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**By: Delegate Frank**

Introduced and read first time: February 6, 1997

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Charter Documents and Mergers**

3 FOR the purpose of providing certain procedures for a real estate investment trust to  
4 execute certain articles pursuant to certain guidelines; clarifying the power of a  
5 corporation and real estate investment trust to restrict transferability of its shares of  
6 stock or beneficial interest; providing a procedure for a real estate investment trust  
7 to restate and amend its declaration of trust; permitting a corporation or real estate  
8 investment trust to merge with certain subsidiaries under certain circumstances;  
9 providing for a corporation to qualify as a real estate investment trust under certain  
10 circumstances; providing for an increase in the percentage of the number of shares  
11 of stock or beneficial interest issued by a successor in a merger in order to require  
12 a vote by the stockholders or shareholders of the successor; and generally relating to  
13 corporations and real estate investment trusts.

14 BY repealing and reenacting, with amendments,  
15 Article - Corporations and Associations  
16 Section 1-301(a), 2-105(a), 3-105(a), 8-203(a), and 8-501.1(c)  
17 Annotated Code of Maryland  
18 (1993 Replacement Volume and 1996 Supplement)

19 BY adding to  
20 Article - Corporations and Associations  
21 Section 8-203(g), 8-501.2, and 8-501.3  
22 Annotated Code of Maryland  
23 (1993 Replacement Volume and 1996 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article - Corporations and Associations**

27 1-301.

28 (a) Articles supplementary and articles of amendment, restatement, restatement  
29 and amendment, consolidation, merger, share exchange, transfer, and extension and,  
30 except as provided in § 3-406(b) of this article, articles of dissolution shall be executed as  
31 follows:

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1 (1) They shall be signed and acknowledged for each corporation OR REAL  
2 ESTATE INVESTMENT TRUST party to the articles, by its chairman or vice chairman of  
3 the board of directors OR BOARD OF TRUSTEES, its president or one of its vice  
4 presidents;

5 (2) They shall be witnessed or attested by the secretary or an assistant  
6 secretary of each corporation OR REAL ESTATE INVESTMENT TRUST party to the  
7 articles, or, if authorized by the bylaws or resolution of the board of directors OR BOARD  
8 OF TRUSTEES and the articles so state, by any other officer or agent of the corporation  
9 OR REAL ESTATE INVESTMENT TRUST;

10 (3) They shall be signed and acknowledged for each other entity party to the  
11 articles by a majority of the entire board of trustees or other governing body; and

12 (4) Except as provided in subsection (b) of this section, the matters and  
13 facts set forth in the articles with respect to authorization and approval shall be verified  
14 under oath as follows:

15 (i) With respect to any Maryland corporation OR REAL ESTATE  
16 INVESTMENT TRUST party to the articles, by the chairman or the secretary of the  
17 meeting at which the articles or transaction were approved, or by the chairman or vice  
18 chairman of the board of directors OR BOARD OF TRUSTEES, president, vice president,  
19 secretary, or assistant secretary of the corporation OR REAL ESTATE INVESTMENT  
20 TRUST;

21 (ii) With respect to any foreign corporation party to articles of  
22 consolidation, merger, or share exchange, by the president, vice president, secretary, or  
23 assistant secretary of the corporation; and

24 (iii) With respect to any other Maryland or foreign entity party to the  
25 articles, by the president, vice president, secretary, assistant secretary, managing trustee,  
26 or persons acting in a similar position for the entity.

27 2-105.

28 (a) A corporation may provide by its charter:

29 (1) For one or more classes of stock, the voting rights of each class, and any  
30 restriction on or denial of these rights;

31 (2) As to each class of stock, either the par value of the shares or that the  
32 shares are without par value;

33 (3) (i) That the corporation shall set apart dividends for or pay dividends  
34 to the holders of a specified class of stock before any dividends are set apart for or paid  
35 to the holders of another class of stock;

36 (ii) The rate, amount, and time of payment of the dividends; and

37 (iii) Whether the dividends are cumulative, cumulative to a limited  
38 extent, or noncumulative;

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1 (4) That any specified class of stock is preferred over another class as to its  
 2 distributive share of the assets on voluntary or involuntary liquidation of the corporation  
 3 and the amount of the preference;

4 (5) That any specified class of stock may be redeemed at the option of the  
 5 corporation or of the holders of the stock and the terms and conditions of redemption,  
 6 including the time and price of redemption;

7 (6) That any specified class of stock is convertible into shares of stock of one  
 8 or more other classes and the terms and conditions of conversion;

9 (7) That the holders of any specified securities issued or to be issued by the  
 10 corporation have any voting or other rights which, by law, are or may be conferred on  
 11 stockholders;

12 (8) For any other preferences, rights, restrictions, including restrictions on  
 13 transferability, and qualifications not inconsistent with law;

14 (9) That the board of directors may classify or reclassify any unissued stock  
 15 from time to time by setting or changing the preferences, conversion or other rights,  
 16 voting powers, restrictions, limitations as to dividends, qualifications, or terms or  
 17 conditions of redemption of the stock; [and]

18 (10) (i) For any grant to the holders of the stock of the corporation,  
 19 including a specified class or series of stock, of the preemptive right to subscribe to:

20 1. Any or all additional issues of the stock; or

21 2. Any securities of the corporation convertible into additional  
 22 issues of stock; or

23 (ii) For any definition or limitation of the preemptive rights of  
 24 stockholders to acquire additional stock or securities in the corporation; AND

25 (11) FOR ANY PROVISION DESIGNED TO PERMIT A CORPORATION TO  
 26 QUALIFY AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE  
 27 CODE OR AS AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT  
 28 OF 1940 OR REGULATIONS ADOPTED THEREUNDER.

29 3-105.

30 (a) A consolidation, merger, share exchange, or transfer of assets shall be  
 31 approved in the manner provided by this section, except that:

32 (1) A merger of a 90 percent or more owned subsidiary WITH OR into its  
 33 parent need be approved only in accordance with the provisions of § 3-106 of this  
 34 subtitle;

35 (2) A share exchange need be approved by a Maryland successor only by its  
 36 board of directors and by any other action required by its charter;

37 (3) A transfer of assets need be approved by a Maryland transferee  
 38 corporation only by its board of directors and by any other action required by its charter;

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1 (4) A foreign corporation party to the transaction shall have the transaction  
2 advised, authorized, and approved in the manner and by the vote required by its charter  
3 and the laws of the place where it is organized;

4 (5) A merger need be approved by a Maryland successor corporation only by  
5 a majority of its entire board of directors if:

6 (i) The merger does not reclassify or change its outstanding stock or  
7 otherwise amend its charter and the number of its shares of stock to be issued or  
8 delivered in the merger is not more than [15] 20 percent of the number of its shares of  
9 the same class or series outstanding immediately before the merger becomes effective; or

10 (ii) There is no stock outstanding or subscribed for and entitled to be  
11 voted on the merger.

12 (6) A business trust party to a merger shall have the merger advised,  
13 authorized, and approved in the manner and by the vote required by its declaration of  
14 trust and the laws of the place where it is organized.

15 8-203.

16 (a) A real estate investment trust may provide by its declaration of trust:

17 (1) That any specified class of shares is preferred over another class as to its  
18 distributive share of the assets on voluntary or involuntary liquidation of the real estate  
19 investment trust and the amount of the preference;

20 (2) That any specified class of shares may be redeemed at the option of the  
21 real estate investment trust or of the holders of the shares and the terms and conditions  
22 of redemption, including the time and price of redemption;

23 (3) That any specified class of shares is convertible into shares of one or  
24 more other classes and the terms and conditions of conversion;

25 (4) That the holders of any specified securities issued or to be issued by the  
26 real estate investment trust have any voting or other rights which, by law, are or may be  
27 conferred on shareholders;

28 (5) For any other preferences, rights, restrictions, including restrictions on  
29 transferability DESIGNED TO PERMIT THE REAL ESTATE INVESTMENT TRUST TO  
30 QUALIFY UNDER THE INTERNAL REVENUE CODE OR REGULATIONS ADOPTED  
31 UNDER THE CODE OR FOR ANY OTHER PURPOSE, and qualifications not inconsistent  
32 with law;

33 (6) That the board of trustees may classify or reclassify any unissued shares  
34 from time to time by setting or changing the preferences, conversion or other rights,  
35 voting powers, restrictions, limitations as to dividends or distributions, qualifications, or  
36 terms or conditions of redemption of the shares; and

37 (7) That the board of trustees may amend the declaration of trust to  
38 increase or decrease the aggregate number of shares or the number of shares of any class  
39 that the trust has authority to issue.

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1 (G) ARTICLES OF SUPPLEMENTARY SHALL BE EXECUTED IN THE MANNER  
2 REQUIRED BY TITLE 1 OF THIS ARTICLE.

3 8-501.1.

4 (c) A merger shall be approved in the manner provided by this section, except  
5 that:

6 (1) A foreign business trust, a Maryland business trust, other than a  
7 Maryland real estate investment trust, a corporation, or a domestic or foreign limited  
8 partnership party to the merger shall have the merger advised, authorized, and approved  
9 in the manner and by the vote required by its declaration of trust, charter, or partnership  
10 agreement and the laws of the place where it is organized;

11 (2) (i) A foreign limited liability company party to the merger shall have  
12 the merger advised, authorized, and approved in the manner and by the vote required by  
13 the laws of the place where it is organized; and

14 (ii) A domestic limited liability shall have the merger approved in the  
15 manner provided under § 4A-703 of this article; [and]

16 (3) A merger need be approved by a Maryland real estate investment trust  
17 successor only by a majority of its entire board of trustees if:

18 (i) The merger does not reclassify or change its outstanding shares or  
19 otherwise amend its declaration of trust; and

20 (ii) The number of shares to be issued or delivered in the merger is not  
21 more than [15] 20 percent of the number of its shares of the same class or series  
22 outstanding immediately before the merger becomes effective; AND

23 (4) A MERGER OF A SUBSIDIARY WITH OR INTO ITS PARENT NEED BE  
24 APPROVED ONLY IN THE MANNER PROVIDED IN § 3-106 OF THIS ARTICLE, PROVIDED  
25 THE PARENT OWNS AT LEAST 90 PERCENT OF THE SUBSIDIARY.

26 8-501.2.

27 (A) IF AUTHORIZED BY A MAJORITY OF THE ENTIRE BOARD OF TRUSTEES, A  
28 REAL ESTATE INVESTMENT TRUST MAY RESTATE ITS DECLARATION OF TRUST AS  
29 PROVIDED IN THIS SECTION.

30 (B) ARTICLES OF RESTATEMENT CONTAINING PROVISIONS REQUIRED BY §  
31 2-608 OF THIS ARTICLE AND SUCH OTHER PROVISIONS AS MAY BE PERMITTED BY  
32 THAT SECTION SHALL BE:

33 (1) EXECUTED FOR EACH PARTY TO THE ARTICLES IN THE MANNER  
34 REQUIRED BY TITLE 1 OF THIS ARTICLE; AND

35 (2) FILED FOR RECORD WITH THE DEPARTMENT.

36 8-501.3.

37 (A) A COMPLETE RESTATEMENT OF THE DECLARATION OF TRUST MAY BE  
38 SUBMITTED FOR APPROVAL IN THE MANNER REQUIRED FOR AN AMENDMENT OF

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1 DECLARATION OF TRUST TO A MEETING OF THE REAL ESTATE INVESTMENT  
2 TRUST'S SHAREHOLDERS OR TRUSTEES.

3 (B) IF THE RESTATEMENT IS SUBMITTED FOR APPROVAL IN THE MANNER  
4 REQUIRED FOR AN AMENDMENT TO THE DECLARATION OF TRUST, ANY  
5 AMENDMENTS TO THE DECLARATION OF TRUST APPROVED AT THE MEETING MAY  
6 BE INCLUDED IN THE RESTATEMENT.

7 (C) ARTICLES OF AMENDMENT AND RESTATEMENT SHALL INCLUDE THE  
8 PROVISIONS REQUIRED TO BE INCLUDED IN BOTH ARTICLES OF AMENDMENT AND  
9 ARTICLES OF RESTATEMENT.

10 (D) ARTICLES OF AMENDMENT AND RESTATEMENT CONTAINING  
11 PROVISIONS REQUIRED BY § 2-609 OF THIS ARTICLE AND SUCH OTHER PROVISIONS  
12 AS MAY BE PERMITTED BY THAT SECTION SHALL BE:

13 (1) EXECUTED FOR EACH PARTY TO THE ARTICLES IN THE MANNER  
14 REQUIRED BY TITLE 1 OF THIS ARTICLE; AND

15 (2) FILED FOR RECORD WITH THE DEPARTMENT.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 1997.