

SENATE BILL 578

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3lr1846
CF HB 882

By: **Senator Raskin**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 27, 2013

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of providing that a Maryland corporation or a real estate investment
4 trust has the power to renounce certain business opportunities in certain
5 documents or by certain resolutions; repealing certain provisions of law
6 prohibiting the declaration or payment of a dividend payable in shares of one
7 class of a corporation's stock to holders of shares of another class of the
8 corporation's stock unless approved in a certain manner; ~~altering the~~
9 ~~circumstances under which a corporation registered as an open end company~~
10 ~~may redeem shares of its stock from any stockholder;~~ requiring each nominee
11 for director of a corporation to have the qualifications required by the charter or
12 bylaws of the corporation; providing that a director of a corporation holds office
13 until the time the director ceases to have certain qualifications under certain
14 circumstances; specifying how the directors who hold over and continue to serve
15 as directors must be determined under certain circumstances; clarifying the
16 circumstances under which certain actions may be taken without a meeting of
17 the board of directors or a committee of the board; clarifying that certain
18 references to a majority or other proportion of directors refer to a majority or
19 other proportion of votes entitled to be cast by the directors; establishing a
20 certain limitation on a board's sole power to take certain actions relating to
21 special meetings of stockholders; ~~repealing a certain provision of law that~~
22 ~~requires the board of directors to provide a place for a meeting of the~~
23 ~~stockholders under certain circumstances;~~ providing that a certain interest with
24 which a proxy may be coupled includes an interest as a party to a certain voting
25 agreement; authorizing two or more stockholders to enter into a written

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 agreement requiring voting rights to be exercised in a certain manner under
 2 certain circumstances; authorizing a certain written agreement to be
 3 specifically enforced; altering the circumstances under which the approval of the
 4 stockholders and articles of transfer or share exchange are not required;
 5 altering the circumstances under which certain mergers need be approved by a
 6 Maryland successor corporation or real estate investment trust only by a
 7 majority of its entire board of directors or trustees; altering the information that
 8 must be included in articles of consolidation, merger, share exchange, or
 9 transfer under certain circumstances; providing that certain information
 10 included in articles of consolidation, merger, share exchange, or transfer may be
 11 made dependent on facts ascertainable outside of the articles; repealing certain
 12 provisions of law requiring the president or a director of a certain corporation
 13 the charter of which has been revived to call a meeting of the stockholders for a
 14 certain purpose; providing that a real estate investment trust is a separate legal
 15 entity; providing that a real estate investment trust is formed by filing a
 16 declaration of trust for record with the State Department of Assessments and
 17 Taxation; defining a certain term; making certain conforming and stylistic
 18 changes; and generally relating to corporations and real estate investment
 19 trusts laws.

20 BY repealing and reenacting, with amendments,

21 Article – Corporations and Associations

22 Section 2–103, 2–309(c), ~~2–310.1~~, 2–403(a), 2–404(b), 2–405, 2–408(c) and (d),
 23 2–502(e), ~~2–503(b)~~, 2–507(d), 2–510, 3–104(a), 3–105(a), 3–109, 8–102,
 24 8–201, 8–301, and 8–501.1(c)

25 Annotated Code of Maryland

26 (2007 Replacement Volume and 2012 Supplement)

27 BY repealing

28 Article – Corporations and Associations

29 Section 3–511

30 Annotated Code of Maryland

31 (2007 Replacement Volume and 2012 Supplement)

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

34 **Article – Corporations and Associations**

35 2–103.

36 Unless otherwise provided by law or its charter, a Maryland corporation has the
 37 general powers, whether or not they are set forth in its charter, to:

38 (1) Have perpetual existence, although existence may be limited to a
 39 specified period if the limitation is stated in a charter provision adopted after May 31,
 40 1908;

1 (2) Sue, be sued, complain, and defend in all courts;

2 (3) Have, use, alter, or abandon a corporate seal;

3 (4) Transact its business, carry on its operations, and exercise the
4 powers granted by this article in any state, territory, district, and possession of the
5 United States and in any foreign country;

6 (5) Make contracts and guarantees, incur liabilities, and borrow
7 money;

8 (6) Sell, lease, exchange, transfer, convey, mortgage, pledge, and
9 otherwise dispose of any or all of its assets;

10 (7) Issue bonds, notes, and other obligations and secure them by
11 mortgage or deed of trust of any or all of its assets;

12 (8) Acquire by purchase or in any other manner, and take, receive,
13 own, hold, use, employ, improve, and otherwise deal with any interest in real or
14 personal property, wherever located;

15 (9) Purchase, take, receive, subscribe for, or otherwise acquire, own,
16 hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and
17 otherwise use and deal in and with stock and other interests in and obligations of
18 other Maryland and foreign corporations, associations, partnerships, and individuals;

19 (10) Subject to the limitations provided in this article, acquire any of its
20 own stock, bonds, notes, and other obligations and securities;

21 (11) Invest its surplus funds, lend money from time to time in any
22 manner which may be appropriate to enable it to carry on the operations or fulfill the
23 purposes specified in its charter, and take and hold real and personal property as
24 security for the payment of funds so invested or loaned;

25 (12) Be a promoter, partner, member, associate, or manager of any
26 partnership, joint venture, trust, or other enterprise;

27 (13) Make gifts or contributions in cash, other property, or stock or
28 other securities of the corporation to or for the use of:

29 (i) The United States, this State, another state of the United
30 States, a territory, possession, or district of the United States, or any institution,
31 agency, or political subdivision of any of them; and

1 (ii) Any governmental or other organization, whether inside or
2 outside the United States, for religious, charitable, scientific, civic, public welfare,
3 literary, or educational purposes;

4 (14) Elect its officers and appoint its agents, define their duties,
5 determine their compensation, and adopt and carry into effect employee and officer
6 benefit plans;

7 **(15) RENOUNCE, IN ITS CHARTER OR BY RESOLUTION OF ITS**
8 **BOARD OF DIRECTORS, ANY INTEREST OR EXPECTANCY OF THE CORPORATION**
9 **IN, OR IN BEING OFFERED AN OPPORTUNITY TO PARTICIPATE IN, BUSINESS**
10 **OPPORTUNITIES OR CLASSES OR CATEGORIES OF BUSINESS OPPORTUNITIES**
11 **THAT ARE:**

12 **(I) PRESENTED TO THE CORPORATION; OR**

13 **(II) DEVELOPED BY OR PRESENTED TO ONE OR MORE OF**
14 **ITS DIRECTORS OR OFFICERS;**

15 ~~[(15)]~~ **(16)** Adopt, alter, and repeal bylaws not inconsistent with law or
16 its charter for the regulation and management of its affairs;

17 ~~[(16)]~~ **(17)** Exercise generally the powers set forth in its charter and
18 those granted by law; and

19 ~~[(17)]~~ **(18)** Do every other act not inconsistent with law which is
20 appropriate to promote and attain the purposes set forth in its charter.

21 2-309.

22 (c) (1) A division of issued shares into a greater number of shares of the
23 same class without any change in the aggregate amount of stated capital is a stock
24 split, and a division with a change in the aggregate amount of stated capital is a stock
25 dividend within the meaning of this subsection.

26 (2) If authorized by its board of directors and unless the charter
27 provides otherwise, shares may be issued by a corporation, without consideration to
28 the holders of one or more classes or series of stock, as a stock split or a stock dividend.

29 (3) If a stock dividend is payable in a corporation's own stock with par
30 value, the shares shall be issued at par value and, at the time the stock dividend is
31 paid, the corporation shall transfer from surplus to stated capital an amount at least
32 equal to the aggregate par value of the shares to be issued.

33 (4) If a stock dividend is payable in a corporation's own stock without
34 par value, the board of directors shall adopt at the time the stock dividend is declared

1 a resolution which sets the aggregate amount to be attributed to stated capital with
 2 respect to the shares that constitute the stock dividend and, at the time the stock
 3 dividend is paid, the corporation shall transfer at least that amount from surplus to
 4 stated capital.

5 [(5) A dividend payable in shares of one class of a corporation's stock
 6 may not be declared or paid to the holders of shares of another class of stock unless the
 7 payment has been:

8 (i) Approved by the board of directors in accordance with
 9 specific authority in the charter; or

10 (ii) Approved at a meeting of stockholders by the affirmative
 11 vote of a majority of all the votes entitled to be cast on the matter of each class entitled
 12 to vote on it.]

13 ~~2-310.1.~~

14 (a) ~~This section applies only to a corporation registered as an open end~~
 15 ~~company under the Investment Company Act of 1940.~~

16 (b) ~~Subject to the provisions of § 2-311 of this subtitle, [if authorized by its~~
 17 ~~board of directors,] a corporation may redeem shares of its stock from any stockholder~~
 18 ~~if [the]:~~

19 ~~(1) THE corporation's charter expressly provides for the redemption of~~
 20 ~~shares of its stock from any stockholder].~~

21 (c) ~~(1) Subject to the provisions of § 2-311 of this subtitle, unless~~
 22 ~~prohibited by its charter, in the case of a corporation whose charter does not expressly~~
 23 ~~provide for the redemption of shares of its stock, the corporation may redeem shares of~~
 24 ~~its stock from any stockholder if:] AND THE BOARD OF DIRECTORS AUTHORIZES~~
 25 ~~THE REDEMPTION; OR~~

26 ~~(2) (i) THE CORPORATION'S CHARTER DOES NOT EXPRESSLY~~
 27 ~~PROHIBIT THE REDEMPTION OF SHARES OF ITS STOCK;~~

28 ~~[(i) (ii) The aggregate net asset value of the shares to be~~
 29 ~~redeemed from the stockholder is, as of the date of the redemption, [\$1,000] \$5,000 or~~
 30 ~~less; and~~

31 ~~[(ii) (iii) Written notice of the redemption to the stockholder of~~
 32 ~~record;~~

33 ~~1. Is mailed first class to the stockholder's last known~~
 34 ~~address of record;~~

1 CORPORATION AT THE TIME THE DIRECTOR WAS ELECTED, IF THE CHARTER OR
2 BYLAWS REQUIRES THE DIRECTOR'S TERM TO END ON A FAILURE TO HAVE
3 THOSE QUALIFICATIONS.

4 (2) Except for a corporation that has elected to be subject to § 3-803 of
5 this article, if the directors are divided into classes, the term of office may be provided
6 in the bylaws, except that:

7 (i) The term of office of a director may not be longer than 5
8 years or, except in the case of an initial or substitute director, shorter than the period
9 between annual meetings; and

10 (ii) The term of office of at least one class shall expire each year.

11 2-405.

12 (a) (1) [In] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
13 SUBSECTION, IN case of failure to elect directors at the designated time, the directors
14 holding over shall continue to [manage the business and affairs] SERVE AS
15 DIRECTORS of the corporation until their successors are elected and qualify.

16 (2) IF THE NUMBER OF DIRECTORS TO BE ELECTED AT THE
17 DESIGNATED TIME, TOGETHER WITH THE NUMBER OF DIRECTORS WHO
18 OTHERWISE WOULD HOLD OVER, EXCEEDS THE NUMBER OF DIRECTORS WHO
19 WERE TO BE ELECTED, THEN THE DIRECTORS WHO WILL HOLD OVER AND
20 CONTINUE TO SERVE AS DIRECTORS OF THE CORPORATION UNTIL THEIR
21 SUCCESSORS ARE ELECTED AND QUALIFY SHALL BE DETERMINED:

22 (I) BY A MAJORITY VOTE OF THE DIRECTORS ELECTED AT
23 THE DESIGNATED TIME AND, IF THE BOARD IS CLASSIFIED, ANY DIRECTORS
24 WHOSE TERMS DID NOT EXPIRE AT THE DESIGNATED TIME, WHETHER OR NOT
25 SUFFICIENT TO CONSTITUTE A QUORUM; OR

26 (II) AS OTHERWISE PROVIDED IN THE CHARTER OR BYLAWS
27 OF THE CORPORATION.

28 (b) A director not elected annually in accordance with § 2-501(b) of this title
29 shall be deemed to be continuing in office and shall not be deemed to be holding over
30 under subsection (a) of this section until after the time at which an annual meeting is
31 required to be held under § 2-501(b) of this title or the charter or bylaws of the
32 corporation.

33 2-408.

1 (c) Any action required or permitted to be taken at a meeting of the board of
 2 directors or of a committee of the board may be taken without a meeting if a
 3 unanimous consent which sets forth the action is:

4 (1) Given in writing or by electronic transmission by each member of
 5 the board or committee **ENTITLED TO VOTE ON THE MATTER**; and

6 (2) Filed in paper or electronic form with the minutes of proceedings of
 7 the board or committee.

8 (d) (1) The charter may provide that one or more directors or a class of
 9 directors shall have more or less than one vote per director on any matter.

10 (2) If the charter provides that one or more directors shall have more
 11 or less than one vote per director on any matter, every reference in this article to a
 12 majority or other proportion of directors shall refer to a majority or other proportion of
 13 votes **[of] ENTITLED TO BE CAST BY** the directors.

14 2-502.

15 (e) **[The] UNLESS THE CHARTER OR BYLAWS EXPRESSLY PROVIDE**
 16 **OTHERWISE, THE** board of directors has the sole power to fix:

17 (1) The record date for determining stockholders entitled to request a
 18 special meeting of the stockholders and the record date for determining stockholders
 19 entitled to notice of and to vote at the special meeting; and

20 (2) The date, time, and place, if any, and the means of remote
 21 communication, if any, by which stockholders and proxy holders may be considered
 22 present in person and may vote at the special meeting.

23 ~~2-503.~~

24 ~~(b) [(1) Subject to paragraph (2) of this subsection, if] IF the board of~~
 25 ~~directors is authorized to determine the place of a meeting of the stockholders, the~~
 26 ~~board may determine that the meeting not be held at any place, but instead may be~~
 27 ~~held solely by means of remote communication, as authorized by subsection (c) of this~~
 28 ~~section.~~

29 ~~[(2) At the request of a stockholder, the board of directors shall provide~~
 30 ~~a place for a meeting of the stockholders.]~~

31 2-507.

32 (d) (1) A proxy is revocable by a stockholder at any time without condition
 33 or qualification unless:

1 (i) The proxy states that it is irrevocable; and

2 (ii) The proxy is coupled with an interest.

3 (2) A proxy may be made irrevocable for as long as it is coupled with
4 an interest.

5 (3) The interest with which a proxy may be coupled includes an
6 interest in the stock to be voted under the proxy, **AN INTEREST AS A PARTY TO A**
7 **VOTING AGREEMENT CREATED IN ACCORDANCE WITH § 2-510(B) OF THIS**
8 **SUBTITLE**, or another general interest in the corporation or its assets or liabilities.

9 2-510.

10 (A) One or more stockholders of a corporation may confer the right to vote or
11 otherwise represent their stock to a trustee by:

12 (1) Entering into a written voting trust agreement which specifies the
13 terms and conditions of the voting trust;

14 (2) Depositing an executed copy of the agreement with the corporation
15 at its principal office; and

16 (3) Transferring their stock for purposes of the agreement to a trustee.

17 (B) **TWO OR MORE STOCKHOLDERS OF A CORPORATION MAY ENTER**
18 **INTO A WRITTEN AGREEMENT SIGNED BY THE STOCKHOLDERS THAT SPECIFIES**
19 **THAT, IN EXERCISING ANY VOTING RIGHTS, THE STOCK HELD BY THE PARTIES**
20 **TO THE AGREEMENT SHALL BE VOTED:**

21 (1) **AS PROVIDED IN THE AGREEMENT;**

22 (2) **AS THE PARTIES MAY AGREE; OR**

23 (3) **IN THE MANNER AGREED ON BY THE PARTIES TO THE**
24 **AGREEMENT.**

25 (C) **AN AGREEMENT MADE UNDER SUBSECTION (B) OF THIS SECTION:**

26 (1) **MAY BE SPECIFICALLY ENFORCED; AND**

27 (2) **IS NOT SUBJECT TO THE REQUIREMENTS OF SUBSECTION (A)**
28 **OF THIS SECTION.**

29 3-104.

1 (a) Notwithstanding any other provision of this subtitle, unless the charter
2 or bylaws of a corporation provide otherwise **BY REFERENCE TO THIS SECTION OR**
3 **THE SUBJECT MATTER OF THIS SECTION**, the approval of the stockholders and
4 articles of transfer or share exchange, as the case may be, are not required for any:

5 (1) Transfer of assets by a corporation in the ordinary course of
6 business actually conducted by it or as a distribution as defined in § 2-301 of this
7 article;

8 (2) Mortgage, pledge, or creation of any other security interest in any
9 or all of the assets of a corporation, whether or not in the ordinary course of its
10 business;

11 (3) Exchange of shares of stock through voluntary action or under any
12 agreement with the stockholders;

13 (4) Transfer of assets by a corporation to one or more persons if all of
14 the equity interests of the person or persons are owned, directly or indirectly, by the
15 corporation; or

16 (5) Transfer of assets by a corporation registered as an open-end
17 investment company under the Investment Company Act of 1940.

18 3-105.

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

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

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

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

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

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

1 (i) The merger does not reclassify or change the terms of any
2 class or series of its stock that is outstanding immediately before the merger becomes
3 effective or otherwise amend its charter [and the number of its shares of stock of such
4 class or series outstanding immediately after the effective time of the merger does not
5 increase by more than 20 percent of the number of its shares of the class or series of
6 stock that is outstanding immediately before the merger becomes effective]; or

7 (ii) There is no stock outstanding or subscribed for and entitled
8 to be voted on the merger; and

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

12 3-109.

13 **(A) IN THIS SECTION, "FACTS ASCERTAINABLE OUTSIDE THE ARTICLES"**
14 **INCLUDES:**

15 **(1) AN ACTION OR A DETERMINATION BY ANY PERSON,**
16 **INCLUDING THE CORPORATION, ITS BOARD OF DIRECTORS, AN OFFICER OR**
17 **AGENT OF THE CORPORATION, AND ANY OTHER PERSON AFFILIATED WITH THE**
18 **CORPORATION;**

19 **(2) THE CONTENTS OF ANY AGREEMENT TO WHICH THE**
20 **CORPORATION IS A PARTY OR ANY OTHER DOCUMENT; AND**

21 **(3) ANY OTHER EVENT.**

22 **[(a)] (B)** Articles of consolidation, merger, share exchange, or transfer shall
23 contain the terms and conditions of the transaction and the manner of carrying it into
24 effect, including:

25 (1) A statement:

26 (i) In a merger, consolidation, or share exchange, that each
27 party to the articles agrees to merge, to consolidate to form a new corporation, or to
28 acquire stock or have its stock acquired in a share exchange, as the case may be; or

29 (ii) In a transfer, that the transferor agrees to sell, lease,
30 exchange, or transfer all or substantially all of its property and assets;

31 (2) The name and place of incorporation or organization of:

32 (i) Each party to the articles; and

1 (ii) The successor corporation in a consolidation, merger, or
2 share exchange or the successor domestic partnership, limited partnership or limited
3 liability company in a merger;

4 (3) As to each foreign corporation:

5 (i) The date of its incorporation;

6 (ii) A statement whether it is incorporated under general law or
7 by special act and, if incorporated by special act, the chapter number and year of
8 passage; and

9 (iii) If the corporation is registered or qualified to do business in
10 this State, the date of its registration or qualification;

11 (4) As to each foreign business trust:

12 (i) The date of its organization; and

13 (ii) If the business trust is registered or qualified to do business
14 in this State, the date of its registration or qualification;

15 (5) As to each foreign partnership, limited partnership or limited
16 liability company:

17 (i) The date of its formation; and

18 (ii) If the foreign partnership, limited partnership or limited
19 liability company is registered or qualified to do business in this State, the date of its
20 registration or qualification;

21 (6) The name, address, and principal place of business of the
22 transferee in a transfer of assets;

23 (7) Each county in this State where:

24 (i) Each corporation, partnership, limited partnership, limited
25 liability company, and business trust party to the articles has its principal office; and

26 (ii) Any of the parties in a consolidation, merger, or transfer,
27 other than the successor, owns an interest in land;

28 (8) If the successor is a foreign corporation, foreign partnership,
29 limited partnership, limited liability company, or a foreign business trust:

30 (i) The location of its principal office in the place where it is
31 organized; and

1 (ii) The name and address of its resident agent in [this State]
2 **THE PLACE WHERE IT IS ORGANIZED;**

3 (9) A statement that the terms and conditions of the transaction set
4 forth in the articles were advised, authorized, and approved by each corporation,
5 partnership, limited partnership, limited liability company, or business trust party to
6 the articles in the manner and by the vote required by its charter or declaration of
7 trust and the laws of the place where it is organized, and a statement of the manner of
8 approval; and

9 (10) Every other provision necessary to effect the consolidation, merger,
10 share exchange, or transfer of assets.

11 **[(b)] (C)** In addition to the requirements of subsection **[(a)] (B)** of this
12 section, articles of consolidation shall include:

13 (1) Every matter and fact required to be stated in articles of
14 incorporation except the provisions about incorporators;

15 (2) As to each corporation party to the articles:

16 (i) The total number of shares of stock of all classes which the
17 corporation has authority to issue;

18 (ii) The number of shares of stock of each class;

19 (iii) The par value of the shares of stock of each class or a
20 statement that the shares are without par value; and

21 (iv) If there are any shares of stock with par value, the
22 aggregate par value of all the shares of all classes; and

23 (3) The manner and basis of converting or exchanging issued stock of
24 the consolidating corporations into different stock or other consideration, and the
25 treatment of any issued stock of the consolidating corporations not to be converted or
26 exchanged, **ANY OR ALL OF WHICH MAY BE MADE DEPENDENT ON FACTS**
27 **ASCERTAINABLE OUTSIDE THE ARTICLES OF CONSOLIDATION.**

28 **[(c)] (D)** In addition to the requirements of subsection **[(a)] (B)** of this
29 section, articles of merger shall include:

30 (1) Any amendment to the charter, certificate of limited partnership,
31 articles of organization of a limited liability company, or declaration of trust of the
32 successor to be effected as part of the merger;

1 (2) As to each corporation party to the articles:

2 (i) The total number of shares of stock of all classes which the
3 corporation has authority to issue;

4 (ii) The number of shares of stock of each class;

5 (iii) The par value of the shares of stock of each class or a
6 statement that the shares are without par value; and

7 (iv) If there are any shares of stock with par value, the
8 aggregate par value of all the shares of all classes;

9 (3) As to each business trust party to the articles:

10 (i) The total number of shares of beneficial interest of all
11 classes which the business trust has authority to issue; and

12 (ii) The number of shares of beneficial interest of each class;

13 (4) As to each limited partnership party to the articles:

14 (i) The percentages of partnership interest of each class of
15 partnership interest of the limited partnership; and

16 (ii) The class of partners and the respective percentage of
17 partnership interests in each class of partnership interest;

18 (5) As to each limited liability company party to the articles:

19 (i) The percentages of membership interest of each class of
20 membership interest of the limited liability company; and

21 (ii) The class of members and the respective percentage of
22 membership interests in each class of membership interest;

23 (6) As to each partnership party to the articles:

24 (i) The percentages of partnership interest of each class of
25 partnership interest of the partnership; and

26 (ii) The class of partners and the respective percentage of
27 partnership interests in each class of partnership interest;

28 (7) If the charter, certificate of limited partnership, articles of
29 organization of a limited liability company, or declaration of trust of the successor is
30 amended in a manner which changes any of the information required by paragraphs

1 (2) through (5) of this subsection, that information as it was both immediately before
2 and as changed by the merger; and

3 (8) The manner and basis of converting or exchanging issued stock of
4 the merging corporations, outstanding partnership interest of the merging partnership
5 or limited partnership, or shares of beneficial interest of the merging business trusts
6 into different stock of a corporation, partnership interest of a partnership or limited
7 partnership, outstanding membership interest of a limited liability company, shares of
8 beneficial interest of a business trust, or other consideration, and the treatment of any
9 issued stock of the merging corporations, partnership interest of the merging
10 partnership or limited partnerships, membership interest of the merging limited
11 liability company, or shares of beneficial interest of the merging business trusts not to
12 be converted or exchanged, **ANY OR ALL OF WHICH MAY BE MADE DEPENDENT ON**
13 **FACTS ASCERTAINABLE OUTSIDE THE ARTICLES OF MERGER.**

14 **[(d)] (E)** In addition to the requirements of subsection **[(a)] (B)** of this
15 section, articles of share exchange shall include:

16 (1) As to the corporation the shares of which are to be acquired in the
17 exchange:

18 (i) The total number of shares of stock of all classes which the
19 corporation has authority to issue;

20 (ii) The number of shares of stock of each class;

21 (iii) The par value of the shares of stock of each class or a
22 statement that the shares are without par value; and

23 (iv) If there are any shares of stock with par value, the
24 aggregate par value of all the shares of all classes; and

25 (2) The manner and basis of exchanging the stock to be acquired for
26 stock or other consideration to be issued or delivered by or on behalf of the successor,
27 **ANY OR ALL OF WHICH MAY BE MADE DEPENDENT ON FACTS ASCERTAINABLE**
28 **OUTSIDE THE ARTICLES OF SHARE EXCHANGE.**

29 **[(e)] (F)** In addition to the requirements of subsection **[(a)] (B)** of this
30 section, articles of transfer shall include:

31 (1) The nature and amount of the consideration to be paid,
32 transferred, or issued for the assets of the transferor or a statement of the method by
33 which the consideration is to be determined, **ANY OR ALL OF WHICH MAY BE MADE**
34 **DEPENDENT ON FACTS ASCERTAINABLE OUTSIDE THE ARTICLES OF TRANSFER;**
35 and

1 (2) In the case of a noncorporate transferee which is a nonresident of
2 the State, the name and address of a resident agent of the transferee in this State.

3 [(f)] (G) Articles of consolidation, merger, or share exchange may provide:

4 (1) The number and names of the directors or trustees of the
5 successor, or of persons acting in similar positions, who will hold those positions as of
6 the effective time of the consolidation, merger, or share exchange, if the persons
7 serving in those positions will be changed in the consolidation, merger, or share
8 exchange; and

9 (2) The titles and names of one or more officers of the successor, or of
10 persons acting in similar positions, who will hold those positions as of the effective
11 time of the consolidation, merger, or share exchange, if the persons serving in those
12 positions will be changed in the consolidation, merger, or share exchange.

13 [3-511.

14 (a) Except as provided in subsection (b) of this section, promptly after the
15 charter of the corporation is revived, the president or a director of the corporation shall
16 call a meeting of the stockholders to elect a full board of directors, giving notice in the
17 manner required by Title 2 of this article.

18 (b) The president or a director of a corporation registered under the
19 Investment Company Act of 1940 shall not be required to call a meeting of
20 stockholders to elect a full board of directors until the corporation is required to hold
21 an annual meeting under § 2-501 of this article.]

22 8-102.

23 A real estate investment trust [is]:

24 (1) IS a permitted form of unincorporated business trust or
25 association[, and may];

26 (2) IS A SEPARATE LEGAL ENTITY; AND

27 (3) MAY conduct business in the State in accordance with this title.

28 8-201.

29 A real estate investment trust [may]:

30 (1) IS FORMED BY FILING A DECLARATION OF TRUST FOR
31 RECORD WITH THE DEPARTMENT; AND

1 **(2)** **MAY** not do business in the State until it complies with this title.

2 8–301.

3 A real estate investment trust has the power to:

4 (1) Unless the declaration of trust provides otherwise, have perpetual
5 existence unaffected by any rule against perpetuities;

6 (2) Sue, be sued, complain, and defend in all courts;

7 (3) Transact its business, carry on its operations, and exercise the
8 powers granted by this title in any state, territory, district, or possession of the United
9 States and in any foreign country;

10 (4) Make contracts, incur liabilities, and borrow money;

11 (5) Sell, mortgage, lease, pledge, exchange, convey, transfer, and
12 otherwise dispose of all or any part of its assets;

13 (6) Issue bonds, notes, and other obligations and secure them by
14 mortgage or deed of trust of all or any part of its assets;

15 (7) Acquire by purchase or in any other manner and take, receive,
16 own, hold, use, employ, improve, encumber, and otherwise deal with any interest in
17 real and personal property, wherever located;

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

21 (i) Securities, shares, and other interests in any obligations of
22 domestic and foreign corporations, other real estate investment trusts, associations,
23 partnerships, and other persons; and

24 (ii) Direct and indirect obligations of the United States, any
25 other government, state, territory, government district, and municipality, and any
26 instrumentality of them;

27 (9) Elect or appoint trustees, officers, and agents of the trust for the
28 period of time the declaration of trust or bylaws provide, define their duties, and
29 determine their compensation;

30 (10) Adopt and implement employee and officer benefit plans;

1 (11) Make and alter bylaws not inconsistent with law or with its
2 declaration of trust to regulate the government of the real estate investment trust and
3 the administration of its affairs;

4 (12) Exercise these powers, including the power to take, hold, and
5 dispose of the title to real and personal property in the name of the trust or in the
6 name of its trustees, without the filing of any bond, except a bond required under §
7 8–204 of this title;

8 (13) Generally exercise the powers set forth in its declaration of trust
9 which are not inconsistent with law and are appropriate to promote and attain the
10 purposes set forth in its declaration of trust;

11 (14) Enter into a business combination subject to the provisions of Title
12 3, Subtitle 6 of this article; [and]

13 (15) Indemnify or advance expenses to trustees, officers, employees,
14 and agents of the trust to the same extent as is permitted for directors, officers,
15 employees, and agents of a Maryland corporation under § 2–418 of this article; AND

16 **(16) RENOUNCE, IN ITS DECLARATION OF TRUST OR BY**
17 **RESOLUTION OF ITS BOARD OF TRUSTEES, ANY INTEREST OR EXPECTANCY OF**
18 **THE REAL ESTATE INVESTMENT TRUST IN, OR IN BEING OFFERED AN**
19 **OPPORTUNITY TO PARTICIPATE IN, ~~SPECIFIED~~ BUSINESS OPPORTUNITIES OR**
20 **~~SPECIFIED~~ CLASSES OR CATEGORIES OF BUSINESS OPPORTUNITIES THAT ARE:**

21 **(I) PRESENTED TO THE REAL ESTATE INVESTMENT TRUST;**
22 **OR**

23 **(II) DEVELOPED BY OR PRESENTED TO ONE OR MORE OF**
24 **ITS TRUSTEES OR OFFICERS.**

25 8–501.1.

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

28 (1) A foreign business trust, a Maryland business trust, other than a
29 Maryland real estate investment trust, a corporation, a domestic or foreign
30 partnership, or a domestic or foreign limited partnership party to the merger shall
31 have the merger advised, authorized, and approved in the manner and by the vote
32 required by its declaration of trust, governing instrument, charter, or partnership
33 agreement and the laws of the place where it is organized;

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

4 (ii) A domestic limited liability company shall have the merger
5 approved in the manner provided under § 4A-703 of this article;

6 (3) A merger need be approved by a Maryland real estate investment
7 trust successor only by a majority of its entire board of trustees if the merger does not
8 reclassify or change the terms of any class or series of its shares that are outstanding
9 immediately before the merger becomes effective or otherwise amend its declaration of
10 trust [and the number of shares of such class or series outstanding immediately after
11 the effective time of the merger does not increase by more than 20 percent of the
12 number of its shares of the class or series of shares outstanding immediately before
13 the merger becomes effective]; and

14 (4) A merger of a subsidiary with or into its parent need be approved
15 only in the manner provided in § 3-106 of this article, provided the parent owns at
16 least 90 percent of the subsidiary.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.