. The unit owners' association may require the unit owner to provide the unit owners' association with the tenant's acknowledgment of and consent to any rules and regulations of the unit owners' association.

C. The provisions of this section shall not apply to units owned by the unit owners' association.

2015, c. 277, § 55-79.87:1; 2016, c. 471;2019, c. 712;2022, cc. 65, 66.

§ 55.1-1974. Limitations on dispositions of units

Unless exempt by § 55.1-1972:

1. No declarant may offer or dispose of any interest in a condominium unit located in the Commonwealth, nor offer or dispose of in the Commonwealth any interest in a condominium unit located outside of the Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

2. No declarant may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within five calendar days from the contract date of the disposition or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice of such cancellation hand-delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be set forth on the first page of the purchase contract in boldface print of not less than 12-point type.

4. The prospective purchaser may cancel a nonbinding reservation agreement by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest in such unit. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this section, nor shall any such provision be a part of any ancillary

agreement.

1974, c. 416, § 55-79.88; 1975, c. 415; 1988, c. 15; 2014, c. 215;2019, c. 712;2020, c. 592.

§ 55.1-1975. Application for registration; fee

A. The application for registration of the condominium shall be filed as prescribed by the Common Interest Community Board's regulations and shall contain the following documents and information:

1. An irrevocable appointment of the Common Interest Community Board to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the

applicant or his personal representative if nonresidents of the Commonwealth;

2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order or judgment entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name and address; the form, date, and jurisdiction of organization; and the address of each of its offices in the Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions and the extent and nature of his interest in the applicant or the condominium, as of a specified date within 30 days of the filing of the application;

5. A statement, in a form acceptable to the Common Interest Community Board, of the condition of the title to the condominium project, including encumbrances, as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the Common Interest Community Board;

6. Copies of the instruments that will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements that a purchaser will be required to agree to or sign;

7. Copies of any management agreements, employment contracts, or other contracts or agreements affecting the use, maintenance, or access of all or a part of the condominium;

8. A statement of the zoning and other governmental regulations affecting the use of the condominium, including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments that affect the condominium;

9. A narrative description of the promotional plan for the disposition of the units in the condominium;

10. Plats and plans of the condominium that comply with the provisions of § 55.1-1920 other than the certification requirements, and that show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands, except that the Common Interest Community Board may establish by regulation or order requirements in lieu of the provisions of § 55.1-1920 for plats and plans of a condominium located outside the Commonwealth;

11. The proposed public offering statement;

12. Any bonds required to be posted pursuant to the provisions of this chapter;

13. A current financial statement or other documentation to demonstrate the declarant's financial ability to complete all proposed improvements on the condominium; and

14. Any other information that the Common Interest Community Board's regulations require for the protection of purchasers.

B. If the declarant registers additional units to be offered for disposition in the same condominium, he may consolidate the subsequent registration with any earlier registration

offering units in the condominium for disposition under the same promotional plan.

C. The declarant shall immediately report any material changes in the information contained in an application for registration.

D. Each application shall be accompanied by a fee in an amount established by the Common Interest Community Board pursuant to § 54.1-113. All fees shall be remitted by the Common Interest Community Board to the State Treasurer and shall be credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

1974, c. 416, § 55-79.89; 1975, c. 415; 1977, c. 428; 1988, c. 16; 2008, cc. 851, 871;2011, c. 605; 2019, c. 712.

§ 55.1-1976. Public offering statement; condominium securities

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units being offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the Common Interest Community Board shall be in a form prescribed by its regulations and shall include the following:

1. The name and principal address of the declarant and the condominium;

2. A general narrative description of the condominium stating the total number of units in the offering, the total number of units planned to be sold and rented, and the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control; a projected budget for at least the first year of the condominium's operation, including projected common expense assessments for each unit; and provisions for reserves for capital expenditures and restraints on alienation;

4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;

6. The significant terms of any encumbrances, easements, liens, and matters of title affecting the condominium;

7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;

8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection B of § 55.1-1955;

9. A statement that, pursuant to subdivision 2 of § 55.1-1974, the purchaser may cancel the disposition within five calendar days of delivery of the current public offering statement or within five calendar days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium that are planned but not yet begun or begun but not yet completed. Such statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;
11. If the units in the condominium are being subjected to a time-share instrument pursuant to § 55.1-2208, the information required to be disclosed by § 55.1-2217;

12. A statement listing the facilities or amenities that are defined as common elements or limited common elements in the condominium instruments that are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities that are not included as part of any assessment and the amount of such fees or charges, if any, a purchaser may be required to pay;

13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;
14. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display the flag of the United States, including reasonable restrictions as to the size, place, and manner of placement or display of such flag; and

15. Additional information required by the Common Interest Community Board to assure full and fair disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purposes before registration of the condominium project and shall be used afterwards only if it is used in its entirety. No person may advertise or represent that the Common Interest Community Board approves or recommends the condominium or disposition of any unit in the condominium. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the Common Interest Community Board requires it.

C. The Common Interest Community Board may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the Common Interest Community Board and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.
D. If an interest in a condominium is currently registered with the U.S. Securities and Exchange Commission, a declarant satisfies all requirements relating to the preparation of a public offering statement in this chapter if he delivers to the purchaser and files with the Common Interest Community Board a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).

1974, c. 416, § 55-79.90; 1977, c. 428; 1986, c. 324; 1996, cc. 281, 888;1999, c. 560;2006, c. 646; 2007, cc. 854, 910;2011, c. 605;2014, c. 215;2019, c. 712.

§ 55.1-1977. Inquiry and examination

Upon receipt of an application for registration, the Common Interest Community Board shall

conduct an examination of the material submitted to determine that:

1. The declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;

2. There is reasonable assurance that all proposed improvements will be completed as represented;

3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Common Interest Community Board in its regulations and afford full and fair disclosure;

4. The declarant has not, or if a corporation its officers and principals have not, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in the Commonwealth, United States, or any other state or foreign country within the past 10 years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions;

5. The public offering statement requirements of this chapter have been satisfied; and

6. All other requirements of this chapter and the Common Interest Community Board's regulations have been satisfied.

1974, c. 416, § 55-79.91; 1988, c. 15; 2019, c. 712.

§ 55.1-1978. Notice of filing and registration

A. Upon receipt of the application for registration, the Common Interest Community Board shall issue a notice of filing to the applicant within five business days. In the case of receipt of an application for a condominium that is a conversion condominium, the Common Interest Community Board shall also issue within five business days a notice of filing to the chief administrative officer of the county or city in which the proposed condominium is located, and the notice shall include the name and address of the applicant and the name and address or location of the proposed condominium. Within 60 days from the date of the notice of filing, the Common Interest Community Board shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the Common Interest Community Board affirmatively determines, upon inquiry and examination, that the requirements of this chapter and the Common Interest Community Board's regulations have been met, it shall enter an order registering the condominium and shall designate the form of the public offering statement.

C. If the Common Interest Community Board determines upon inquiry and examination that any of the requirements of this chapter and the Common Interest Community Board's regulations have not been met, the Common Interest Community Board shall notify the applicant that the application for registration must be corrected in the particulars specified within 20 days. If the requirements are not met within the time allowed, the Common Interest Community Board shall enter an order rejecting the registration, and such order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days after issuance of the order. During this 20-day period, the applicant may petition for

reconsideration and shall be entitled to a hearing to correct the particulars specified in the Common Interest Community Board's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, is given to the applicant.

1974, c. 416, § 55-79.92; 1985, c. 107; 1988, c. 15; 2006, c. 726;2019, c. 712.

§ 55.1-1979. Annual report by declarant

The declarant shall file a report in the form prescribed by the regulations of the Common Interest Community Board within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

1974, c. 416, § 55-79.93; 1975, c. 415; 1988, c. 15; 2012, cc. 481, 797;2019, c. 712.

§ 55.1-1980. Annual report by unit owners' association

The unit owners' association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The filing of the annual report required by this section shall begin upon the termination of the declarant control period pursuant to § 55.1-1943. The annual report shall be accompanied by a fee in an amount established by the Common Interest Community Board, which shall be paid into the state treasury and credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

1993, c. 958, § 55-79.93:1; 2008, cc. 851, 871;2009, c. 557;2012, cc. 481, 797;2019, cc. 391, 712.

§ 55.1-1981. Termination of registration

A. In the event that all of the units in the condominium have been disposed of and that all periods for conversion or expansion have expired, the Common Interest Community Board shall issue an order terminating the registration of the condominium.

B. Notwithstanding any other provision of this chapter, the Common Interest Community Board may administratively terminate the registration of a condominium if:

1. The declarant has not filed an annual report in accordance with § 55.1-1979 for three or more consecutive years; or

2. The declarant's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

2012, cc. 481, 797, § 55-79.93:2; 2019, c. 712.

§ 55.1-1982. Conversion condominiums; special provisions

A. For the purposes of this section:

"Affordable rent" means a monthly rent that does not exceed the greater of 30 percent of the annual gross income of the tenant household or 30 percent of the imputed income limit applicable to such unit size, as published by the Virginia Housing Development Authority for compliance with the Low Income Housing Tax Credit program.

"Certified nonprofit housing corporation" means a nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that has been certified by a locality as actively engaged in producing or preserving affordable housing as determined by criteria established by

the locality.

"Disabled" means a person suffering from a severe, chronic physical or mental impairment that results in substantial functional imitations.

"Elderly" means a person not less than 62 years of age.

B. Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of § 55.1-1976 the following:

1. A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee;

2. Information on the actual expenditures made on all repairs, maintenance, operation, or upkeep of the subject building within the last three years, set forth in a tabular format with the proposed budget of the condominium and cumulatively broken down on a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws. If such building has not been occupied for a period of three years, then the information shall be set forth for the maximum period such building has been occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect;

4. A statement of the declarant as to the present condition of all structural components and major utility installations in the condominium, including the approximate dates of construction, installation, and major repairs and the expected useful life of each such item, together with the estimated cost of replacing each such item;

5. If any building included or that may be included in the condominium was substantially completed prior to July 1, 1978, a statement that each such building has been inspected for asbestos in accordance with standards in effect at the time of inspection, or that an asbestos inspection will be conducted, and whether asbestos requiring response actions has been found and, if found, that response actions have been or will be completed in accordance with applicable standards prior to the conveyance of any unit in such building. Any asbestos management program or response action undertaken by the building owner shall comply with the standards promulgated pursuant to § 2.2-1164.

C. In the case of a conversion condominium, the declarant shall give, at the time specified in subsection D, formal notice to each of the tenants of the building that the declarant has submitted or intends to submit to the provisions of this chapter. This notice shall advise each tenant of (i) the offering price of the unit he occupies; (ii) the projected common expense assessments against that unit for at least the first year of the condominium's operation; (iii) any relocation services or assistance, public or private, of which the declarant is aware; (iv) any measures taken or to be taken by the declarant to reduce the incidence of tenant dislocation; and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. During the first 60 days after such notice is mailed or hand delivered, each of the tenants shall have the exclusive right to purchase the unit he occupies, but only if such unit is to be retained in the conversion condominium without substantial alteration in its physical layout. If the conversion condominium is subject to local ordinances that have been adopted pursuant to subsections G and H, any tenant who is disabled or elderly may assign the exclusive right to

purchase his unit to a governmental agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent, following the provisions of subsection G. The acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not (a) exceed the greater of one unit or five percent of the total number of units in the condominium or (b) impede the condominium conversion process. In determining which, if any, units shall be acquired pursuant to this subsection, preference shall be given to elderly or disabled tenants.

The notice required in this subsection shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the conversion to condominium. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55.1-1410, except that, despite the provisions of § 55.1-1410, a tenancy from month-to-month may only be terminated upon 120 days' notice when such termination is in regard to the creation of a conversion condominium. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the declarant, in order to then terminate the tenancy, such declarant shall give the tenant a further notice as provided in § 55.1-1410. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided by subsection A of § 55.1-1229 and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations, or improvements, provided that (i) the making of the same does not constitute an actual or constructive eviction of the tenant and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. The declarant shall also provide general notice to the tenants of the condominium or proposed condominium at the time of application to the Common Interest Community Board in addition to the formal notice required by this subsection.

D. The declarant of a conversion condominium shall, in addition to the requirements of § 55.1-1975, include with the application for registration a copy of the formal notice set forth in subsection C and a certified statement that such notice, fully complying with the provisions of subsection C, shall be at the time of the registration of such condominium mailed or delivered to each of the tenants in the building for which registration is sought. The price and projected common expense assessments for each unit need not be filed with the Common Interest Community Board until such notice is mailed to the tenants.

E. Notwithstanding the provisions of § 55.1-1901, in the case of any conversion condominium created under the provisions of the Horizontal Property Act (§ 55.1-2000 et seq.) for which a final report has not been issued by the Common Interest Community Board pursuant to former §

55-79.21 prior to June 1, 1975, the provisions of subsections B and C shall apply and the declarant shall be required to furnish evidence of full compliance with subsections B and C prior to the issuance by the Common Interest Community Board of a final report for such conversion condominium.

F. Any locality may require by ordinance that the declarant of a conversion condominium file with that governing body all information that is required by the Common Interest Community Board pursuant to § 55.1-1975 and a copy of the formal notice required by subsection C. Such information shall be filed with that governing body when the application for registration is filed with the Common Interest Community Board, and such copy of the formal notice shall be filed with that governing body. There shall be no fees for such filings.

G. The governing body of any locality may enact an ordinance requiring that elderly or disabled

tenants occupying as their residence, at the time of issuance of the general notice required by subsection C, apartments or units in a conversion condominium be offered leases or extensions of leases on the apartments or units they then occupied, or on other apartments or units of at least equal size and overall quality. The terms and conditions of such leases or extensions shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion condominium and such lease shall include or incorporate by reference the bylaws or rules and regulations, if any, of the association. No such ordinance shall require that such leases or extensions be offered on more than 20 percent of the apartments or units in such conversion condominium, nor shall any such ordinance require that such leases or extensions extend beyond three years from the date of such notice. Such leases or extensions shall not be required, however, in the case of any apartments or units that will in the course of the conversion be substantially altered in the physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

H. The governing body of any county utilizing the optional urban county executive form of government (§ 15.2-800 et seq.) or the optional county manager plan of government (§ 15.2-702 et seq.), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential condominium converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount that the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Transportation.

1974, c. 416, § 55-79.94; 1975, c. 415; 1980, cc. 727, 738; 1981, cc. 455, 503; 1982, cc. 273, 475, 663; 1983, c. 310; 1984, cc. 321, 601; 1985, c. 69; 1987, c. 412; 1988, c. 723; 1989, c. 398; 1991, c. 497; 1993, c. 634; 2007, cc. 602, 665;2019, c. 712.

§ 55.1-1983. Escrow of deposits

A. Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose that is federally insured and located in the Commonwealth, except where such deposits are being held by a real estate broker or attorney licensed under the laws of the Commonwealth, in which case such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

B. In lieu of escrowing deposits as provided in subsection A, the declarant of a condominium consisting of more than 50 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth below; or

2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth below.

The surety bond or letter of credit shall be maintained until (i) the granting of a deed to the unit,(ii) the purchaser's default under a purchase contract for the unit entitling the declarant to retain

the deposit, or (iii) the refund of the deposit to the purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The declarant shall file the bond with the Common Interest Community Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds $10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. $75,000 or less, the blanket bond shall be $75,000;

2. More than $75,000 but less than $200,000, the blanket bond shall be $200,000;

3. $200,000 or more but less than $500,000, the blanket bond shall be $500,000;

4. $500,000 or more but less than $1 million, the blanket bond shall be $1 million; and

5. $1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for use and benefit of every person protected under this chapter. The declarant shall file the letter of credit with the Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds $10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. $75,000 or less, the blanket letter of credit shall be $75,000;

2. More than $75,000 but less than $200,000, the blanket letter of credit shall be $200,000;

3. $200,000 or more but less than $500,000, the blanket letter of credit shall be $500,000;

4. $500,000 or more but less than $1 million, the blanket letter of credit shall be $1 million; and

5. $1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a declarant maintains in any calendar year, the total amount of deposits considered held by the declarant shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

1974, c. 416, § 55-79.95; 1977, c. 91; 2007, c. 445;2008, cc. 851, 871;2019, c. 712.

§ 55.1-1984. Declarant to deliver declaration to purchaser

The declarant shall within 10 days of recordation of the condominium instruments as provided for in §§ 55.1-1907 and 55.1-1911 forward to each purchaser at his last known address by first-class mail, return receipt requested, an exact copy of the recorded declaration and bylaws.

1974, c. 416, § 55-79.96; 2019, c. 712.

§ 55.1-1985. Investigations and proceedings

A. Whenever the Common Interest Community Board receives a written complaint that appears

to state a valid claim, the Common Interest Community Board shall make necessary public or private investigations in accordance with law within or outside of the Commonwealth to determine whether any declarant or its agents, employees, or other representatives have violated or are about to violate this chapter or any Common Interest Community Board regulation or order, or to aid in the enforcement of this chapter or in the prescribing of Common Interest Community Board regulations and forms. The Common Interest Community Board may also in like manner and with like authority investigate written complaints against persons other than the declarant or its agents, employees, or other representatives.

B. For the purpose of any investigation or proceeding under this chapter, the Common Interest Community Board or any officer designated by regulation may administer oaths or affirmations and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected by such failure, the Common Interest Community Board may apply to the Circuit Court of the County of Henrico for an order compelling compliance.

1974, c. 416, § 55-79.99; 1993, c. 198; 2011, c. 605;2019, c. 712.

§ 55.1-1986. Cease and desist orders

A. The Common Interest Community Board may issue an order requiring a person to cease and desist from any of the unlawful practices enumerated in subdivisions 1 through 5 and to take such affirmative action as in the judgment of the Common Interest Community Board will carry out the purposes of this chapter if the Common Interest Community Board determines after notice and hearing that such person has:

1. Violated any provision of this chapter;

2. Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

3. Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the Common Interest Community Board;

4. Disposed of any units that have not been registered with the Common Interest Community Board; or

5. Violated any lawful order or regulation of the Common Interest Community Board.

B. If the Common Interest Community Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary order to cease and desist or to take such affirmative action as may be deemed appropriate by the Common Interest Community Board. Prior to issuing the temporary order, the Common Interest Community Board shall give notice of the proposal to issue a temporary order to the person.

Every temporary order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether it becomes permanent.

1974, c. 416, § 55-79.100; 1975, c. 415; 2019, cc. 467, 712.

§ 55.1-1987. Revocation of registration

A. A registration may be revoked by the Common Interest Community Board after notice and hearing upon a written finding of fact in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that the declarant has:

1. Failed to comply with the terms of a cease and desist order;

2. Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

3. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

4. Failed faithfully to perform any stipulation or agreement made with the Common Interest Community Board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

5. Made intentional misrepresentations or concealed material facts in an application for registration.

B. If the Common Interest Community Board finds after notice and a hearing that the developer has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

1974, c. 416, § 55-79.101; 2019, c. 712.

§ 55.1-1988. Judicial review

Proceedings for judicial review shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1974, c. 416, § 55-79.102; 1996, c. 573;2019, c. 712.

§ 55.1-1989. Penalties

Any person who willfully violates any provision of § 55.1-1972, 55.1-1974, 55.1-1975, 55.1-1976, 55.1-1979, 55.1-1982, or 55.1-1983 or any regulation adopted under or order issued pursuant to § 55.1-1971, or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact is guilty of a misdemeanor and may be fined not less than $1,000 or double the amount of gain from the transaction, whichever is the larger, but not more than $50,000, or he may be imprisoned for not more than six months, or both, for each offense.

1974, c. 416, § 55-79.103; 2019, c. 712.

§§ 55.1-1990 through 55.1-1995. Repealed

Repealed by Acts 2023, cc. 387, 388, cl. 2, effective July 1, 2023.

PROPERTY OWNERS' ASSOCIATION ACT

ARTICLE 1, General Provisions

ARTICLE 2, Disclosure Requirements; Authorized Fees

ARTICLE 3, Operation and Management of Association

Code of Virginia

Property Owners' Association Act

§ 55.1-1800. Definitions

As used in this chapter, unless the context requires a different meaning:

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association or a committee that is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement, or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased, or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as a common area in the declaration.

"Common interest community" means the same as that term is defined in § 54.1-2345.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

"Development" means real property located within the Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration,

other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Resale certificate" means a certificate issued by an association pursuant to §§ 55.1-2309 and 55.1-2310.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

1989, c. 679, § 55-509; 1991, c. 667; 1996, c. 618;1998, c. 623;2001, c. 715;2002, c. 459;2003, c. 422;2008, cc. 851, 871;2011, c. 334;2015, cc. 93, 410;2019, c. 712;2021, Sp. Sess. I, cc. 9, 494; 2023, cc. 387, 388.

§ 55.1-1801. Applicability

A. This chapter applies to developments subject to a declaration initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the Subdivided Land Sales Act (§ 55.1-2300 et seq.). For the purposes of this chapter, as used in the Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation, and control of a development are deemed to correspond with the term "declaration."

"Developer" is deemed to correspond with the term "declarant."

"Subdivision" is deemed to correspond with the term "development."

B. This chapter supersedes the Subdivided Land Sales Act (§ 55.1-2300 et seq.), and no development shall be subject to the Subdivided Land Sales Act on or after July 1, 1998.

This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998, provided, however, that this chapter shall be applicable to any development established prior to the enactment of the Subdivided Land Sales Act (§ 55.1-2300 et seq.)(i) located in a county with an urban county executive form of government, (ii) containing 500 or more lots, (iii) each lot of which is located within the boundaries of a watershed improvement district established pursuant to Article 3 (§ 10.1-614 et seq.) of Chapter 6 of Title 10.1, and (iv) each lot of which is subject to substantially similar deed restrictions, which shall be considered a declaration under this chapter.

In addition, any development established prior to July 1, 1978, may specifically provide for the applicability of the provisions of this chapter.

C. This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent that the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

D. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§ 55.1-1900 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski, and other recreational facilities both to its members and to the general public.

1989, c. 679, § 55-508; 1991, c. 667; 1992, c. 677; 1998, cc. 32, 623;2003, c. 422;2005, c. 668;2008, cc. 851, 871;2018, c. 645;2019, c. 712.

§ 55.1-1802. Developer to register and file annual report; payment of real estate taxes attributable to the common area

A. Unless control of the association has been transferred to the members, the developer shall register the association with the Common Interest Community Board within 30 days after recordation of the declaration and thereafter shall ensure that the report required pursuant to § 55.1-1835 and any required update has been filed.

B. Upon the transfer of the common area to the association, the developer shall pay all real estate taxes attributable to the open or common space as defined in § 58.1-3284.1 through the date of the transfer to the association.

1993, c. 956, § 55-509.1; 2018, c. 733;2019, c. 712;2023, cc. 387, 388. §

55.1-1803. Limitation on certain contracts and leases by declarant

A. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group shall be entered into for a period in excess of five years. Any such contract or agreement may be terminated without penalty by the association or its board of directors upon not less than 90 days' written notice to the other party given no later than 60 days after the expiration of the period of declarant control contemplated by the declaration.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly

made by or on behalf of the association, its board of directors, or the lot owners as a group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions of such contract or lease.

C. If entered into at any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract, lease, or agreement, other than those subject to the provisions of subsection A or B, may be entered into by or on behalf of the association, its board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the association at the time entered into under the circumstances.

D. This section shall be strictly construed to protect the rights of the lot owners.

2012, c. 671, § 55-509.1:1; 2019, c. 712.

§ 55.1-1804. Documents to be provided by declarant upon transfer of control

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors other than the declarant are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including minute books and rules and regulations and all amendments to such rules and regulations that may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the lot owners, not to exceed 60 days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (vi) all association insurance policies that are currently in force; (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements, including stormwater facilities; (viii) any contracts in which the association is a contracting party; (ix) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the association property; (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors; and (xi) an inventory and description of stormwater facilities located on the common area or which otherwise serve the development and for which the association has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements for maintenance thereof.

The requirement for delivery of stormwater facility information required by clause (xi) shall be deemed satisfied by delivery to the association of a final site plan or final construction drawings showing stormwater facilities as approved by a local government jurisdiction and applicable recorded easements or agreements, if any, containing requirements for the maintenance, repair, or replacement of the stormwater facilities.

If the association is managed by a common interest community manager in which the declarant, or its principals, has no pecuniary interest or management role, then such common interest

community manager shall have the responsibility to provide the documents and information required by clauses (i), (ii), (vi), and (viii).

1996, c. 618, § 55-509.2; 2008, cc. 851, 871;2012, c. 671;2019, cc. 712, 724.

§ 55.1-1805. Association charges

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the issuance of a resale certificate pursuant to § 55.1-2309 or 55.1-2311 except as expressly authorized in § 55.1-2316. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55.1-2316. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2352.

2008, cc. 851, § 55-509.3, 871;2011, c. 334;2014, c. 216;2015, c. 277;2019, c. 712;2020, c. 592; 2023, cc. 387, 388.

§ 55.1-1806. Rental of lots

A. Except as expressly authorized in this chapter, in the declaration, or as otherwise provided by law, no association shall:

1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an assessment or impose a charge except as provided in § 55.1-1805;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of $50 during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55.1-1805;

4. Require the lot owner to use a lease or an addendum to the lease prepared by the association;

5. Charge any deposit from the lot owner or the tenant of the lot owner;

6. Have the authority to evict a tenant of any lot owner or to require any lot owner to execute a power of attorney authorizing the association to evict such a tenant; or

7. Refuse to recognize a person designated by the lot owner as the lot owner's authorized representative under the provisions of § 55.1-1823. Notwithstanding the foregoing, the requirements of § 55.1-1828 and the declaration shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

B. The association may require the lot owner to provide the association with (i) the names and contact information of and vehicle information for the tenants and authorized occupants under such lease and (ii) the name and contact information of any authorized agent of the lot owner. The association may require the lot owner to provide the association with the tenant's acknowledgment of and consent to any rules and regulations of the association.

C. The provisions of this section shall not apply to lots owned by the association.

2015, c. 277, § 55-509.3:1; 2016, c. 471;2019, c. 712;2022, cc. 65, 66.

§ 55.1-1807. Statement of lot owner rights

Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § 55.1-1815, including records of all financial transactions;

2. The right to cast a vote on any matter requiring a vote by the association's membership in proportion to the lot owner's ownership interest, unless the declaration provides otherwise;

3. The right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection G of § 55.1-1815 and § 55.1-1816;

4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at such proceeding, as provided in § 55.1-1819, and the right of due process in the conduct of that hearing; and

5. The right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § 55.1-1828.

2015, c. 286, § 55-509.3:2; 2018, c. 663;2019, c. 712.

§ 55.1-1808 through 55.1-1814. Repealed

Repealed by Acts 2023, cc. 387 and 388, cl. 2, effective July 1, 2023

§ 55.1-1815. Access to association records; association meetings; notice

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

2. The actual salary of the six highest compensated employees of the association earning over$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days'

written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55.1-1819;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55.1-1816;

8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual lot owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

F. Notwithstanding the provisions of subsections B and C, all books and records of the association, including individual salary information for all employees and payments to independent contractors, shall be available for examination and copying upon request by a member of the board of directors in the discharge of his duties as a director.

G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot. In lieu of sending such notice by United States mail, notice may instead be (i) hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the member, or (ii) sent to the member by electronic mail, provided that the member has elected to receive such notice by electronic mail and, in the event that such electronic mail is returned as undeliverable, notice is subsequently sent by United States mail. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (a) within 60 days from the conclusion of the meeting to which such minutes appertain or (b) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

H. Unless expressly prohibited by the governing documents, a member may vote at a meeting of the association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the board of directors has adopted guidelines for such voting by electronic means. Members voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

1989, c. 679, § 55-510; 1991, c. 667; 1992, cc. 69, 71; 1993, cc. 365, 827; 1999, cc. 594, 654, 1029; 2000, cc. 905, 1008;2001, c. 419;2003, c. 442;2004, c. 193;2007, c. 675;2008, cc. 851, 871;2009, c. 665;2011, c. 361;2013, c. 275;2014, c. 207;2018, c. 663;2019, cc. 368, 712;2020, c. 592;2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1816. Meetings of the board of directors

A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such

request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

Any member may record any portion of a meeting that is required to be open. The board of directors or subcommittee or other committee of the board of directors conducting the meeting may adopt rules (a) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (b) requiring the member recording the meeting to provide notice that the meeting is being recorded.

Except for the election of officers, voting by secret or written ballot in an open meeting shall be a violation of this chapter.

C. The board of directors or any subcommittee or other committee of the board of directors may (i) convene in executive session to consider personnel matters; (ii) consult with legal counsel;(iii) discuss and consider contracts, pending or probable litigation, and matters involving violations of the declaration or rules and regulations; or (iv) discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee of the board of directors, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period during each meeting to allow members an opportunity to comment on any matter relating to the association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the board of directors may limit the comments of members to the topics listed on the meeting agenda.

1999, c. 1029, § 55-510.1; 2000, c. 905;2001, c. 715;2003, c. 404;2004, c. 333;2005, c. 353;2019, c. 712;2021, Sp. Sess. I, cc. 9, 494;2023, cc. 387, 388.

§ 55.1-1817. Distribution of information by members
The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

2001, c. 715, § 55-510.2; 2019, c. 712.

§ 55.1-1818. Common areas; notice of pesticide application
The association shall post notice of all pesticide applications in or upon the common areas. Such notice shall consist of conspicuous signs placed in or upon the common areas where the pesticide will be applied at least 48 hours prior to the application.

2011, c. 264, § 55-510.3; 2019, c. 712.

§ 55.1-1819. Adoption and enforcement of rules
A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. At a special meeting of the association convened in accordance with the provisions of the association's bylaws, a majority of votes cast at such meeting may repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including application for injunctive relief or actual damages, during which the court shall award to the prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant to such declaration expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments that are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant, and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55.1-1815. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.
Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed $50 for a single offense or $10 per day for any offense of a continuing nature, and shall be treated as an assessment against the member's lot for the purposes of § 55.1-1833. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.

F. After the date an action is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, the association shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the lot owner to abate or remedy the violation.

G. In any action filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.

1989, c. 679, § 55-513; 1991, c. 667; 1993, c. 956; 1994, c. 368;1997, cc. 173, 417;2000, cc. 846, 905;2002, c. 509;2008, cc. 851, 871;2011, cc. 372, 378;2014, c. 784;2019, c. 712;2021, Sp. Sess. I, c. 131.

§ 55.1-1819.1. Limitation of smoking in development

Except to the extent that the declaration provides otherwise, the board of directors may establish reasonable rules that restrict smoking in the development, including rules that prohibit smoking in the common areas. For developments that include attached private dwelling units, such rules may prohibit smoking within such dwelling units. Rules adopted pursuant to this section may be enforced in accordance with § 55.1-1819.

2021, Sp. Sess. I, c. 131.

§ 55.1-1820. Display of the flag of the United States; necessary supporting structures; affirmative defense

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), no association shall prohibit any lot owner from displaying upon property to which the lot owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code (4 U.S.C. § 1 et seq.), or any rule or custom pertaining to the proper display of the flag. The association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property, provided that such restrictions are necessary to protect a substantial interest of the association.

B. The association may restrict the display of such flag in the common areas.

C. In any action brought by the association under § 55.1-1819 for violation of a flag restriction, the association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the association.

D. In any action brought by the association under § 55.1-1819, the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the resale certificate as required by § 55.1-2310.

2000, c. 891, § 55-513.1; 2007, cc. 854, 910;2008, cc. 851, 871;2010, cc. 166, 453;2019, c. 712; 2023, cc. 387, 388.

§ 55.1-1820.1. Installation of solar energy collection devices

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the association establishes such a prohibition. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate issued pursuant to § 55.1-2309 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the association. An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

2006, c. 939, §§ 67-700, 67-701; 2008, c. 881;2009, c. 866;2013, c. 357;2014, c. 525;2020, cc. 272, 795;2021, Sp. Sess. I, c. 387;2023, cc. 387, 388.

§ 55.1-1821. Home-based businesses permitted; compliance with local ordinances

A. Except to the extent that the declaration provides otherwise, no association shall prohibit any lot owner from operating a home-based business within his personal residence. The association may, however, establish (i) reasonable restrictions as to the time, place, and manner of the operation of a home-based business and (ii) reasonable restrictions as to the size, place, duration, and manner of the placement or display of any signs on the owner's lot related to such home-based business. Any home-based business shall comply with all applicable local ordinances.

B. If a development is located in a locality that classifies home-based child care services as an accessory or ancillary residential use under the locality's zoning ordinance, the provision of home-based child care services in a personal residence shall be deemed a residential use unless expressly (i) prohibited or restricted by the declaration or (ii) restricted by the association's bylaws or rules as provided in subsection A.

2013, c. 310, § 55-513.2; 2019, cc. 2, 30, 712.

§ 55.1-1822. Use of for sale signs in connection with sale

Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no association shall require the use of any for sale sign that is (i) an association sign or (ii) a real estate sign that does not comply with the requirements of the Real Estate Board. An association may, however, prohibit the placement of signs in the common area and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed.

2008, cc. 851, 871, § 55-509.4; 2010, c. 165;2014, c. 216;2016, c. 471;2017, cc. 387, 405;2018, c. 226;2019, c. 712;2023, cc. 387, 388.

§ 55.1-1823. Designation of authorized representative

Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no association shall require any lot owner to execute a formal power of attorney if the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative, and the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization that includes the designated representative's name, contact information, and license number and the lot owner's signature. Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

2008, cc. 851, 871, § 55-509.4; 2010, c. 165;2014, c. 216;2016, c. 471;2017, cc. 387, 405;2018, c. 226;2019, c. 712;2022, cc. 65, 66;2023, cc. 387, 388.

§ 55.1-1823.1. Electric vehicle charging stations permitted

A. Except to the extent that the declaration or other recorded governing document provides otherwise, no association shall prohibit any lot owner from installing an electric vehicle charging station for the lot owner's personal use on property owned by the lot owner. An association may establish reasonable restrictions concerning the number, size, place, and manner of placement or installation of such electric vehicle charging station on the exterior of property owned by the lot owner.

B. An association may prohibit or restrict the installation of electric vehicle charging stations on the common area within the development served by the association and may establish reasonable

restrictions as to the number, size, place, and manner of placement or installation of electric vehicle charging stations on the common area.

C. Any lot owner installing an electric vehicle charging station shall indemnify and hold the association harmless from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of the installation, maintenance, operation, or use of such electric charging station. An association may require the lot owner to obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, or use of the electric vehicle charging station and require the association to be included as a named insured on such policy.

2020, c. 1012.

§ 55.1-1824. Assessments; late fees

Except to the extent that the declaration or any rules or regulations promulgated pursuant to such declaration provide otherwise, the board may impose a late fee that does not exceed the penalty provided in § 58.1-3915 for any assessment or installment that is not paid within 60 days of the due date for payment of such assessment.

2013, c. 256, § 55-513.3; 2014, c. 239;2019, c. 712.

§ 55.1-1825. Authority to levy special assessments

A. In addition to all other assessments that are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if (i) the purpose in so doing is found by the board to be in the best interests of the association and (ii) the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any such claimed breach of fiduciary duty.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § 55.1-1833 as well as any other rights afforded a creditor under law.

C. The failure of a member to pay the special assessment allowed by subsection A will provide the association with the right to deny the member access to any or all of the common areas. However, the member shall not be denied direct access to the member's lot over any road within the development that is a common area.

1989, c. 679, § 55-514; 1991, c. 667; 1992, c. 450; 1998, cc. 32, 751;2008, cc. 851, 871;2019, c. 712.

§ 55.1-1826. Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1800 ;

2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1800;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-514.1; 2019, cc. 33, 44, 712.

§ 55.1-1827. Deposit of funds; fidelity bond

A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the association and shall be segregated for each account in the managing agent's records in a manner that permits the funds to be identified on an individual association basis.

B. Any association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the association or committed by any managing agent or employees of the managing agent. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of$1 million or the amount of the reserve balances of the association plus one-fourth of the aggregate annual assessment income of such association. The minimum coverage amount shall be $10,000. The board of directors or managing agent may obtain such bond or insurance on behalf of the association.

2007, cc. 696, 712, § 55-514.2; 2008, cc. 851, 871;2019, c. 712.

§ 55.1-1828. Compliance with declaration

A. Every lot owner, and all those entitled to occupy a lot, shall comply with all lawful provisions of this chapter and all provisions of the declaration. Any lack of such compliance shall be

grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association or by its board of directors or any managing agent on behalf of such association or, in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section shall not preclude an action against the association and authorizes the recovery by the prevailing party in any such action of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a lot owner for nonpayment of assessments in which the lot owner has failed to pay assessments levied by the association on more than one lot or in which such lot owner has had legal actions taken against him for nonpayment of any prior assessment, and the prevailing party is the association or its board of directors or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the association, whether any judicial proceedings are filed.

C. A declaration may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the development is located, or as mutually agreed to by the parties.

1989, c. 679, § 55-515; 1993, c. 956; 2012, c. 758;2014, c. 569;2019, c. 712.

§ 55.1-1829. Amendment to declaration and bylaws; consent of mortgagee

A. In the event that any provision in the declaration requires the written consent of a mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, or by regular mail with proof of mailing to the mortgagee at the address supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the declaration and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise. If the mortgagee has not supplied an address to the association, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise.

B. Subsection A shall not apply to amendments that alter the priority of the lien of the mortgagee or that materially impair or affect a lot as collateral or the right of the mortgagee to foreclose on a lot as collateral.

C. Where the declaration is silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the declaration does not specifically affect mortgagee rights.

D. Except as otherwise provided in the declaration, a declaration may be amended by a two-thirds vote of the lot owners.

E. An action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is effective.

F. Agreement of the required majority of lot owners to any amendment of the declaration adopted pursuant to subsection D shall be evidenced by their execution of the amendment, or ratifications of such amendment, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the association or by such other officer or officers as the declaration may specify, that the requisite majority of the lot owners signed the amendment or ratifications of such amendment.

G. Subsections D and F shall not be construed to affect the validity of any amendment recorded prior to July 1, 2017.

1997, c. 887, § 55-515.1; 1998, c. 32;1999, c. 805;2003, cc. 59, 74;2017, c. 374;2019, c. 712.

§ 55.1-1830. Validity of declaration; corrective amendments

A. All provisions of a declaration shall be deemed severable, and any unlawful provision of the declaration shall be void.

B. No provision of a declaration shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of a declaration restraining the alienation of lots other than such lots as may be restricted to residential use only.

E. The rule of property law known as the doctrine of merger shall not apply to any easement included in or granted pursuant to a right reserved in a declaration.

F. The declarant may unilaterally execute and record a corrective amendment or supplement to the declaration to correct a mathematical mistake, an inconsistency, or a scrivener's error or clarify an ambiguity in the declaration with respect to an objectively verifiable fact, including recalculating the liability for assessments or the number of votes in the association appertaining to a lot, within five years after the recordation of the declaration containing or creating such mistake, inconsistency, error, or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. Regardless of the date of recordation of the declaration, the principal officer of the association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the board of directors. All corrective amendments and supplements recorded prior to July 1, 1997, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

1998, c. 32, § 55-515.2; 2001, c. 271;2019, c. 712.

§ 55.1-1831. Reformation of declaration; judicial procedure

A. An association may petition the circuit court in the county or city in which the development or the greater part of the development is located to reform a declaration where the association, acting through its board of directors, has attempted to amend the declaration regarding ownership of legal title of the common areas or real property using provisions outlined in such declaration to resolve (i) ambiguities or inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the association or individual lot owners or (ii) scrivener's errors, including incorrectly identifying the association, incorrectly identifying an entity other than the association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common areas or real property to:

1. Reform, in whole or in part, any provision of a declaration; and

2. Correct any mistake or other error in the declaration that may exist with respect to the declaration for any other purpose.

C. A petition filed by the association with the court setting forth any inconsistency or error made in the declaration, or the necessity for any change in the declaration, shall be deemed sufficient basis for the reformation, in whole or in part, of the declaration, provided that:

1. The association has made three good faith attempts to convene a duly called meeting of the association to present for consideration amendments to the declaration for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the development still owns a lot or other property in the development, the declarant joins in the petition of the association;

4. A copy of the petition is sent to all owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association.

D. Any mortgagee of a lot in the development shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any lot as collateral for a mortgage, or affect a mortgagee's right to foreclose on a lot as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1829.

2014, c. 659, § 55-515.2:1; 2019, c. 712.

§ 55.1-1832. Use of technology

A. Unless expressly prohibited by the declaration, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using electronic means.

B. The association, the lot owners, and those entitled to occupy a lot may perform any obligation or exercise any right under any declaration or bylaw provision or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any declaration or bylaw provision or any provision of this chapter.

D. Voting on, consent to, and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic means, provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

E. Subject to other provisions of law, no action required or permitted by any declaration or bylaw provision or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the board of directors.

F. Any meeting of the association, the board of directors, or any committee may be held entirely or partially by electronic means, provided that the board of directors has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to do so. The board of directors shall determine whether any such meeting may be held entirely or partially by electronic means.

G. If any person does not have the capability or desire to conduct business using electronic means, the association shall make available a reasonable alternative, at its expense, for such person to conduct business with the association without use of such electronic means.

H. This section shall not apply to any notice related to an enforcement action by the association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

2010, c. 432, § 55-515.3; 2019, c. 712;2021, Sp. Sess. I, cc. 9, 494. §

55.1-1833. Lien for assessments

A. The association shall have a lien, once perfected, on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of such lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under § 55.1-318 shall be given in the same fashion as if the association's lien were a judgment.

B. The association, in order to perfect the lien given by this section, shall file, before the expiration of 12 months from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such development is situated, a

memorandum, verified by the oath of the principal officer of the association or such other officer or officers as the declaration may specify, which contains the following:

1. The name of the development;

2. A description of the lot;

3. The name or names of the persons constituting the owners of that lot;

4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;

5. The date of issuance of the memorandum;

6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and

7. A statement that the association is obtaining a lien in accordance with the provisions of the Property Owners' Association Act as set forth in Chapter 18 (§ 55.1-1800 et seq.) of Title 55.1.

It shall be the duty of the clerk in whose office such memorandum is filed as provided in this section to record and index the same as provided in subsection D, in the names of the persons identified in such memorandum as well as in the name of the association. The cost of recording and releasing the memorandum shall be taxed against the person found liable in any judgment or order enforcing such lien.

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable county or city. The notice shall be sent at least 10 days before the actual filing date of the memorandum of lien.

D. Notwithstanding any other provision of this section or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No action to enforce any lien perfected under subsection B shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any action in which the petition may be properly filed shall be regarded as the institution of an action under this section. Nothing in this subsection shall extend the time within which any such lien may be perfected.

F. The judgment or order in an action brought pursuant to this section shall include reimbursement for costs and reasonable attorney fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B, the lien shall be released in accordance with the provisions of § 55.1-339. Any lien that is not so released shall subject the lien creditor to the penalty set forth in subdivision B 1 of § 55.1-339.

For the purposes of § 55.1-339, the principal officer of the association, or any other officer or officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55.1-1828.

I. At any time after perfecting the lien pursuant to this section, the property owners' association may sell the lot at public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the lot and shall be deemed the lot owner's statutory agent for the purpose of transferring title to the lot. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The association shall give notice to the lot owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the lot owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the lot. The notice shall further inform the lot owner of the right to bring a court action in the circuit court of the county or city where the lot is located to assert the nonexistence of a debt or any other defense of the lot owner to the sale.

2. After expiration of the 60-day notice period specified in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which such development is situated. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection D, in the names of the persons identified in such appointment as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the lot owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the lot owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the lot. Those conditions are that the lot owner (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pay all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees.

4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, including the name, address, and telephone number of the trustee, by hand delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust, provided that the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders and their assigns, at the addresses noted in the memorandum of lien, by United States mail, postage prepaid, no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the county or city in which the property to be sold, or any portion of such property, is located pursuant to the following provisions:

a. The association shall advertise once a week for four successive weeks; however, if the property or some portion of such property is located in a city or in a county immediately contiguous to a city, publication of the advertisement on five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b, the association may further advertise as the association finds appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. The association shall have the following powers and duties upon a sale:

a. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the declaration, the association may bid to purchase the lot at a foreclosure sale. The association may own, lease, encumber, exchange, sell, or convey the lot. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision I 10 and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the association, its agent, or its attorney.

b. The association may require any bidder at any sale to post a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or, if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the

association in connection with that sale.

c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the owner or his assigns, provided, however, that, as to the payment of such residue, the association shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the lot with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale of such property or to deliver possession of the lot to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309, and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55.1-1815 upon the written request of the prior lot owner, the current lot owner, or any holder of a recorded lien against the lot at the time of the sale. The association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a lot is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts the sale is set aside by the court or an appeal is filed in the Court of Appeals or granted by the Supreme Court and an order is entered requiring such sale to be set aside.

1989, c. 679, § 55-516; 1991, c. 667; 1997, cc. 760, 766;2000, c. 905;2004, cc. 778, 779, 786;2019, c. 712;2021, Sp. Sess. I, c. 489.

§ 55.1-1834. Notice of sale under deed of trust

In accordance with the provisions of § 15.2-979, the association shall be given notice whenever a lot becomes subject to a sale under a deed of trust. Upon receipt of such notice, the board of directors, on behalf of the association, shall exercise whatever due diligence it deems necessary with respect to the lot subject to a sale under a deed of trust to protect the interests of the association.

2015, cc. 93, 410, § 55-516.01; 2019, c. 712.

§ 55.1-1835. Annual report by association

The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The annual report shall be accompanied by a fee in an amount established by the Board, which shall be paid into the state treasury and credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

1993, c. 958, § 55-516.1; 2008, cc. 851, 871;2009, c. 557;2012, cc. 481, 797;2019, cc. 391, 712.

§ 55.1-1836. Condemnation of common area; procedure

When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment for such portion shall be paid to the association, which shall be a party in interest in the condemnation proceeding. The common area that is affected shall be valued on the basis of the common area's highest and best use as though it were free from restriction to sole use as a common area.

Except to the extent that the declaration or any rules and regulations duly adopted pursuant to such declaration otherwise provide, the board of directors shall have the authority to negotiate with the condemning authority, agree to an award or payment amount with the condemning authority without instituting condemnation proceedings, and, upon such agreement, convey the subject common area to the condemning authority. Thereafter, the president of the association may unilaterally execute and record the deed of conveyance to the condemning authority.

A member of the association, by virtue of his membership, shall be estopped from contesting the action of the association in any proceeding held pursuant to this section.

1995, c. 377, § 55-516.2; 1998, c. 32;2016, c. 719;2019, c. 712.

NONSTOCK CORPORATION ACT

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Code of Virginia

Virginia Nonstock Corporation Act

§ 13.1-801. Short title

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

Code 1950, § 13.1-201; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-291; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-803. Definitions

As used in this chapter, unless the context requires a different meaning:

"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. When used with respect to a foreign corporation, the "articles of incorporation" of such entity means the document that is equivalent to the articles of incorporation of a domestic corporation.

"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 chapter 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 (§ 13.1-898.1:1 et seq.).

"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," with respect to an entity, means an entity governed as to its internal affairs by the organic law of the Commonwealth.

"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," when referring to a document for which effectiveness is contingent upon issuance of a certificate by the Commission, means the time and date determined in accordance with § 13.1-806.

"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 the director 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.

"Entity conversion" means conversion. A certificate of entity conversion is the same as a certificate of conversion.

"Foreign," with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than the Commonwealth.

"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 a foreign partnership, foreign limited liability company, foreign limited partnership, or foreign business trust.

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

"Includes" denotes a partial definition.

"Incorporation surrender" has the same meaning as specified in § 13.1-898.1:1. A certificate of incorporation surrender is the same as a certificate of domestication.

"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.

"Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

"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 chapter.

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

"Protected series" has the same meaning as specified in § 13.1-1002.

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

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

"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 chapter 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 chapter 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.

Code 1950, § 13.1-202; 1956, c. 428; 1985, c. 522; 1997, c. 801;2002, c. 285;2007, c. 925;2010, c. 171;2012, c. 706;2021, Sp. Sess. I, c. 487;2022, c. 82.

§ 13.1-804. Filing requirements

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this 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 or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

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 (§ 13.1-893.1 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.

1985, c. 522; 1986, c. 231; 1995, c. 70;2000, c. 995;2007, c. 925;2010, c. 171;2015, c. 623. §

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.

2007, c. 925.

§ 13.1-805. Issuance of certificate by Commission; recordation of documents

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

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

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

§ 13.1-806. Effective time and date of document

A. Except as otherwise provided in § 13.1-807, 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 or 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 fifteenth day after the date on which the certificate is issued by the Commission. If a delayed effective date is specified, but no time is specified, the effective time shall be 12:01 a.m. on the date specified. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

B. Notwithstanding subsection A, any certificate that has a delayed effective time or date shall not become effective if, prior to the effective time and date, a statement of cancellation signed by each party to the articles to which the certificate relates is delivered to the Commission for filing. If the Commission finds that the statement of cancellation complies with the requirements of law, it shall, by order, cancel the certificate.

C. A statement of cancellation shall contain:

1. The name of the corporation;

2. The name of the articles and the date on which the articles were filed with the Commission;

3. The time and date on which the Commission's certificate becomes effective; and

4. A statement that the articles are being canceled in accordance with this section.

D. 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.

E. For articles with a delayed effective date and time, the effective date and time shall be Eastern

Time.

1985, c. 522; 2007, c. 925;2021, Sp. Sess. I, c. 487.

§ 13.1-807. Correcting filed articles

A. Articles filed with the Commission may be corrected if (i) the articles contain an inaccuracy;(ii) the articles were not properly authorized or defectively signed, 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 that:

1. Set forth the name of the corporation prior to filing;

2. Describe the articles to be corrected, including their effective date;

3. Specify the inaccuracy or defect to be corrected;

4. Correct the inaccuracy or defect; and

5. State that the board of directors authorized the correction and the date of such authorization.

C. If the Commission finds that the articles of correction comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of correction. 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 shall be accepted by the Commission when received more than 30 days after the effective date of the certificate relating to the articles to be corrected.

1985, c. 522; 2007, c. 925;2008, cc. 91, 509;2021, Sp. Sess. I, c. 487.

§ 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.

1985, c. 522; 2007, c. 925.

§ 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 of good standing 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 and, if applicable, the designated name adopted for use in the Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the law of the Commonwealth,

the date of its incorporation, which is the original date of incorporation or formation of the domesticated or converted corporation if the corporation was domesticated from a foreign jurisdiction or was converted from a domestic eligible entity, 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 chapter 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 has not become effective or 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.

1985, c. 522; 1988, c. 405; 1993, c. 60; 2006, c. 663;2007, c. 925;2021, Sp. Sess. I, c. 487.

§ 13.1-810. Notices and other communications

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 acknowledgment from an information processing system described in subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, 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 States 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.

1985, c. 522; 2007, c. 925;2010, c. 171.

§ 13.1-810.1. Number of members

A. For purposes of this Act, the following identified as a member in a corporation's current record of members constitutes one member:

1. Two or more persons who together have a single membership interest in the corporation;

2. A corporation, limited liability company, partnership, limited partnership, business trust, trust, estate, or other entity; or

3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

B. For purposes of this Act, membership interests registered in substantially similar names constitute one member if it is reasonable to believe that the names represent the same person.

2007, c. 925;2015, c. 623.

§ 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.

Code 1950, § 13.1-295; 1958, c. 506; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-296; 1958, c. 565; 1981, c. 320; 1985, c. 522; 2007, c. 925.

§ 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 30 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.

Code 1950, § 13.1-287; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925;2008, c. 91;2010, c. 171;2015, c. 623.

§ 13.1-814. Shares of stock and dividends prohibited

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

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

§ 13.1-814.1. 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.

1986, c. 532.

§ 13.1-815. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this chapter, except the annual report required by § 13.1-936 , a statement of change pursuant to § 13.1-834 or 13.1-926, and a statement of resignation pursuant to § 13.1-835 or 13.1-927, until all fees, charges, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation or a certificate of entity conversion with respect to a domestic corporation that will become a domestic eligible entity until the annual registration fee has been paid by or on behalf of that corporation.

C. A domestic or foreign corporation shall not be required to pay the annual registration fee assessed against it pursuant to subsection B of § 13.1-936.1 in any year if (i) the Commission issues or files any of the following types of certificate or instrument and (ii) the certificate or instrument is effective on or before the annual registration fee due date:

1. A certificate of termination of corporate existence or a certificate of incorporation surrender for a domestic corporation;

2. A certificate of withdrawal for a foreign corporation;

3. A certificate of merger or an authenticated copy of an instrument of merger for a domestic or foreign corporation that has merged into a surviving domestic corporation or eligible entity, or into a surviving foreign corporation or eligible entity; or

4. An authenticated copy of an instrument of entity conversion for a foreign corporation that has converted to a different entity type.

The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

D. Annual registration fee assessments that have been paid shall not be refunded.

Code 1950, § 13.1-284; 1956, c. 428; 1985, c. 522; 1988, c. 405; 1989, c. 152; 1997, c. 216;2003, c. 374;2006, c. 659;2007, cc. 810, 925;2009, c. 216;2010, c. 753;2015, c. 623;2021, Sp. Sess. I, c. 487.

§ 13.1-815.1. Charter and entrance fees for corporations

A. Every domestic corporation, upon the granting of its charter or upon domestication, shall pay a charter fee in the amount of $50 into the state treasury, and every foreign corporation shall pay an entrance fee of $50 into the state treasury for its certificate of authority to transact business in the Commonwealth.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in the Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation.

C. For any domestic stock corporation that files articles of conversion to become a domestic corporation, the charter fee to be charged shall be an amount equal to the difference between the amount already paid as a charter fee by the domestic stock corporation and the amount that would be required by this section to be paid.

1988, c. 405; 2003, c. 374;2007, cc. 810, 925;2008, c. 509;2021, Sp. Sess. I, c. 487.

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

The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

1. For the filing of articles of entity conversion to convert a corporation to a limited liability company, the fee shall be $100.

2. For filing any one of the following, the fee shall be $25:

a. Articles of incorporation, domestication, or incorporation surrender.

b. Articles of amendment or restatement.

c. Articles of merger.

d. Articles of correction.

e. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.

f. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.

g. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

h. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

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

j. An application to register or to renew the registration of a corporate name.

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

a. An application to reserve or to renew the reservation of a corporate name.

b. A notice of transfer of a reserved corporate name.

c. An application for use of an indistinguishable name.

d. Articles of dissolution.

e. Articles of revocation of dissolution.

f. Articles of termination of corporate existence.

g. An application for withdrawal of a foreign corporation.

h. A notice of release of a registered name.

4. For issuing a certificate pursuant to § 13.1-945, the fee shall be $6.

Code 1950, §§ 13.1-285, 13.1-286.1; 1956, c. 428; 1958, c. 564; 1964, c. 551; 1972, c. 579; 1975, c. 500; 1981, c. 522; 1982, c. 460; 1984, c. 294; 1985, c. 522; 1987, c. 183; 1988, c. 405; 1995, c. 368; 2003, c. 374;2004, c. 274;2007, cc. 771, 925;2012, c. 130;2021, Sp. Sess. I, c. 487.

§ 13.1-817. Repealed

Repealed by Acts 1991, c. 123.

§ 13.1-818. Incorporators

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

Code 1950, § 13.1-230; 1956, c. 428; 1968, c. 42; 1975, c. 500; 1985, c. 522; 2015, c. 623.

§ 13.1-819. Articles of incorporation

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that satisfies the requirements of § 13.1-829.

2. If the corporation is to have no members, a statement to that effect.

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

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

designation of ex officio directors, if any.

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

B. The articles of incorporation may set forth:

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

2. Provisions not inconsistent with law:

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

b. Regarding the management of the business and regulation of the affairs of the corporation;

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

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

C. The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.

D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § 13.1-804.

E. Except as provided in subsection A of § 13.1-855, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Code 1950, § 13.1-231; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1982, c. 182; 1985, c. 522; 1986, c. 622; 1993, c. 113; 2000, c. 162;2001, cc. 517, 541;2007, c. 925.

§ 13.1-820. Issuance of certificate of incorporation

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

When the certificate of incorporation is effective, the corporate existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act.

Code 1950, §§ 13-223, 13-224, 13.1-232, 13.1-233; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-821. Liability for preincorporation transactions

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

1985, c. 522.

§ 13.1-822. Organization of corporation

A. After incorporation:

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

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

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

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

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

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

Code 1950, § 13.1-234; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925. §

13.1-823. Bylaws

A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

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

Code 1950, §§ 13-234, 13.1-212; 1956, c. 428; 1985, c. 522; 2007, c. 925;2010, c. 171.

§ 13.1-824. Emergency bylaws

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

1. Procedures for calling a meeting of the board of directors;

2. Quorum requirements for the meeting; and

3. Designation of additional or substitute directors.

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

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

1. Binds the corporation; and

2. May not be used to impose liability on a corporate director, officer, employee or agent.

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

Code 1950, § 13.1-212.1; 1962, c. 102; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-204; 1956, c. 428; 1958, c. 564; 1960, c. 296; 1971, Ex. Sess., c. 98; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-204.1; 1975, c. 500; 1985, c. 522; 1996, c. 77;2007, c. 925;2015, c. 611.

§ 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.

1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-206; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 13.1-829. Corporate name

A. A corporate name shall not contain:

1. Any word or phrase that indicates or implies that it is organized for the purpose of conducting any business other than a business that it is authorized to conduct;

2. The word "redevelopment" unless the corporation is organized as an urban redevelopment corporation pursuant to Chapter 190 of the Acts of Assembly of 1946, as amended;

3. Any word, abbreviation, or combination of characters that states or implies the corporation is a limited liability company, a limited partnership, a registered limited liability partnership, or a protected series of a series limited liability company; or

4. Any word or phrase that is prohibited by law for such corporation.

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

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

2. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

5. A limited liability company name reserved under § 13.1-1013;

6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

8. A business trust name reserved under § 13.1-1215;

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § 50-73.3;and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

C. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon the Commission's records from one or more of the names described in subsection B. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.

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

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

Code 1950, § 13.1-207; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 232; 2003, c. 592;2005, c. 379;2007, c. 925;2009, c. 216;2012, c. 63;2021, Sp. Sess. I, c. 487.

§ 13.1-830. Reserved name

A. A person may apply to the Commission to reserve the exclusive use of a corporate name, including a designated name for a foreign corporation. If the Commission finds that the corporate name applied for is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

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

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

D. A reserved corporate name may be used by its owner in connection with (i) the formation of, or an amendment to change the name of, a domestic stock or nonstock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § 13.1-630, 13.1-762, 13.1-829, 13.1-924, 13.1-1012, 13.1-1054, 13.1-1214, 13.1-1244, 50-73.2, or 50-73.56, as the case may be.

Code 1950, § 13.1-207.1; 1975, c. 500; 1985, c. 522; 2006, c. 505;2007, c. 925;2015, c. 444;2021, Sp. Sess. I, c. 487.

§ 13.1-831. Registered name

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by § 13.1-924, if the name is distinguishable upon the records of the Commission.

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

C. Except as provided in subsection F, registration is effective for one year after the date an application is filed.

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

E. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the 60-day period preceding the date of expiration of the registration, a renewal application that complies with the requirements of subsection B. The renewal application is effective when filed in accordance with this section and, except as provided in subsection F, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

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

G. A foreign corporation that has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission.

Code 1950, § 13.1-207.2; 1975, c. 500; 1981, c. 522; 1985, c. 522; 1995, c. 114;2002, c. 607;2007, c. 925;2021, Sp. Sess. I, c. 487.

§ 13.1-832. Repealed

Repealed by Acts 2007, c. 771, cl. 2.

§ 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.

Code 1950, § 13.1-208; 1956, c. 428; 1976, c. 4; 1985, c. 522; 1993, c. 113; 2000, c. 162;2001, cc. 517, 541;2007, c. 925.

§ 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 with the Commission a statement of change on a form prescribed and furnished 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 city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-833.

B. A statement of change shall forthwith be filed with the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-833.

C. A corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-833. In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-209; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1976, c. 4; 1985, c. 522; 1986, c. 622; 1987, c. 183; 1988, c. 405; 2003, c. 597;2007, c. 925;2010, c. 434.

§ 13.1-835. Resignation of registered agent

A. A registered agent may resign as agent for the corporation by signing and filing with the Commission a statement of resignation stating (i) the name of the corporation, (ii) the name of the agent, and (iii) that the agent resigns from serving as registered agent for the corporation. The statement of resignation shall be accompanied by a certification that the registered agent will have a copy of the statement mailed to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. When the statement of resignation takes effect, the registered office is also discontinued.

B. A statement of resignation takes effect on the earlier of (i) 12:01 a.m. on the thirty-first day after the date on which the statement was filed or (ii) the date on which a statement of change to appoint a registered agent is filed, in accordance with § 13.1-834, with the Commission.

1985, c. 522; 2007, c. 925;2010, c. 434;2021, Sp. Sess. I, c. 487. §

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.

Code 1950, §§ 13-12, 13-14, 13.1-210; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 622; 1991, c. 672; 2001, cc. 517, 541;2007, c. 925.

§ 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.

Code 1950, § 13.1-211; 1956, c. 428; 1958, c. 564; 1982, c. 182; 1985, c. 522; 2007, c. 925.

§ 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. Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-844.2, 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.

Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925;2012, c. 706;2018, c. 265.

§ 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. Except as otherwise determined by the board of directors acting pursuant to subsection C of § 13.1-844.2, 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.

Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925;2012, c. 706;2018, c. 265.

§ 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.

1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-216; 1956, c. 428; 1985, c. 522; 2007, c. 925;2015, c. 611.

§ 13.1-842. Notice of meeting

A. 1. A corporation shall notify members of the date, time, and place, if any, 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, if any, 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.

Code 1950, § 13.1-214; 1956, c. 428; 1958, c. 564; 1960, c. 214; 1985, c. 522; 1986, c. 529; 2002, c. 285;2007, c. 925;2010, c. 171;2015, c. 611;2018, c. 265.

§ 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.

Code 1950, § 13.1-215; 1956, c. 428; 1985, c. 522; 2007, c. 925. §

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.

1985, c. 522; 2007, c. 925.

§ 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.

2007, c. 925.

§ 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 or a member's proxy; 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 read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

C. Unless the articles of incorporation or bylaws require the meeting of members to be held at a place, the board of directors may determine that any meeting of members shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection B.

2010, c. 171;2018, c. 265.

§ 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. If the meeting is to be held at a place, 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 as provided in subsections B and C, 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.

1985, c. 522; 2007, c. 925;2010, c. 171;2018, c. 265.

§ 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.

Code 1950, § 13.1-217; 1956, c. 428; 1975, c. 500; 1982, c. 182; 1985, c. 522; 2002, c. 285;2007, c. 925.

§ 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.

1985, c. 522; 1999, c. 101;2002, c. 285;2007, c. 925;2010, c. 171. §

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 and other 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.

2007, c. 925;2010, c. 171;2015, c. 611.

§ 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.

1985, c. 522; 2007, c. 925;2015, c. 611.

§ 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.

Code 1950, § 13.1-219; 1956, c. 428; 1985, c. 522; 2007, c. 925. §

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.

1985, c. 522; 2007, c. 925.

§ 13.1-851. Change in quorum or voting requirements

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

B. An amendment to the articles of incorporation that adds, changes, or deletes a quorum or

voting requirement shall meet the quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect.

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

§ 13.1-852. Voting for directors; cumulative voting

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

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

C. A statement included in the articles of incorporation that "all of a designated voting group of members are entitled to cumulate their votes for directors" or words of similar import means that the members designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

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

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

2. A member who has the right to cumulate his votes gives notice to the secretary of the corporation not less than 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.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 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 chapter in that it:

1. Eliminates the board of directors or, subject to the requirements of subsection A of § 13.1-872, 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.

1991, c. 132; 1997, c. 217;2007, c. 925;2015, c. 611. §

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.

2007, c. 925.

§ 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 .

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. 925;2010, c. 171.

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

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

1985, c. 522.

§ 13.1-857. Terms of directors generally

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

B. The 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.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1986, c. 529; 2004, c. 303;2007, c. 925.

§ 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.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 140; 1989, c. 419; 2007, c. 925.

§ 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.

1985, c. 522; 1991, c. 124; 2007, c. 925. §

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.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 177; 1991, c. 124; 2007, c. 925.

§ 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.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-222; 1956, c. 428; 1985, c. 522; 1991, c. 124; 2007, c. 925.

§ 13.1-863. Compensation of directors

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

1985, c. 522.

§ 13.1-864. Meetings of 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.

Code 1950, § 13.1-225; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 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. However, if expressly authorized in the articles of incorporation, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting by fewer than all of the directors, but not less than the greater of (i) a majority of the directors in office or (ii) a quorum of the directors as required by the articles of incorporation or bylaws, if the requisite number of directors sign a consent describing the action to be taken and deliver it to the corporation, except such action shall not be permitted to be taken without a meeting if any director objects to the taking of such proposed action. To be effective, such objection shall have been delivered to the corporation no later than ten business days after notice of the proposed action is given. The corporation shall promptly notify each director of any such objection. Any actions taken without a meeting shall comply with any voting requirements established in the articles of incorporation or bylaws. If corporate action is to be taken under this subsection by fewer than all of the directors, the corporation shall give written notice of the proposed corporate action, not less than 10 business days before the action is taken, or such longer period as may be required by the articles of incorporation or bylaws, to all directors. The notice shall contain or be accompanied by a description of the action to be taken. Notwithstanding any provision of this subsection, corporate action may not be taken by fewer than all of the directors without a meeting if the action also requires adoption by or approval of the members.

B. Action taken under this section is effective when the last director, or the last director sufficient to satisfy the requirements of subsection A if action by fewer than all of the directors is authorized, 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 the requisite number of 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.

1985, c. 522; 2007, c. 925;2015, c. 611;2016, c. 382.

§ 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.

1985, c. 522; 2002, c. 285;2007, c. 925;2010, c. 171. §

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.

1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522; 1992, c. 471; 2007, c. 925.

§ 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.

Code 1950, § 13.1-224; 1956, c. 428; 1975, c. 500; 1977, c. 435; 1985, c. 522; 2007, c. 925.

§ 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.

1985, c. 522; 2007, c. 925.

§ 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 subsection shall survive any termination, cancellation, or other discontinuance of the community association.

1987, cc. 59, 257; 1988, c. 561; 1989, c. 422; 2007, c. 925;2011, cc. 693, 704.

§ 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.

1989, c. 422; 2007, c. 925;2011, cc. 693, 704.

§ 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.

Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 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.

2007, c. 925.

§ 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.

Code 1950, § 13.1-226; 1956, c. 428; 1982, c. 372; 1985, c. 522; 1994, c. 189;2007, c. 925.

§ 13.1-873. Duties of officers

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

1985, c. 522.

§ 13.1-874. Resignation and removal of officers

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective 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.

Code 1950, § 13.1-227; 1956, c. 428; 1985, c. 522; 1990, c. 282; 1991, c. 124; 2007, c. 925.

§ 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 or 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, arbitrative, or investigative and whether formal or informal.

1985, c. 522; 2007, c. 925;2009, c. 587.

§ 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.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925.

§ 13.1-877. Mandatory indemnification

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

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

§ 13.1-878. Advance for expenses

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

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925;2010, c. 171;2015, c. 611.

§ 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.

1987, cc. 59, 257; 2007, c. 925.

§ 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.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. 925.

§ 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.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 1987, cc. 59, 257; 1988, c. 561; 2007, c. 925;2010, c. 171.

§ 13.1-884. Authority to amend articles of incorporation

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

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

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

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

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 of the initial registered agent or the address of the initial registered office, if a statement of change described in § 13.1-834 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.

Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522; 2007, c. 925;2015, c. 623.

§ 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.

Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522; 2007, c. 925.

§ 13.1-887. Voting on amendments by voting groups

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

1985, c. 522.

§ 13.1-887.1. Amendment prior to organization

When a corporation has not yet completed its organization, 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.

2002, c. 607;2007, c. 925.

§ 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 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.

Code 1950, §§ 13-226, 13-227, 13.1-237, 13.1-238; 1956, c. 428; 1966, c. 218; 1975, c. 500; 1985, c. 522; 2002, c. 607;2007, c. 925;2012, c. 130.

§ 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.

1985, c. 522; 2002, c. 607;2007, c. 925.

§ 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.

Code 1950, § 13.1-239; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 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 § 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.

1985, c. 522; 2007, c. 925.

§ 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.

1985, c. 522; 2007, c. 925.

§ 13.1-893.1. Definitions

As used in this article:

"Merger" means a business combination pursuant to § 13.1-894.

"Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger.

"Survivor" in a merger means the domestic or foreign corporation or the eligible entity into which one or more other domestic or foreign corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

2007, c. 925;2009, c. 216.

§ 13.1-894. Merger

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge, resulting in a survivor that is a domestic corporation created in the merger.

B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation, or may be created as the survivor of a merger in which a domestic corporation is a party but only if the merger is permitted by the organic law of the foreign corporation or eligible entity.

C. The plan of merger shall include:

1. As to each party to the merger, its name, jurisdiction of formation, and type of entity;

2. The survivor's name, jurisdiction of formation, and type of entity, and, if the survivor is to be created in the merger, a statement to that effect;

3. The terms and conditions of the merger;

4. The manner and basis of converting the membership interests of each merging domestic or

foreign corporation and eligible interests of each domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

5. The manner and basis of converting any rights to acquire the membership interests of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

6. Any amendment to the articles of incorporation of the survivor that is a domestic corporation or if the articles of incorporation are amended and restated, as an attachment to the plan, the survivor's restated articles of incorporation, or if a new domestic corporation is to be created by the merger, as an attachment to the plan, the survivor's articles of incorporation; and

7. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or required by the articles of incorporation or organic document of any such party.

D. In addition to the requirements of subsection C, a plan of merger may contain any other provision not prohibited by law.

E. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § 13.1-804.

F. Unless the plan of merger provides otherwise, a plan of merger may be amended prior to the effective time and date of the certificate of merger, but if the members of a domestic corporation that is a party to the merger are required by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such members to change any of the following unless the amendment is subject to the approval of the members:

1. The amount or kind of membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, or other property to be received under the plan by the members of or holders of eligible interests in any party to the merger;

2. The articles of incorporation of any domestic corporation that will be the survivor of the merger, except for changes permitted by subsection B of § 13.1-885;or

3. Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

Code 1950, § 13.1-240; 1956, c. 428; 1985, c. 522; 2007, c. 925;2008, c. 509;2015, c. 611;2021, Sp. Sess. I, c. 487.

§ 13.1-895. Action on plan of merger

A. In the case of a domestic corporation that is a party to a merger, where the members of any merging corporation have voting rights the plan of merger shall be adopted by the board of directors. Except as provided in subsection F, after adopting a plan of merger, the board of directors shall submit the plan to the members for their approval.

The board of directors shall also transmit to the members a recommendation that the members approve the plan, 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.

B. The board of directors may condition its submission of the plan of merger to the members on any basis.

C. If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, the corporation shall notify each member, whether or not entitled to vote, of the meeting of members at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or foreign corporation or eligible entity and its members are to receive membership or other interests in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its members are to receive membership or other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.
D. Unless the articles of incorporation or the board of directors acting pursuant to subsection B, requires a greater vote, the plan of merger to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes cast by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.

E. Separate voting by voting groups is required:

1. On a plan of merger by each class of members:

a. Whose membership interests are to be converted under the plan of merger into membership interests in a different domestic or foreign corporation, or eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing; or

b. Who would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the articles of incorporation, would require action by separate voting groups under § 13.1-887.

2. On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger.

F. Unless the articles of incorporation otherwise provide, approval by the corporation's members of a plan of merger is not required if:

1. The corporation will survive the merger;

2. Except for amendments permitted by subsection B of § 13.1-885, its articles of incorporation will not be changed; and

3. Each person who is a member of the corporation immediately before the effective time of the merger will retain the same membership interest with identical designation, preferences, limitations, and rights immediately after the effective time of the merger.

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

H. If as a result of a merger one or more members of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger shall require the execution by each member of a separate written consent to become subject to such owner liability.

Code 1950, § 13.1-242; 1956, c. 428; 1985, c. 522; 2002, c. 607;2007, c. 925;2015, c. 611.

§ 13.1-896. Articles of merger

A. After a plan of merger has been adopted and approved as required by this Act, articles of merger shall be executed on behalf of each party to the merger. The articles shall set forth:

1. The plan of merger, the names of the parties to the merger, and, for each party that is a foreign corporation or eligible entity, the name of the state or country under whose law it is incorporated or formed;

2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the articles of merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

3. The date the plan of merger was adopted by each domestic corporation that was a party to the merger;

4. If the plan of merger required approval by the members of a domestic corporation that was a party to the merger, either:

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

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

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

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

5. If the plan of merger was adopted by the directors without approval by the members of a domestic corporation that was a party to the merger, a statement that the plan of merger was duly approved by the vote of a majority of the directors in office, including the reason member

approval was not required; and

6. As to each foreign corporation or eligible entity that was a party to the merger, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

B. Articles of merger shall be filed with the Commission by the survivor of the merger. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. Articles of merger filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

Code 1950, §§ 13.1-243, 13.1-244; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2000, c. 53;2003, c. 597 ;2007, c. 925;2009, c. 216.

§ 13.1-897. Effect of merger

A. When a merger becomes effective:

1. The domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence as the case may be;

2. The separate existence of every domestic or foreign corporation or eligible entity that is merged into the survivor ceases;

3. Property owned by and, except to the extent that assignment would violate a contractual prohibition on assignment by operation of law, every contract right possessed by each domestic or foreign corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

4. All liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are vested in the survivor;

5. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

6. The articles of incorporation or organic document of the survivor is amended to the extent provided in the plan of merger;

7. The articles of incorporation or organic document of a survivor that is created by the merger becomes effective; and

8. The membership interests of each domestic or foreign corporation that is a party to the merger and the eligible interests in an eligible entity that is a party to the merger that are to be converted under the plan of merger into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such membership interests or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under the organic law of the eligible entity.

B. Upon a merger's becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to appoint the clerk of the Commission as its agent for

service of process in a proceeding to enforce the rights of members of each domestic corporation that is a party to the merger.

C. No corporation that is required by law to be a domestic corporation may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States, or another country, shall also be a domestic corporation of the Commonwealth.

Code 1950, § 13.1-245; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925.

§ 13.1-897.1. Abandonment of a merger

A. Unless otherwise provided in the plan of merger or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger is organized or by which it is governed, after a plan of merger has been adopted and approved as required by this article, and at any time before the certificate of merger has become effective, the plan may be abandoned by a domestic corporation that is a party to the plan without action by its members in accordance with any procedures set forth in the plan of merger or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the plan of merger.

B. If a merger is abandoned after the articles of merger have been filed with the Commission but before the certificate of merger has become effective, in order for the certificate of merger to be abandoned, all parties to the plan of merger shall sign a statement of abandonment and deliver it to the Commission for filing prior to the effective time and date of the certificate of merger. If the Commission finds that the statement of abandonment complies with the requirements of law, it shall issue a certificate of abandonment, effective as of the time and date the statement of abandonment was received by the Commission, and the merger shall be deemed abandoned and shall not become effective.

C. The statement of abandonment shall contain:

1. The name of each domestic and foreign corporation and eligible entity that is a party to the merger and its jurisdiction of formation and entity type;

2. When the survivor will be a domestic corporation or domestic stock corporation created by the merger, the name of the survivor set forth in the articles of merger;

3. The date on which the articles of merger were filed with the Commission;

4. The date and time on which the Commission's certificate of merger becomes effective; and

5. A statement that the merger is being abandoned in accordance with this section.

2007, c. 925;2021, Sp. Sess. I, c. 487.

§§ 13.1-898, 13.1-898.1. Repealed

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

§ 13.1-898.1:1. Definitions

As used in this article, unless the context requires a different meaning:

"Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

"Domesticating corporation" means the domestic corporation that approves a plan of domestication pursuant to § 13.1-898.3 or the foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

"Domestication" means a transaction pursuant to this article, including domestication of a foreign corporation as a domestic corporation or domestication of a domestic corporation in another jurisdiction, where the other jurisdiction authorizes such a transaction even if by another name.

2021, Sp. Sess. I, c. 487.

§ 13.1-898.2. Domestication

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

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

C. The plan of domestication shall set forth:

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

2. The terms and conditions of the domestication; and

3. For a foreign corporation that is to become a domestic corporation, as a referenced attachment, amended and restated articles of incorporation that comply with the requirements of § 13.1-819 as they will be in effect upon consummation of the domestication.

D. The plan of domestication may include any other provision relating to the domestication.

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

2003, c. 374;2007, c. 925;2012, c. 130.

§ 13.1-898.3. Action on plan of domestication by a domestic corporation

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

1. The board of directors of the corporation shall adopt the plan of domestication.

2. After adopting a plan of domestication, the board of directors shall submit the plan of domestication for approval by the members.

3. For a plan of domestication to be approved:

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

b. The members shall approve the plan as provided in subdivision 6 of this subsection.

4. The board of directors may condition its submission of the plan of domestication to the members on any basis.

5. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842 at which the plan of domestication is to be submitted for approval. The notice shall state that a purpose of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

6. Unless this Act or the board of directors, acting pursuant to subdivision 4 of this subsection, requires a greater vote, the plan of domestication shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subdivision or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

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

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

2003, c. 374;2007, c. 925.

§ 13.1-898.4. Articles of domestication

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

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

2. The plan of domestication;

3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was

domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and

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

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

C. The certificate of domestication shall become effective pursuant to § 13.1-806.

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

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

2003, c. 374;2007, c. 925;2012, c. 130.

§ 13.1-898.5. Surrender of articles of incorporation upon domestication

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

1. The name of the corporation;

2. The jurisdiction in which the corporation is to be domesticated and the name of the corporation upon its domestication under the laws of that jurisdiction;

3. The plan of domestication;

4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of the Commonwealth;

5. Where the members of the corporation have voting rights, a statement:

a. That the plan was adopted by the unanimous consent of the members; or

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

(1) The existence of a quorum of each voting group entitled to vote separately on the plan; and
(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was

sufficient for approval by that voting group;

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

7. A statement that the corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

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

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

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

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

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

E. Service of process on the clerk of the Commission is service of process on a former domestic corporation that has surrendered its charter pursuant to this section. Service on the clerk shall be made in accordance with § 12.1-19.1 and service on the former domestic corporation may be made in any other manner permitted by law.

2003, c. 374;2007, c. 925;2015, c. 623.

§ 13.1-898.6. Effect of domestication

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

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

2. The liabilities remain the liabilities of the corporation;

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

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

5. The corporation is deemed to:

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

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

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

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

2003, c. 374;2007, c. 925.

§ 13.1-898.7. Abandonment of domestication

A. Unless otherwise provided in the plan of domestication, after a plan of domestication has been adopted and approved by a domestic corporation as required by this article, and at any time before the certificate of incorporation surrender has become effective, the plan may be abandoned by the corporation without action by its members in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the manner determined by the board of directors.

B. A domesticating corporation that is a foreign corporation may abandon its domestication to a domestic corporation in the manner prescribed by its organic law.

C. If a domestication is abandoned after articles of incorporation surrender or articles of domestication have been filed with the Commission but before the certificate of incorporation surrender or certificate of domestication has become effective, a statement of abandonment signed by the domesticating corporation shall be delivered to the Commission for filing prior to the effective time and date of the certificate of incorporation surrender or certificate of domestication. If the Commission finds that the statement of abandonment complies with the requirements of law, it shall issue a certificate of abandonment, effective as of the date and time the statement of abandonment was received by the Commission, and the domestication shall be deemed abandoned and shall not become effective.

D. The statement of abandonment shall contain:

1. The name of the domesticating corporation and its jurisdiction of formation;

2. When the domestication corporation is a foreign corporation, the name of the domesticated corporation set forth in the articles of domestication;

3. The date on which the articles of incorporation surrender or articles of domestication were filed with the Commission;

4. The date and time on which the Commission's certificate of incorporation surrender or certificate of domestication becomes effective; and

5. A statement that domestication is being abandoned in accordance with this section or, when the domesticating corporation is a foreign corporation, a statement that the foreign corporation abandoned the domestication as required by its organic law.

2003, c. 374;2007, c. 925;2015, c. 623;2021, Sp. Sess. I, c. 487.

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

Unless the articles of incorporation provide otherwise, no approval of the members of a corporation entitled to vote is required:

1. To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

2. To mortgage, pledge or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets whether or not in the usual and regular course of business; or

3. To transfer any or all of the corporation's assets to one or more domestic or foreign eligible entities all of whose eligible interests are owned by the corporation.

Code 1950, §§ 13-232, 13.1-246; 1956, c. 428; 1985, c. 522; 2007, c. 925.

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

A. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its assets, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors adopts and its members approve the proposed transaction.

B. Where there are members having voting rights, a disposition, other than a disposition described in § 13.1-899, shall be authorized in the following manner:

1. The board of directors shall adopt a resolution authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also submit to the members a recommendation that the members approve the proposed disposition, 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.

2. The board of directors may condition its submission of the proposed transaction on any basis.
3. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 13.1-842. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain or be accompanied by a copy or summary of the agreement pursuant to which the disposition will be effected. If only a summary of the agreement is sent to members, the corporation shall also send a copy of the agreement to any member who requests it.

4. Unless the board of directors, acting pursuant to subdivision 2 of this subsection, requires a greater vote, the disposition to be authorized shall be approved by more than two-thirds of all the votes cast on the disposition at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the disposition by each voting group entitled to vote on the disposition at a meeting at which a quorum of the voting group exists.

5. Unless the parties to the disposition have agreed otherwise, after a disposition of assets has been approved by members, and at any time before the disposition has been consummated, it may be abandoned, subject to any contractual rights, without further member action in accordance with the procedure set forth in the resolution proposing the disposition or, if none is set forth, by the board of directors.

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

D. A disposition of assets in the course of dissolution under Article 13 (§ 13.1-902 et seq.) is not governed by this section.

Code 1950, §§ 13-232, 13.1-246; 1956, c. 428; 1985, c. 522; 1991, c. 110; 2007, c. 925.

§ 13.1-901. Sale of certain real property by incorporated educational institutions

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

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

§ 13.1-902. Dissolution by directors and members

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

B. For a proposal to dissolve to be adopted:

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

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

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

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

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

the votes cast by each voting group entitled to vote on the proposed dissolution at a meeting at which a quorum of the voting group exists.

Code 1950, § 13.1-248; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-903. Dissolution by directors

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

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

§ 13.1-904. Articles of dissolution

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

1. The name of the corporation.

2. The date dissolution was authorized.

3. Where there are members having voting rights, either (i) a statement that dissolution was authorized by unanimous consent of the members, or (ii) a statement that the proposed dissolution was submitted to the members by the board of directors in accordance with this article and a statement of (a) the existence of a quorum of each voting group entitled to vote separately on dissolution and (b) either the total number of votes cast for and against dissolution by each voting group entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution separately by each voting group and a statement that the number cast for dissolution by each voting group was sufficient for approval by that voting group.

4. Where there are no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the dissolution was authorized and a statement of the fact that dissolution was authorized by the vote of a majority of the directors in office.

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

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

D. For purposes of §§ 13.1-902 through 13.1-908.2, "dissolved corporation" means a corporation whose articles of dissolution have become effective; the term includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Code 1950, §§ 13.1-252, 13.1-253; 1956, c. 428; 1974, c. 452; 1975, c. 500; 1985, c. 522; 2003, c. 596;2007, c. 925.

§ 13.1-905. Revocation of dissolution

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

B. Revocation of dissolution shall be authorized in the same manner as the dissolution was

authorized unless, where members have votes, that authorization permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

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

1. The name of the corporation;

2. The effective date of the dissolution that was revoked;

3. The date that the revocation of dissolution was authorized;

4. If the corporation's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

5. If member action was required to revoke the dissolution, the information required by subdivision 3 of subsection A of § 13.1-904.

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

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

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

§ 13.1-906. Effect of dissolution

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

1. Collecting its assets;

2. Disposing of its properties;

3. Discharging or making provision for discharging its liabilities;

4. Distributing its remaining property; and

5. Doing every other act necessary to wind up and liquidate its business and affairs.

B. Dissolution of a corporation does not:

1. Transfer title to the corporation's property;

2. Subject its directors to standards of conduct different from those prescribed in § 13.1-870;

3. Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

4. Prevent commencement of a proceeding by or against the corporation in its corporate name;

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

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

1985, c. 522; 2007, c. 925.

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

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

1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act or as a court may direct;

4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether issuing shares or not, as may be specified in a plan of distribution adopted as provided in this Act or as a court may direct.

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

Code 1950, §§ 13-237, 13.1-249, 13.1-250; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-908. Known claims against dissolved corporation

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

B. The dissolved corporation shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an

instrument of indebtedness;

3. Provide a mailing address where a claim may be sent;

4. State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim is required to be delivered to the dissolved corporation; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

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

1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or

2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the delivery of written confirmation of the claim to the dissolved corporation.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or may be still occurring. 1985, c. 522; 2007, c. 925.

§ 13.1-908.1. Other claims against dissolved corporation

A. A dissolved corporation may also (i) deliver notice of its dissolution to any known claimant with a liability or claim that pursuant to subsection D of § 13.1-908 is not treated as a claim for purposes of § 13.1-908 and (ii) publish notice of its dissolution one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

1. Describe the information that is required to be included in a claim and provide a mailing address to which the claim may be sent; and

2. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of delivery of notice to the claimant, or the date of publication of the notice, as appropriate.

C. If the dissolved corporation provides notice of its dissolution in accordance with this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the date on which notice was delivered to the claimant or published, as appropriate:

1. A claimant who was not given written notice under § 13.1-908;

2. A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

3. A claimant whose claim pursuant to subsection D of § 13.1-908 is not treated as a claim for purposes of § 13.1-908.

D. A claim that is not barred by subsection C of § 13.1-908 or subsection C of this section may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 13.1-908.2, if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

2007, c. 925;2015, c. 611.

§ 13.1-908.2. Court proceedings

A. A dissolved corporation that has published a notice under § 13.1-908.1 may file an application with the circuit court of the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 13.1-908.1.

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims that do not meet the definition of a claim in subsection D of § 13.1-908, and such claims may not be enforced against a member who received assets in liquidation.

2007, c. 925.

§ 13.1-908.3. Director duties

A. The board of directors shall cause the dissolved corporation to apply its remaining assets to discharge or make reasonable provision for the payment of claims and make distributions of assets to members after payment or provision for claims.

B. Directors of a dissolved corporation that has disposed of claims under § 13.1-908, 13.1-908.1, or 13.1-908.2 shall not be liable for breach of subsection A with respect to claims against the dissolved corporation that are barred or satisfied under § 13.1-908, 13.1-908.1, or 13.1-908.2.

2007, c. 925.

§ 13.1-909. Grounds for judicial dissolution

A. The circuit court in any city or county described in subsection C may dissolve a corporation:

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

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

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

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

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

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

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

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

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

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

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

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

B. The circuit court in the city or county named in subsection C shall have full power to liquidate

the assets and business of the corporation at any time after the termination of corporate existence, pursuant to the provisions of this article upon the application of any person, for good cause, with regard to any assets or business that may remain. The jurisdiction conferred by this clause may also be exercised by any such court in any city or county where any property may be situated whether of a domestic or a foreign corporation that ceased to exist.

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

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

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

Code 1950, §§ 13.1-257, 13.1-260, 13.1-261; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925. §

13.1-910. Receivership or custodianship

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

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

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

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

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

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

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

Code 1950, §§ 13.1-258, 13.1-259; 1956, c. 428; 1985, c. 522; 2007, c. 925. §

13.1-911. Decree of dissolution

A. If after a hearing the court determines that one or more grounds for judicial dissolution described in § 13.1-909 exist, it may enter a decree directing that the corporation shall be dissolved. The clerk of the court shall deliver a certified copy of the decree to the Commission, which shall enter an order of involuntary dissolution.

B. After the order of involuntary dissolution has been entered, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with §§ 13.1-906 and 13.1-907 and the notification of claimants in accordance with §§ 13.1-908, 13.1-908.1, and 13.1-908.2. When all of the assets of the corporation have been distributed, the court shall so advise the Commission, which shall enter an order of termination of corporate existence.

Code 1950, §§ 13.1-262, 13.1-263; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-912. Articles of termination of corporate existence

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

1. The name of the corporation;

2. That all the assets of the corporation have been distributed; and

3. That the dissolution of the corporation has not been revoked.

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

C. The statement "that all the assets of the corporation have been distributed" means that the corporation has divested itself of all its assets by the payment of claims or by assignment to a trustee or trustees as directed by § 13.1-907. If any certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § 55.1-2513, pay such person's share to the State Treasurer as abandoned property on complying with all applicable requirements of § 55.1-2524 except subdivision B 4 of that section.

1985, c. 522; 1986, c. 529; 2004, c. 162;2007, c. 925.

§ 13.1-913. Termination of corporate existence by incorporators or initial directors

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

1. The name of the corporation;

2. That the corporation has not commenced business;

3. That no debt of the corporation remains unpaid;

4. That the net assets of the corporation remaining after winding up have been distributed; and

5. That a majority of the initial directors authorized the dissolution or that initial directors were not named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

1985, c. 522; 1986, c. 234; 2007, c. 925.

§ 13.1-914. Automatic termination of corporate existence

A. If any domestic corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending termination of its corporate existence. Whether or not such notice is mailed, if any corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, the corporate existence of the corporation shall be automatically terminated as of that day.

B. If any domestic corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-835 fails to file a statement of change pursuant to § 13.1-834 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of the impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day.

C. The properties and affairs of a corporation whose corporate existence has been terminated pursuant to this section shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) pay, satisfy, and discharge its liabilities and obligations, and (iii) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

D. No officer, director, or agent of a corporation shall have any personal obligation for any of the liabilities of the corporation whether such liabilities arise in contract, tort, or otherwise, solely by reason of the termination of the corporation's existence pursuant to this section.

Code 1950, § 13.1-254; 1956, c. 428; 1970, c. 4; 1980, c. 185; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216;2000, c. 52;2007, c. 925;2010, c. 753.

§ 13.1-915. Involuntary termination of corporate existence

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in the Commonwealth as required by law; (iii) has failed to file any document required by this Act to be filed with the Commission; or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. Upon termination, the properties and affairs of the

corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907. A corporation whose existence is terminated pursuant to clause (iv) shall not be eligible for reinstatement for a period of not less than one year.

B. Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

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

Code 1950, § 13.1-256; 1956, c. 428; 1958, c. 506; 1968, c. 116; 1976, c. 350; 1985, c. 522; 1991, c. 310; 2007, c. 925;2008, cc. 588, 770.

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

A. A corporation that has ceased to exist pursuant to this article may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to § 13.1-911 and the circuit court's decree directing dissolution contains no provision of reinstatement of corporate existence.

B. To have its corporate existence reinstated, the corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any member's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of $10;

3. All annual registration fees and penalties that were due before the corporation ceased to exist and that would have been assessed or imposed to the date of reinstatement if the corporation's existence had not been terminated;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. If the name of the corporation does not comply with the provisions of § 13.1-829 at the time of reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to a name that satisfies the provisions of § 13.1-829, with the fee required by this chapter for the filing of articles of amendment; and

6. If the corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-834.

C. If the corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement of corporate existence. Upon entry of the order of reinstatement, the corporate existence shall be deemed to have continued from the date of termination as if termination had never occurred, and any liability incurred by the corporation or a director, officer, or other agent after the termination and before the reinstatement is determined as if the termination of the corporation's existence had never occurred.

Code 1950, § 13.1-255; 1956, c. 428; 1958, c. 564; 1976, c. 350; 1985, c. 522; 1986, c. 234; 1988, c. 405; 2004, c. 601;2005, c. 379;2006, c. 663;2007, c. 925;2015, c. 623.

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

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

Code 1950, § 13.1-264; 1956, c. 428; 1985, c. 522; 2007, c. 925.

§ 13.1-918. Repealed

Repealed by Acts 1988, c. 405.

§ 13.1-919. Authority to transact business required

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

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

1. Maintaining, defending, or settling any proceeding;

2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

3. Maintaining bank accounts;

4. Selling through independent contractors;

5. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Commonwealth before they become contracts;

6. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;

7. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;

8. Owning, without more, real or personal property;

9. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

10. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution; or

11. Serving, without more, as a general partner of or as a partner in a partnership that is a general partner of a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

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

Code 1950, §§ 13.1-265 to 13.1-265.2; 1956, c. 428; 1962, c. 239; 1980, c. 630; 1985, c. 522; 2007, c. 925.

§ 13.1-920. Consequences of transacting business without authority

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

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

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

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

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

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

Code 1950, §§ 13-218, 13.1-281; 1956, c. 428; 1981, c. 320; 1985, c. 522; 1986, c. 571; 1990, c. 325; 1991, c. 672; 2007, c. 925.

§ 13.1-921. Application for certificate of authority

A. A foreign corporation may apply to the Commission for a certificate of authority to transact business in the Commonwealth. The application shall be made on forms prescribed and furnished by the Commission. The application shall set forth:

1. The name of the foreign corporation, and if the corporation is prevented by § 13.1-924 from using its name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § 13.1-924;

2. The foreign corporation's jurisdiction of formation, and if the foreign corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;

3. The foreign corporation's original date of incorporation, organization, or formation as an entity and its period of duration;

4. The street address of the foreign corporation's principal office;

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

6. The names and usual business addresses of the current directors and principal officers of the foreign corporation.

B. The foreign corporation shall deliver with the completed application a copy of its articles of incorporation and all amendments and corrections thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in its jurisdiction of formation.

C. A foreign corporation is not precluded from receiving a certificate of authority to transact business in the Commonwealth because of any difference between the law of the foreign corporation's jurisdiction of formation and the law of the Commonwealth.

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

Code 1950, §§ 13.1-269, 13.1-270; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1994, c. 348;2001, cc. 517, 541;2002, c. 607;2004, c. 274;2007, c. 925;2015, c. 623;2021, Sp. Sess. I, c. 487.

§ 13.1-922. Amended certificate of authority

A. A foreign corporation authorized to transact business in the Commonwealth shall obtain an amended certificate of authority from the Commission:

1. If it changes its corporate name or the state or other jurisdiction of its incorporation; or

2. To abandon or change the designated name adopted by the corporation for use in the Commonwealth pursuant to subsection B of § 13.1-924.

B. The requirements of § 13.1-921 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation that is authorized to transact business in the Commonwealth are amended, within 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

Code 1950, §§ 13.1-275 to 13.1-277; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1986, c. 571; 1987, c. 431; 2007, c. 925;2015, c. 623.

§ 13.1-923. Effect of certificate of authority

A. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in the Commonwealth, subject, however, to the right of the Commonwealth to revoke the certificate as provided in this Act.

B. A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall not be deemed to authorize it to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in the Commonwealth.

C. This Act does not authorize the Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in the Commonwealth.

Code 1950, §§ 13.1-266, 13.1-271; 1956, c. 428; 1985, c. 522; 2007, c. 925. §

13.1-924. Corporate name of foreign corporation

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such foreign corporation satisfies the requirements of § 13.1-829.

B. If the corporate name of a foreign corporation does not satisfy the requirements of § 13.1-829, to obtain or maintain a certificate of authority to transact business in the Commonwealth, if its real name is unavailable, the foreign corporation may use a designated name that is available, and that satisfies the requirements of § 13.1-829, if it informs the Commission of the designated name.

Code 1950, §§ 13.1-267, 13.1-268, 13.1-277; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 232, 571; 2003, c. 592;2005, c. 379;2007, c. 925;2012, c. 63.

§ 13.1-925. Registered office and registered agent of foreign corporation

A. Each foreign corporation authorized to transact business in the Commonwealth shall continuously maintain in the Commonwealth:

1. A registered office, which may be the same as any of its places of business.

2. A registered agent, who shall be:

a. An individual who is a resident of Virginia 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.

Code 1950, § 13.1-272; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1994, c. 348;2000, c. 162;2001, cc. 517, 541;2007, c. 925.

§ 13.1-926. Change of registered office or registered agent of a foreign corporation

A. A foreign corporation authorized to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the foreign corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post office address, including street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-925.

B. A statement of change shall forthwith be filed with the Commission by a foreign corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-925.

C. A foreign corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A foreign corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-925. In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the foreign corporation on or before the business day

following the day on which the statement is filed.

Code 1950, § 13.1-273; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 622; 2003, c. 597;2007, c. 925;2010, c. 434.

§ 13.1-927. Resignation of registered agent of foreign corporation

A. A registered agent may resign as agent for the corporation by signing and filing with the Commission a statement of resignation stating (i) the name of the foreign corporation, (ii) the name of the agent, and (iii) that the agent resigns from serving as registered agent for the foreign corporation. The statement of resignation shall be accompanied by a certification that the registered agent will have a copy of the statement mailed to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. When the statement of resignation takes effect, the registered office is also discontinued.

B. A statement of resignation takes effect on the earlier of (i) 12:01 a.m. on the thirty-first day after the date on which the statement was filed with the Commission or (ii) the date on which a statement of change to appoint a registered agent is filed, in accordance § 13.1-926, with the Commission.

1985, c. 522; 2007, c. 925;2010, c. 434;2021, Sp. Sess. I, c. 487. **§**

13.1-928. Service of process on foreign corporation

A. The registered agent of a foreign corporation authorized to transact business in the Commonwealth shall be an agent of such corporation upon whom any process, notice, order or demand required or permitted by law to be served upon the corporation may be served. The registered agent may by 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, order or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth 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. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Code 1950, §§ 13-214 to 13-217, 13.1-274; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 571, 622; 1991, c. 672; 2001, cc. 517, 541;2007, c. 925.

§ 13.1-928.1. Merger of foreign corporation authorized to transact business in Commonwealth A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is incorporated, and such corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated; however, the filing

shall not be required when a foreign corporation merges with a domestic corporation, the foreign corporation's articles of incorporation are not amended by said merger, and the articles of merger filed on behalf of the domestic corporation pursuant to § 13.1-896 contain a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is incorporated, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign corporation, limited liability company, business trust, partnership, or limited partnership shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it was incorporated and comply in behalf of the predecessor corporation with the provisions of § 13.1-929. If a surviving or resulting corporation or limited liability company, business trust, partnership, or limited partnership is to continue to transact business in the Commonwealth and has not received a certificate of authority to transact business in the Commonwealth, within such 30 days, deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated.

C. Upon the merger or consolidation of two or more foreign corporations any one of which owns property in the Commonwealth, all such property shall pass to the surviving or resulting corporation except as otherwise provided by the laws of the state by which it is governed, but only from the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

1986, c. 571; 1990, c. 283; 2006, c. 663;2007, c. 925;2015, c. 623.

§ 13.1-928.2. Entity conversion of foreign corporation authorized to transact business in Commonwealth

A. Whenever a foreign corporation that is authorized to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor corporation with the provisions of § 13.1-929;or

2. If the surviving or resulting entity is a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in

the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign corporation that is authorized to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign corporation shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. 274.

§ 13.1-929. Withdrawal of foreign corporation

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on a form prescribed and furnished by the Commission and shall set forth:

1. The name of the foreign corporation and the name of the state or other jurisdiction under whose laws it is incorporated;

2. If applicable, a statement that the foreign corporation was a party to a merger permitted by the laws of the state or other jurisdiction under whose law it was incorporated and that it was not the surviving entity of the merger, has consolidated with another entity, or has converted to another type of entity under the laws of the state or other jurisdiction under whose law it was incorporated;

3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;

4. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 4; and

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

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate or a statement that no such returns are required to be filed or taxes are required to be paid. In such case the corporation may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in the Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign corporation may be made in any other manner permitted by law.

Code 1950, §§ 13.1-278, 13.1-278.1; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 529; 1991, c. 672; 2007, c. 925;2012, c. 130;2015, c. 623.

§ 13.1-930. Automatic revocation of certificate of authority

A. If any foreign corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation notice of the impending revocation of its certificate of authority to transact business in the Commonwealth. Whether or not such notice is mailed, if any foreign corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, such foreign corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. Every foreign corporation authorized to transact business in the Commonwealth shall pay the annual registration fee required by law on or before the foreign corporation's annual registration fee due date determined in accordance with subsection A of § 13.1-936.1 of each year.

C. If any foreign corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-927 fails to file a statement of change pursuant to § 13.1-926 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign corporation of impending revocation of its certificate of authority. If the foreign corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending revocation notice was mailed, the foreign corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

D. The automatic revocation of a foreign corporation's certificate of authority pursuant to this section constitutes the appointment of the clerk of the Commission as the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

E. Revocation of a foreign corporation's certificate of authority pursuant to this section does not terminate the authority of the registered agent of the corporation.

Code 1950, § 13.1-279; 1956, c. 428; 1970, c. 4; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216;2000, c. 52;2007, c. 925;2010, c. 753.

§ 13.1-931. Involuntary revocation of certificate of authority

A. The certificate of authority to transact business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Has failed to file any document required by this Act to be filed with the Commission;

4. No longer exists under the laws of the state or country of its incorporation; or

5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

A certificate revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

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

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Code 1950, § 13.1-280; 1956, c. 428; 1958, c. 506; 1985, c. 522; 1991, c. 672; 1995, c. 76;2007, c. 925;2008, cc. 588, 770;2015, c. 623.

§ 13.1-931.1. Reinstatement of foreign corporation whose certificate of authority has been withdrawn or revoked

A. A foreign corporation whose certificate of authority to transact business in the

Commonwealth has been withdrawn or revoked may be relieved of the withdrawal or revocation and have its certificate of authority reinstated by the Commission within five years after the date of withdrawal or revocation unless the certificate of authority was revoked by order of the Commission pursuant to subdivision A 1 of § 13.1-931.

B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any member's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of $10;

3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was revoked and that would have been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority revoked;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation or other constituent documents of the foreign corporation and any mergers entered into by the foreign corporation from the date of withdrawal or revocation of its certificate of authority to the date of its application for reinstatement, along with an application for an amended certificate of authority if required as a result of an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

6. If the name of the foreign corporation does not comply with the provisions of § 13.1-924 at the time of reinstatement, an application for an amended certificate of authority to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 13.1-924, with the fee required by this chapter for the filing of an application for an amended certificate of authority; and

7. If the foreign corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-926.

C. If the foreign corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign corporation's certificate of authority to transact business in the Commonwealth.

1987, c. 431; 1988, c. 405; 2004, c. 274;2007, c. 925;2015, c. 623.

§ 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.

Code 1950, § 13.1-228; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. 925. §

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.

1985, c. 522; 2007, c. 925.

§ 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.

1985, c. 522; 2007, c. 925.

§ 13.1-935. Court-ordered inspection

A. If a corporation does not allow a member who complies with subsection A of § 13.1-933 to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections B and C of § 13.1-933 may apply to the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order if the member proves that the corporation refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

1985, c. 522.

§ 13.1-935.1. 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.

2007, c. 925.

§ 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 prescribed and 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 on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and on or before 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.

Code 1950, §§ 13-9, 13-11, 13-32, 13-213, 13.1-282, 13.1-283; 1956, c. 428; 1958, c. 418; 1975, c. 500; 1981, c. 523; 1985, c. 522; 1987, c. 2; 1997, c. 216;2007, c. 925;2010, c. 753.

§ 13.1-936.1. Annual registration fees to be paid by domestic and foreign corporations; penalty for failure to pay timely

A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to conduct its affairs in the Commonwealth, and by such date in each year thereafter, an annual registration fee of $25, provided that for a domestic corporation that became a domestic corporation by conversion from a domestic stock corporation or by domestication from a foreign corporation that was authorized to transact business in the Commonwealth at the time of the conversion or domestication, the annual registration fee shall be paid each year on or before the date on which its annual registration fee was due prior to the conversion or domestication. At the discretion of the Commission, the annual registration fee 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 registration fee due dates of corporations as equally as practicable throughout the year on a monthly basis.

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 carrying on its business in the Commonwealth or upon its franchise, property, or receipts. Nonstock corporations incorporated before 1970 that were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

B. Each year, the Commission shall ascertain from its records each domestic corporation and each foreign corporation authorized to conduct its affairs in the Commonwealth, as of the first day of the second month next preceding the month in which it was incorporated or authorized to transact business in the Commonwealth and shall assess against each such corporation the annual registration fee herein imposed. Notwithstanding the foregoing, for a domestic corporation that became a domestic corporation by conversion from a domestic stock corporation or by domestication from a foreign corporation that was authorized to transact business in the Commonwealth at the time of the domestication, the assessment shall be made as of the first day of the second month preceding the month in which its annual registration fee was due prior to the conversion or domestication. In any year in which a corporation's annual registration fee due date is extended pursuant to subsection A, the annual 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 Commission to

the Comptroller and to each such corporation.

C. Any domestic or foreign corporation that fails to pay the annual registration fee herein imposed within the time prescribed shall incur a penalty of $10, which shall be added to the amount of the annual registration fee due. The penalty shall be in addition to any other penalty or liability imposed 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 Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 7 (§ 55.1-653 et seq.) of Chapter 6 of Title 55.1, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

1988, c. 405; 1991, c. 311; 1997, c. 216;2007, c. 925;2010, c. 753;2021, Sp. Sess. I, c. 487.

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

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

1988, c. 405.

§ 13.1-937. Application to existing corporations

Unless otherwise provided, the provisions of this chapter shall apply to all domestic and foreign corporations existing at the time this chapter takes effect and their members. The charter of every corporation heretofore or hereafter organized in this Commonwealth shall be subject to the provisions of this chapter. In the case of foreign corporations, the certificate of authority to transact business in this Commonwealth issued by the Commission under any prior act of this Commonwealth shall continue in effect subject to the provisions hereof.

Code 1950, §§ 13.1-203, 13.1-290, 13.1-290.1; 1956, c. 428; 1966, c. 387; 1975, c. 500; 1985, c. 522.

§ 13.1-938. Application to certain social, patriotic and benevolent societies incorporated before year 1900; reports by such societies

The charter of every social, patriotic and benevolent society incorporated by an act of the General Assembly of Virginia prior to the year 1900 for the purpose of perpetuating the memory of men in the military, naval and civil service of the Colonies and of the Continental Congress shall be deemed to have remained, and to be, in full force and effect notwithstanding the provisions of § 13.1-937 or any other statute enacted after January 1, 1950, or regulation pursuant thereto requiring the filing of any report or reports with the Commission. All such reports which under such statutes should have been so filed shall be filed with the Commission on or before August 1, 1986. Such corporation hereafter shall be deemed to hold its charter subject to the provisions of the Constitution of Virginia now in effect, and the laws passed in pursuance thereof.

1985, c. 522.

§ 13.1-939. Saving provision

A. Except as provided in subsection B, the repeal of a statute by this Act does not affect:

1. The operation of the statute or any action taken under it before its repeal;

2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;

3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or

4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors, under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this Act.

C. If any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by 15 U.S.C. § 7002(a)(2).

Code 1950, § 13.1-292; 1956, c. 428; 1985, c. 522; 2007, c. 925;2010, c. 171.

§ 13.1-940. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

§ 13.1-941. Repealed

Repealed by Acts 2002, c. 607.

§ 13.1-941.01 through 13.1-944. Repealed

Repealed by Acts 2021, Sp. Sess. I, c. 487, cl. 2, effective July 1, 2021.

§ 13.1-944.1. Definitions

In this article:

"Articles of organization" has the same meaning specified in § 13.1-1002.

"Converting entity" means the domestic corporation that adopts a plan of entity conversion pursuant to this article.

"Corporation" has the same meaning specified in § 13.1-803.

"Limited liability company" has the same meaning specified in § 13.1-1002.

"LLC membership interest" has the same meaning as membership interest in § 13.1-1002.

"Member" when used with respect to a corporation has the meaning as specified in § 13.1-803, and when used with respect to a limited liability company has the same meaning specified in § 13.1-1002.

"Membership interest" has the same meaning specified in § 13.1-803.

"Person" has the same meaning specified in § 13.1-803.

"Resulting entity" means the limited liability company that is in existence immediately after consummation of an entity conversion pursuant to this article.

2012, c. 706.

§ 13.1-944.2. Entity conversion

A domestic corporation may become a domestic limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of this article.

2012, c. 706;2016, c. 288.

§ 13.1-944.3. Plan of entity conversion

A. To become a domestic limited liability company, a domestic corporation shall adopt a plan of entity conversion setting forth:

1. A statement of the corporation's intention to convert to a limited liability company;

2. The terms and conditions of the conversion, including the manner and basis of converting the membership interests, if any, of the corporation into LLC membership interests of the resulting entity;

3. If the corporation has no members, the designation of each person who is to become a member of the limited liability company upon conversion, provided that no person shall be designated as a member of the resulting entity without the person's prior consent;

4. As a separate attachment to the plan, the full text of the articles of organization of the resulting entity as they will be in effect upon consummation of the conversion; and

5. Any other provision relating to the conversion that may be desired.

B. The plan of entity conversion may also include a provision that the board of directors may amend the plan before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan to the members shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the membership interests of the corporation, unless the amendment has been approved by the members in the manner set forth in § 13.1-944.4.

2012, c. 706;2016, c. 288.

§ 13.1-944.4. Action on plan of entity conversion

A. Where the corporation has no members, or no members having voting rights, the plan shall be adopted upon receiving the vote of at least two-thirds of the directors in office.

B. Where there are members of the corporation having voting rights:

1. The plan of entity conversion shall be adopted by the board of directors;

2. After adopting the plan of entity conversion, the board of directors shall submit the plan to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the plan, unless the board of directors determines

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 voting members shall approve the plan as provided in subdivision C 3.

C. When a plan of entity conversion is to be approved by the members in accordance with subsection B:

1. The board of directors may condition its submission of the plan of entity conversion to the members on any basis;

2. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 13.1-842 at which the plan of entity conversion is to be submitted for approval. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan; and

3. Unless this chapter or the board of directors, acting pursuant to subdivision 1, requires a greater vote, the plan of entity conversion shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be 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 plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

2012, c. 706.

§ 13.1-944.5. Articles of entity conversion

A. After the plan of entity conversion of a corporation into a limited liability company has been adopted and approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which name shall satisfy the requirements of the laws of the Commonwealth;

2. The date on which the corporation was originally incorporated, organized, or formed; its original name, entity type, and jurisdiction of incorporation, organization, or formation; and, for each subsequent change of entity type or jurisdiction of incorporation, organization, or formation made before the filing of the articles of entity conversion, the effective date of the change and the corporation's name, entity type, and jurisdiction of incorporation, organization, or formation upon consummation of the change;

3. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of Chapter 12 (§ 13.1-1000 et seq.), as they will be in effect upon consummation of the conversion;

4. The date the plan of entity conversion was approved; and

5. A statement:

a. That the plan was adopted by the vote of at least two-thirds of the directors in office, including

the reason member approval was not required;

b. That the plan was adopted by the unanimous consent of the members having voting rights; or

c. That the plan was proposed by the board of directors and submitted to the members in accordance with this chapter, and a statement of:

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

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

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

2012, c. 706;2015, c. 623;2016, c. 288.

§ 13.1-944.6. Effect of entity conversion

A. When an entity conversion under this article becomes effective, with respect to that entity:

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

2. The liabilities remain the liabilities of the resulting entity;

3. A pending proceeding may be continued by or against the resulting entity as if the conversion did not occur;

4. The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity;

5. The membership interests, if any, of the corporation are reclassified into LLC membership interests in accordance with the plan of entity conversion, and the members of the converting entity are entitled only to the rights provided in the plan of entity conversion;

6. The resulting entity is deemed to:

a. Be a limited liability company for all purposes;

b. Be the same entity without interruption as the converting entity that existed before the conversion; and

c. Have been organized on the date that the converting entity was originally incorporated, organized, or formed; and

7. The corporation shall cease to be a corporation when the certificate of entity conversion becomes effective.

B. Any member of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

2012, c. 706;2015, c. 623;2016, c. 288.

§ 13.1-944.7. Abandonment of entity conversion

A. Unless otherwise provided in the plan of entity conversion, after a plan of entity conversion has been adopted and approved by the converting domestic corporation in the manner as required by this article, and at any time before the certificate of entity conversion has become effective, the plan may be abandoned by the corporation without action by its members in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

B. If an entity conversion is abandoned after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, a statement of abandonment shall be signed on behalf of the converting domestic corporation and delivered to the Commission for filing before the effective time and date of the certificate of entity conversion. If the Commission finds that the statement of abandonment complies with the requirements of law, it shall issue a certificate of abandonment, effective as of the date and time the statement was received by the Commission, and the entity conversion shall be deemed abandoned and shall not become effective.

C. The statement of abandonment shall contain:

1. The name of the converting domestic corporation;

2. The name of the converted entity set forth in the articles of entity conversion;

3. The date on which the articles of conversion were filed with the Commission;

4. The date and time on which the Commission's certificate of entity conversion becomes effective; and

5. A statement that the entity conversion is being abandoned in accordance with this section.

2012, c. 706;2015, c. 623;2016, c. 288;2021, Sp. Sess. I, c. 487. §

13.1-945. Property title records

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign corporation has changed or corrected its name, merged into a domestic or foreign limited liability company, corporation, business trust, limited partnership or partnership, converted into a domestic or foreign limited liability company, business trust, limited partnership or partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign corporation has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign corporation's jurisdiction of incorporation may be admitted to record in the deed books, in accordance with § 17.1-227, of any clerk's office within the jurisdiction of which any property of the corporation is located in order

to maintain the continuity of title records. The person filing the certificate shall pay a fee of $10 to the clerk of the court, but no tax shall be due thereon.

2007, c. 771.

§§ 13.1-946 through 13.1-980. Reserved

Reserved.

RESALE DISCLOSURE ACT

Chapter 23.1. Resale Disclosure Act.

§ 55.1-2307. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agent" means the authorized agent designated by the purchaser or seller in a ratified real estate contract, listing agreement, or other writing designating such agent.

"Association" means an association created pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), or the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or a council of co-owners created pursuant to the Horizontal Property Act
(§ 55.1-2000 et seq.).

"Board" means the board of directors or executive board, of an association, except that in the case of a horizontal property regime created pursuant to the Horizontal Property Act (§ 55.1-2000 et seq.), "board" means the council of co-owners.

"Common interest community" means a condominium created pursuant to the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Horizontal Property Act (§ 55.1-2000 et seq.), a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or a property owners' association subject to the Property Owners' Association Act (§ 55.1-1800 et seq.).

"Days" means calendar days.

"Declarant" means the same as that term is defined in §§ 55.1-1800 and 55.1-1900.

"Financial update" means updated financial information for the unit, including information required by subdivisions A 4 and 5 of § 55.1-2310.

"Governing documents" means, to the extent applicable, the declaration, bylaws, organizing articles, and any other foundational documents of the association and all amendments to such documents.

"Limited elements" means the limited common elements appurtenant to a condominium unit or cooperative unit or the limited common area appurtenant to a lot.

"Managing agent" means a licensee who performs management services as defined in § 54.1-2345.

"Purchaser" means the person or entity acquiring the unit.

"Ratified real estate contract" or "contract" means the contract to purchase the unit and any addenda to such contract.

"Resale certificate" means the information listed in § 55.1-2310.

"Rules and regulations" means restrictions or limitations adopted by the board or authorized committee addressing the use, operation, appearance, or design of a portion of the common interest community.

"Seller" means the person or entity selling the unit.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

"Unit" means a condominium unit in a condominium, a cooperative unit in a real estate cooperative, or a lot in a community governed by an association.

"Updated resale certificate" means an update of the resale certificate referenced in § 55.1-2311.

2023, cc. 387, 388.

§ 55.1-2308. Contract for resale; disclosures.

Unless exempt pursuant to § 55.1-2317, any contract for the resale of a unit in a common interest community shall disclose (i) that the unit is located in a common interest community; (ii) that the seller is required to obtain from the association a resale certificate and provide it to the purchaser; (iii) the purchaser's right to cancel the contract pursuant to § 55.1-2312; (iv) that the purchaser may request an updated resale certificate pursuant to § 55.1-2311; and (v) that the purchaser's right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement. If the contract does not contain the disclosures required by this section, the purchaser's sole remedy is to cancel the contract prior to settlement.

2023, cc. 387, 388.

§ 55.1-2309. Resale certificate; delivery.

A. The seller shall be required to obtain the resale certificate from the association and provide such resale certificate to the purchaser.

B. Unless exempt pursuant to § 55.1-2317, the association, the association's managing agent, or any third party preparing the resale certificate on behalf of the association shall deliver such resale certificate within 14 days after a written request by a seller or seller's agent.

C. The association, association's managing agent, or any third party preparing the resale certificate on behalf of the association shall deliver the resale certificate to the seller, or to such person as the seller may direct, either printed or in a generally accepted electronic format as the seller may request.

D. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. The seller or purchaser may request an updated resale certificate as provided in § 55.1-2311.

2023, cc. 387, 388.

§ 55.1-2310. Resale certificate; form and contents.

A. The association shall include the completed resale certificate form, developed by the common interest community board pursuant to subdivision 3 of § 54.1-2350, with supporting documentation set out in the following order:

1. The name, address, and phone numbers of the preparer of the resale certificate and any managing agent of the association;

2. A copy of the governing documents and any rules and regulations of the association;

3. A statement disclosing any restraint on the alienability of the unit for which the resale certificate is being issued;

4. A statement of the amount and payment schedules of assessments and any unpaid assessments currently due and payable to the association;

5. A statement of any other fees due and payable by an owner of the unit;

6. A statement of any other entity or facility to which the owner of the unit being sold may be liable for assessments, fees, or other charges due to the ownership of the unit;

7. A statement of the amount and payment schedule of any approved additional or special assessment and any unpaid additional or special assessment currently due and payable;

8. A statement of any capital expenditures approved by the association for the current and succeeding fiscal years;

9. A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

10. The most recent balance sheet and income and expense statement, if any, of the association;

11. The current operating budget of the association;

12. The current reserve study, or a summary of such study;

13. A statement of any unsatisfied judgments against the association and the nature and status of any pending actions in which the association is a party and that could have a material impact on the association, the owners, or the unit being sold;

14. A statement describing any insurance coverage provided by the association for the benefit of the owners, including fidelity coverage, and any insurance coverage recommended or required to be obtained by the owners;

15. A statement as to whether the board has given or received written notice that any existing uses, occupancies, alterations, or improvements in or to the unit being sold or to the limited elements assigned thereto violate any provision of the governing documents or rules and regulations together with copies of any notices provided;

16. A statement as to whether the board has received written notice from a governmental agency of any violation of environmental, health, or building codes with respect to the unit being sold, the limited elements assigned thereto, or any other portion of the common interest community that has not been cured;

17. A copy of any approved minutes of meetings of the board held during the last six months;

18. A copy of any approved or draft minutes of the most recent association meeting;

19. A statement of the remaining term of any leasehold estate affecting a common area or common element, as those terms are defined in §§ 55.1-1800, 55.1-1900, and 55.1-2100, in the common interest community and the provisions governing any extension or renewal of such leasehold;

20. A statement of any limitation in the governing documents on the number or age of persons who may occupy a unit as a dwelling;

21. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to display the flag of the United States, including reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;

22. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on the owner's unit or limited element;

23. A statement setting forth any restriction, limitation, or prohibition on the size, placement, or duration of display of political, for sale, or any other signs on the property;

24. A statement identifying any parking or vehicle restriction, limitation, or prohibition in the governing documents or rules and regulations;

25. A statement setting forth any restriction, limitation, or prohibition on the operation of a home-based business that otherwise complies with all applicable local ordinances;

26. A statement setting forth any restriction, limitation, or prohibition on an owner's ability to rent the unit;

27. In a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the owner of real estate taxes and interest paid by the association;

28. A statement describing any pending sale or encumbrance of common elements;

29. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies; and

30. Certification that the association has filed with the Common Interest Community Board the annual report required by law, which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing.

2023, cc. 387, 388.

§ 55.1-2311. Updated resale certificate.

A. If a resale certificate was issued more than 30 days but less than 12 months before settlement, the seller or the purchaser, upon proof of being the contract purchaser of the unit, may request an updated resale certificate. The updated resale certificate shall be delivered to the person requesting it, or as such person may direct, in the format requested. The updated resale certificate shall be delivered within 10 days after the written request.

B. The updated resale certificate shall contain current information for all items that may have changed from the original resale certificate or a statement that there are no changes.

C. A settlement agent authorized by the seller or purchaser may request a financial update and the association shall provide such information within three business days after the written request.

2023, cc. 387, 388.

§ 55.1-2312. Cancellation of contract by purchaser.

A. The purchaser may cancel the contract:

1. Within three days, or up to seven days if extended by the ratified real estate contract, after the ratification date of the contract if the purchaser receives the resale certificate, whether or not complete pursuant to § 55.1-2310, or a notice that the resale certificate is unavailable on or before the date that the contract is ratified;

2. Within three days, or up to seven days if extended by the ratified real estate contract, from the date the purchaser receives the resale certificate, whether or not complete pursuant to § 55.1-2310, or a notice that the resale certificate is unavailable if delivery occurs after the contract is ratified; or

3. At any time prior to settlement if the resale certificate is not delivered to the purchaser.

B. Written notice of cancellation shall be provided to the seller in accordance with the terms of the contract. The purchaser shall have the burden to demonstrate delivery of the notice of cancellation.

C. If the unit is governed by more than one association, the timeframe for the purchaser's right of cancellation shall run from the date of delivery of the last resale certificate.

D. Cancellation shall be without penalty, and the seller shall cause any deposit or escrowed funds to be returned promptly to the purchaser.

2023, cc. 387, 388.

§ 55.1-2313. Liability for resale certificate.

A. A seller providing a resale certificate pursuant to § 55.1-2310 or 55.1-2311 shall not be liable to the purchaser for any erroneous information provided by the association and included in the certificate or for the failure or delay of the association to provide the resale certificate in a timely manner.

B. A purchaser shall not be liable for any unpaid assessment or fee greater than the amount set forth in the resale certificate, updated resale certificate, or financial update. The association shall, as to the purchaser, be bound by the information provided in the resale certificate or updated resale certificate as to the amounts of current assessments, including any approved special or additional assessments, and any violation of the governing documents or rules and regulations as of the date of the resale certificate, updated resale certificate, or financial update unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

2023, cc. 387, 388.

§ 55.1-2314. Failure to provide resale certificate; no waiver.

A. If an association, the association's managing agent, or any third party preparing a resale certificate fails to comply with § 55.1-2310 or 55.1-2311, the purchaser shall not be required to pay any delinquent assessments or remedy any violation of the governing documents or rules and regulations existing as of the date of the resale certificate or updated resale certificate. The association may only enforce a violation incurred by a previous owner against a purchaser if (i) such violation has been properly noted in the resale certificate or updated resale certificate or (ii) the seller failed to provide the resale certificate to the purchaser as required by § 55.1-2309.

B. The purchaser shall abide by the governing documents and rules and regulations as to all matters arising after acquiring the unit regardless of whether such purchaser received a resale certificate.

C. The preparer of the resale certificate or updated resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $1,000.

D. The Common Interest Community Board may assess a monetary penalty for failure to deliver the resale certificate or updated resale certificate as required against any (i) association pursuant to § 54.1-2351 or
(ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352.

2023, cc. 387, 388.

§ 55.1-2315. Properties subject to more than one declaration.

If the unit is subject to more than one common interest community, each association, the association's managing agent, or any third party preparing a resale certificate on behalf of an association shall provide a resale certificate for that association and may charge the appropriate fees.

2023, cc. 387, 388.

§ 55.1-2316. Resale certificate; fees.

A. An association may charge a post-closing fee and fees for preparation, delivery, and expedited delivery of a resale certificate, an updated resale certificate, or financial update and for the inspection of a unit performed to prepare the resale certificate or updated resale certificate. Unless provided otherwise by the association, the appropriate fees shall be paid when the resale certificate, updated resale certificate, or financial update is requested. The seller shall be responsible for all fees associated with the preparation and delivery of the resale certificate, including any fees for inspection of the unit. The requesting party shall pay any fees for the preparation and delivery of the updated resale certificate or financial update.

B. The Common Interest Community Board shall establish the maximum fees that the association may charge for such post-closing and preparation, delivery, and inspection; such maximum fees shall be commercially reasonable and consistent with the effort required to comply with the resale certificate requirements. The maximum allowable fees, as published by the Common Interest Community Board and effective as of January 12, 2023, shall be adjusted no less than every five years, as of January 1 of that year, in an amount not less than the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor or an equivalent successor index.

C. The association shall publish and make available a schedule of the applicable fees (i) for preparation and delivery of the resale certificate, updated resale certificate, and financial update; (ii) for the inspection of a unit; and (iii) related to any post-closing costs.

D. A post-closing fee to be collected at settlement may be imposed on the purchaser of the property for the purpose of establishing the purchaser as the owner of the property in the records of the association.

E. No association may collect fees authorized by this section unless the association (i) is registered with the Common Interest Community Board; (ii) is current in filing the most recent annual report and fee with the Common Interest Community Board pursuant to § 55.1-1835; (iii) is current in paying any assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5; and (iv) provides the option to receive the disclosure packet electronically.

2023, cc. 387, 388.

§ 55.1-2317. Exemptions.

A. The resale certificate required by this chapter need not be provided in the case of:

1. An initial disposition by a declarant;

2. A disposition of a unit by gift;

3. A disposition of a unit pursuant to court order if the court so directs;

4. A disposition of a unit by foreclosure or deed in lieu of foreclosure;

5. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction; or

6. A disposition of a unit in a common interest community containing no residential units.

B. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the association and provide the resale certificate to the purchaser.

2023, cc. 387, 388.

COMMON INTEREST COMMUNITY BOARD AND OMBUDSMAN

ARTICLE 1. Common Interest Community Board

ARTICLE 2. Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund

Chapter 23.3. Common Interest Communities.

Article 1. Common Interest Community Board.

§ 54.1-2345. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Association" includes condominium, cooperative, or property owners' associations.

"Board" means the Common Interest Community Board.

"Common interest community" means real estate subject to a declaration containing lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses, provided that for the purposes of this chapter only, a common interest community does not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.) or any additional land that is a part of such registration. "Common interest community" does not include an arrangement described in § 54.1-2345.1.

"Common interest community manager" means a person or business entity, including a partnership, association, corporation, or limited liability company, that, for compensation or valuable consideration, provides management services to a common interest community.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual assessment in connection with the provision of maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition.

"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors or other governing body of a property owners' association.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative.

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

2008, cc. 851, 871; 2019, c. 712; 2020, c. 592.

§ 54.1-2345.1. Certain real estate arrangements and covenants not deemed to constitute a common interest community.

A. An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community, or an arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. Assessments against the lots in the common interest community required by such arrangement shall be included in the periodic budget for the common interest community, and the arrangement shall be disclosed in all required public offering statements and resale certificates.

B. A covenant requiring the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree to create such community.

2019, c. 712; 2023, cc. 387, 388.

§ 54.1-2346. License required; certification of employees; renewal; provisional license.

A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this article prior to engaging in such management services.

B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this article shall be subject to the provisions of § 54.1-111.

C. On or after July 1, 2012, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the

common interest community manager during the prior fiscal year. The minimum coverage amount shall be$10,000.

E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

2008, cc. 851, 871; 2011, cc. 334, 605; 2019, c. 712.

§ 54.1-2347. Exceptions and exemptions generally.

A. The provisions of this article shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;

2. An employee of an association from providing management services for that association's common interest community;

3. A resident of a common interest community acting without compensation from providing management services for that common interest community;

4. A resident of a common interest community from providing bookkeeping, billing, or recordkeeping services for that common interest community for compensation, provided the blanket fidelity bond or employee dishonesty insurance policy maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;

5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;

6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;

7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;

8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.) from

providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this article if he would be otherwise exempt from such licensure.

2008, cc. 851, 871; 2010, c. 511; 2011, cc. 334, 605; 2019, c. 712.

§ 54.1-2348. Common Interest Community Board; membership; meetings; quorum.

There is hereby created the Common Interest Community Board (the Board) as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. Members of the Board shall be appointed by the Governor and consist of 11 members as follows: three shall be representatives of Virginia common interest community managers, one shall be a Virginia attorney whose practice includes the representation of associations, one shall be a representative of a Virginia certified public accountant whose practice includes providing attest services to associations, one shall be a representative of the Virginia time-share industry, two shall be representatives of developers of Virginia common interest communities, and three shall be Virginia citizens, one of whom serves or who has served on the governing board of an association that is not professionally managed at the time of appointment and two of whom reside in a common interest community. Of the initial appointments, one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of two years and one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of three years; the Virginia attorney shall serve a term of three years; the Virginia certified public accountant shall serve a term of one year; the Virginia citizen who serves or who has served on the governing board of an association shall serve a term of two years, and the two Virginia citizens who reside in a common interest community shall serve terms of one year. All other initial appointments and all subsequent appointments shall be for terms for four years, except that vacancies may be filled for the remainder of the unexpired term. Each appointment of a representative of a Virginia common interest community manager to the Board may be made from nominations submitted by the Virginia Association of Community Managers, who may nominate no more than three persons for each manager vacancy. In no case shall the Governor be bound to make any appointment from such nominees. No person shall be eligible to serve for more than two successive four-year terms.

The Board shall meet at least once each year and at other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. A majority of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this article.

2008, cc. 851, 871; 2010, c. 511; 2012, c. 522; 2019, c. 712.

§ 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce the provisions of this article. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this article in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), including the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. Upon application for license and each renewal thereof, the applicant shall pay a fee established by the Board, which shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the Community Association Managers International Certification Board, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this article;

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this article;

8. Issue a certificate of registration to each association that has properly filed in accordance with this chapter; and

9. Develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act (§ 55.1-1800 et seq.).

B. 1. The Board shall have the sole responsibility for the administration of this article and for the promulgation of regulations to carry out the requirements thereof.

2. The Board shall also be responsible for the enforcement of this article, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this article with respect to a real estate

broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

3. For purposes of enforcement of this article or the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or the Resale Disclosure Act (§ 55.1-2307 et seq.), any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

D. Notwithstanding the provisions of subsection A of § 54.1-2354.4, the Board may receive a complaint directly from any person aggrieved by an association's failure to deliver a resale certificate in accordance with Chapter 23.1 (§ 55.1-2307 et seq.) of Title 55.1.

2008, cc. 851, 871; 2009, c. 557; 2010, cc. 511, 615; 2011, c. 334; 2012, cc. 481, 797; 2015, c. 268; 2017, cc. 387, 393, 405, 406; 2019, cc. 391, 712; 2023, cc. 387, 388.

§ 54.1-2350. Annual report; form to accompany resale certificates.

In addition to the provisions of § 54.1-2349, the Board shall:

1. Administer the provisions of Article 2 (§ 54.1-2354.1 et seq.);

2. Develop and disseminate an association annual report form for use in accordance with §§ 55.1-1835, 55.1-1980, and 55.1-2182; and

3. Develop and disseminate a standardized resale certificate form, which shall contain disclosure statements in the order listed in § 55.1-2310. The form shall provide for the attachment of reference documents and contain space for an association to indicate those disclosures that pertain to its particular community. The form shall also provide that the purchaser remains responsible for his own examination of the resale certificate and of any attached reference documents.

2008, cc. 851, 871; 2017, c. 257; 2018, cc. 70, 733; 2019, cc. 390, 712; 2022, cc. 65, 66; 2023, cc. 387, 388.

§ 54.1-2351. General powers and duties of Board concerning associations.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this article, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this article or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act or practice in violation of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders, the Board without prior administrative proceedings may

bring an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action involving a violation by a declarant or a developer of a time-share project of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this article.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order, the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this article, the Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than $1,000 per violation against any governing board that violates any provision of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders unless the governing board has been given notice and an opportunity to be heard pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

2008, cc. 851, 871; 2009, c. 557; 2010, c. 615; 2019, c. 712; 2023, cc. 387, 388.

§ 54.1-2352. Cease and desist orders.

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this article, if the Board determines after notice and hearing that the governing board of an association has:

1. Violated any statute or regulation of the Board governing the association regulated pursuant to this article, including engaging in any act or practice in violation of this article, the Property Owners'

Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders;

2. Failed to register as an association or to file an annual report as required by statute or regulation;

3. Materially misrepresented facts in an application for registration or an annual report; or

4. Willfully refused to furnish the Board information or records required or requested pursuant to statute or regulation.

B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary order to cease and desist or to take such affirmative action as may be deemed appropriate by the Board. Prior to issuing the temporary order, the Board shall give notice of the proposal to issue a temporary order to the person. Every temporary order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

2008, cc. 851, 871; 2009, c. 557; 2019, cc. 467, 712; 2023, cc. 387, 388.

§ 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager.

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and

take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Recovery Fund as a cost of administering the Fund pursuant to § 54.1-2354.5, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. The provisions of this article are declared to be remedial. The purpose of this article is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this article shall be liberally administered in order to protect those

interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

2008, cc. 851, 871; 2011, cc. 334, 605; 2019, c. 712.

§ 54.1-2354. Variation by agreement.

Except as expressly provided in this article, provisions of this article may not be varied by agreement, and rights conferred by this article may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this article and the provisions of the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), as applicable.

2008, cc. 851, 871; 2019, c. 712.

Article 2. Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund.

§ 54.1-2354.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions A 1, 2, and 4 of § 2.2-4519, and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations to the fund.

"Claimant" means, upon proper application to the Director, a receiver for a common interest community manager appointed pursuant to § 54.1-2353 in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver.

"Director" means the Director of the Department of Professional and Occupational Regulation.

1993, c. 958; 2008, cc. 851, 871, § 55-528; 2019, c. 712.

§ 54.1-2354.2. Common Interest Community Management Information Fund.

A. There is hereby created the Common Interest Community Management Information Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to promote the improvement and more efficient operation of common interest communities through research and education. The Fund shall be established on the books of the Comptroller. The Fund shall consist of money paid into it pursuant to §§ 54.1-2349, 55.1-1835, 55.1-1980, and 55.1-2182, and such money shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to § 54.1-2354.5.

B. Expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Common Interest Community Ombudsman, shall be paid first from interest earned on deposits constituting the Fund and the balance from the moneys collected annually in the Fund. The Board may use the remainder of the interest earned on the balance of the Fund and of the moneys collected annually and deposited in the Fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;

2. Expeditious and inexpensive procedures for resolving complaints about an association from members of the association or other citizens;

3. Seminars and educational programs designed to address topics of concern to community associations; and

4. Other programs deemed necessary and proper to accomplish the purpose of this article.

C. Following the close of any biennium, when the Common Interest Community Management Information Fund shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the Board, the Board shall revise the fees levied by it for placement into the Fund so that the fees are sufficient but not excessive to cover expenses. A fee established pursuant to § 55.1-1835, 55.1-1980, or 55.1-2182 shall not exceed $25 unless such fee is based on the number of units or lots in the association.

1993, c. 958, § 55-529; 2008, cc. 851, 871; 2019, cc. 391, 712.

§ 54.1-2354.3. Common Interest Community Ombudsman; appointment; powers and duties.

A. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.

B. The Office shall:

1. Assist members in understanding rights and the processes available to them according to the laws and regulations governing common interest communities and respond to general inquiries;

2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;

3. Receive notices of final adverse decisions and may either (i) refer such decision to the Board for further review of whether such decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board or (ii) make a determination of whether a final adverse decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board and promptly notify the complainant of such determination. If the Office determines that such conflict exists, the Office shall promptly notify the governing board, and if applicable the common interest community manager, of the association that issued the final adverse decision that such decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board. If within 365 days of issuing such determination the Ombudsman receives a subsequent notice of final adverse decision for the same violation, the Office shall refer the matter to the Board;

4. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;

5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;

6. Maintain data on inquiries received, referrals made to the Board, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;

7. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;

8. Monitor changes in federal and state laws relating to common interest communities;

9. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and

10. Carry out activities as the Board determines to be appropriate.

1993, c. 958, § 55-530; 1997, c. 222; 1998, c. 463; 2001, c. 816; 2008, cc. 851, 871; 2010, cc. 59, 208; 2012, cc. 481, 797; 2019, c. 712; 2023, cc. 20, 21.

§ 54.1-2354.4. Association complaint procedures; final adverse decisions.

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.

2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mailing address of the Office. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

B. A complainant may give notice to the Ombudsman of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a $25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Ombudsman shall provide a copy of the written notice to the governing board, and if applicable the common interest community manager, of the association that made the final adverse decision.

C. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director shall provide the complainant and the governing board, and if applicable the common interest community manager, of the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the

Board shall be final and not subject to further review. If within 365 days of issuing a determination that an adverse decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board the Director receives a subsequent notice of final adverse decision for the same violation, the Director shall refer the repeat violation to the Board, which shall take action in accordance with § 54.1-2351 or 54.1-2352, as deemed appropriate by the Board.

1993, c. 958, § 55-530; 1997, c. 222; 1998, c. 463; 2001, c. 816; 2008, cc. 851, 871; 2010, cc. 59, 208; 2012, cc. 481, 797; 2019, c. 712; 2023, cc. 20, 21.

§ 54.1-2354.5. Common Interest Community Management Recovery Fund.

A. There is hereby created the Common Interest Community Management Recovery Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date shall be assessed $25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three business days after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency shall be secured under the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 64.2-1502.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest Community Management Information Fund, established pursuant to § 54.1-2354.2, or accrue to the Fund.

C. On and after July 1, 2011, the minimum balance of the Fund shall be $150,000. Whenever the Director determines that the principal balance of the Fund is or will be less than such minimum principal balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount from the Common Interest Community Management Information Fund to the Fund to bring the principal balance of the Fund to the amount required by this subsection. Such transfer shall be considered by the Board within 30 days of the notification of the Director.

D. If any such transfer of funds is insufficient to bring the principal balance of the Fund to the minimum amount required by this section, or if a transfer to the Fund has not occurred, the Board shall assess each association and each common interest community manager, within 30 days of notification by the Director, a sum sufficient to bring the principal balance of the Fund to the required minimum amount. The amount of such assessment shall be allocated among the associations and common interest community managers in proportion to each payor's most recently paid annual assessment, or if an association or common interest community manager has not paid an annual assessment previously, in proportion to the average annual assessment most recently paid by associations or common interest community managers, respectively. The Board may order an assessment at any time in addition to any required assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

Notice to common interest community managers and the governing boards of associations of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within 45 days after the mailing of such notice.

E. If any common interest community manager fails to remit the required payment within 45 days of the mailing, the Director shall notify the common interest community manager by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

F. If any association fails to remit the required payment within 45 days of the mailing, the Director shall notify the association by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, it shall be deemed a knowing and willful violation of this section by the governing board of the association.

G. At the close of each fiscal year, whenever the balance of the Fund exceeds $5 million, the amount in excess of $5 million shall be transferred to the Virginia Housing Trust Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36. Except for payments of costs as set forth in this article and transfers pursuant to this subsection, there shall be no transfers out of the Fund, including transfers to the general fund, regardless of the balance of the Fund.

H. A claimant may seek recovery from the Fund subject to the following conditions:

1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, the Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § 54.1-2353 by the court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, as certified by the court appointing the receiver.

3. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment of the amount of such shortfall to the claimant from the Fund, provided that in no event shall such payment exceed the balance in the Fund. When the Fund balance is not sufficient to pay the aggregate amount of such shortfall, the Board shall direct that payment be applied first in satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore the funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager. If the Board has reason to believe that there may be additional claims against the Fund, the Board may withhold any payment from the Fund for a period of not more than one year. After such one-year period, if the aggregate of claims received exceeds the Fund balance, the Fund balance shall be prorated by the Board among the claimants and paid in the above payment order from the Fund in proportion to the amounts of claims remaining unpaid.

4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the Fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations receiving distributions from the Fund against the common interest community manager to the extent that such rights were satisfied from the Fund.

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a case decision as defined in § 2.2-4001, and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court that is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the Fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions resulted in payment from the Fund. The common interest community manager whose license was so revoked shall not be eligible to apply for a license as a common interest community manager until he has repaid in full the amount paid from the Fund on his account, plus interest at the judgment rate of interest from the date of payment from the Fund.

8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action against any common interest community manager for any violation of statute or regulation, nor shall the repayment in full by a common interest community manager of the amount paid from the Fund on such common interest community manager's account nullify or modify the effect of any disciplinary proceeding against such common interest community manager for any such violation.

2008, cc. 851, 871, § 55-530.1; 2009, c. 557; 2013, c. 754; 2019, c. 712.