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Annual Survey of Virginia Law: Business and Corporate Law

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BUSINESS AND CORPORATE LAW

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I. INTRODUCTION

This article reviews recent developments in the law affecting Virginia businesses and corporations. Part II discusses recent judicial decisions, including: two Fourth Circuit Court of Appeals opinions, one interpreting and upholding the constitutionality of the Virginia statutes regulating hostile takeovers,[1] and the other determining the owner of partnership property upon dissolution of the partnership;[2] two Supreme Court of Virginia decisions regarding non-stock corporations, one determining the validity of the board of directors,[3] and one deciding whether the Property Owners' Association Act supersedes the bylaws of an incorporated non-stock property owners' association;[4] four Supreme Court of Virginia decisions including one denying a shareholder's request for a list of shareholders,[5] one refusing to pierce the corporate veil,[6] another refusing to dissolve a closely held corporation held by a husband and a wife going through divorce,[7] and finally, one determining when a limited partner

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1. *See infra* notes 10-106 and accompanying text.
2. *See infra* notes 107-32 and accompanying text.
3. *See infra* notes 149-85 and accompanying text.
4. *See infra* notes 186-209 and accompanying text.
5. *See infra* notes 133-48 and accompanying text.
6. *See infra* notes 210-28 and accompanying text.
7. *See infra* notes 229-41 and accompanying text.

can be held liable for debts of the partnership.[8] Part III discusses several acts of the 1996 session of the Virginia General Assembly amending Virginia's corporation, partnership, and limited liability company statutes.[9]

II. RECENT JUDICIAL DECISIONS

A. *Constitutionality and Interpretation of Virginia Statutes Regulating Hostile Takeovers*

In *WLR Foods, Inc. v. Tyson Foods, Inc.*,[10] the Fourth Circuit Court of Appeals interpreted and upheld the constitutionality of four Virginia statutes: The Control Share Acquisitions Act (the "Control Share Act");[11] the Affiliated Transactions Act;[12] the "Poison Pill Statute;"[13] out of "Business Judgment Statute."[14] This case arose from the Tyson Foods, Inc.'s ("Tyson") hostile tender offer for shares of WLR Foods, Inc. ("WLR"). The board of directors of WLR relied on the above-mentioned statutes to thwart the takeover attempt and defend the actions it took in doing so. Tyson appealed various rulings of the district court which upheld the constitutionality of the statutes.[15]

The Control Share Act provides that when a person acquires a certain percentage of voting shares, those shares lose all voting rights unless a majority of disinterested shares votes to restore voting rights in a shareholder referendum.[16] Shares entitled to vote in a referendum consist of all voting shares other than interested shares (which excludes those that are owned by the acquiring person, an officer, or an employee of

8. *See infra* notes 242-63 and accompanying text.
9. *See infra* notes 264-314 and accompanying text.
10. 65 F.3d 1172 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 921 (1996).
11. VA. CODE ANN. §§ 13.1-728.1 to -728.9 (Repl. Vol. 1993 & Cum. Supp. 1996).
12. VA. CODE ANN. §§ 13.1-725 to -727.1 (Repl. Vol. 1993 & Cum. Supp. 1996).
13. VA. CODE ANN. § 13.1-646 (Repl. Vol. 1993 & Cum. Supp. 1996).
14. VA. CODE ANN. § 13.1-690 (Repl. Vol. 1993 & Cum. Supp. 1996).
15. WLR Foods, Inc. v. Tyson Foods, Inc., 857 F. Supp. 492 (W.D. Va. 1994); WLR Foods, Inc. v. Tyson Foods, Inc., 857 F. Supp. 496 (W.D. Va. 1994); WLR Foods, Inc. v. Tyson Foods, Inc., 861 F. Supp. 1277 (W.D. Va. 1994); WLR Foods, Inc. v. Tyson Foods, Inc., 869 F. Supp. 419 (W.D. Va. 1994).
16. VA. CODE ANN. § 13.1-728.3 (Repl. Vol. 1993).

the corporation who is also a director).[17] The corporation may set a record date to determine which shares are interested and which are entitled to vote in the referendum.[18]

The Affiliated Transaction Act[19] prohibits a merger, share exchange, sale of assets, or dissolution involving a corporation and a shareholder for a period of three years following the date on which the shareholder becomes an interested shareholder.[20] A shareholder becomes an interested shareholder when the shareholder obtains a certain percentage of shares of the corporation.[21] The transaction can be approved by the vote of a majority of the disinterested directors and two-thirds of the voting shares (excluding those beneficially held by the interested shareholder).[22]

The Poison Pill Statute allows a corporation to give shareholders certain rights or options to purchase shares in the corporation at favorable terms.[23] The purchase rights take effect upon a specified event such as the acquisition of a certain percentage of the corporation's stock by one person. The directors of the corporation are required to exercise good faith judgment when granting such rights.[24]

The Business Judgment Statute establishes the standard of care for directors in fulfilling their duties to the corporation and its shareholders.[25] A director must discharge his duties as a director in accordance with his good faith business judgment of what is in the best interest of the corporation.[26] A director

17. VA. CODE ANN. § 13.1-728.1 (Repl. Vol. 1993 & Cum. Supp. 1996).

18. VA. CODE ANN. § 13.1-660 (Repl. Vol. 1993 & Cum. Supp. 1996) (allowing a corporation to fix a record date for voting groups in order to make a determination of shareholders for any purpose).

19. VA. CODE ANN. §§ 13.1-725 to -726 (Repl. Vol. 1993 & Cum. Supp. 1996).

20. VA. CODE ANN. § 13.1-725.1 (Repl. Vol. 1993).

21. VA. CODE ANN. § 13.1-725 (Repl. Vol. 1993 & Cum. Supp. 1996).

22. VA. CODE ANN. § 13.1-646(A) (Repl. Vol. 1993 & Cum. Supp. 1996).

23. VA. CODE ANN. § 13.1-725.1 (Repl. Vol. 1993 & Cum. Supp. 1996).

24. VA. CODE ANN. § 13.1-646 (Repl. Vol. 1993); *see* VA. CODE ANN. § 13.1-690 (Repl. Vol. 1993 & Cum. Supp. 1996).

25. VA. CODE ANN. § 13.1-690 (Repl. Vol. 1993 & Cum. Supp. 1996).

26. VA. CODE ANN. § 13.1-690(A) (Repl. Vol. 1993 & Cum. Supp. 1996).

may rely on information presented to him by professionals unless the director has knowledge that makes reliance unwarranted.[27]

1. Williams Act Preemption

Tyson argued that the Virginia statutes mentioned above controvert the purposes of the Williams Act,[28] and are therefore preempted by virtue of the Supremacy Clause of the United States Constitution.[29] A state law is preempted by federal statute only if: (1) Congress clearly expresses an intention to do so; (2) it is impossible to comply with both federal and state laws; or (3) the state law stands as an obstacle to the purposes and objectives of Congress.[30] Since Congress did not clearly express the intent to preempt state law in the Williams Act and Tyson did not argue that it would be impossible to comply with both the Williams Act and the Virginia statutes, the Fourth Circuit considered only whether the Virginia statutes stood as an obstacle to the objectives of Congress.[31]

The Williams Act amended the Securities Exchange Act of 1934 to regulate hostile takeovers. The Act protects investors by placing them on an equal footing with the takeover bidder.[32] Tyson contended that an additional objective of the Williams Act was to level the playing field between the bidder and its target.[33] Tyson argued because the Virginia statutes provide the target management with an advantage in takeovers, the statutes controvert this purpose of the Williams Act and should be preempted.[34] In *Edgar v. MITE Corp.*,[35] the United States Supreme Court found that the Williams Act preempted Illinois statutes which favored management over bidders to the

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27. VA. CODE ANN. § 13.1-690(B) (Repl. Vol. 1993 & Cum. Supp. 1996).
28. WLR Foods, Inc. v. Tyson Foods, Inc., 65 F.3d 1172, 1179 (4th Cir. 1995) (construing 15 U.S.C. § 78 m(d)-(e) and 78n(d)-(f) (1993)).
29. U.S. CONST. art. VI, cl. 2.
30. *WLR Foods*, 65 F.3d at 1179.
31. *Id.* (citing Edgar v. MITE Corp., 457 U.S. 624, 631 (1982)).
32. *Id.* (citing CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 82 (1987)).
33. *Id.* (citing *Edgar*, 457 U.S. at 633-34).
34. *Id.* (citing *Edgar*, 457 U.S. at 633-34).
35. 457 U.S. 624 (1982).

shareholders' detriment.[36] The Fourth Circuit held that while the Williams Act is designed to maintain the neutrality between bidder and target, neutrality is only incidental to the broader purpose of protecting investors.[37] The Williams Act does not forbid allowing management an advantage which is not unfair to investors.[38] The Fourth Circuit found that Tyson did not show that the Virginia statutes weakened the protection of investors, for example, by keeping information from the shareholders.[39]

Tyson further argued that the Williams Act preempts the Virginia statutes because the statutes do not provide a bidder with a "meaningful opportunity for success" in a hostile takeover.[40] Several courts have used the "meaningful opportunity for success" test in assessing whether the Williams Act preempts state statutes.[41] The Fourth Circuit rejected the "meaningful opportunity for success" test, holding that the creation of an environment that is conducive to takeovers is not the purpose of the Williams Act.[42] The Fourth Circuit held that the Virginia hostile takeover statutes do not frustrate the goal of investor protection, and are therefore not preempted by the Williams Act.[43]

2. Burden on Interstate Commerce

Tyson argued that the Virginia statutes violated the Commerce Clause by discriminating against and imposing a burden

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36. *Id.* at 639.

37. *WLR Foods*, 65 F.3d at 1179 (citing IU Int'l Corp. v. NX Acquisition Corp., 840 F.2d 220, 222 (4th Cir.), *adopted en banc*, 840 F.2d 229 (4th Cir. 1988) (per curiam); Hyde Park Partners, L.P. v. Connolly, 839 F.2d 837, 849-50 (1st Cir. 1988)).

38. *WLR Foods*, 65 F.3d at 1180.

39. *Id.*

40. *Id.*

41. *E.g.*, BNS, Inc. v. Koppers Co., 683 F. Supp. 458, 469 (D. Del. 1988) (holding that state statutes do not violate the Williams Act so long as hostile offers which are beneficial to target shareholders have a meaningful opportunity for success).

42. *WLR Foods*, 65 F.3d at 1180 (citing Amanda Acquisition Corp. v. Universal Foods Corp., 877 F.2d 496, 504-05 (7th Cir.), *cert. denied*, 493 U.S. 955 (1989) ("The Williams Act does not create a right to profit from the business of making tender offers."))

43. *Id.* at 1181.

on interstate commerce that was excessive in relation to the benefits of the statutes.[44] The Fourth Circuit found absolutely no evidence of discrimination, and, assuming the Virginia statutes imposed some burden on interstate commerce, that the interest of Virginia in regulating its corporations outweighed the burden.

The Fourth Circuit based its holding on two cases: *CTS Corp. v. Dynamics Corp. of America*[45] and *Amanda Acquisitions Corp. v. Universal Foods Corp.*[46] In *CTS*, the Supreme Court held that an Indiana statute (similar to the Control Share Act) did not discriminate against interstate commerce because it had the same effect on tender offers whether or not the bidder was a resident of Indiana.[47] Since the Indiana law affected both residents and non-residents equally, there was no discrimination. In *Amanda*, the Seventh Circuit held that an affiliated transaction statute (more strict than Virginia's) did not violate the Commerce Clause because it did not regulate or forbid interstate transactions, and did not make distinctions based on the domicile of the bidder.[48] The Fourth Circuit found that the Virginia statutes treated in-state and out-of-state tender offers exactly the same in that a Virginia bidder confronts the same difficulties as an out-of-state bidder.[49]

The Fourth Circuit also rejected Tyson's argument that the Virginia statutes discriminate against interstate commerce by making it difficult to gain control of a Virginia corporation, thereby "hoarding" a local resource.[50] Tyson based this argument on the United States Supreme Court case of *C & A Carbone, Inc. v. Town of Clarkstown*.[51] In *Clarkstown*, the Supreme Court found discrimination against interstate commerce where a town ordinance required non-hazardous solid waste to be processed at the local processing facility, thus hoarding

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44. *Id.*
45. 481 U.S. 69 (1987).
46. 877 F.2d 496 (7th Cir.), *cert. denied*, 493 U.S. 955 (1989).
47. *WLR Foods*, 65 F.3d at 1181 (citing *CTS*, 481 U.S. at 87).
48. *Id.* (citing Amanda Acquisition Corp. v. Universal Foods Corp., 877 F.2d 496, 506 (7th Cir.), *cert. denied*, 493 U.S. 955 (1989)).
49. *Id.*
50. *Id.*
51. 511 U.S. 383 (1994).

waste for the facility.[52] In *WLR Foods*, the Fourth Circuit found that no commodity was being hoarded by Virginia.[53] Although the Virginia statutes may increase the difficulty or expense of getting control of a Virginia corporation, they did not erect a complete ban on the control of such corporations. Thus, Virginia was not hoarding its corporations and the statutes did not violate the Commerce Clause.[54]

Finally, Tyson argued that the burden imposed on interstate commerce exceeded the local benefits of the regulation.[55] The Fourth Circuit found that, even assuming that the Virginia's statutes did impose some burden on interstate commerce, Virginia's interest in regulating its corporations outweighed the burden.[56] The Fourth Circuit explained that Virginia is permitted to determine that hostile takeovers can be detrimental to Virginia corporations.[57] A state may regulate a corporation because a corporation is an entity whose very existence and attributes are a product of state law.[58] While state regulation of corporations may affect interstate commerce, a state has an interest in promoting stable relationships among parties involved in corporations created under its laws and in ensuring that investors have an effective voice in corporate affairs.[59]

3. Business Judgment Statute Analysis

Tyson argued that since it sued the WLR directors for an injunction rather than for damages, and since the board had a conflict of interest, the Business Judgment Statute did not apply and should be abandoned in favor of the common law standard of duty of loyalty.[60] Tyson also argued that the Virginia Business Judgment Statute does not prohibit its inquiry into the substance of the WLR directors' decision to oppose the

52. *Id.* at 389.
53. *WLR Foods*, 65 F.3d at 1181.
54. *Id.*
55. *Id.* (citing Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970)).
56. *Id.* at 1182.
57. *Id.*
58. *Id.* (citing CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 89 (1987)).
59. *Id.* (citing *CTS*, 481 U.S. at 91).
60. *Id.* at 1182.

tender offer and take defensive measures.[61] The district court denied discovery of the materials used by WLR in deciding how to respond to the takeover attempt. In rejecting all of Tyson's arguments, the Fourth Circuit agreed with the district court that the Business Judgment Statute was the exclusive standard by which to measure the actions of directors of a Virginia corporation involved in a hostile takeover.[62]

a. Exclusive Standard

The Fourth Circuit found that the Virginia Code expressly provides that actions of directors with respect to the issuance of shares, affiliated transactions, and control share acquisitions are subject to the Business Judgment Statute.[63] Therefore, the actions taken by the WLR directors in responding to Tyson's hostile tender offer are explicitly made subject to the statute, thereby foreclosing any reliance on the common law duty of loyalty.[64]

The Fourth Circuit looked to the Virginia Code to determine whether a conflict of interest existed on the WLR board.[65] The Virginia Code defines a conflict of interest transaction to be a transaction with the corporation in which a director has a direct or indirect personal interest.[66] A director has an indirect personal interest if he is a director, officer, trustee of, or has a material financial interest in, another entity that is party to the transaction.[67] The Fourth Circuit found that Tyson failed to show that any WLR board member had a conflict of interest, as defined in the conflict of interest statute.[68]

Tyson claimed that the Business Judgment Statute only pro-

61. *See* VA. CODE ANN. § 13.1-690 (Repl. Vol. 1993 & Cum. Supp. 1996).
62. *WLR Foods*, 65 F.3d at 1182.
63. *Id.* at 1182-83.
64. *Id.*
65. *Id.* at 1183 (citing VA. CODE ANN. § 13.1-691 (Repl. Vol. 1993 & Cum. Supp. 1996); Izadpanah v. Boeing Joint Venture, 243 Va. 81, 83, 412 S.E.2d 708, 709 (1992)).
66. VA. CODE ANN. § 13.1-691 (Repl. Vol. 1993 & Cum. Supp. 1996); *WLR Foods*, 65 F.3d at 1183.
67. VA. CODE ANN. § 13.1-691 (Repl. Vol. 1993 & Cum. Supp. 1996).
68. *WLR Foods*, 65 F.3d at 1183.

tects directors from personal liability and should not apply when directors are sued for an injunction.[69] Tyson sued the WLR directors for an injunction, rather than damages, to enjoin the defensive measures taken in response to its hostile takeover attempt.[70] The Fourth Circuit found it clear from the language of the statute that the standard is not only a means to assess a director's personal liability, but also a benchmark against which a director's actions shall be measured in other contexts.[71] The Fourth Circuit noted that Tyson cited no authority to support its contention that the Business Judgment Statute did not apply to injunctive actions against directors, and held that the statute applied to the director actions in this case.[72]

b. Discovery Rulings of the District Court

Tyson challenged the district court's refusal to allow discovery of the substance of the information and recommendations given to the WLR board by its advisor.[73] The district court held that under Virginia law the information sought was "not reasonably calculated to lead to the discovery of admissible evidence."[74] Under Rule 26 of the Federal Rules of Civil Procedure, information that is not admissible at trial is discoverable as long as it is relevant to the subject matter involved in the pending action.[75] The Fourth Circuit agreed with the district court that the only issue was the good faith business judgment of the directors, not whether the decision ultimately reached was the correct one.[76] The actions of a director are to be judged by the director's good faith in performing corporate duties, and not by the substantive merit of the director's decisions themselves.[77]

69. *Id.*
70. *Id.*
71. *Id.* (citing Daniel T. Murphy, *The New Virginia Stock Corporation Act: A Primer*, 20 U. RICH. L. REV. 67, 107 (1985)).
72. *Id.*
73. *Id.* at 1183-84.
74. 857 F. Supp. 495 (citing FED. R. CIV. P. 26(b)(1)).
75. FED. R. CIV. P. 26(b)(1).
76. *WLR Foods*, 65 F.3d at 1185.
77. *Id.* at 1184-85.

The Fourth Circuit rejected Tyson's claim that knowledge of the substantive content of the information is necessary to determine whether the director's decision was made in good faith. Tyson hoped to prove lack of good faith by showing that, based on the advisor's information, the board should have reached a different result. The Fourth Circuit found that the Virginia legislature specifically rejected a subjective standard of director conduct based on a comparison between a director and the hypothetical reasonable person.[78] When it enacted the Business Judgment Statute, the General Assembly chose to leave out that portion of the Model Business Corporation Act which provided that a director shall discharge his duties with the care that an ordinarily prudent person in like position would exercise under similar circumstances.[79] The Virginia Business Judgment Statute contains no reference to "ordinarily prudent person."[80] The Fourth Circuit held that directors' actions in Virginia are not to be judged for their reasonableness and a plaintiff is not allowed to discover the substantive content of the recommendations made to the board of directors.[81]

The Fourth Circuit further held that the district court's restriction on discovery did not prevent Tyson from being able to determine whether the actions of the WLR board were in good faith.[82] Tyson had access to various records describing the procedure of the WLR board, copies of the minutes of board meetings which made it clear that the directors discussed the takeover, the name of the advisor, and knew when the WLR board hired the advisor. The Fourth Circuit held that access to this information gave Tyson the opportunity to determine whether the WLR board had acted in good faith, and harmonized its decision with its opinion in *Sandberg v. Virginia Bankshares, Inc.*[83] In *Sandberg*, the directors of a bank retained no independent investment advisor in order to assess a

78. *Id.*

79. *Id.* at 1185 (construing VA. CODE ANN. § 13.1-690 (Repl. Vol. 1993 & Cum. Supp. 1996)).

80. *See* VA. CODE ANN. § 13.1-690 (Repl. Vol. 1993 & Cum. Supp. 1996).

81. *WLR Foods*, 65 F.3d at 1185-86; *see* MODEL BUS. CORP. ACT § 8.30(a)(2) (1990).

82. *Id.* at 1186.

83. 891 F.2d 1112 (4th Cir. 1989), *rev'd on other grounds*, 501 U.S. 1083 (1991).

fair value for its stock, and merely issued a two-sentence statement recommending acceptance of a merger offer.[84] The Fourth Circuit found that the board in *Sandberg* merely rubber-stamped everything management placed before it and held that the board lacked good faith.[85]

Tyson argued that had the trial court in *Sandberg* restricted the evidence to only the procedure by which the board made the decision, the jury could not have determined the bad faith of the directors.[86] However, the Fourth Circuit found that it would not be impossible for a jury to find that the board in *Sandberg* merely rubber-stamped the merger if the jury knew of the advisors consulted by the board, their qualifications, how they were selected, the general topics of their advice, and whether their advice was followed.[87] The Fourth Circuit found that the same type of information allowed in this case would have permitted a finding of lack of good faith in *Sandberg*.[88]

Tyson argued that the district court clearly erred in finding that the WLR directors did not breach their duty of good faith to the shareholders by rejecting Tyson's offer and adopting defensive measures.[89] When Tyson first made the offer, WLR Director Keeler stated that WLR was not for sale. Tyson contended that WLR rejected the offer before considering the matter with the help of experts.[90] The Fourth Circuit reviewed the district court's factual findings and determined that while the WLR directors stated that the company was not for sale, the directors also repeatedly acknowledged that the board was required to consider the offer.[91] The WLR board had several extended meetings regarding the takeover, in addition to spending time and financial resources on gathering information from informed advisors. The Fourth Circuit refused to reverse the

84. *Id.* at 1117.
85. *Id.* (citing *Sandberg*, 891 F.2d at 1123).
86. 65 F.3d at 1186.
87. *Id.*
88. *Id.*
89. *Id.* at 1187.
90. *Id.*
91. *Id.*

finding of the district court that the WLR board had acted in good faith.[92]

4. Control Share Act Analysis

In rejecting Tyson's appeal, the Fourth Circuit interpreted the Control Share Act.[93] Under the Control Share Act, Tyson's acquisition of a controlling percentage of WLR stock triggered a loss of voting rights. WLR held a shareholder referendum to determine whether a majority of disinterested shareholders would agree to reinstate Tyson's voting rights.

Interested shares may not be counted in the referendum.[94] The Control Share Act defines interested shares as shares held by: (1) the acquiring person; (2) an officer; (3) an employee who is also a director; or (4) an associate of such persons.[95] An "associate" is a person, business entity, or a trust who controls, is controlled by, or is under common control with the shareholder, or who is acting to acquire or control the beneficial use of shares with such shareholder, or in which the shareholder is a ten percent owner, fiduciary or trustee.[96] An "associate" is also any relative or spouse of the shareholder, and any relative of the spouse residing with the shareholder.[97]

Four directors resigned as employees prior to the record date for the control share referendum.[98] Tyson argued that the four directors continued to be employees for purposes of the referendum, and therefore their shares should not have been counted in the vote.[99] Tyson further argued that subtracting the votes of the four directors would not cure the referendum because the

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92. *Id.*
93. *See* VA. CODE ANN. § 13.1-728.1 to -728.9 (Repl. Vol. 1993 & Cum. Supp. 1996).
94. VA. CODE ANN. § 13.1-728.3(B) (Repl. Vol. 1993).
95. VA. CODE ANN. § 13.1-728.1 (Repl. Vol. 1993 & Cum. Supp. 1996).
96. *WLR Foods*, 65 F.3d at 1187 (citing VA. CODE ANN. § 13.1-728.1 (Repl. Vol. 1993 & Cum. Supp. 1996)).
97. *Id.*
98. *Id.* at 1188
99. *Id.*

directors' vote intimidated the other voters, thereby tainting the entire vote.[100]

The Fourth Circuit reviewed the facts found by the district court. The resigning directors did not report to anyone at WLR, were not responsible for signing checks for the company, did not have authority to direct other employees, had no office or secretary, and upon resignation, gave up all salaries.[101] Based on these facts, the Fourth Circuit affirmed the district court's ruling that none of the four directors were employees of WLR on the record date.[102] The Fourth Circuit also rejected Tyson's claim that the entire board should have been precluded from voting on the ground that they were associates of Keeler—a director and employee who was not entitled to, and did not, vote in the referendum.[103] Tyson argued that by procuring the resignations of the four director-employees, the WLR board acted with Keeler to control the beneficial use of shares.[104] The Fourth Circuit held that Tyson's position depended upon the validity of the resignations of the four directors. Since the directors' resignations were sincere, the facts did not support Tyson's claim that the WLR board acted in concert with Keeler to control the directors' vote.[105] The Fourth Circuit held that the shares of the four resigning directors and the shares of the other directors were not interested and therefore were properly cast in the referendum.[106]

B. *Transferring Property of a Partnership in Dissolution*

In *Federal Deposit Insurance Corp. v. Hish,*[107] the Fourth Circuit decided the issue of whether a general partner can alienate his share of the property of a partnership in dissolution. Koons owned a 22.5% partnership interest in real estate which was held in the name of Koons Leasing Co., a Virginia

100. *Id.*
101. *Id.*
102. *Id.* at 1188-89.
103. *Id.* at 1189.
104. *Id.*
105. *Id.*
106. *Id.*
107. 76 F.3d 620 (4th Cir. 1996).

general partnership (the "Partnership").[108] The partners agreed to dissolve the Partnership and to have the Partnership distribute the real estate to the partners as tenants in common, whereupon, after a waiting period, the undivided fee simple interests would be traded as tax-free exchanges.[109]

The Partnership filed final partnership tax returns and converted its bank accounts into accounts held by the partners as tenants in common.[110] The partners filed individual tax returns listing rental income as tenants in common and acquired business licenses that identified the property owner as a tenant in common.[111] The tenants on the Partnership property were instructed to make rental payments individually to the partners as tenants in common.[112] The Partnership, however, never executed any deeds transferring the real estate to the partners as tenants in common.[113] Koons, experiencing financial difficulties, borrowed five million dollars from the other partners. Koons' loan was secured by his interest in the Partnership, and the security interest was perfected by the filing of a financing statement.[114]

Koons also borrowed 1.8 million dollars from a bank, securing the loan by a deed of trust on the real estate, rather than by his partnership interest.[115] Koons' attorney gave a legal opinion to the bank stating that the dissolution of the Partnership by operation of law vested Koons with legal and equitable title to the Partnership real estate as tenant in common.[116] Following Koons' execution of the deed of trust, the partners halted the dissolution of the Partnership.[117] The partners amended the final partnership tax return, closed the tenants in common bank accounts, and reopened the Partnership's bank ac-

108. *Id.* at 622.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*

count.[118] Koons assigned his interest in the Partnership to the lending partners and filed bankruptcy.[119]

The district court, based upon the overwhelming evidence of the partners' intent to dissolve the Partnership and treat partnership property as a tenancy in common, held that the deed of trust validly conveyed a fee simple interest in the real estate belonging to Koons.[120] The partners appealed, arguing that Koons could not encumber Partnership real estate for his own use without the consent of the remaining partners.[121] The appellants also argued that the Virginia Uniform Partnership Act prevented Koons from assigning his individual interest in the Partnership property.[122] The FDIC claimed that placing the Partnership in dissolution distributed the real estate to the partners as tenants in common; therefore, Koons held an undivided 22.5% fee simple interest in the real estate when he executed the deed of trust and the deed of trust was valid against that interest.[123]

The Fourth Circuit found that in Virginia legal title to property can be conveyed only by deed or will.[124] The Fourth Circuit noted that a statutory exception to this rule exists where a partnership is dissolved and some of the partners wish to continue the business of the Partnership.[125] Nevertheless, the circuit court found that this exception did not apply in this case because a new partnership was never created.[126] The Fourth Circuit held that because the Partnership executed no deed con-

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118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.* at 623 (citing Virginia Uniform Partnership Act, VA. CODE ANN. § 50-25(B)(1) (Repl. Vol. 1994) (providing that a partner has a right with his partners to possess partnership property for partnership purposes but has no right to possess such property for any other purposes without the consent of his partners)).
122. VA. CODE ANN. § 50-25(B)(2)(Repl. Vol. 1994) (providing that a partner's right in specific Partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property); *see In re* Vannoy, 176 B.R. 758, 770-71 (Bankr. M.D.N.C. 1994).
123. *Hish*, 76 F.3d at 623.
124. VA. CODE ANN. § 55-2 (Repl. Vol. 1995) (providing that no interest in land shall be conveyed unless by deed or will); Southwest Prods. Co. v. U.S., 882 F.2d 113, 117 (4th Cir. 1989).
125. *Hish*, 76 F.3d at 623; *see* VA. CODE ANN. § 50-37.1 (Repl. Vol. 1994).
126. *Id.* at 623 n.2 (citing VA. CODE ANN. § 50-37.1 (Repl. Vol. 1994)).

veying title from the Partnership to the partners as tenants in commons, Koons did not have a tenancy in common interest in the real estate.[127] Therefore, the deed of trust was invalid to create a lien encumbering the real estate of the Partnership.[128]

In rejecting the FDIC's argument that terminating a partnership automatically converts all partnership property into property held as tenants in common, the Fourth Circuit distinguished between the dissolution of a partnership and the termination and winding up of its affairs.[129] The Fourth Circuit held that "[a]ctual termination occurs only after the assets of a partnership are distributed and accounts between the partners settled."[130] The Fourth Circuit found that since the Partnership was only in dissolution and its existence had not been terminated, the Partnership still held title to the real estate.[131] The Fourth Circuit remanded to determine the issue of whether Koons' execution of the deed of trust could be deemed an act of the Partnership, or whether the deed of trust created a lien against his partnership interest.[132]

C. *Burden of Proof to Obtain Corporate Records*

In *Retail Property Investors, Inc. v. Skeens*,[133] the Supreme Court of Virginia determined what must be proved to compel

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127. *Id.*

128. *Id.* at 623. The Fourth Circuit discarded two Supreme Court of Virginia cases, *Klingstein v. Rockingham Nat'l Bank*, 165 Va. 275, 182 S.E. 115, 116-17 (1935) and *Woodson v. Gilmer*, 205 Va. 487, 137 S.E.2d 891, 892 (1964), which the FDIC relied upon to claim the Deed of Trust was valid. In those cases, the Supreme Court of Virginia held that title to property held in the names of individual partners was still partnership property if such was the intention of the parties at the time of the transaction. *See Hish*, 76 F.3d at 623; VA. CODE ANN. § 50-10 (Repl. Vol. 1994) (providing that partnership property may be held in the names of the partnership or in the names of one or more individual partners). The Fourth Circuit found that these cases had no legal bearing on the issue. *Hish*, 76 F.3d at 623.

129. *Hish*, 76 F.3d at 623-24.

130. *Id.* (citing VA. CODE ANN. § 50-40 (Repl. Vol. 1994); *In re* Williamsburg Suites, Ltd., 117 B.R. 216, 217-18 (Bankr. E.D. Va. 1990); *In re* 2111 Assocs.-Chicago, 580 F.2d 705, 708 (4th Cir. 1978)).

131. *Id.* at 624.

132. *Id.*

133. 252 Va. 36, 471 S.E.2d 181 (1996).

the production of corporate records and who has the burden of proof. Skeens, a shareholder, requested the names, addresses and share ownership information of all the shareholders of Retail Property Investors, Inc. ("RPI"). Skeens indicated that he intended to contact the other shareholders regarding the misleading manner in which the company sold its shares, the mismanagement of the company by its officers and directors, the generation and distribution of misleading information in management reports, and other malfeasance.[134]

RPI agreed to produce the shareholders list provided that Skeens executed a certificate to assure that his request was for a proper purpose.[135] The certificate required Skeens to specify a proper purpose and to certify that neither he nor his attorney would use the shareholder list directly or indirectly for any purpose other than the specified purpose. Additionally, the certificate required Skeens to certify that "in particular, [he would] not use the list as a means of soliciting . . . business or other professional relationships or retainers of any nature from any shareholder."[136]

Skeens testified that he sought the shareholder list because he wanted to file a lawsuit and wished to solicit other shareholders to join in and help with the expense. Skeens also admitted that he had never investigated whether his receipt of the shareholder list would injure the company. A director of RPI testified that producing the shareholder list would injure the company, and that the cost and the time required of management and the board of directors to defend the lawsuit would be damaging. The director also testified that the directors made the determination that producing the shareholder list would not be in the company's best interests.[137]

The Supreme Court of Virginia interpreted section 13.1-771(C) of the Virginia Code, which sets forth four requirements that a shareholder must fulfill to obtain corporate records.[138]

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134. *Id.* at 38, 471 S.E.2d at 181-82.
135. *Id.*, 471 S.E.2d at 182.
136. *Id.*
137. *Id.* at 39, 471 S.E.2d at 183.
138. *Id.* at 40, 471 S.E.2d at 183 (citing VA. CODE ANN. § 13.1-771(C) (Repl. Vol. 1993)).

A shareholder may obtain corporate records only if:

> (1) He has been a shareholder of record for at least six months immediately preceding his demand or is a holder of record of at least five percent of all of the outstanding shares;
> (2) His demand is made in good faith and for a proper purpose;
> (3) He describes with reasonable particularity his purpose and the records he desires to inspect; and
> (4) The records are directly connected with his purpose.[139]

The Supreme Court of Virginia said that the Virginia statute evolved from the common law and recalled the rules it laid down in *Bank of Giles County v. Mason*,[140] a case decided upon common law principles.[141] In *Mason*, the supreme court said that a shareholder's right to inspect corporate books or records is "not absolute and uncontrolled, but must be for a proper purpose."[142] The court must be satisfied that the shareholder's request is made in good faith, for the proper purpose of protecting his rights as an owner of stock, and that granting the relief will not adversely affect the corporation's interest.[143] The supreme court stated in *Mason* that the stockholder must prove that a right of inspection exists.[144]

Interpreting the statute through its common law heritage, the Supreme Court of Virginia held that a shareholder, seeking corporate records pursuant to section 13.1-771 of the Virginia Code, has the burden of proving that he is acting in good faith to protect his rights as a shareholder, and that his receipt of the corporate records will not adversely affect the corporation's interests.[145] Skeens sought the shareholder list to solicit the participation of the other shareholders in a lawsuit. The su-

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139. *Id.* (citing VA. CODE ANN. § 13.1-771(C) (Repl. Vol. 1993)).
140. 199 Va. 176, 98 S.E.2d 905 (1957).
141. *Id.*
142. *Id.* at 181, 98 S.E.2d at 908.
143. *Id.* at 181-82, 98 S.E.2d at 908.
144. *Id.* at 182, 98 S.E.2d at 908.
145. Retail Property Investors, Inc. v. Skeens, 252 Va. 36, 41, 471 S.E.2d 181, 183 (1996).

preme court held that Skeens failed, as a matter of law, to carry the burden of proof that he sought the records for proper purpose.[146] In addition, the evidence showed that production of the shareholder list would be injurious to the corporation.[147] The supreme court reversed the circuit court's order requiring the company to produce its shareholder list.[148]

D. *Validity of Successor Directors*

In *Stewart v. Lady*,[149] the Supreme Court of Virginia determined who were the lawful directors of a Virginia non-stock, non-profit corporation which had no members. The Seniors Coalition ("TSC") was an internal division of the Taxpayers Education Lobby, a tax-exempt corporation created by Alexander in 1979. TSC published a newsletter and engaged in fundraising and lobbying activities on behalf of its parent corporation. In 1990, Alexander "caused TSC to be incorporated as a separate legal entity."[150] One of Alexander's employees, Hansen, was the incorporator and sole director. Hansen elected Stewart and Carlin to TSC's board of directors (the "Initial Board"). Alexander informed the Initial Board that TSC would not commence operations and that he would advise them when they should exercise their duties as directors.[151]

Alexander continued to operate TSC as though it were a division of the Taxpayers Education Lobby. Rather than following established corporate procedures, Alexander ran TSC and the Taxpayers Education Lobby autocratically; whatever he said was the law. The chancellor in the trial court specifically found that the Initial Board never acted.[152] Lady, Aldridge, and McDonnell[153] convinced Alexander that they should serve as the directors of TSC. Alexander agreed and purportedly elected

146. *Id.*
147. *Id.*
148. *Id.*
149. 251 Va. 106, 465 S.E.2d 782 (1996).
150. *Id.* at 109, 465 S.E.2d at 783.
151. *Id.*
152. *Id.*
153. Lady, Aldridge, and McDonnell were members of the board of directors of the Taxpayers Education Lobby.

them as directors of TSC (the "Current Board"). In 1992, the Current Board began to operate the company, squeezed Alexander out, and built TSC into a business with significant assets and many activities.[154] After the Current Board took control, it was treated by Alexander and others as the lawful board of directors of TSC.

The Initial Board knew that the Current Board was operating TSC and that the Current Board had published a newsletter which the Initial Board had seen. In fact, one of the members of the Initial Board had placed an advertisement in the 1992 edition of the newsletter.[155] The Initial Board took no action until 1994 when it elected Pearson to replace Hansen, but otherwise did not conduct any annual meetings, nor did it elect any other directors.[156]

The trial court held that the Current Board was the lawful director of TSC.[157] On appeal, the Initial Board argued that the Virginia Non-Stock Corporation Act vests sole power to elect successor directors with the board of directors, and that Alexander did not have the authority to elect successor directors.[158] The Current Board asserted that Alexander, acting as agent of the Initial Board, had both the express and the implied authority to elect the Current Board.[159]

The supreme court found that, according to the Virginia Code, directors of a non-stock corporation shall be elected or appointed in a manner provided in the articles of incorporation.[160] The Virginia Code further states that the initial board of directors shall hold office until the first annual election of directors.[161] TSC's Initial Board filed articles of incorporation which specified that the directors shall hold office for a term of one year and until their respective successors are elected and

154. *Stewart*, 251 Va. at 109, 465 S.E.2d at 783.

155. *Id.* at 110, 465 S.E.2d at 784.

156. *Id.* at 109, 465 S.E.2d at 784.

157. Seniors Coalition v. Lady, 35 Va. Cir. 36 (Fairfax County 1994).

158. *Stewart*, 251 Va. at 110, 465 S.E.2d at 784; *see* VA. CODE ANN. §§ 13.1-801 to -980 (Repl. Vol. 1993 & Cum. Supp. 1996).

159. *Stewart*, 251 Va. at 109, 465 S.E.2d at 784.

160. *Id.* at 110, 465 S.E.2d at 784 (citing VA. CODE ANN. § 13.1-855(D) (Repl. Vol. 1993 & Cum. Supp. 1996)).

161. VA. CODE ANN. § 13.1-857(B) (Repl. Vol. 1993 & Cum. Supp. 1996).

qualified.[162] The articles further provided that successor directors shall be elected by a majority vote of the directors in office immediately preceding the expiration of each term.[163]

Based on section 13.1-855(D) of the Virginia Code and its interpretation of TSC's articles of incorporation, the supreme court found that the members of the Initial Board were the lawful directors of TSC because they never elected any successors.[164] The supreme court disregarded the fact that the Initial Board did not conduct annual meetings or elect any other directors until they elected Pearson in 1994. When a corporation fails to hold its regular annual meeting of the board of directors, the directors then in office hold over until their successors are elected.[165]

The supreme court rejected the Current Board's argument that Alexander, as an agent of the Initial Board, had the authority to elect the Current Board as the directors of TSC.[166] The Non-Stock Corporation Act states that if a corporation has no members or its members have no right to vote, the directors shall have sole voting power.[167] The supreme court interpreted the statute to mean that the Non-Stock Corporation Act does not grant an agent of the board of directors the power to elect a director.[168]

The Current Board, citing *Coastal Pharmaceutical Co. v. Goldman*,[169] *Curley v. Dahlgren Chrysler-Plymouth, Dodge, Inc.*,[170] and *Brewer v. First National Bank*,[171] argued that the Initial Board, having acquiesced in the informal conduct of TSC's affairs, cannot now insist that the informal act of Alexander appointing the Current Board is invalid, and should be estopped from asserting that they are the lawful directors of

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162. *Stewart*, 251 Va. at 111, 465 S.E.2d at 784.
163. *Id.*
164. *Id.*
165. *Id.* at 111, 465 S.E.2d at 784-85 (citing Blue Ridge Property Owners Ass'n v. Miller, 216 Va. 611, 613, 221 S.E.2d 163, 165 (1976)).
166. *Id.* at 111-12, 465 S.E.2d at 784.
167. VA. CODE ANN. § 13.1-846(C) (Repl. Vol. 1993 & Cum. Supp. 1996).
168. *Stewart*, 251 Va. at 112, 465 S.E.2d at 785.
169. 213 Va. 831, 836-37, 195 S.E.2d 848, 852-53 (1973).
170. 245 Va. 429, 433-34, 429 S.E.2d 221, 224 (1993).
171. 202 Va. 807, 812-13, 120 S.E.2d 273, 278 (1961).

TSC.[172] In the three cases cited, the Supreme Court of Virginia held that strict adherence to statutory or corporate form is not required to render the acts of a small, closely held corporation binding on the corporation.[173] The Current Board argued that in allowing Alexander to conduct TSC's affairs informally, the Initial Board chose not to follow the corporate form and therefore should not be permitted to raise it as a defense to the election of the Current Board.[174]

The supreme court explained that in the past it has refused to invalidate the informal acts of corporations to protect innocent third parties who dealt in good faith with the close corporations.[175] The Current Board cannot be deemed an innocent third party when they directed and managed the corporation. In addition, the supreme court stated that waiting to take action to assert themselves as the rightful directors did not estop the Initial Board from doing so.[176] Estoppel requires actual fraud or a representation upon which an innocent third party relied upon to his detriment.[177] The supreme court found no evidence of fraud or deception, nor reliance by the Current Board.[178] The fact that the Initial Board waited until TSC was a successful business to assert themselves as the rightful directors does not constitute a representation, which is a necessary element of estoppel.[179]

The supreme court rejected the Current Board's argument that under the Virginia Non-Stock Corporation Act, the chancellor has the power to review elections of directors and grant equitable relief.[180] The supreme court found that there had been no contested election which a chancellor would have the

172. *Stewart*, 251 Va. at 112, 465 S.E.2d at 785.
173. *Id.*
174. *Id.*
175. *Id.* (citing Lake Motel, Inc. v. Lowery, 224 Va. 553, 560, 299 S.E.2d 496, 500 (1983)).
176. *Id.* at 112-13, 465 S.E.2d at 785.
177. *Id.* (citations omitted).
178. *Id.* at 113, 465 S.E.2d at 785-86.
179. *Id.*, 465 S.E.2d at 786.
180. *Id.* at 113-14, 465 S.E.2d at 786; *see* VA. CODE ANN. § 13.1-861 (Repl. Vol. 1993 & Cum. Supp. 1996).

power to review.[181] Alexander did not have the statutory authority to elect successors to the Initial Board.[182] Nor did the supreme court agree with the Current Board's argument that the doctrine of laches barred the Initial Board from asserting its validity. The supreme court found that the Current Board knew in 1992 that the Initial Board was the lawful board and had not elected any successor directors.[183] Therefore, the Initial Board's failure to assert its claims earlier did not prejudice the Current Board.[184] The supreme court reversed the judgment of the trial court and declared that the members of the Initial Board were the lawful directors of TSC.[185]

E. *Statutory Restriction on Management by Board of Directors*

In *Lake Monticello Owners' Ass'n v. Lake*,[186] the Supreme Court of Virginia ruled on the interaction between the Virginia Non-Stock Corporation Act[187] and the Property Owners' Association Act.[188] Lake Monticello Owners' Association is a non-stock corporation that is subject to the provisions of the Property Owners' Association Act.[189] The bylaws of the association give members the right to include proposals appropriate for membership action in the proxy statement and notice of the next annual meeting.[190] The bylaws also provide that a proposal can be disqualified if it is not a proper subject for action by members or if it deals with a matter relating to the ordinary business operations of the association.[191] The Property Owners' Association Act gives the board of directors the power to establish, adopt, and enforce rules and regulations, but also grants the members the right to repeal or amend any rule or

181. *Stewart*, 251 Va. at 114, 465 S.E.2d at 786.
182. *Id.*
183. *Id.*
184. *Id.* at 114-15, 465 S.E.2d at 786-87.
185. *Id.* at 115, 465 S.E.2d at 787.
186. 250 Va. 565, 463 S.E.2d 652 (1995).
187. VA. CODE ANN. §§ 13.1-801 to -980 (Repl. Vol. 1993 & Cum. Supp. 1996).
188. VA. CODE ANN. §§ 55-508 to -516.2 (Repl. Vol. 1995 & Cum. Supp. 1996).
189. *Lake*, 250 Va. at 567, 463 S.E.2d at 653.
190. *Id.* at 569, 463 S.E.2d at 654.
191. *Id.*, 463 S.E.2d at 654-55.

regulation adopted by the board of directors with respect to the use of the common areas.[192]

Certain members of the association filed a proposal to amend several of the association's bylaws, rules, regulations, and policies with respect to the use of common areas. The members proposed amending bylaws requiring invitees to obtain a guest card, charging annual greens fees to property owners who do not play golf, appointing the security guards as special policemen, and restricting access by prospective purchasers.[193] The board of directors of the association refused to include the proposal in the proxy on the ground that the proposal was not a proper subject for action by members and dealt with matters relating to the ordinary business operations of the association.[194] The trial court invalidated the bylaws which limited the members' right to repeal director actions on the ground that the bylaws violated the Property Owners' Association Act.[195]

The supreme court reversed the trial court's invalidation of the bylaws, citing a settled rule of statutory construction: If apparently conflicting statutes can be harmonized and effect given to both, they will be so construed.[196] The supreme court held that this rule was equally applicable where there is a conflict between a statute and a corporate bylaw.[197] The supreme court interpreted the bylaws of the association to limit the board's disqualification right to those proposals which relate to matters within the exclusive control of the board.[198]

The supreme court next turned to the issue of whether the member proposals were properly disqualified by the board. The board of directors contended that since the members failed to introduce any evidence showing that the board of directors

192. VA. CODE ANN. § 55-513(A) (Repl. Vol. 1995 & Cum. Supp. 1996). There is no similar statutory right given to shareholders under the Virginia Stock Corporation Act or to members under the Virginia Non-Stock Corporation Act. *Lake*, 250 Va. at 568-69, 463 S.E.2d at 654.

193. *Lake*, 250 Va. at 569, 463 S.E.2d at 655.

194. *Id.* at 570, 463 S.E.2d at 655.

195. *Id.*

196. *Id.* (citing Albemarle County v. Marshall, 215 Va. 756, 761, 214 S.E.2d 146, 150 (1975)).

197. *Id.*

198. *Id.* (citing *Marshall*, 215 Va. at 761, 214 S.E.2d at 150).

acted in bad faith, the court need not inquire into the correctness of the board's decision, arguing that the board's decision is subject to a presumption of correctness under the Virginia Business Judgment Statute.[199] In rejecting the board's Business Judgment Statute defense, the supreme court held that the Business Judgment Statute only applies to a decision that is a business judgment and does not apply to a decision, such as the one in this case, which construes and applies a statute and a corporate bylaw.[200]

The supreme court next considered the correctness of the board's decision to disqualify the proposal. The board argued that a member can only amend bylaws with respect to matters such as the conduct of meetings, the elections of directors and officers, the duties of officers and committees and other matters of internal concern. The members of a property owners' association do not have the right to propose changes relating to the day-to-day activities of the association or the making of corporate policy and management decisions.[201]

Comparing this issue with the right of stockholders to amend the bylaws of an ordinary corporation, the supreme court stated that the Property Owners' Association Act gives members of the association specific statutory rights to amend or repeal the board's rules with respect to the use of the common areas.[202] The supreme court found that the rules and regulations which members sought to amend either restricted the future conduct of the members in the exercise of their rights in the communitity, or subjected them to the penalties for failure to follow the rules enforced by the association's employees and agents.[203] Since the proposal dealt with the members' use of the common area, the supreme court held that the Property

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199. *Id.* at 571, 463 S.E.2d at 656; *see* VA. CODE ANN. § 13.1-870 (Repl. Vol. 1993 & Cum. Supp. 1996).

200. *Id.* (citing Gottlieb v. Economy Stores, 199 Va. 848, 857, 102 S.E.2d 345, 352 (1958) (holding that action of corporation must be in accordance with law and corporate powers)).

201. *Id.* at 572, 463 S.E.2d at 656.

202. *Id.* (citing VA. CODE ANN. § 55-513(A) (Repl. Vol. 1995)).

203. *Id.*

Owners' Association Act authorized the members to make the proposal.[204]

The supreme court further found that the board's "statements of policy," which bound the future conduct of the members and provided penalties for their violations, were actually rules and regulations which the Property Owners' Association Act authorizes the members to repeal.[205] The supreme court distinguished *Lake* from *Kaplan v. Block*,[206] which the board cited for the proposition that the proposal cannot divest the board of its duty of management and control by creating a sterilized board of directors.[207] The supreme court stated that *Kaplan* involved a stock corporation, not a non-stock corporation subject to the Property Owners' Association Act.[208] In addition, the proposal did not create a sterilized board in which every action of the board had to be approved by members.[209]

F. *Piercing the Corporate Veil*

In *Bogese, Inc. v. State Highway and Transportation Commission*,[210] the Supreme Court of Virginia refused Bogese, Inc.'s, ("Bogese") request to pierce its own corporate veil to find unity of ownership between real estate owned by the corporation and an adjacent condemned parcel.[211] Bogese, the shareholders of which were the Bogese family, owned a parcel of real estate, a portion of which was to be acquired by eminent domain.[212] Bogese transferred the remaining land to a family-owned partnership to begin development.[213] When the Commonwealth acquired the condemned parcel from Bogese, the partnership claimed the taking damaged its adjacent parcel of land.[214]

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204. *Id.*, 463 S.E.2d at 656-57.
205. *Id.* at 573, 463 S.E.2d at 657 (citing Columbia Broadcasting Sys., Inc. v. United States, 316 U.S. 407, 422 (1942)).
206. 183 Va. 327, 332, 31 S.E.2d 893, 895 (1944).
207. *Lake*, 250 Va. at 573, 463 S.E.2d at 657.
208. *Id.*
209. *Id.* at 572, 463 S.E.2d at 656.
210. 250 Va. 226, 462 S.E.2d 345 (1995).
211. *Id.* at 227-28, 462 S.E.2d at 346.
212. *Id.*
213. *Id.* at 228, 462 S.E.2d at 346.
214. *Id.*

Generally, when a portion of a tract of land is taken by eminent domain, the owner is entitled to recover damage for the remainder of the tract, but not for damage to separate and independent tracts.[215] The exception to the rule is the unity of lands doctrine, a requirement of which is the unity of ownership of the condemned parcel and the separate tract.[216] The Commonwealth disputed the existence of unity of ownership because at the time of the taking Bogese owned the condemned tract and the partnership owned the adjacent tract.[217] Bogese and the partnership contended that the substantially identical ownership of the two parcels satisfied the unity of lands doctrine.[218]

To determine this issue of first impression, the supreme court looked to decisions in other jurisdictions.[219] The supreme court was unwilling to adopt the position held by courts in New Jersey and New York, cited by the partnership.[220] These courts held that two parcels, each owned by a different entity, may be considered a single parcel to establish unity of ownership when the entities are integrated by family ownership, business purpose, and actual practice.[221] Instead, the Supreme Court of Virginia found more persuasive the opinions of courts in Pennsylvania and North Carolina which preserved the corporate form.

In *Sams v. Redevelopment Authority*,[222] a partnership owned the condemned parcel and a corporation owned a nearby tract.[223] In *Sams*, the shareholders of the corporation, who were also the partners in the partnership, sought damages to the corporation's tract. The shareholders argued that the tracts were owned by the same owners and were used together for the

215. *Id.* at 228-29, 462 S.E.2d at 346-47.
216. *Id.* at 229, 462 S.E.2d at 346 (citing Virginia Elec. & Power Co. v. Webb, 196 Va. 555, 566, 84 S.E.2d 735, 741-42 (1954)).
217. *Id.*, 462 S.E.2d at 347.
218. *Id.*
219. *Id.*
220. *See* Housing Auth. of Newark v. Norfolk Realty Co., 364 A.2d 1052 (1976); M.T.M. Realty Corp. v. State, 261 N.Y.S.2d 815 (N.Y. Ct. Cl. 1965).
221. *Bogese*, 250 Va. at 229, 462 S.E.2d at 347.
222. 244 A.2d 779 (Pa. 1968).
223. *Id.* at 780.

same integrated purpose.[224] The Supreme Court of Pennsylvania stated that the corporate entity will be disregarded only when the entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime.[225] In *Board of Transportation v. Martin*,[226] the Supreme Court of North Carolina ruled that a parcel of land owned by an individual and an adjacent parcel owned by a corporation, of which the individual is sole shareholder, cannot be treated as a unified tract.[227] The Supreme Court of Virginia found that the rationale expressed by these authorities followed previous statements of the supreme court in which it held that only an extraordinary exception will justify piercing the corporate veil, as when it is used as a device to mask wrongs, obscure fraud, or hide crime.[228]

G. *Dissolution of Close Corporation*

In *Schultz v. Schultz*,[229] the Supreme Court of Virginia held that a fifty percent shareholder in a close corporation was a necessary party in a dissolution suit brought against the corporation by the other fifty percent shareholder.[230] Gerald and Marilyn Schultz, husband and wife, as well as the sole shareholders, directors and officers of a Virginia professional corporation, were involved in a divorce proceeding.[231] The divorce court prohibited the Schultzes from transferring any assets of the marital estate and determined that the fair-market value of the corporation was $500,000.[232] After the divorce court prohibited the transfer of marital assets, Gerald filed a dissolution suit against the corporation under section 13.1-747 of the Vir-

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224. *Bogese*, 250 Va. at 229, 462 S.E.2d at 347.
225. *Sams*, 244 A.2d at 781 (holding that one cannot choose to accept the benefits incident to a corporate enterprise and at the same time brush aside the corporate form when it works to the shareholder's detriment).
226. 249 S.E.2d 390 (N.C. 1978).
227. *Id.* at 396.
228. *Bogese*, 250 Va. at 230-31, 462 S.E.2d at 348 (citations omitted).
229. 250 Va. 121, 458 S.E.2d 458 (1995).
230. *Id.* at 124, 458 S.E.2d at 460.
231. *Id.* at 122, 458 S.E.2d at 459.
232. *Id.*

ginia Code and requested the appointment of a receiver.[233] Marilyn was not named as a party in the suit.

The dissolution court, holding that the corporation's board of directors was deadlocked, dissolved the corporation and appointed a receiver.[234] The order of dissolution directed Marilyn to cooperate with the receiver, execute certain documents and agreements, and produce all documents requested by the receiver in connection with a plan of reorganization approved by the dissolution court.[235] In addition, the plan of reorganization provided for the formation of a new corporation in which Marilyn would be the sole shareholder and required the new corporation to indemnify the dissolved corporation.[236]

The supreme court found that the Virginia Code authorizes a circuit court to dissolve a corporation under certain circumstances, including a deadlock in the board of directors.[237] The dissolution statute also states that it is not necessary to make directors or shareholders parties to the proceeding unless relief is sought against them individually.[238] The supreme court found that the dissolution court order sought relief from Marilyn individually in numerous respects, and therefore Marilyn was a necessary party to the dissolution suit.[239] Since a court cannot render a valid judgment when necessary parties to a proceeding are not before the court, the supreme court vacated the dissolution order.[240] Because the divorce court enjoined the litigants from transferring any assets of the marital estate, the supreme court stayed all proceedings in the dissolution suit until the divorce proceeding was final.[241]

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233. VA. CODE ANN. § 13.1-747 (Repl. Vol. 1993 & Cum. Supp. 1996).
234. *Schultz*, 250 Va. at 124, 458 S.E.2d at 460.
235. *Id.*, 458 S.E.2d at 459.
236. *Id.*, 458 S.E.2d at 460.
237. *Id.*, 458 S.E.2d at 459; *see* VA. CODE ANN. § 13.1-747(A)(1)(a) (Repl. Vol. 1993 & Cum. Supp. 1996).
238. VA. CODE ANN. § 13.1-747(D) (Repl. Vol. 1993 & Cum. Supp. 1996).
239. *Schultz*, 250 Va. at 124, 458 S.E.2d at 460.
240. *Id.* (citing Allen v. Chapman, 242 Va. 94, 99, 406 S.E.2d 186, 188 (1991)).
241. *Id.* at 125, 458 S.E.2d at 460.

H. *Liability of a Limited Partner for Debts of Partnership*

In *Sloan v. Thorton*,[242] the Supreme Court of Virginia determined whether a limited partner had become a general partner, was in control of the partnership, or should otherwise be held liable for partnership debts based on his ownership of shares in the corporate general partner. Sloan obtained a judgment against the partnership and sought to collect from Thorton, a limited partner owning a twenty-five percent interest in the partnership.[243] The two general partners of the partnership were Rawn, an individual, and a corporation whose stock was initially owned equally by Rawn and Thorton.[244] The trial court found that Thorton signed a guarantee with the title company indicating he was a general partner of the partnership, and that Rawn had assigned his stock in the corporate general partner and his general partnership interest in the partnership to Thorton.[245] Sloan argued that these facts established that Thorton was a general partner liable for the partnership debts.[246]

The supreme court looked to the Virginia Revised Uniform Limited Partnership Act to determine whether Thorton had become a general partner of the limited partnership.[247] The supreme court found that the Limited Partnership Act provided that the partnership agreement governed the admission of general partners to a partnership.[248] The Act further provided that when there is a change in general partners, an amended certificate of limited partnership reflecting the addition or withdrawal of a general partner must be filed with the State Corporation Commission.[249] The partnership agreement provided

242. 249 Va. 492, 457 S.E.2d 60 (1995).
243. *Id.* at 495, 457 S.E.2d at 61.
244. *Id.*
245. *Id.* at 496, 457 S.E.2d at 62.
246. *Id.*
247. *Id.* (construing VA. CODE ANN. §§ 50-73.1 to -73.78. (Repl. Vol. 1994 & Cum. Supp. 1995)); *see* VA. CODE ANN. §§ 50-73.1 to -73.78 (Repl. Vol. 1996).
248. *Sloan*, 249 Va. at 496, 457 S.E.2d at 62 (construing VA. CODE ANN. § 50-73.27 (Repl. Vol. 1994 & Cum. Supp. 1995)); *see* VA. CODE ANN. § 50-73.27 (Repl. Vol. 1996).
249. VA. CODE ANN. § 50-73.12 (Repl. Vol. 1994 & Cum. Supp. 1995); *see* VA.

that a person could become a general partner only if all general partners and fifty-one percent in interest of all limited partners consented and the partnership's counsel issued an opinion stating that the new general partner was admitted in conformity with federal and state law.[250]

The supreme court found no evidence in the record that either the general partners or fifty-one percent of the limited partners consented to admitting Thorton as a general partner of the partnership, that no legal opinion had been issued, or that an amended certificate of partnership was filed with the State Corporation Commission.[251] The supreme court held that a finding that one is a general partner must be based on proof—absent in this case—of the necessary statutory elements.[252]

Sloan argued for imposing personal liability on Thorton on the ground that Thorton was a limited partner in control of the partnership.[253] The supreme court held that the Limited Partnership Act provides that a limited partner in control is liable only to those persons who transact business with the limited partner reasonably believing that the limited partner is a general partner.[254] The supreme court reviewed the facts found by the trial court and concluded that Sloan personally had never met Thorton, that Sloan dealt directly with Rawn in matters regarding the partnership, that Thorton was not involved in any of Sloan's negotiations with the partnership, and that Thorton was not a limited partner during the time in which the partnership incurred debts to Sloan.[255] Based on these facts, the supreme court found that there was no credible evidence to support a finding that Thorton was a limited partner in control of the partnership or that Sloan relied in any way on Thorton's actions in contracting with the limited partnership.[256]

CODE ANN. § 50-73.12 (Repl. Vol. 1996).

250. *Sloan*, 249 Va. at 497, 457 S.E.2d at 62.

251. *Id.*

252. *Id.*

253. *Id.*, 457 S.E.2d at 62-63.

254. *Id.*, 457 S.E.2d at 62 (citing VA. CODE ANN. § 50-73.24(A) (Repl. Vol. 1994 & Cum. Supp. 1995)); *see* VA. CODE ANN. § 50-73.2(A) (Repl. Vol. 1996).

255. *Id.* at 498, 457 S.E.2d at 63.

256. *Id.*

Finally, the supreme court refused to pierce the corporate veil of the corporate general partner to hold Thorton liable for partnership debts based on his stock ownership of the corporate general partner.[257] Sloan argued that the corporate form should be ignored because no directors' meetings were held and Thorton did not know the telephone number, location or assets of the corporation, did not know that he was a director, and did not receive a salary as a director.[258] The supreme court found that while the corporate general partner ignored formalities, piercing the corporate veil to impose liability on a shareholder is an extraordinary remedy which should be undertaken only when necessary to avoid an injustice.[259]

The supreme court held that three conditions must exist to hold a shareholder personally liable for debts of a corporation.[260] First, the corporation must be a sham corporation, an indication of which is the disregard of corporate formalities.[261] Second, the corporation must be the alter ego, alias, stooge, or dummy corporation of the shareholder, and third, the corporation must be used by the shareholder to disguise a wrong or to obscure a fraud by the shareholder.[262] The supreme court found that there was no evidence that the corporation was Thorton's alter ego or that he used the corporate form to hide fraud, and refused to pierce the corporate veil of the corporate general partner.[263]

III. LEGISLATIVE DEVELOPMENTS

Recent legislation passed by the General Assembly and signed by the Governor includes a restriction on the right of shareholders to vote by class on amendments to the articles of

257. *Id.* at 499, 457 S.E.2d at 63-64.

258. *Id.* at 498, 457 S.E.2d at 63.

259. *Id.* (citing O'Hazza v. Executive Credit Corp., 246 Va. 111, 115, 431 S.E.2d 318, 320 (1993)).

260. *Id.*

261. *Id.*

262. *Id.* at 499 n.3, 457 S.E.2d at 63 n.3 (citing Perpetual Real Estate Servs., Inc. v. Michaelson Properties, 974 F.2d 545 (4th Cir. 1992)).

263. *Id.* at 498-99, 457 S.E.2d at 63.

incorporation of a corporation,[264] and a limitation on the right to dissent to a major corporate transaction.[265] Another bill made numerous changes to the Virginia Liability Company Act and the Revised Partnership Act.[266] The General Assembly also repealed the Virginia Code statutes governing general partnerships effective January 1, 2001, and adopted the Uniform Partnership Act of 1994, effective June 1, 1997.[267]

A. *Voting on Amendments by Classes of Shares*

The General Assembly amended and reenacted section 13.1-708 which governs voting on amendments to articles of incorporation by voting groups.[268] Section 13.1-708 provides that outstanding shares of a class are entitled to vote as a separate voting group if the proposed amendment would increase or decrease the aggregate number of authorized shares of that class.[269] The statute prohibits the dilution or elimination of the voting power of the class. The amended statute provides such a vote of the class is not required if so provided in the articles of incorporation in effect prior to the issuance of any shares of that class.[270] Nor is a class vote required if so provided in any prior amendment to the articles of incorporation which was approved by the required vote of the shares of such class.[271] However, the statute also provides that the amendment may not decrease the number of authorized shares of the class below the number of shares then outstanding or required to be reserved for issuance.[272] In that case, the affirmative vote of the class as a separate voting group would still be required.[273] The statute further provides that if a proposed amendment entitling two or more classes to vote as separate voting groups would affect those two classes the same or in a

264. *See infra* notes 268-75 and accompanying text.
265. *See infra* notes 276-78 and accompanying text.
266. *See infra* notes 294-308 and accompanying text.
267. *See infra* notes 309-14 and accompanying text.
268. VA. CODE ANN. § 13.1-708 (Cum. Supp. 1996).
269. VA. CODE ANN. § 13.1-708(A)(1) (Cum. Supp. 1996).
270. *Id.*
271. *Id.*
272. *Id.*
273. *Id.*

substantially similar way, the shares of those classes shall vote together as a single voting group on the proposed amendment.[274] Prior to the amendment of the statute, this provision only applied to series within a class of shares.[275]

B. *Limitation on Shareholders' Dissent*

A shareholder is generally allowed a right to dissent and to obtain payment of the fair-market value of his shares from the corporation in the event of merger, share exchange, or sale of all the property of the corporation.[276] However, a shareholder has no right to dissent from a major transaction if the corporation's shares held by the shareholder are listed on a national securities exchange, provided the transaction meets certain conditions.[277] The amended statute additionally limits the dissent of a shareholder whose shares are listed on the National Association of Securities Automated Quotation System ("NASDAQ").[278]

C. *Filing of Name-Change Certificates*

The General Assembly amended and reenacted sections 13.1-633, 13.1-832, 13.1-1067 and 50-37.3 of the Virginia Code relating to stock and non-stock corporations, partnerships, and limited liability companies to provide for circuit court clerk filing and recordation of name-change certificates issued by the State Corporation Commission.[279] Such name-change certificates may be admitted to record in the deed books of the recording office within the jurisdiction where any property of the business entity is located in order to maintain the continuity of title records.[280] The certificate must be filed in accordance with sec-

274. VA. CODE ANN. § 13.1-708(C) (Cum. Supp. 1996).
275. *See* VA. CODE ANN. § 13.1-708(C) (Repl. Vol. 1993).
276. VA. CODE ANN. § 13.1-730(A) (Cum. Supp. 1996).
277. VA. CODE ANN. § 13.1-730(C) (Cum. Supp. 1996).
278. *Id.*
279. VA. CODE ANN. §§ 13.1-633, -832, -1067 (Cum. Supp. 1996); VA. CODE ANN. § 50-37.3 (Repl. Vol. 1996).
280. VA. CODE ANN. § 13.1-633 (Cum. Supp. 1996).

tion 17-60.[281] The amendment establishes a uniform ten dollar fee for recording such documents.[282]

D. *Cancellation of Limited Partnership Certificate for Failure to Pay Fee*

The General Assembly amended sections 50-73.49 and -73.69 of the Virginia Code to provide for automatic dissolution of a limited partnership upon the cancellation of the limited partnership certificate for failure to pay the annual registration fee.[283] Prior to the amendment, section 50-73.69 only provided for a penalty of twenty-five dollars for the failure to pay within the time prescribed by the Virginia Code.[284] If the limited partnership fails to pay its annual registration fee by October 1 in the year assessed, the State Corporation Commission will mail a notice to the limited partnership of impending cancellation of its certificate, and the certificate will automatically be cancelled if the fee is unpaid as of December 31 of that year.[285] Cancellation of the registration dissolves a domestic limited partnership and the statute states that the dissolved partnership shall be wound up.[286]

However, a limited partner is not liable as a general partner by reason of the limited partnership's failure to pay the annual registration fee or by reason of the cancellation of the limited partnership certificate for failure to pay such fee.[287] The limited partnership may have its certificate reinstated by paying the annual registration fee, all late fees, a reinstatement fee of one-hundred dollars, and all other registration fees and penalties within two years of the cancellation of the certificate.[288]

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281. VA. CODE ANN. § 13.1-633 (Cum. Supp. 1996) (Virginia Code § 17-60 provides that all documents involving title to real estate be recorded in deed books. VA. CODE ANN. § 17-60 (Repl. Vol. 1996)).
282. VA. CODE ANN. § 13.1-633 (Cum. Supp. 1996).
283. VA. CODE ANN. § 50-73.49, -73.69 (Repl. Vol. 1996).
284. *See* VA. CODE ANN. § 50-73.69 (Repl. Vol. 1994); VA. CODE ANN. § 50-73.67 (Repl. Vol. 1994 & Cum. Supp. 1995).
285. VA. CODE ANN. § 50-73.69(B) (Repl. Vol. 1996).
286. *Id.*
287. VA. CODE ANN. § 50-73.69(C) (Repl. Vol. 1996).
288. VA. CODE ANN. § 50-73.69(D) (Repl. Vol. 1996).

If the name of the limited partnership is not available at the time of reinstatement, the limited partnership must file an amendment to its certificate of limited partnership changing its name, or adopt an assumed name for use in Virginia as a prerequisite to reinstatement.[289] If the limited partnership pays the reinstatement fees and complies with the provisions of reinstatement within two years after the date the certificate was cancelled, the cancellation will be deemed to never have occurred and partnership liabilities incurred between the cancellation and reinstatement are treated as though the cancellation had not occurred.[290]

E. *Savings Banks Added to Definition of Financial Institution*

The General Assembly amended sections 6.1-2.1, -2.9:4, -194.87, -232, -250, -330.48, -381, 13.1-514, -620, and -627 of the Virginia Code to replace references to "savings and loan associations" with the phrase "savings institutions" in order to clarify that savings banks are included within such references.[291] In particular, the General Assembly so amended the provisions of the Virginia Stock Corporation Act which prohibited depository institutions from participating in partnerships, joint ventures, or other associations which leave the depository institutions open to unlimited liability.[292] The amendment to the Virginia Securities Act clarifies that securities issued by a savings bank are exempt from securities regulation requirements.[293]

F. *Numerous Changes to Limited Liability Company and Partnership Acts*

The Virginia General Assembly amended certain statutes governing Virginia's limited liability companies and partner-

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289. *Id.*
290. VA. CODE ANN. § 50-73.69(E) (Repl. Vol. 1996).
291. VA. CODE ANN. §§ 6.1-2.1, -2.9:4, -194.87, -232, -250, -330.48, -381 (Cum. Supp. 1996); VA. CODE ANN. §§ 13.1-514, -620, -627 (Cum. Supp. 1996).
292. *See* VA. CODE ANN. § 13.1-627(B) (Cum. Supp. 1996).
293. VA. CODE ANN. § 13.1-514(A)(4) (Cum. Supp. 1996).

ships, making numerous technical changes.[294] The most significant change eliminates the requirement that a Virginia limited liability company have a minimum of two members.[295] A further change to the Limited Liability Company Act provides that the existence of a limited liability company can be delayed if the articles of organization filed with the State Corporation Commission state that the certificate of organization shall become effective at a later time and date specified in the articles.[296] Otherwise, the existence of a limited liability company begins when the Commission issues a certificate of organization.[297]

A certificate with a delayed effective time becomes effective at the earlier of the time or date so specified in the articles of organization, or 11:59 p.m. on the fifteenth day after the date on which the certificate is issued.[298] A delayed certificate will not become effective if, prior to the effective time, the parties to the articles file a request for cancellation and the Commission, by order, cancels the certificate.[299]

The definition of "the parties," to which the statute refers, is not clear. Articles of organization can be filed by a single organizer. The amended statute appears to require more than one person to request a cancellation of the certificate.[300] In addition, in the event that more than one organizer files articles delaying the effective time of organization, the amended statute appears to require a unanimous request by the organizers to cancel the certificate.[301]

The statute governing management of a limited liability company originally provided that the managers shall be elected by

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294. *See* VA. CODE ANN. § 11-3 (Cum. Supp. 1996); VA. CODE ANN. §§ 13.1-1002, -1004, -1010.1, -1015, -1024, -1031, -1046, -1049, -1052, -1054, -1059, -1102, -1104, -1105, -1110, -1117, -1121 (Cum. Supp. 1996); VA. CODE ANN. § 50-73.11:1 (Repl. Vol. 1996); VA. CODE ANN. § 64.1-48 (Cum. Supp. 1996).

295. VA. CODE ANN. §§ 13.1-1002, -1046.3 (Cum. Supp. 1996).

296. VA. CODE ANN. §§ 13.1-1004(B), -1004(D)(1) (Cum. Supp. 1996).

297. VA. CODE ANN. § 13.1-1004(B) (Cum. Supp. 1996).

298. VA. CODE ANN. § 13.1-1004(D)(1) (Cum. Supp. 1996).

299. VA. CODE ANN. § 13.1-1004(D)(2) (Cum. Supp. 1996).

300. *See id.*

301. *See id.*

the members.[302] This statute has been amended to allow for other means of electing managers to be set out in the articles of organization or an operating agreement.[303]

A change to the distribution statute eliminated the requirement that a member receive distributions from a limited liability company before his or its resignation from the company.[304]

A change to the registered agent statute of the Limited Liability Company Act permits a professional registered limited liability partnership to be a registered agent for domestic and foreign limited liability companies.[305]

The statute governing a foreign limited liability company has been amended to allow a foreign limited liability company to add the initials "LC" or "LLC," to conform with name requirements of the Virginia Code.[306] The section governing the name of a professional limited liability company was similarly amended to allow the use of "PLLC" or "PLC."[307]

Finally, the Virginia Code section prohibiting the solicitation of the drafting of wills has been amended to allow a professional limited liability company organized for the practice of law to advertise the drafting of wills.[308]

G. *Adoption of the Uniform Partnership Act of 1994*

The Uniform Partnership Act of 1994 (the "Act") becomes effective July 1, 1997.[309] The bill enacting the Act repeals section 50-74 of the Virginia Code requiring the recordation of a certificate of partnership effective July 1, 1997 and also repeals other prior statutes governing partnerships as of January 1, 2000.[310] While an in-depth discussion of the Act is beyond the

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302. VA. CODE ANN. § 13.1-1024(D) (Repl. Vol. 1993).
303. VA. CODE ANN. § 13.1-1024(D) (Cum. Supp. 1996).
304. VA. CODE ANN. § 13.1-1031 (Cum. Supp. 1996).
305. VA. CODE ANN. § 13.1-1015(A)(2)(b) (Cum. Supp. 1996).
306. VA. CODE ANN. § 13.1-1054 (Cum. Supp. 1996); *see* VA. CODE ANN. § 13.1-1012 (Cum. Supp. 1996).
307. VA. CODE ANN. § 13.1-1054 (Cum. Supp. 1996).
308. VA. CODE ANN. § 64.1-48 (Cum. Supp. 1996).
309. VA. CODE ANN. § 50-73.79 to -73.149 (Repl. Vol. 1996).
310. H.B. 893, Va. Gen. Assembly, (Reg. Sess. 1996); *see* VA. CODE ANN. §§ 50-1 to

scope of this survey article, certain significant concepts deserve mention.

Under the Act, partnerships may voluntarily file statements of partnership authority.[311] Such statements can limit the capacity of a partner to act as agent for the partnership or transfer property on behalf of the partnership. Statements of partnership merger and dissolution may also be filed with the State Corporation Commission.

The Act also provides for the duties of loyalty and care which a partner owes to the partnership and to the other partners.[312] Such duties include not doing business on behalf of someone with an interest adverse to the partnership and refraining from business in competition with the partnership.[313] The Act further provides that the withdrawal of a partner from the partnership does not automatically result in the dissolution of the partnership.[314]

-43.12 (Repl. Vol. 1996).

311. VA. CODE ANN. § 50-73.93 (Rep. Vol. 1996).

312. VA. CODE ANN. § 50-73.102 (Repl. Vol. 1996).

313. VA. CODE ANN. §§ 50-73.102(B)(2), (3) (Repl. Vol. 1996).

314. VA. CODE ANN. § 50-73.111 (Repl. Vol. 1996).