
By: Delegate Frank

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Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

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CHAPTER ____

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; altering certain rights of
13 certain stockholders under certain circumstances; and generally relating to
14 corporations and real estate investment trusts.

15 BY repealing and reenacting, with amendments,
16 Article - Corporations and Associations
17 Section 1-301(a), 2-105(a), 3-105(a), 3-202(a), 8-203(a), and 8-501.1(c)
18 Annotated Code of Maryland
19 (1993 Replacement Volume and 1996 Supplement)

20 BY adding to
21 Article - Corporations and Associations
22 Section 8-203(g), 8-501.2, and 8-501.3
23 Annotated Code of Maryland
24 (1993 Replacement Volume and 1996 Supplement)

2

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

3 **Article - Corporations and Associations**

4 1-301.

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

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

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

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

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

23 (i) With respect to any Maryland corporation OR REAL ESTATE
24 INVESTMENT TRUST party to the articles, by the chairman or the secretary of the
25 meeting at which the articles or transaction were approved, or by the chairman or vice
26 chairman of the board of directors OR BOARD OF TRUSTEES, president, vice president,
27 secretary, or assistant secretary of the corporation OR REAL ESTATE INVESTMENT
28 TRUST;

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

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

35 2-105.

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

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

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

3

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

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

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

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

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

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

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

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

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

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

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

27 2. Any securities of the corporation convertible into additional
 28 issues of stock; or

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

31 (11) ~~FOR ANY PROVISION RESTRICTIONS ON TRANSFERABILITY FOR~~
 32 ~~ANY PURPOSE, INCLUDING RESTRICTIONS DESIGNED TO PERMIT A CORPORATION~~
 33 ~~TO QUALIFY AS;~~

34 (1) A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL
 35 REVENUE CODE OR REGULATIONS ADOPTED UNDER THE INTERNAL REVENUE
 36 CODE; OR AS

37 (2) AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY
 38 ACT OF 1940 OR REGULATIONS ADOPTED ~~THEREUNDER~~ UNDER THE INVESTMENT
 39 COMPANY ACT OF 1940.

4

1 3-105.

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

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

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

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

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

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

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

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

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

25 3-202.

26 (a) Except as provided in subsection (c) of this section, a stockholder of a
27 Maryland corporation has the right to demand and receive payment of the fair value of
28 the stockholder's stock from the successor if:

29 (1) The corporation consolidates or merges with another corporation;

30 (2) The stockholder's stock is to be acquired in a share exchange;

31 (3) The corporation transfers its assets in a manner requiring [corporate]
32 action under § 3-105(D) of this title;

33 (4) The corporation amends its charter in a way which alters the contract
34 rights, as expressly set forth in the charter, of any outstanding stock and substantially
35 adversely affects the stockholder's rights, unless the right to do so is reserved by the
36 charter of the corporation; or

37 (5) The transaction is governed by § 3-602 of this title or exempted by §
38 3-603(b) of this title.

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1 8-203.

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

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

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

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

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

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

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

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

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

28 8-501.1.

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

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

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

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

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

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

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

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

11 8-501.2.

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

15 (B) ARTICLES OF RESTATEMENT CONTAINING PROVISIONS REQUIRED BY §
16 2-608 OF THIS ARTICLE AND SUCH OTHER PROVISIONS AS MAY BE PERMITTED BY
17 THAT SECTION SHALL BE:

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

20 (2) FILED FOR RECORD WITH THE DEPARTMENT.

21 8-501.3.

22 (A) A COMPLETE RESTATEMENT OF THE DECLARATION OF TRUST MAY BE
23 SUBMITTED FOR APPROVAL IN THE MANNER REQUIRED FOR AN AMENDMENT OF
24 THE DECLARATION OF TRUST TO A MEETING OF THE REAL ESTATE INVESTMENT
25 TRUST'S SHAREHOLDERS OR TRUSTEES.

26 (B) IF THE RESTATEMENT IS SUBMITTED FOR APPROVAL IN THE MANNER
27 REQUIRED FOR AN AMENDMENT TO THE DECLARATION OF TRUST, ANY
28 AMENDMENTS TO THE DECLARATION OF TRUST APPROVED AT THE MEETING MAY
29 BE INCLUDED IN THE RESTATEMENT.

30 (C) ARTICLES OF AMENDMENT AND RESTATEMENT SHALL INCLUDE THE
31 PROVISIONS REQUIRED TO BE INCLUDED IN BOTH ARTICLES OF AMENDMENT AND
32 ARTICLES OF RESTATEMENT.

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

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

38 (2) FILED FOR RECORD WITH THE DEPARTMENT.

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