
By: **Delegate Frank**

Introduced and read first time: January 30, 1998

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 1998

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Extraordinary Actions**

3 FOR the purpose of allowing certain amendments to be made to the charter of a
4 corporation or to the declaration of trust of a real estate investment trust
5 without stockholder or shareholder approval; ~~repealing certain provisions of law~~
6 ~~allowing certain amendments to be made to the charter of a corporation without~~
7 ~~stockholder approval~~; allowing a Maryland corporation to consolidate with and
8 merge into a corporation or business trust organized under the laws of a foreign
9 country; clarifying that a certain merger need be approved by a certain
10 Maryland corporation only by a majority of its entire board under certain
11 circumstances; allowing a Maryland real estate investment trust to merge into a
12 business trust organized under the laws of a foreign country; altering the
13 circumstances under which a merger of a 90 percent or more owned subsidiary
14 corporation with or into its parent corporation may be effected without
15 stockholder approval; allowing a declaration of trust of a real estate investment
16 trust to include a provision requiring for any action a greater proportion of votes
17 than provided by statute; allowing proposed amendments to the declaration of
18 trust of a real estate investment trust to be approved by written consent of the
19 shareholders; altering certain definitions; making conforming and stylistic
20 changes; and generally relating to mergers, consolidations, and amendments to
21 the charters of corporations and the declarations of trust of real estate
22 investment trusts.

23 BY repealing and reenacting, with amendments,
24 Article - Corporations and Associations
25 Section 2-105(a) and (c), 2-306, 2-604, 2-605, 2-607(a), 3-101(b) and (e),
26 3-105(a)(5), 3-106, 3-202(b) and (c), 3-203(a), 8-202(c), 8-501, and
27 8-501.1(a)(3)

1 Annotated Code of Maryland
2 (1993 Replacement Volume and 1997 Supplement)

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

5 **Article - Corporations and Associations**

6 2-105.

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

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

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

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

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

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

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

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

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

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

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

31 (9) That the board of directors may classify or reclassify any unissued
32 stock from time to time by setting or changing the preferences, conversion or other
33 rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms
34 or conditions of redemption of the stock;

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

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

4 2. Any securities of the corporation convertible into
5 additional issues of stock; or

6 (ii) For any definition or limitation of the preemptive rights of
7 stockholders to acquire additional stock or securities in the corporation; [and]

8 (11) For restrictions on transferability for any purpose, including
9 restrictions designed to permit a corporation to qualify as:

10 (i) A real estate investment trust under the Internal Revenue Code
11 or regulations adopted under the Internal Revenue Code; or

12 (ii) An investment company under the Investment Company Act of
13 1940 or regulations adopted under the Investment Company Act of 1940; AND

14 (12) THAT THE BOARD OF DIRECTORS, WITH THE APPROVAL OF A
15 MAJORITY OF THE ENTIRE BOARD, AND WITHOUT ACTION BY THE STOCKHOLDERS,
16 MAY AMEND THE CHARTER TO INCREASE OR DECREASE THE AGGREGATE NUMBER
17 OF SHARES OF STOCK OF THE CORPORATION OR THE NUMBER OF SHARES OF STOCK
18 OF ANY CLASS THAT THE CORPORATION HAS AUTHORITY TO ISSUE.

19 (c) [The] NOTWITHSTANDING SUBSECTION (A)(12) OF THIS SECTION, THE
20 board of directors of a corporation that is registered or intends to register as an
21 open-end company under the Investment Company Act of 1940, after the registration
22 as an open-end company takes effect, may increase or decrease the aggregate number
23 of shares of stock or the number of shares of stock of any class that the corporation
24 has authority to issue, unless a provision has been included in the charter of the
25 corporation after July 1, 1987 prohibiting an action by the board of directors to
26 increase or decrease the aggregate number of shares of stock or the number of shares
27 of stock of any class that the corporation has authority to issue.

28 2-306.

29 (a) Unless the charter provides otherwise, if stated capital is reduced by
30 retiring stock held by the corporation, the board of directors may approve the
31 reduction without stockholder action.

32 (b) (1) Except as provided in subsection (a) of this section OR IN § 2-605 OF
33 THIS TITLE, a reduction of stated capital of a corporation, whether to be effected with
34 or without a charter amendment, shall be approved in the manner provided in this
35 subsection.

36 (2) The board of directors shall:

1 (i) Adopt a resolution which declares that the charter amendment,
2 if any, and the proposed reduction is advisable; and

3 (ii) Direct that the proposed reduction and any charter amendment
4 be submitted for consideration at either an annual or special meeting of the
5 stockholders.

6 (3) A notice which states that a purpose of the meeting will be to act on
7 the proposed reduction and any charter amendment shall be given in the manner
8 required by Subtitle 5 of this title to each stockholder entitled to vote on the matter.

9 (4) The proposed reduction and any charter amendment shall be
10 approved by the stockholders of the corporation by the affirmative vote of two thirds
11 of all the votes entitled to be cast on the matter.

12 2-604.

13 (A) THIS SECTION DOES NOT APPLY TO A CHARTER AMENDMENT ~~PERMITTED~~
14 ~~BY § 2-105(A)(12) BY THE BOARD OF DIRECTORS IN ACCORDANCE WITH § 2-105(A)(12)~~
15 AND (C) OF THIS TITLE.

16 [(a)] (B) If there is any stock outstanding or subscribed for entitled to be voted
17 on the charter amendment, it shall be approved as provided in this section.

18 [(b)] (C) The board of directors of a corporation proposing a charter
19 amendment shall:

20 (1) Adopt a resolution which sets forth the proposed amendment and
21 declares that it is advisable; and

22 (2) Direct that the proposed amendment be submitted for consideration
23 at either an annual or a special meeting of the stockholders.

24 [(c)] (D) (1) Notice which states that a purpose of the meeting will be to act
25 on the proposed amendment shall be given by the corporation in the manner required
26 by Subtitle 5 of this title to:

27 (i) Each stockholder entitled to vote on the proposed amendment;
28 and

29 (ii) Each stockholder not entitled to vote on the proposed
30 amendment if the contract rights of his stock, as expressly set forth in the charter,
31 would be altered by the amendment.

32 (2) The notice shall include a copy of the amendment or a summary of
33 the changes it will effect.

34 [(d)] (E) The proposed amendment shall be approved by the stockholders of
35 the corporation by the affirmative vote of two thirds of all the votes entitled to be cast
36 on the matter.

1 2-605.

2 (a) Notwithstanding the provisions of § 2-604 of this subtitle, a majority of the
3 entire board of directors, without action by the stockholders, may amend the charter
4 of a corporation to:

5 (1) [Delete from the corporate name the word "The" or the name of a
6 political subdivision or other geographical location of the State] CHANGE THE NAME
7 OF THE CORPORATION; OR

8 (2) [Abbreviate the word "corporation", "incorporated", "company", or
9 "limited" in the corporate name;] CHANGE THE NAME OR OTHER DESIGNATION OR
10 THE PAR VALUE OF ANY CLASS OR SERIES OF STOCK OF THE CORPORATION AND THE
11 AGGREGATE PAR VALUE OF THE STOCK OF THE CORPORATION.

12 [(3) Substitute in the corporate name for its respective abbreviation the
13 word "corporation", "incorporated", "company", or "limited"; or

14 (4) If the corporation is registered as an open-end company under the
15 Investment Company Act of 1940, change its corporate name or change the name or
16 other designation of any class or series of its stock.]

17 (b) A change in THE name or OTHER designation of a class or series of stock
18 under subsection [(a)(4)] (A)(2) of this section may not change the preferences,
19 conversion or other rights, voting powers, restrictions, limitations as to dividends,
20 qualifications, or terms or conditions of redemption of the class or series of stock.

21 2-607.

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

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

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

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

29 (ii) The amendment is limited to a change expressly ~~permitted by §~~
30 ~~2-605 of this subtitle OR BY § 2-105(A)(12)~~ AUTHORIZED BY § 2-105(A)(12) AND (C) AND
31 2-605 OF THIS TITLE to be made without action by the stockholders [and, if approved
32 under § 2-605(a)(4) of this subtitle, that the corporation is registered as an open-end
33 company under the Investment Company Act of 1940].

1 3-101.

2 (b) "Foreign corporation" means a corporation organized under the laws of the
3 United States, another state of the United States, or a territory, possession, or district
4 of the United States, OR UNDER THE LAWS OF A FOREIGN COUNTRY.

5 (e) "Foreign business trust" means a business trust organized under the laws
6 of the United States, another state of the United States, or a territory, possession, or
7 district of the United States, OR UNDER THE LAWS OF A FOREIGN COUNTRY.

8 3-105.

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

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

13 (i) The merger does not reclassify or change THE TERMS OF ANY
14 CLASS OR SERIES OF its [outstanding stock] STOCK THAT IS OUTSTANDING
15 IMMEDIATELY BEFORE THE MERGER BECOMES EFFECTIVE or otherwise amend its
16 charter and the number of its shares of stock to be issued or delivered in the merger
17 is not more than 20 percent of the number of its shares of the [same] class or series
18 OF STOCK THAT IS outstanding immediately before the merger becomes effective; or

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

21 3-106.

22 (a) Notwithstanding the provisions of § 3-105 of this subtitle, the merger of a
23 90 percent or more owned subsidiary corporation WITH OR into its parent corporation
24 may be effected as provided in this section[,] if:

25 (1) [the] THE charter of the [parent] SUCCESSOR is not amended in the
26 merger OTHER THAN TO CHANGE ITS NAME, THE NAME OR OTHER DESIGNATION OR
27 THE PAR VALUE OF ANY CLASS OR SERIES OF ITS STOCK, OR THE AGGREGATE PAR
28 VALUE OF ITS STOCK; AND

29 (2) THE CONTRACT RIGHTS OF ANY STOCK OF THE SUCCESSOR ISSUED
30 IN THE MERGER IN EXCHANGE FOR STOCK OF THE ~~PARENT CORPORATION OTHER~~
31 ~~CORPORATION PARTICIPATING IN THE MERGER~~ ARE IDENTICAL TO THE CONTRACT
32 RIGHTS OF THE STOCK FOR WHICH THE STOCK OF THE SUCCESSOR WAS
33 EXCHANGED.

34 (b) For the purposes of this section, a subsidiary is considered to be 90 percent
35 or more owned if the parent corporation owns shares entitled to cast 90 percent or
36 more of all the votes entitled to be cast of each group or class of shares entitled to vote
37 as a group or class on the merger.

1 (c) (1) The board of directors of each Maryland corporation proposing to
2 become a party to the merger shall adopt a resolution which approves the proposed
3 merger on substantially the terms and conditions set forth or referred to in the
4 resolution. The approval shall be by a majority vote of the entire board of directors. A
5 meeting of the stockholders is not necessary.

6 (2) If a foreign corporation is a party to the articles, the transaction shall
7 be advised, authorized, and approved by the corporation in the manner and by the
8 vote required by its charter and the laws of the place where it is organized.

9 (d) (1) Unless waived by all minority stockholders, at least 30 days before
10 the articles are filed with the Department, a parent corporation which owns less than
11 all of the outstanding stock of the subsidiary shall give notice of the transaction to
12 each of the subsidiary's minority stockholders of record on the date of giving of the
13 notice or on a record date fixed for that purpose which is not more than 10 days before
14 the date of giving notice.

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

18 3-202.

19 (b) (1) Fair value is determined as of the close of business:

20 (i) With respect to a merger under § 3-106 of this title of a 90
21 percent or more owned subsidiary WITH OR into its parent, on the day notice is given
22 or waived under § 3-106; or

23 (ii) With respect to any other transaction, on the day the
24 stockholders voted on the transaction objected to.

25 (2) Except as provided in paragraph (3) of this subsection, fair value may
26 not include any appreciation or depreciation which directly or indirectly results from
27 the transaction objected to or from its proposal.

28 (3) In any transaction governed by § 3-602 of this title or exempted by §
29 3-603(b) of this title, fair value shall be value determined in accordance with the
30 requirements of § 3-603(b) of this title.

31 (c) Unless the transaction is governed by § 3-602 of this title or is exempted
32 by § 3-603(b) of this title, a stockholder may not demand the fair value of his stock
33 and is bound by the terms of the transaction if:

34 (1) The stock is listed on a national securities exchange or is designated
35 as a national market system security on an interdealer quotation system by the
36 National Association of Securities Dealers, Inc.:

1 (i) With respect to a merger under § 3-106 of this title of a 90
2 percent or more owned subsidiary WITH OR into its parent, on the date notice is given
3 or waived under § 3-106; or

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

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

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

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

13 (3) The stock is that of an open-end investment company registered with
14 the Securities and Exchange Commission under the Investment Company Act of 1940
15 and the value placed on the stock in the transaction is its net asset value.

16 3-203.

17 (a) A stockholder of a corporation who desires to receive payment of the fair
18 value of his stock under this subtitle:

19 (1) Shall file with the corporation a written objection to the proposed
20 transaction:

21 (i) With respect to a merger under § 3-106 of this title of a 90
22 percent or more owned subsidiary WITH OR into its parent, within 30 days after notice
23 is given or waived under § 3-106; or

24 (ii) With respect to any other transaction, at or before the
25 stockholders' meeting at which the transaction will be considered;

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

27 (3) Within 20 days after the Department accepts the articles for record,
28 shall make a written demand on the successor for payment for his stock, stating the
29 number and class of shares for which he demands payment.

30 8-202.

31 (c) Notwithstanding any provision of this title which requires for any action
32 the concurrence of a greater proportion of the votes than a majority of the votes
33 entitled to be cast, a real estate investment trust may provide by its declaration of
34 trust that the action may be taken or authorized on the concurrence of a GREATER OR
35 smaller proportion, but not less than a majority of the number of votes entitled to be
36 cast on the matter.

1 8-501.

2 (a) Except as provided in § 8-202(c) or § 8-203(a)(7) of this title, a declaration
3 of trust may be amended only as provided in this section.

4 (b) The board of trustees of a real estate investment trust proposing an
5 amendment to its declaration of trust shall:

6 (1) Adopt a resolution which sets forth the proposed amendment and
7 declares that it is advisable; and

8 (2) Direct that the proposed amendment be submitted for consideration
9 [at either an annual or a special meeting of] BY the shareholders.

10 (c) (1) [Notice] IF THE PROPOSED AMENDMENT IS TO BE CONSIDERED AT A
11 MEETING OF THE SHAREHOLDERS, NOTICE which states that a purpose of the
12 meeting will be to act upon the proposed amendment shall be given by the real estate
13 investment trust in the manner required by its declaration of trust or bylaws to:

14 (i) Each shareholder entitled to vote on the proposed amendment;
15 and

16 (ii) Each shareholder not entitled to vote on the proposed
17 amendment if the contract rights of the shareholder's shares, as expressly set forth in
18 the declaration of trust, would be altered by the amendment.

19 (2) The notice shall include a copy of the amendment or a summary of
20 the changes it will affect.

21 (d) The proposed amendment shall be approved by the shareholders of the real
22 estate investment trust by the affirmative vote OR WRITTEN CONSENT of two thirds
23 of all the votes entitled to be cast on the matter.

24 (e) A declaration of trust may permit:

25 (1) [the] THE BOARD OF trustees [by a two-thirds vote], WITH THE
26 APPROVAL OF TWO THIRDS OF ITS MEMBERS, AND WITHOUT ACTION BY THE
27 SHAREHOLDERS, to amend [provisions of] the declaration of trust from time to time
28 to qualify as a real estate investment trust under the Internal Revenue Code or under
29 this title; AND

30 (2) A MAJORITY OF THE ENTIRE BOARD OF TRUSTEES, WITHOUT ACTION
31 BY THE SHAREHOLDERS, TO AMEND THE DECLARATION OF TRUST IN ANY RESPECT
32 IN WHICH THE CHARTER OF A CORPORATION MAY BE AMENDED ~~PURSUANT TO~~ IN
33 ACCORDANCE WITH § 2-605 OF THIS ARTICLE.

34 (f) Articles of amendment, setting forth the amendment and stating the
35 manner in which it was approved, shall be signed and acknowledged by at least a
36 majority of the trustees, or an officer duly authorized by at least a majority of the
37 trustees, and filed with the Department.

1 8-501.1.

2 (a) (3) "Foreign business trust" means a business trust organized under the
3 laws of the United States, another state of the United States, or a territory,
4 possession, or district of the United States, OR UNDER THE LAWS OF A FOREIGN
5 COUNTRY.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 1998.