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## The Virginia Limited Liability Company

James J. Wheaton

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41st WILLIAM & MARY TAX CONFERENCE  
THE VIRGINIA LIMITED LIABILITY COMPANY

James J. Wheaton  
Willcox & Savage, P.C.  
1800 NationsBank Center  
Norfolk, Virginia 23510

I. **Background of the Virginia Limited Liability Company Act.**

A. **Initial Legislation and Subsequent Amendments.**

A version of the Virginia Act, modelled after the Florida LLC act, was introduced in 1990. A bar committee prepared legislation that was introduced and adopted, with few changes, by the 1991 General Assembly, and significant amendments have been introduced and passed in each subsequent legislative session. There is no written legislative history for the Virginia Act.

B. **Basis of the Virginia Act.**

1. **Before 1994--Revenue Ruling 93-5--"Bulletproof" Tax Status.**

A 1988 revenue ruling (Rev. Rul. 88-76, 1988-2 C.B. 360) provided that LLCs formed under Wyoming's LLC legislation were eligible for partnership tax treatment because such LLCs would lack at least two of the four characteristics attributed to corporations--free transferability and continuity of life. The Virginia Act originally was drafted to ensure similar "bulletproof" partnership tax status. In late December 1992, the Service issued Revenue Ruling 93-5, which confirmed that Virginia LLCs would be treated as partnerships for federal income tax purposes.

2. **1994 and 1995 Changes.**

Legislation enacted during the 1994 session of the Virginia General Assembly changed the Virginia Act's original rules regarding the transferability of LLC interests and the dissolution of an LLC. The old "bulletproof" rules required unanimous consent of an LLC's members to admit the assignee of a membership interest as a member, and also required the unanimous approval of the remaining members of an LLC for the continuation of an LLC after certain events of dissolution. Under the provisions enacted in 1994, an assignee may be admitted as a

member, and an LLC may be continued after an event of dissolution, upon the consent of the percentage or number of members provided for in writing in the LLC's articles of organization or operating agreement. However, the required majority could not, under the 1994 rules, constitute less than a "majority in interest."

These changes in the Virginia rules obviously altered the parameters within which Virginia's revenue ruling was issued, and the changes made in 1995 went further. Under the current statute, the "majority in interest" formulations are default rules that may be varied. These changes allow Virginia LLCs to take advantage of the flexibility afforded by the guidelines in Rev. Proc. 95-10. For example, in an LLC that is managed by member-managers, the triggering events of dissolution may be limited only to the member-managers, and not all of the typical events must act as a trigger, so long as those chosen are meaningful. Similarly, the decision whether to admit an assignee of an LLC interest as a member may be delegated to member-managers, and the majority vote in that case could be a majority in number rather than in interest. Moreover, a Virginia LLC may choose to lack centralized management or limited liability, and thereby choose to have continuity of life and/or free transferability of interests.

The 1995 amendments added a definition of "majority in interest" that is drawn from the IRS definition contained in Rev. Proc. 94-46.

### **3. Other Drafting Considerations.**

The Virginia Act draws heavily from the LLC statute enacted in Colorado in 1990 and from an early draft of the Maryland statute. In addition, where possible, the provisions of the Act were adapted from parallel provisions in the Virginia Stock Corporation Act (the "Stock Act"), the Virginia Uniform Partnership Act, and the Virginia Revised Uniform Limited Partnership Act ("VRULPA").

### **C. Function of the Act's Default Rules.**

One underpinning of the Uniform Partnership Act and the Revised Uniform Limited Partnership Act has been the principle that those statutes are sufficient, without contractual variation, to govern the basic relationships among partners. However, just as those acts permit variations in certain circumstances from the assumed or "default" rules embodied in the partnership acts, the Virginia Act permits variations from its statutory default rules to be included, alternatively, in the articles of organization or operating agreement of an LLC. Each of the

opportunities to vary or add to the Act should be considered when the LLC is organized.

**D. Basic Vocabulary.**

The owners of a Virginia LLC are its "members," and their ownership interests in the LLC are membership "interests." In Virginia, an LLC is formed by filing "articles of organization" with the State Corporation Commission ("SCC"). Once formed, the members may manage the LLC, or they may elect "managers" (who need not be members). The operations of an LLC may be governed by an "operating agreement," which may be, but need not be, written.

**II. Formation of an LLC.**

**A. Commencement of Existence.**

**1. Filing.**

An LLC comes into existence when articles of organization are filed with the SCC and a certificate of organization is issued by the Commission. § 13.1-1004B. This is similar to the corporate approach, but differs from VRULPA (where a limited partnership comes into existence immediately upon filing a certificate of limited partnership). The certificate of organization is conclusive evidence that the LLC has been properly formed. *Id.*

**2. Execution.**

Unlike a certificate of limited partnership, which requires the signatures of the general partners, a third party (the SCC form calls this person the "organizer") may sign and file articles of organization just as an incorporator may file articles of incorporation under the Stock Act. *See* § 13.1-1010.

**3. Two Member Requirement.**

A limited liability company is intended to be taxed as a partnership. For that reason, the definition of "limited liability company" contained in § 13.1-1002 requires that a Virginia LLC have at least two members. Other state statutes allow single-member LLCs, but Virginia has not yet made that change.

Because a Virginia LLC must always have two members, it is essential that the LLC already have its initial members at the moment the

certificate of organization is issued by the SCC. Thus, before filing an LLC's articles of organization, the identity of at least two initial members should be ascertained.

It will also be prudent, as backup for defending the LLC's partnership tax status and as preparation for any future due diligence review of the LLC's records, to create a certificate or other document evidencing the LLC's initial membership. Although this documentation is not required by the Act, it would be a valuable part of an LLC's records.

The Virginia Act now enables a two-member LLC to add a second member without dissolving after an event that terminates the membership of one of the members. § 13.1-1046(3).

**B. Filing the Articles of Organization.**

The articles must contain only the minimal information required by § 13.1-1011, and must be accompanied by a filing fee of \$100 (§ 13.1-1005(1)(a)). The SCC has published an optional form (LLC-1011) for articles of organization.

The information requirements for the articles are similar to those for stock corporations:

**1. Name.**

- a. The name must contain the words "limited liability company" or "limited company" or one of the abbreviations "L.L.C.", "L.C.", "LLC" or "LC."
- b. The name cannot contain the words "Corporation," "Incorporated," or "Limited Partnership," or the abbreviations "Corp.," "Inc.," or "L.P."
- c. The name must be distinguishable upon the SCC's records from other LLC names (domestic or foreign) in use or reserved for use in Virginia. Note that a foreign LLC may use an assumed name if its actual name is not available in Virginia.  
§ 13.1-1054(2).

**2. Registered office and agent.**

The requirements for the registered agent and registered office parallel those found in the Stock Act and VRULPA. § 13.1-1015. A registered

agent must be a resident of Virginia and either a member or manager of the LLC, an officer or director of a corporation that is a member or manager of the LLC or a general partner of a partnership that is a member or manager of the LLC, a member of the Virginia State Bar, or a professional corporation or a professional limited liability company registered under Va. Code § 54.1-3902. The agent's business office must be identical with the LLC's registered office.

**3. Principal Office.**

This is the address at which the LLC must keep the minimum records that the Act requires LLCs to maintain. *See § 13.1-1028.* The principal office may be the same as the registered office.

**4. Latest Date of Winding Up.**

The latest date on which the LLC is to be dissolved and its affairs wound up must be indicated.

**5. Other Matters.**

The articles of organization may also include any other matter permitted to be set forth in an operating agreement. Note that several sections of the Act require that certain optional matters be contained either in the articles or in an operating agreement. Most of these provisions constitute permitted variations from the "default" rules established by the Act.

**C. Purpose and Powers.**

**1. Purpose.**

An LLC may engage in any lawful business except as otherwise provided by law, or as restricted by the articles of organization. *§ 13.1-1008.*

**2. Professional businesses.**

The Virginia Professional Limited Liability Company Act, §§ 13.1-1100 *et seq.*, became effective on July 1, 1992. Under this Act, professionals who are eligible to form professional corporations may also elect to use the professional LLC form. A professional LLC is created by filing articles of organization.

Some professions may still need to amend internal rules in order to provide for the use of professional LLCs. In Virginia, the State Board of Accountancy and Virginia State Bar have amended their rules to allow professional LLC accounting and law firms.

A further discussion of professional LLCs is found in Section X of this outline.

**3. Powers.**

An LLC has the powers of an individual to do all things necessary or convenient to carry out its business and affairs. The Act includes a non-exclusive list of powers that parallels the list included in the Stock Act. § 13.1-1009.

**D. Converting an Existing Partnership.**

An existing general or limited partnership can be converted to an LLC simply by filing articles of organization with the State Corporation Commission. § 13.1-1010.1. In addition to the other requirements for articles of organization, the articles must include the name of the former general or limited partnership, and the date and place of filing of the partnership's certificate of partnership or certificate of limited partnership.

The conversion provisions were rewritten substantially by the 1993 General Assembly. The provisions now provide that a conversion will be approved by the partnership's partners in the same manner as provided for amendments to the partnership's partnership agreement (or, as a default rule, by all the partners). A general partner will remain liable as a general partner for all of the partnership's pre-conversion obligations. *See* § 13.1-1010.1.

The conversion statute also provides that the post-conversion LLC is deemed the same entity as the pre-conversion partnership, that the partnership's property is automatically vested in the LLC, and that the LLC has all the obligations of the converted partnership. § 13.1-1010.2. Accordingly, if the short-form conversion statute is used, there will be no need for the partnership to convey its assets to the LLC. However, provision is made for recording a certificate evidencing the conversion in real estate records. *See* § 13.1-1067.

**E. Amendment of Articles of Organization.**

An LLC may amend its articles of organization by filing articles of amendment with the SCC and paying a filing fee of \$25. §§ 13.1-1014, -1005(2)(a). The

amendment becomes effective when a certificate of amendment is issued by the SCC.

An amendment to the articles of organization must be approved, unless the articles of organization require a greater vote, by a majority vote of the members of the LLC entitled to vote thereon. § 13.1-1014B.

### III. **Management of an LLC.**

#### A. **Member or Manager?**

An LLC may be managed either by its members, or by a manager or managers elected by the members. If an LLC is to be manager-managed, the articles of organization or an operating agreement must specify this choice (and a proposed amendment would require this fact to be set forth in writing). If not specified, the LLC will be deemed to be member-managed. § 13.1-1022A.

Although member management is presumed if a contrary specification is not included in either the articles of organization or an operating agreement, *see* § 13.1-1022A, the manager form offers significant flexibility in structuring the operation of an LLC. An operating agreement (or the articles of organization, if desired) could implement a variety of choices involving the responsibilities and voting power of managers. Under some circumstances, a drafter might even wish to set up two manager classes that would parallel the functions of corporate officers and directors.

#### B. **Member-managed LLC.**

##### 1. **Weighted Voting Rule.**

The members of an LLC will vote (unless the articles or an operating agreement provide otherwise) on the basis of their contributions to the LLC. § 13.1-1022B. Alternatively, the members could choose a per capita voting rule.

##### 2. **Required Vote for LLC Decisions.**

The Act contains a default rule providing for majority voting on all matters for which a greater voting majority is not required under the Act or by agreement.

**C. Manager-managed LLC.**

The articles of organization or an operating agreement may specify that an LLC will be managed by one or more managers.

**1. Qualifications.**

Managers need not be Virginia residents or members of the LLC. The articles or an operating agreement may prescribe other qualifications.  
*§ 13.1-1024B.*

**2. Number of Managers.**

The number of managers is fixed by or in the manner provided by the articles or an operating agreement, and is subject to amendment.  
*§ 13.1-1024C.*

**3. Election and Removal.**

Managers are elected, and vacancies among managers are filled, by a vote of members. Managers may be removed in the manner provided in the articles or an operating agreement, and if no such provision is made, may be removed with or without cause by a majority vote of the members. *§ 13.1-1024D to -1024F.*

**4. Standards of Conduct.**

A manager (or managing member) must discharge his duties in accordance with his good faith business judgment of the best interests of the LLC. *§ 13.1-1024.1.* This provision parallels the standard of care established for corporate directors under the Stock Act.

**5. Agency Authority of Members and Managers.**

The 1995 amendments to the Virginia statute added a section (13.1-1021.1) making clear that members in member-managed LLCs, and managers in manager-managed LLCs, will have authority to act for the LLC. Even if the LLC is manager-managed, a member will be deemed to have authority when dealing with third parties without actual notice, unless the articles of organization state that the LLC is manager-managed.

**D. Operating Agreement.**

**1. Contents.**

An operating agreement may contain any provisions regarding the affairs or business of an LLC that are not inconsistent with the articles of organization or law. § 13.1-1023A.

**2. Adoption and Amendment.**

An operating agreement need not be in writing, but must initially be agreed to by all the members. Unless a lesser vote is permitted under the articles of organization or an operating agreement, the agreement must also be amended by unanimous consent. § 13.1-1023B.

Because the Act defines an "operating agreement" as "an agreement of the members as to the affairs of a limited liability company and the conduct of its business," *see* § 13.1-1002, virtually any written agreement or oral discussions among members relating to the operation of an LLC will rise to the level of an operating agreement (subject to the existence of a factual agreement and unanimous consent among the members).

If a written operating agreement is to be the principal governing document for an LLC, it will probably be important to include stringent integration and amendment provisions in the written agreement. The Virginia Act permits a requirement, in the articles or a written operating agreement, that the operating agreement be in writing. Otherwise, members of an LLC may contend that there are other "operating agreements" to which all the members have agreed, and those may supplement or directly contradict the rules that the members have reduced to writing.

**3. Optional Provisions.**

Numerous sections of the Act contemplate that members may provide for certain matters in an operating agreement.

**4. Enforcement.**

An operating agreement may be enforced in a court of equity by injunctive or other relief. § 13.1-1023C.

**E. Limitations on Liability.**

A manager or member is not liable, in an action brought by or in the right of the LLC, or by or on behalf of its members, for damages in excess of (a) the monetary amount (which may be zero) specified in writing in the articles of organization or an operating agreement, or (b) if not specified, the greater of \$100,000 or the amount of cash compensation received by the member or manager during the 12 months preceding the act or omission giving rise to the liability. This limitation, which parallels the Stock Act provision found in § 13.1-692.1, does not apply to willful misconduct or knowing violations of criminal law. § 13.1-1025.

**F. Business Transactions.**

Unless limited by the articles or an operating agreement, members and managers may transact business with the LLC to the same extent as if they were not members. § 13.1-1026.

**G. Business Records of an LLC.**

An LLC must maintain at its principal office (which can be the registered office) certain business records similar to those required to be maintained by limited partnerships. § 13.1-1028A. Section 13.1-1028A describes the only required documentation for an LLC other than the articles of organization. The required records include a list of all members and their last known business address, copies of organizational documents, copies of all tax returns and financial statements for the last three years, and a copy of any written operating agreement.

**IV. Liability of LLC Members.**

**A. General Rule.**

A member, manager or agent of an LLC does not have a personal obligation for the contractual or tort liabilities of an LLC solely by reason of being a member, manager or agent of an LLC or except as otherwise provided by the Code. § 13.1-1019. Members, managers and agents remain responsible for their own acts and for activities undertaken in an individual capacity on behalf of the LLC (such as loan guaranties). Members, managers and agents also are not relieved of liability otherwise imposed by the Code (such as the liability of "responsible persons" for unpaid taxes).

**B. Members Are Not Proper Parties to Actions Involving LLCs.**

A member of an LLC is not a proper party to a proceeding by or against a limited liability company, except in connection with a derivative action or in a case involving the enforcement of a member's right against or liability to the LLC. § 13.1-1020.

**C. Piercing the Veil.**

As courts are confronted with cases involving limited liability companies, it is anticipated that circumstances will arise in which "piercing the veil" theories will be asserted. Although it is the intention of the Act that members of an LLC not be personally obligated for the liabilities of the LLC, it will be important for professional advisors to a limited liability company to admonish the client that the few formalities required by the Act, and any formalities required by an operating agreement, be observed.

**V. Financial Matters.**

**A. Contributions.**

**1. Nature.**

Members may make contributions to an LLC in the form of cash, property or services rendered, and may contribute promissory notes or enter into other binding obligations to contribute cash or property or to perform services. § 13.1-1027A. An obligation to contribute cash or property, or to perform services, is enforceable by the LLC even if the member is unable to perform because of death, disability or any other reason. The LLC also has the option to require a member that has not made a required contribution of property or services to contribute cash equal to the value (as stated in the LLC's records) of the promised contribution. § 13.1-1027B.

**2. Compromise.**

An obligation of a member to contribute money or property to the LLC, or to return to the LLC money or property paid or distributed in violation of the Act, may be compromised only by the unanimous consent of the members. A creditor that extends credit or otherwise acts in reliance on the original obligation of the member can enforce the obligation notwithstanding such a compromise. § 13.1-1027C.

3. **Enforceability.**

A member's promise to make a contribution is enforceable only if set forth in a writing signed by the member. § 13.1-1027D. A proposed addition to the Virginia statute would create additional enforcement mechanisms, including forfeiture, with respect to a member's failure to make required capital contributions (including contributions in response to capital calls).

B. **Profits and Losses, Distributions.**

1. **Method of allocation.**

The profits and losses of an LLC, and distributions of cash or other assets of an LLC, are allocated on the basis of the value of the members' respective contributions. However, members may provide for another method of allocation in writing in the articles of organization or an operating agreement. Note that this means that if such a requirement is set out in an operating agreement, the operating agreement must be written. §§ 13.1-1029, -1030.

2. **Interim distributions.**

The articles or an operating agreement may provide for a member's entitlement to receive interim distributions. § 13.1-1031.

3. **Distributions upon Resignation.**

a. Under the old statute, a member could resign from the LLC upon not less than 6 months prior notice to each member, unless the articles or an operating agreement specify in writing the time or events upon the happening of which a member may resign or a definite time for the dissolution and winding up of the LLC. § 13.1-1032. A resigning member was entitled to receive any distribution to which the member was entitled under the articles or an operating agreement, and if those documents did not provide for such distributions, was entitled to receive the fair value of his membership interest, as of the date of his resignation, within a reasonable time after resignation. § 13.1-1033.

b. The 1995 amendments to the statute created a default rule providing that members have no right to resign, and repealed § 13.1-1033.

4. **Distributions in Kind.**

Except as provided in writing in the articles or an operating agreement, a member has no right to demand and receive a distribution in any form other than cash, and cannot be compelled to accept a distribution in kind that is disproportionate to his or its membership interest. § 13.1-1034.

5. **Restrictions on Distributions.**

The provision that restricts distributions by an LLC (§ 13.1-1035) is drawn from the Stock Act.

- a. An LLC may not make a distribution if, after giving effect to the distribution, the LLC would not be able to pay its debts as they became due in the usual course of business (equity solvency test), or if the LLC's total assets would be less than the sum of its total liabilities (balance sheet solvency test). Under the balance sheet test, the LLC must also have available, prior to making a distribution, the amount needed to satisfy any preferential dissolution rights of members that are superior to the rights of the members who will receive the distribution. § 13.1-1035A.
- b. The LLC may determine whether a distribution is permitted by relying on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances, or on a fair valuation or other method that is reasonable under the circumstances. § 13.1-1035B.
- c. The effect of a distribution is measured as of the date the distribution is authorized, or if the distribution is made more than 120 days after authorization, as of the date payment is made. § 13.1-1035C.
- d. An LLC's indebtedness to a member arising from the declaration of a distribution is on a parity with the indebtedness of the LLC to general unsecured creditors. § 13.1-1035D. A member entitled to receive a distribution is a creditor of the LLC and is entitled to all remedies available to a creditor. § 13.1-1037.

6. **Liability for Wrongful Distributions.**

A member that receives a distribution in violation of § 13.1-1035, the articles of organization or an operating agreement is liable to the LLC,

for a period of 6 years after the distribution, for the amount of the distribution wrongfully made.

**VI. Membership Interests and their Assignment.**

**A. Nature of a Membership Interest.**

A membership interest in an LLC is personal property. § 13.1-1038.

**B. Assignability of Membership Interests.**

**1. Assignment Does Not Confer Membership.**

An LLC, like a partnership, must lack the corporate characteristic of free transferability. To that end, although a member's personal property interest in the LLC is assignable, except as otherwise provided in the articles or an operating agreement, the assignment of an interest does not entitle the assignee to participate in the management and affairs of the LLC or to become or to exercise any rights of a member. The assignment merely entitles the assignee to receive any share of profits and losses and distributions to which the assignor would be entitled. § 13.1-1039.

**2. Majority in Interest Consent Presently Required for Assignee to Become Member.**

The articles of organization or a written operating agreement may provide for the admission of an assignee of an interest in an LLC as a member upon the consent of a majority in interest of the members. § 13.1-1040A. The 1995 amendments to the Virginia Act made this a default rule that may be altered in the articles or a written operating agreement.

**3. Assignee Member's Rights and Obligations.**

An assignee that becomes a member has the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles, any operating agreement and the Act. An assignee also assumes the assignor's obligations to make contributions and return unlawful distributions. However, the assignee does not have such obligations with respect to liabilities that are unknown to the assignee at the time he or it became a member. The assignor is not released from his or its obligations with respect to wrongful distributions or contributions not made. § 13.1-1040B & C.

**4. Effect of Assignment.**

Upon the assignment of an entire interest, the assigning member ceases to be a member. The assignment does not in and of itself dissolve the LLC. § 13.1-1039.

**C. Admission of New Members.**

The Virginia Act contains a provision providing for the admission of new members of an LLC. A new member will become a member upon compliance with a provision contained in an operating agreement or, if the operating agreement does not provide for the admission of new members, upon the consent of all members. § 13.1-1038.1.

**D. Creditor's Right to Charge Interest.**

A judgment creditor of a member may charge the interest of a member in the LLC with payment of the unsatisfied amount of the judgment with interest. A judgment creditor will have only the rights that an assignee of the interest would have. § 13.1-1041.

**VII. Dissolution of an LLC.**

**A. Events Causing Dissolution.**

An LLC is dissolved, and its affairs will be wound up, upon the happening of the following events:

1. Events specified in the articles of organization or an operating agreement;
2. The unanimous written consent of the members;
3. The death, resignation, expulsion, bankruptcy, or dissolution of a member, unless the business of the LLC is continued. The business of the LLC can be continued, as provided in the articles of organization or in writing in an operating agreement, upon the vote of a "majority in interest" of the remaining members.

§ 13.1-1046.

The 1995 amendments to the Virginia statute added language that allows the statutory dissolution rules to be varied by agreement in writing in the articles of organization or an operating agreement.

**B. Judicial Dissolution.**

Upon application, the circuit court in the locality in which the registered office of the LLC is located may decree dissolution of the LLC if it is not reasonably practicable to carry on the business of the LLC in conformity with the articles and any operating agreement. § 13.1-1047.

**C. Winding-up.**

Unless otherwise provided in the articles or an operating agreement, the members may wind up the LLC's affairs. However, on cause shown, the circuit court in the locality in which the registered office of the LLC is located, on application of a member, the member's legal representative or assignee, may wind up the LLC's affairs. § 13.1-1048.

**D. Distributions Upon Dissolution.**

Upon the winding up of an LLC, its assets will be distributed, in order, to creditors (including member-creditors) in satisfaction of liabilities of the LLC other than for distributions to members, to members and former members in satisfaction of liabilities for distributions, and to members generally. Distributions to members will be made first, for the return of their contributions, and second, in proportion to the manner in which they share in distributions generally. The members may prescribe another basis, in the articles or an operating agreement, for the distributions to members. § 13.1-1049.

**E. Certificate of Cancellation.**

The winding up of an LLC is deemed to be complete when the debts, liabilities and obligations of the LLC have been paid or discharged and/or reasonably adequate provision has been made therefor, and all other property and assets of the LLC have been distributed to its members. Upon completion of the winding up of the LLC, the LLC must file a certificate of cancellation with the SCC on Form LLC-1050. § 13.1-1050. The certificate of cancellation must be accompanied by a filing fee of \$25. § 13.1-1005(2)(b). The certificate of cancellation is effective when accepted for filing by the SCC.

**VIII. Mergers Involving LLCs.**

**A. Virginia Inter-Entity Merger Provisions.**

Until 1992, Virginia had no provisions allowing different types of entities to merge with each other. The corporate, partnership and LLC statutes now

permit mergers involving stock corporations, limited partnerships and limited liability companies.

1. **Inter-Entity Mergers in Virginia.**

The Stock Act, LLC Act and VRULPA were each amended to allow inter-entity mergers. The only major restriction is that a limited partnership cannot be the survivor of any merger in which a corporation is involved. This rule is designed to prevent a corporate shareholder from inadvertently becoming a general partner of a limited partnership.

2. **Procedure.**

Each merging corporation, limited partnership or limited liability company must adopt a Plan of Merger that sets forth the identity of the merging parties, the jurisdiction of organization of the merging parties, the terms and conditions of the merger, and the manner in which membership interests, partnership interests and shares of stock will be converted into ownership interests of the surviving entity.

The surviving entity of a merger must file articles of merger with the SCC.

3. **Approval by owners.**

The approval of a merger by a limited partnership or LLC must be unanimous, unless the articles of organization or operating agreement, in the case of an LLC, or the partnership agreement, in the case of a limited partnership, otherwise provide. The approval of a merger by a corporation must be in the manner already provided for in the Stock Act.

4. **Title to assets.** When a merger become effective, title to real and other property vests in the surviving entity by operation of law. However, with respect to real estate owned by a non-surviving entity, the surviving entity is obligated to file a copy of the certificate of merger in the real estate recording records in order to evidence the change of ownership.

B. **Domestic Entities May Merge With Foreign Entities.**

The merging parties must comply with the merger statutes applicable in each jurisdiction. Note that many states do not yet permit inter-entity mergers.

**C. Inter-Entity Mergers with Corporations are Not Tax Free Reorganizations.**

When an LLC or limited partnership merges with another LLC or partnership, and the members or partners of one of the merging entities have a greater than 50% interest in the capital and profits of the entity that survives the merger, the surviving entity will be deemed a continuation of that merging entity. By contrast, a merger of a corporation into an entity that is not a corporation cannot qualify as a tax-free reorganization under § 368 of the Internal Revenue Code, and will result in the taxable liquidation of the corporation.

**IX. Professional LLCs in Virginia.**

The Virginia Professional Limited Liability Company Act parallels closely the Virginia Professional Corporation Act.

**A. Forming a Professional LLC.**

A professional LLC is an LLC that includes as its members licensed professionals or professional business entities (professional corporations or other professional LLCs) licensed to engage in certain professions. A professional LLC is formed in the same manner as a regular LLC, and may include as part of its name the words "professional limited company" or "professional limited liability company, or the abbreviations "P.L.C." or "P.L.L.C." § 13.1-1104.

**B. Membership of a Virginia Professional LLC.**

The members of a professional LLC must all be licensed individuals or professional business entities, except as otherwise permitted by the statute. § 13.1-1103.

**C. Professional Liability.**

Just as professionals who are shareholders of a professional corporation do not have joint personal liability for the professional acts and omissions of their co-shareholders, but are still liable for their own professional acts and omissions, the members of a professional LLC will continue to be personally responsible for their own conduct. The members of a professional LLC will not have personal liability, however, for the acts and omissions of their co-members.

**D. Virginia L.L.P. Statute.**

A limited liability partnership statute was enacted by the 1994 General Assembly.

**X. Miscellaneous Provisions of the Act.**

**A. Derivative Actions.**

The Act contains derivative action provisions that parallel those contained in VRULPA. §§ 13.1-1042 to -1045.

**B. Annual Registration Fees.**

Each domestic and foreign LLC must pay an annual registration fee of \$50. The registration provisions parallel those in VRULPA. §§ 13.1-1061 to -1066.

1. **Deadline.** An LLC becomes obligated for the annual fee if it is in existence on July 1 of each year, and the fee must be paid on or before September 1. The assessment of the fee is to be forwarded by the SCC to each limited liability company before August 15. §§ 13.1-1062A, -1063.
2. **Penalties.** An LLC that fails to pay its annual fee in a timely manner will incur a penalty of \$25, and the SCC will not issue any certificate referred to in the Act until all such fees and penalties have been collected. §§ 13.1-1064, -1065.
3. **Identification of Members and Managers Not Required.** Because the articles or organization need not contain names of members or managers, and because the annual registration requirement does not provide for a periodic listing of members or managers, third parties have no filed source for ascertaining the names of the LLC's members or managers.

**C. Real Estate.**

An LLC may acquire and hold title to real estate. § 13.1-1021. The recording tax provisions of the Virginia Code permit recording tax exemptions for transfers between LLCs, partnerships and LLC members that parallel the exemptions previously available to partnerships and their partners.