

By: **Delegate Barve**

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Assigned to: Economic Matters

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CHAPTER _____

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Powers of Corporations**
3 **and Boards of Directors - Extraordinary Actions**

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

25 BY repealing and reenacting, with amendments,
26 Article - Corporations and Associations
27 Section 2-103(13), 2-105(a) and (c), 2-203, 2-306, 2-604, 2-605, 2-607(a),

1 3-101(b) and (e), 3-105(a)(5), 3-106, 3-202(b) and (c), 3-203(a), 8-202(c),
2 8-501, and 8-501.1(a)(3)
3 Annotated Code of Maryland
4 (1993 Replacement Volume and 1998 Supplement)

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

7 **Article - Corporations and Associations**

8 2-103.

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

11 (13) [If authorized by its board of directors, make] MAKE [reasonable]
12 gifts or contributions [out of profits] IN CASH, OTHER PROPERTY, OR STOCK OR
13 OTHER SECURITIES OF THE CORPORATION to or for the use of:

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

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

20 2-105.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 2. Any securities of the corporation convertible into
19 additional issues of stock; or

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

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

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

26 (ii) An investment company under the Investment Company Act of
27 1940 or regulations adopted under the Investment Company Act of 1940; AND

28 (12) THAT THE BOARD OF DIRECTORS, WITH THE APPROVAL OF A
29 MAJORITY OF THE ENTIRE BOARD, AND WITHOUT ACTION BY THE STOCKHOLDERS,
30 MAY AMEND THE CHARTER TO INCREASE OR DECREASE THE AGGREGATE NUMBER
31 OF SHARES OF STOCK OF THE CORPORATION OR THE NUMBER OF SHARES OF STOCK
32 OF ANY CLASS THAT THE CORPORATION HAS AUTHORITY TO ISSUE.

33 (c) [The] NOTWITHSTANDING SUBSECTION (A)(12) OF THIS SECTION, THE
34 board of directors of a corporation that is registered or intends to register as an
35 open-end company under the Investment Company Act of 1940, after the registration
36 as an open-end company takes effect, may increase or decrease the aggregate number
37 of shares of stock or the number of shares of stock of any class that the corporation

1 has authority to issue, unless a provision has been included in the charter of the
2 corporation after July 1, 1987 prohibiting an action by the board of directors to
3 increase or decrease the aggregate number of shares of stock or the number of shares
4 of stock of any class that the corporation has authority to issue.

5 2-203.

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

8 (1) Authorizes the issuance;

9 (2) Sets the minimum price or value of consideration for the stock or
10 convertible securities or a formula for its determination; and

11 (3) Fairly describes any consideration other than money and states:

12 (i) Its actual value as determined by the board of directors; or

13 (ii) That the board of directors has determined that the actual
14 value is or will be not less than a certain sum.

15 (b) In the absence of actual fraud in the transaction, the value of consideration
16 stated in the charter or determined by the board of directors in its resolution is
17 conclusive for all purposes.

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

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

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

23 (2) A consolidation, merger, or share exchange.

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

28 (F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR § 2-204
29 OR § 2-206 OF THIS SUBTITLE, A CORPORATION MAY ISSUE STOCK OR OTHER
30 SECURITIES OF THE CORPORATION PURSUANT TO § 2-103(13) OF THIS TITLE
31 WITHOUT CONSIDERATION OF ANY KIND.

32 2-306.

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

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

5 (2) The board of directors shall:

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

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

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

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

17 2-604.

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

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

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

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

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

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

31 (i) Each stockholder entitled to vote on the proposed amendment;
32 and

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

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

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

6 2-605.

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

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

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

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

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

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

26 2-607.

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

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

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

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

34 (ii) The amendment is limited to a change expressly [permitted by
35 § 2-605 of this subtitle] AUTHORIZED BY §§ 2-105(A)(12) ~~AND (C)~~ AND 2-605 OF THIS
36 TITLE to be made without action by the stockholders [and, if approved under §

1 2-605(a)(4) of this subtitle, that the corporation is registered as an open-end
2 company under the Investment Company Act of 1940].

3 3-101.

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

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

10 3-105.

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

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

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

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

24 3-106.

25 (a) Notwithstanding the provisions of § 3-105 of this subtitle, the merger of a
26 90 percent or more owned subsidiary corporation WITH OR into its parent corporation
27 may be effected as provided in this section[,] if:

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

32 (2) THE CONTRACT RIGHTS OF ANY STOCK OF THE SUCCESSOR ISSUED
33 IN THE MERGER IN EXCHANGE FOR STOCK OF THE OTHER CORPORATION
34 PARTICIPATING IN THE MERGER ARE IDENTICAL TO THE CONTRACT RIGHTS OF THE
35 STOCK FOR WHICH THE STOCK OF THE SUCCESSOR WAS EXCHANGED.

36 (b) For the purposes of this section, a subsidiary is considered to be 90 percent
37 or more owned if the parent corporation owns shares entitled to cast 90 percent or

1 more of all the votes entitled to be cast of each group or class of shares entitled to vote
2 as a group or class on the merger.

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

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

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

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

20 3-202.

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

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

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

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

30 (3) In any transaction governed by § 3-602 of this title or exempted by §
31 3-603(b) of this title, fair value shall be value determined in accordance with the
32 requirements of § 3-603(b) of this title.

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

36 (1) The stock is listed on a national securities exchange or is designated
37 as a national market system security on an interdealer quotation system by the
38 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 CORPORATION, on the date
3 notice is given 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 CORPORATION, within 30
23 days after notice 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 IN ACCORDANCE
33 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, 1999.