
By: **Delegate Barve**
Introduced and read first time: February 11, 2000
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 22, 2000

CHAPTER 642

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Miscellaneous Provisions**

3 FOR the purpose of altering the manner in which certificates of correction may be
4 executed; providing that certain officers of certain entities may execute certain
5 documents; providing that articles of incorporation may include a certain
6 provision; providing that provisions of the bylaws of a corporation or a real
7 estate investment trust may be made dependent on certain facts ascertainable
8 outside the bylaws; providing that the term "future director" may be defined in
9 a stockholder rights plan; altering certain provisions of law governing the
10 issuance of stock or convertible securities; clarifying that certain provisions of
11 law governing the issuance of stock and convertible securities do not apply to
12 certain consolidations, mergers, or share exchanges; authorizing a corporation
13 or real estate investment trust to issue shares without consideration to up to a
14 certain number of persons for certain purposes; altering the minimum number
15 of directors a corporation is required to have; authorizing the charter of a
16 corporation to provide that the voting powers of directors may vary among the
17 directors; authorizing the board of directors of a corporation or the board of
18 trustees of a real estate investment trust to establish certain committees;
19 authorizing the charter or bylaws of a corporation or real estate investment
20 trust or certain agreements to which the corporation or real estate investment
21 trust is a party to provide for the establishment of certain committees of boards
22 of directors or boards of trustees under certain circumstances; prohibiting a
23 corporation from indemnifying a director or advancing expenses for a certain
24 proceeding under certain circumstances; altering certain provisions of law
25 governing stockholder consent without a meeting; clarifying that certain
26 provisions of law with respect to mergers apply only to Maryland corporations;
27 altering the circumstances under which a stockholder is not entitled to exercise
28 certain appraisal rights; providing when a meeting of stockholders of a

1 registered investment company must be held after the revival of its charter;
2 altering the time during which the board of directors of a corporation or the
3 board of trustees of a real estate investment trust may exempt certain
4 transactions with certain persons from certain laws governing business
5 combinations; altering certain exemptions from certain laws governing business
6 combinations and control share acquisitions; conforming certain provisions of
7 the Maryland REIT Law relating to trustee removal to certain provisions of the
8 Maryland General Corporation Law; clarifying that a real estate investment
9 trust has the power to make certain investments; establishing certain short
10 titles; altering certain definitions; defining a certain term; making certain
11 stylistic, technical, and conforming changes; providing for the application of
12 certain provisions of this Act; and generally relating to Maryland corporations
13 and Maryland real estate investment trusts.

14 BY repealing and reenacting, with amendments,
15 Article - Corporations and Associations
16 Section 1-101(t), 1-207(d), 1-301, 2-104(a)(3), 2-201(c), 2-203, 2-402(a),
17 2-411(a), 2-418(b), 2-505, 2-607(a), 3-106(d), 3-202(c), 3-203, 3-511,
18 3-603(c) and (e), 3-701(d) and (e)(2), 3-702(c), 3-803(a)(1), 3-804(a),
19 8-206, and 8-301(8)
20 Annotated Code of Maryland
21 (1999 Replacement Volume)

22 BY repealing
23 Article - Corporations and Associations
24 Section 8-205
25 Annotated Code of Maryland
26 (1999 Replacement Volume)

27 BY adding to
28 Article - Corporations and Associations
29 Section 2-110(d), 2-206(d), 2-408(d), 2-411(e), 3-605, 3-710, 8-202(e), 8-205,
30 and 8-207
31 Annotated Code of Maryland
32 (1999 Replacement Volume)

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

35 **Article - Corporations and Associations**

36 1-101.

37 (t) "Stockholder" means a person who [holds] IS A RECORD HOLDER OF
38 shares of stock in a corporation and includes a member of a corporation organized
39 without [capital] stock.

1 1-207.

2 (d) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
3 A certificate of correction shall be executed in the same manner in which the
4 document being corrected was required to be executed.

5 (2) A CERTIFICATE OF CORRECTION TO ARTICLES OF INCORPORATION
6 SHALL BE EXECUTED BY THE INCORPORATOR OR IN THE MANNER PROVIDED IN §
7 1-301 OF THIS TITLE.

8 1-301.

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

13 (1) They shall be signed and acknowledged for each corporation or real
14 estate investment trust party to the articles, by its chairman or vice chairman of the
15 board of directors or board of trustees, its CHIEF EXECUTIVE OFFICER, CHIEF
16 OPERATING OFFICER, president or one of its vice presidents;

17 (2) They shall be witnessed or attested by the secretary or an assistant
18 secretary of each corporation or real estate investment trust party to the articles, or,
19 if authorized by the bylaws or resolution of the board of directors or board of trustees
20 and the articles so state, by any other officer or agent of the corporation or real estate
21 investment trust;

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

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

27 (i) With respect to any Maryland corporation or real estate
28 investment trust party to the articles, by the chairman or the secretary of the meeting
29 at which the articles or transaction were approved, or by the chairman or vice
30 chairman of the board of directors or board of trustees, CHIEF EXECUTIVE OFFICER,
31 CHIEF OPERATING OFFICER, president, vice president, secretary, or assistant
32 secretary of the corporation or real estate investment trust;

33 (ii) With respect to any foreign corporation party to articles of
34 consolidation, merger, or share exchange, by the CHIEF EXECUTIVE OFFICER, CHIEF
35 OPERATING OFFICER, president, vice president, secretary, or assistant secretary of
36 the corporation; and

37 (iii) With respect to any other Maryland or foreign entity party to
38 the articles, by the CHIEF EXECUTIVE OFFICER, CHIEF OPERATING OFFICER,

1 president, vice president, secretary, assistant secretary, managing trustee, or persons
2 acting in a similar position for the entity.

3 (b) When articles of transfer are executed:

4 (1) With respect to the transferor corporation, the requirements of
5 subsection (a)(4)(i) apply;

6 (2) With respect to a transferee corporation, the matters and facts set
7 forth in the articles with respect to authorization and approval shall be verified under
8 oath by the CHIEF EXECUTIVE OFFICER, CHIEF OPERATING OFFICER, president, vice
9 president, secretary, or assistant secretary of the corporation; and

10 (3) With respect to a transferee which is not a corporation, the articles
11 shall be signed and acknowledged by the transferee.

12 (c) All other instruments required to be filed with the Department may be
13 signed:

14 (1) By the chairman or vice chairman of the board of directors, the CHIEF
15 EXECUTIVE OFFICER, CHIEF OPERATING OFFICER, president, or any vice president
16 and witnessed or attested by the secretary or any assistant secretary, or by any other
17 officer or agent of the corporation who is authorized by the bylaws or resolution of the
18 board of directors to perform the duties usually performed by the secretary and the
19 instrument so states;

20 (2) If it appears from the instrument that there are no such officers, by a
21 majority of the directors or by such directors as may be designated by the board and
22 the instrument so states; or

23 (3) If it appears from the instrument that there are no officers or
24 directors, by the holders of a majority of outstanding stock.

25 2-104.

26 (a) The articles of incorporation shall include:

27 (3) The purposes for which the corporation is formed OR A STATEMENT
28 THAT THE CORPORATION MAY ENGAGE IN ANY LAWFUL BUSINESS OR OTHER
29 ACTIVITY;

30 2-110.

31 (D) (1) IN THIS SUBSECTION, "FACTS ASCERTAINABLE OUTSIDE THE
32 BYLAWS" INCLUDE:

33 (I) AN ACTION OR DETERMINATION BY ANY PERSON, INCLUDING
34 THE CORPORATION, ITS BOARD OF DIRECTORS, AN OFFICER OR AGENT OF THE
35 CORPORATION, AND ANY OTHER PERSON AFFILIATED WITH THE CORPORATION;

36 (II) ANY AGREEMENT OR OTHER DOCUMENT; OR

1 (III) ANY OTHER EVENT.

2 (2) ANY PROVISION OF THE BYLAWS PERMITTED UNDER SUBSECTION
3 (A) OF THIS SECTION MAY BE MADE DEPENDENT UPON FACTS ASCERTAINABLE
4 OUTSIDE THE BYLAWS.

5 2-201.

6 (c) (1) The board of directors of a corporation may, in its sole discretion:

7 (i) Set the terms and conditions of rights, options, or warrants
8 under a stockholder rights plan; and

9 (ii) Issue rights, options, or warrants under a stockholder rights
10 plan to designated persons or classes of persons.

11 (2) The rights, options, or warrants under paragraph (1) of this
12 subsection may, in the sole discretion of the board of directors, include any limitation,
13 restriction, or condition that:

14 (i) Precludes, limits, invalidates, or voids the exercise, transfer, or
15 receipt of the rights, options, or warrants by designated persons or classes of persons
16 in specified circumstances; or

17 (ii) Limits for a period not to exceed 180 days the power of a future
18 director, AS DEFINED IN THE STOCKHOLDER RIGHTS PLAN, to vote for the
19 redemption, modification, or termination of the rights, options, or warrants.

20 2-203.

21 (a) Before the issuance of stock or convertible securities, the board of directors
22 shall adopt a resolution which:

23 (1) Authorizes the issuance;

24 (2) Sets the minimum [price or value of] consideration for the stock or
25 convertible securities or a formula for its determination; and

26 (3) Fairly describes any consideration other than money.

27 (b) In the absence of actual fraud in the transaction, the [value of] MINIMUM
28 consideration stated in the charter or determined by the board of directors in its
29 resolution is conclusive for all purposes.

30 (c) For purposes of this section, the consideration for stock issued as a stock
31 dividend is the resulting capitalization of surplus.

32 (d) This section does not apply to the issuance of stock or convertible securities
33 as part of:

34 (1) A reclassification of stock effected by amendment of the charter; or

1 (2) A consolidation, merger, or share exchange, INCLUDING A
2 CONSOLIDATION, MERGER, OR SHARE EXCHANGE TO WHICH A WHOLLY OWNED
3 SUBSIDIARY OF THE CORPORATION IS A PARTY.

4 (e) If its issuance is authorized in accordance with this subtitle, stock with par
5 value and securities convertible into stock with par value may be issued as full paid
6 and nonassessable even if the price or value of the consideration received is less than
7 the par value of the stock issued or the stock into which the securities are convertible.

8 (f) Notwithstanding any other provision of this section or § 2-204 or § 2-206
9 of this subtitle, a corporation may issue stock or other securities of the corporation
10 pursuant to § 2-103(13) of this title without consideration of any kind.

11 2-206.

12 (D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A
13 CORPORATION MAY ISSUE SHARES OF ITS STOCK TO UP TO 100 PERSONS WITHOUT
14 CONSIDERATION FOR THE PURPOSE OF QUALIFYING THE CORPORATION AS A REAL
15 ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE.

16 2-402.

17 (a) Each corporation shall have at least [three directors at all times, provided
18 that:

19 (1) If there is no stock outstanding the number of directors may be less
20 than three but not less than one; and

21 (2) If there is stock outstanding and so long as there are less than three
22 stockholders, the number of directors may be less than three but not less than the
23 number of stockholders] ONE DIRECTOR.

24 2-408.

25 (D) (1) THE CHARTER MAY PROVIDE THAT ONE OR MORE DIRECTORS OR A
26 CLASS OF DIRECTORS SHALL HAVE MORE OR LESS THAN ONE VOTE PER DIRECTOR
27 ON ANY MATTER.

28 (2) IF THE CHARTER PROVIDES THAT ONE OR MORE DIRECTORS SHALL
29 HAVE MORE OR LESS THAN ONE VOTE PER DIRECTOR ON ANY MATTER, EVERY
30 REFERENCE IN THIS ARTICLE TO A MAJORITY OR OTHER PROPORTION OF
31 DIRECTORS SHALL REFER TO A MAJORITY OR OTHER PROPORTION OF VOTES OF THE
32 DIRECTORS.

33 2-411.

34 (a) The [bylaws of a corporation may authorize its] board of directors [to] OF
35 A CORPORATION MAY:

1 (1) Appoint from among its members an executive committee and other
2 committees composed of one or more directors; and

3 (2) Delegate to these committees any of the powers of the board of
4 directors, except the power to:

5 (i) Authorize dividends on stock;

6 (ii) Issue stock other than as provided in subsection (b) of this
7 section;

8 (iii) Recommend to the stockholders any action which requires
9 stockholder approval;

10 (iv) Amend the bylaws; or

11 (v) Approve any merger or share exchange which does not require
12 stockholder approval.

13 (E) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION OR § 2-408(D) OF
14 THIS SUBTITLE, THE CHARTER OR BYLAWS OF A CORPORATION, OR ANY AGREEMENT
15 TO WHICH THE CORPORATION IS A PARTY AND WHICH HAS BEEN APPROVED BY THE
16 BOARD OF DIRECTORS, MAY PROVIDE FOR:

17 (1) THE ESTABLISHMENT OF ONE OR MORE STANDING COMMITTEES OR
18 FOR THE CREATION OF ONE OR MORE COMMITTEES UPON THE OCCURRENCE OF
19 CERTAIN EVENTS; AND

20 (2) THE COMPOSITION OF THE MEMBERSHIP, AND THE
21 QUALIFICATIONS AND THE VOTING AND OTHER RIGHTS OF MEMBERS OF ANY SUCH
22 COMMITTEE, SUBJECT TO THE CONTINUED SERVICE OF MEMBERS OF THE
23 COMMITTEE AS DIRECTORS.

24 2-418.

25 (b) (1) A corporation may indemnify any director made a party to any
26 proceeding by reason of service in that capacity unless it is established that:

27 (i) The act or omission of the director was material to the matter
28 giving rise to the proceeding; and

29 1. Was committed in bad faith; or

30 2. Was the result of active and deliberate dishonesty; or

31 (ii) The director actually received an improper personal benefit in
32 money, property, or services; or

33 (iii) In the case of any criminal proceeding, the director had
34 reasonable cause to believe that the act or omission was unlawful.

1 (2) (i) Indemnification may be against judgments, penalties, fines,
2 settlements, and reasonable expenses actually incurred by the director in connection
3 with the proceeding.

4 (ii) However, if the proceeding was one by or in the right of the
5 corporation, indemnification may not be made in respect of any proceeding in which
6 the director shall have been adjudged to be liable to the corporation.

7 (3) (i) The termination of any proceeding by judgment, order, or
8 settlement does not create a presumption that the director did not meet the requisite
9 standard of conduct set forth in this subsection.

10 (ii) The termination of any proceeding by conviction, or a plea of
11 nolo contendere or its equivalent, or an entry of an order of probation prior to
12 judgment, creates a rebuttable presumption that the director did not meet that
13 standard of conduct.

14 (4) A CORPORATION MAY NOT INDEMNIFY A DIRECTOR ~~UNDER THIS~~
15 ~~SECTION~~ OR ADVANCE EXPENSES UNDER THIS SECTION FOR A PROCEEDING
16 BROUGHT BY THAT DIRECTOR AGAINST THE CORPORATION, EXCEPT:

17 (I) FOR A PROCEEDING BROUGHT TO ENFORCE INDEMNIFICATION
18 UNDER THIS SECTION; OR

19 (II) IF THE CHARTER OR BYLAWS OF THE CORPORATION, A
20 RESOLUTION OF THE BOARD OF DIRECTORS OF THE CORPORATION, OR AN
21 AGREEMENT APPROVED BY THE BOARD OF DIRECTORS OF THE CORPORATION TO
22 WHICH THE CORPORATION IS A PARTY EXPRESSLY PROVIDE OTHERWISE.

23 2-505.

24 (A) [Any] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ANY
25 action required or permitted to be taken at a meeting of stockholders may be taken
26 without a meeting if [the following are filed with the records of stockholders
27 meetings:

28 (1) An] A unanimous written consent which sets forth the action and is
29 signed by each stockholder entitled to vote on the matter IS FILED WITH THE
30 RECORDS OF STOCKHOLDERS MEETINGS]; and

31 (2) A written waiver of any right to dissent signed by each stockholder
32 entitled to notice of the meeting but not entitled to vote at it].

33 (B) UNLESS THE CHARTER REQUIRES OTHERWISE, THE HOLDERS OF ANY
34 CLASS OF STOCK OTHER THAN COMMON STOCK, ENTITLED TO VOTE GENERALLY IN
35 THE ELECTION OF DIRECTORS, MAY TAKE ACTION OR CONSENT TO ANY ACTION BY
36 THE WRITTEN CONSENT OF THE STOCKHOLDERS ENTITLED TO CAST NOT LESS THAN
37 THE MINIMUM NUMBER OF VOTES THAT WOULD BE NECESSARY TO AUTHORIZE OR
38 TAKE THE ACTION AT A STOCKHOLDERS MEETING IF THE CORPORATION GIVES

1 NOTICE OF THE ACTION TO EACH STOCKHOLDER NOT LATER THAN 10 DAYS AFTER
2 THE EFFECTIVE TIME OF THE ACTION.

3 2-607.

4 (a) Articles of amendment shall set forth the amendment and state:

5 (1) That the amendment was advised by the board of directors and
6 approved by the stockholders; or

7 (2) That the amendment was approved by a majority of the entire board
8 of directors and that:

9 (i) No stock entitled to be voted on the matter was outstanding or
10 subscribed for at the time of approval; or

11 (ii) The amendment is limited to a change expressly authorized by
12 [§§ 2-105(a)(12) and 2-605] § 2-105(A)(12) OR § 2-605 of this title to be made without
13 action by the stockholders.

14 3-106.

15 (d) (1) [Unless] IF THE PARENT AND SUBSIDIARY ARE BOTH MARYLAND
16 CORPORATIONS, AND UNLESS waived by all minority stockholders, at least 30 days
17 before the articles are filed with the Department, a parent corporation which owns
18 less than all of the outstanding stock of the subsidiary shall give notice of the
19 transaction to each of the subsidiary's minority stockholders of record on the date of
20 giving of the notice or on a record date fixed for that purpose which is not more than
21 10 days before the date of giving notice.

22 (2) A minority stockholder of the subsidiary has the right to demand and
23 receive payment of the fair value of his stock as provided in Subtitle 2 of this title
24 relating to objecting stockholders.

25 3-202.

26 (c) Unless the transaction is governed by § 3-602 of this title or is exempted
27 by § 3-603(b) of this title, a stockholder may not demand the fair value of [his] THE
28 STOCKHOLDER'S stock and is bound by the terms of the transaction if:

29 (1) The stock is listed on a national securities exchange [or], is
30 designated as a national market system security on an interdealer quotation system
31 by the National Association of Securities Dealers, Inc., OR IS DESIGNATED FOR
32 TRADING ON THE NASDAQ SMALL CAP MARKET:

33 (i) With respect to a merger under § 3-106 of this title of a 90
34 percent or more owned subsidiary with or into its parent corporation, on the date
35 notice is given or waived under § 3-106; or

1 (ii) With respect to any other transaction, on the record date for
2 determining stockholders entitled to vote on the transaction objected to;

3 (2) The stock is that of the successor in a merger, unless:

4 (i) The merger alters the contract rights of the stock as expressly
5 set forth in the charter, and the charter does not reserve the right to do so; or

6 (ii) The stock is to be changed or converted in whole or in part in
7 the merger into something other than either stock in the successor or cash, scrip, or
8 other rights or interests arising out of provisions for the treatment of fractional
9 shares of stock in the successor; [or]

10 (3) THE STOCK IS NOT ENTITLED TO BE VOTED ON THE TRANSACTION
11 OR THE STOCKHOLDER DID NOT OWN THE SHARES OF STOCK ON THE RECORD DATE
12 FOR DETERMINING STOCKHOLDERS ENTITLED TO VOTE ON THE TRANSACTION;

13 (4) THE CHARTER PROVIDES THAT THE HOLDERS OF THE STOCK ARE
14 NOT ENTITLED TO EXERCISE THE RIGHTS OF AN OBJECTING STOCKHOLDER UNDER
15 THIS SUBTITLE; OR

16 [(3)] (5) The stock is that of an open-end investment company
17 registered with the Securities and Exchange Commission under the Investment
18 Company Act of 1940 and the value placed on the stock in the transaction is its net
19 asset value.

20 3-203.

21 (a) A stockholder of a corporation who desires to receive payment of the fair
22 value of [his] THE STOCKHOLDER'S stock under this subtitle:

23 (1) Shall file with the corporation a written objection to the proposed
24 transaction:

25 (i) With respect to a merger under § 3-106 of this title of a 90
26 percent or more owned subsidiary with or into its parent corporation, within 30 days
27 after notice is given or waived under § 3-106; or

28 (ii) With respect to any other transaction, at or before the
29 stockholders' meeting at which the transaction will be considered OR, IN THE CASE OF
30 ACTION TAKEN UNDER § 2-505(B) OF THIS ARTICLE, WITHIN 10 DAYS AFTER THE
31 CORPORATION GIVES THE NOTICE REQUIRED BY § 2-505(B) OF THIS ARTICLE;

32 (2) May not vote in favor of the transaction; and

33 (3) Within 20 days after the Department accepts the articles for record,
34 shall make a written demand on the successor for payment for [his] THE
35 STOCKHOLDER'S stock, stating the number and class of shares for which [he] THE
36 STOCKHOLDER demands payment.

1 (b) A stockholder who fails to comply with this section is bound by the terms of
2 the consolidation, merger, share exchange, transfer of assets, or charter amendment.
3 3-511.

4 (A) [Promptly] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
5 PROMPTLY after the charter of the corporation is revived, the president or a director
6 of the corporation shall call a meeting of the stockholders to elect a full board of
7 directors, giving notice in the manner required by Title 2 of this article.

8 (B) THE PRESIDENT OR A DIRECTOR OF A CORPORATION REGISTERED UNDER
9 THE INVESTMENT COMPANY ACT OF 1940 SHALL NOT BE REQUIRED TO CALL A
10 MEETING OF STOCKHOLDERS TO ELECT A FULL BOARD OF DIRECTORS UNTIL THE
11 CORPORATION IS REQUIRED TO HOLD AN ANNUAL MEETING UNDER § 2-501 OF THIS
12 ARTICLE.

13 3-603.

14 (c) (1) Whether or not such business combinations are authorized or
15 consummated in whole or in part after July 1, 1983 or after the determination date,
16 the provisions of § 3-602 of this subtitle do not apply to business combinations that
17 specifically, generally, or generally by types, as to specifically identified or
18 unidentified existing or future interested stockholders or their affiliates, have been
19 approved or exempted therefrom, in whole or in part, by resolution of the board of
20 directors of the corporation:

21 (i) Prior to September 1, 1983 or such earlier date as may be
22 irrevocably established by resolution of the board of directors; or

23 (ii) If involving transactions with a particular interested
24 stockholder or its existing or future affiliates, at any time prior to the [determination
25 date] MOST RECENT TIME THAT THE INTERESTED STOCKHOLDER BECAME AN
26 INTERESTED STOCKHOLDER.

27 (2) Unless by its terms a resolution adopted under this subsection is
28 made irrevocable, it may be altered or repealed by the board of directors, but this
29 shall not affect any business combinations that have been consummated, or are the
30 subject of an existing agreement entered into, prior to the alteration or repeal.

31 (e) (1) Unless the charter of the corporation provides otherwise, the
32 provisions of § 3-602 of this subtitle do not apply to any business combination of:

33 (i) A close corporation as defined in § 4-101(b) of this article;

34 (ii) A corporation having fewer than 100 beneficial owners of its
35 stock;

36 (iii) A corporation whose original articles of incorporation have a
37 provision, or whose stockholders adopt a charter amendment after June 30, 1983 by a
38 vote of at least 80 percent of the votes entitled to be cast by outstanding shares of

1 voting stock of the corporation, voting together as a single voting group, and
2 two-thirds of the votes entitled to be cast by persons (if any) who are not interested
3 stockholders of the corporation or affiliates or associates of interested stockholders,
4 voting together as a single voting group, expressly electing not to be governed by the
5 provisions of § 3-602 of this subtitle in whole or in part, or in either case as to
6 business combinations, specifically, generally, or generally by types, or as to identified
7 or unidentified existing or future interested stockholders or their affiliates, provided
8 that, other than in the case of the original articles of incorporation, an amendment
9 may not be effective until 18 months after the vote of stockholders and may not apply
10 to any business combination of the corporation with an interested stockholder (or any
11 affiliate of the interested stockholder) who became an interested stockholder on or
12 before the date of the vote;

13 (iv) [An investment company] A CORPORATION registered under
14 the Investment Company Act of 1940 AS AN OPEN END INVESTMENT COMPANY;

15 (v) A CORPORATION REGISTERED UNDER THE INVESTMENT
16 COMPANY ACT OF 1940 AS A CLOSED END INVESTMENT COMPANY UNLESS ITS BOARD
17 OF DIRECTORS ADOPTS A RESOLUTION TO BE SUBJECT TO § 3-602 OF THIS SUBTITLE
18 ON OR AFTER JUNE 1, 2000, PROVIDED THAT THE RESOLUTION SHALL NOT BE
19 EFFECTIVE WITH RESPECT TO A BUSINESS COMBINATION WITH ANY PERSON WHO
20 HAS BECOME AN INTERESTED STOCKHOLDER BEFORE THE TIME THAT THE
21 RESOLUTION IS ADOPTED; or

22 [(v)] (VI) A corporation with an interested stockholder that became
23 an interested stockholder inadvertently, if the interested stockholder:

24 1. As soon as practicable (but not more than 10 days after
25 the interested stockholder knew or should have known it had become an interested
26 stockholder) divests itself of a sufficient amount of the voting stock of the corporation
27 so that it no longer is the beneficial owner, directly or indirectly, of 10 percent or more
28 of the outstanding voting stock of the corporation; and

29 2. Would not at any time within the 5-year period preceding
30 the announcement date with respect to the business combination have been an
31 interested stockholder except by inadvertence.

32 (2) For purposes of paragraph (1)(ii) of this subsection, all stockholders of
33 a corporation that have executed an agreement to which the corporation is an
34 executing party governing the purchase and sale of stock of the corporation or a
35 voting trust agreement governing stock of the corporation shall be considered a single
36 beneficial owner of the stock covered by the agreement.

37 3-605.

38 THIS SUBTITLE MAY BE CITED AS THE MARYLAND BUSINESS COMBINATION
39 ACT.

1 3-701.

2 (d) (1) "Control shares" means shares of stock that, except for this subtitle,
3 would, if aggregated with all other shares of stock of the corporation (including shares
4 the acquisition of which is excluded from "control share acquisition" in subsection
5 (e)(2) of this section) owned by a person or in respect of which that person is entitled
6 to exercise or direct the exercise of voting power, except solely by virtue of a revocable
7 proxy, entitle that person, directly or indirectly, to exercise or direct the exercise of the
8 voting power of shares of stock of the corporation in the election of directors within
9 any of the following ranges of voting power:

10 (i) [One-fifth] ONE-TENTH or more, but less than one-third of all
11 voting power;

12 (ii) One-third or more, but less than a majority of all voting power;
13 or

14 (iii) A majority or more of all voting power.

15 (2) "Control shares" includes shares of stock of a corporation only to the
16 extent that the acquiring person, following the acquisition of the shares, is entitled,
17 directly or indirectly, to exercise or direct the exercise of voting power within any level
18 of voting power set forth in this section for which approval has not been obtained
19 previously under § 3-702 of this subtitle.

20 (e) (2) "Control share acquisition" does not include the acquisition of shares:

21 (i) Before November 4, 1988;

22 (ii) Under a contract made before November 4, 1988;

23 (iii) Under the laws of descent and distribution;

24 (iv) Under the satisfaction of a pledge or other security interest
25 created in good faith and not for the purpose of circumventing this subtitle; [or]

26 (v) Under a merger, consolidation, or share exchange effected
27 under Subtitle 1 of this title if the corporation is a party to the merger, consolidation,
28 or share exchange; OR

29 (VI) WITHIN ONE-TENTH OR MORE BUT LESS THAN ONE-FIFTH OF
30 ALL VOTING POWER OF OUTSTANDING SHARES OF STOCK OF THE CORPORATION
31 BEFORE JUNE 1, 2000.

32 3-702.

33 (c) This subtitle does not apply to:

34 (1) A close corporation as defined in § 4-101(b) of this article;

1 (2) A corporation having fewer than 100 beneficial owners of its stock;
2 [or]

3 (3) [An investment company registered] A CORPORATION REGISTERED
4 under the Investment Company Act of 1940 AS AN OPEN END INVESTMENT
5 COMPANY; OR

6 (4) A CORPORATION REGISTERED UNDER THE INVESTMENT COMPANY
7 ACT OF 1940 AS A CLOSED END INVESTMENT COMPANY UNLESS ITS BOARD OF
8 DIRECTORS ADOPTS A RESOLUTION TO BE SUBJECT TO THIS SUBTITLE ON OR AFTER
9 JUNE 1, 2000, PROVIDED THAT THE RESOLUTION SHALL NOT BE EFFECTIVE WITH
10 RESPECT TO ANY PERSON WHO HAS BECOME A HOLDER OF CONTROL SHARES
11 BEFORE THE TIME THAT THE RESOLUTION IS ADOPTED.

12 3-710.

13 THIS SUBTITLE MAY BE CITED AS THE MARYLAND CONTROL SHARE
14 ACQUISITION ACT.

15 3-803.

16 (a) (1) [Before] EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,
17 NOTWITHSTANDING ANY PROVISION IN THE CHARTER OR THE BYLAWS OF A
18 CORPORATION, BEFORE the first annual meeting of stockholders after a corporation
19 elects to be subject to this subtitle, the board of directors shall designate by
20 resolution, from among its members, directors to serve as class I directors, class II
21 directors, and class III directors.

22 3-804.

23 (a) Notwithstanding any other lesser proportion of votes required by a
24 provision in the charter or the bylaws, but subject to § 2-406(b)(3) OR § 8-205(B)(3) of
25 this article the stockholders of a corporation may remove any director by the
26 affirmative vote of at least two-thirds of all the votes entitled to be cast by the
27 stockholders generally in the election of directors.

28 8-202.

29 (E) (1) IN THIS SUBSECTION, "FACTS ASCERTAINABLE OUTSIDE THE
30 BYLAWS" INCLUDE:

31 (I) AN ACTION OR DETERMINATION BY ANY PERSON, INCLUDING
32 THE REAL ESTATE INVESTMENT TRUST, ITS BOARD OF TRUSTEES, AN OFFICER OR
33 AGENT OF THE REAL ESTATE INVESTMENT TRUST, AND ANY OTHER PERSON
34 AFFILIATED WITH THE REAL ESTATE INVESTMENT TRUST;

35 (II) ANY AGREEMENT OR OTHER DOCUMENT; OR

36 (III) ANY OTHER EVENT.

1 (2) ANY PROVISION OF THE BYLAWS PERMITTED UNDER SUBSECTION
2 (A) OF THIS SECTION MAY BE MADE DEPENDENT UPON FACTS ASCERTAINABLE
3 OUTSIDE THE BYLAWS.

4 [8-205.

5 Unless the declaration of trust provides otherwise or the real estate investment
6 trust elects to be subject to § 3-804 (a) of this article, the shareholders of a real estate
7 investment trust may remove any trustee, with or without cause, by the affirmative
8 vote of a majority of all the votes entitled to be cast for the election of trustees.]

9 8-205.

10 (A) THE SHAREHOLDERS OF A REAL ESTATE INVESTMENT TRUST MAY
11 REMOVE ANY TRUSTEE, WITH OR WITHOUT CAUSE, BY THE AFFIRMATIVE VOTE OF A
12 MAJORITY OF ALL THE VOTES ENTITLED TO BE CAST GENERALLY FOR THE
13 ELECTION OF TRUSTEES, EXCEPT:

14 (1) AS PROVIDED IN SUBSECTION (B) OF THIS SECTION;

15 (2) AS OTHERWISE PROVIDED IN THE DECLARATION OF TRUST OF THE
16 REAL ESTATE INVESTMENT TRUST; OR

17 (3) FOR A REAL ESTATE INVESTMENT TRUST THAT HAS ELECTED TO BE
18 SUBJECT TO § 3-804(A) OF THIS ARTICLE.

19 (B) UNLESS THE DECLARATION OF TRUST OF THE REAL ESTATE INVESTMENT
20 TRUST PROVIDES OTHERWISE:

21 (1) IF THE SHAREHOLDERS OF ANY CLASS OR SERIES ARE ENTITLED
22 SEPARATELY TO ELECT ONE OR MORE TRUSTEES, A TRUSTEE ELECTED BY A CLASS
23 OR SERIES MAY NOT BE REMOVED WITHOUT CAUSE EXCEPT BY THE AFFIRMATIVE
24 VOTE OF A MAJORITY OF ALL THE VOTES OF THAT CLASS OR SERIES;

25 (2) IF A REAL ESTATE INVESTMENT TRUST HAS CUMULATIVE VOTING
26 FOR THE ELECTION OF TRUSTEES AND LESS THAN THE ENTIRE BOARD IS TO BE
27 REMOVED, A TRUSTEE MAY NOT BE REMOVED WITHOUT CAUSE IF THE VOTES CAST
28 AGAINST THE TRUSTEE'S REMOVAL WOULD BE SUFFICIENT TO ELECT THE TRUSTEE
29 IF THEN CUMULATIVELY VOTED AT AN ELECTION OF THE ENTIRE BOARD OF
30 TRUSTEES, OR, IF THERE IS MORE THAN ONE CLASS OF TRUSTEES, AT AN ELECTION
31 OF THE CLASS OF TRUSTEES OF WHICH THE TRUSTEE IS A MEMBER; AND

32 (3) IF THE TRUSTEES HAVE BEEN DIVIDED INTO CLASSES, A TRUSTEE
33 MAY NOT BE REMOVED WITHOUT CAUSE.

34 8-206.

35 (A) The [declaration of trust or bylaws of a real estate investment trust may
36 provide for] BOARD OF TRUSTEES OF A REAL ESTATE INVESTMENT TRUST MAY
37 ESTABLISH one or more committees of the board of trustees composed of one or more

1 trustees and for the delegation to those committees of any of the powers of the board
2 of trustees.

3 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE
4 DECLARATION OF TRUST OR BYLAWS OF A REAL ESTATE INVESTMENT TRUST, OR
5 ANY AGREEMENT TO WHICH THE REAL ESTATE INVESTMENT TRUST IS A PARTY AND
6 WHICH HAS BEEN APPROVED BY THE BOARD OF TRUSTEES, MAY PROVIDE FOR:

7 (1) THE ESTABLISHMENT OF ONE OR MORE STANDING COMMITTEES OR
8 FOR THE CREATION OF ONE OR MORE COMMITTEES UPON THE OCCURRENCE OF
9 CERTAIN EVENTS; AND

10 (2) THE COMPOSITION OF THE MEMBERSHIP, AND THE
11 QUALIFICATIONS AND THE VOTING AND OTHER RIGHTS OF MEMBERS OF ANY SUCH
12 COMMITTEE, SUBJECT TO THE CONTINUED SERVICE OF MEMBERS OF THE
13 COMMITTEE AS TRUSTEES.

14 8-207.

15 NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A REAL ESTATE
16 INVESTMENT TRUST MAY ISSUE SHARES OF BENEFICIAL INTEREST TO UP TO 100
17 PERSONS WITHOUT CONSIDERATION FOR THE PURPOSE OF QUALIFYING THE REAL
18 ESTATE INVESTMENT TRUST AS A REAL ESTATE INVESTMENT TRUST UNDER THE
19 INTERNAL REVENUE CODE.

20 8-301.

21 A real estate investment trust has the power to:

22 (8) Purchase, take, receive, subscribe for, or otherwise acquire, own,
23 hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and deal
24 in and with:

25 (i) Securities, shares, and other interests in any obligations of
26 domestic and foreign corporations, other real estate investment trusts, associations,
27 partnerships, and [individuals] OTHER PERSONS; and

28 (ii) Direct and indirect obligations of the United States, any other
29 government, state, territory, government district, and municipality, and any
30 instrumentality of them;

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 June 1, 2000.

