

SENATE BILL 169

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1999 Regular Session
9r0192
CF 9r0216

By: **The President (Administration)**

Introduced and read first time: January 28, 1999

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Unsolicited Takeovers**

3 FOR the purpose of authorizing a corporation to include certain provisions in its
4 articles of incorporation; authorizing a real estate investment trust to include
5 certain provisions in its declaration of trust; providing that the duties of
6 directors of a corporation and the duties of the trustees of a real estate
7 investment trust do not require them to take certain actions; providing that the
8 provisions of this Act do not apply unless certain corporations or real estate
9 investment trusts elect to be subject to them; providing that certain directors
10 may be removed only under certain circumstances; providing that certain
11 special meetings of stockholders of corporations or shareholders of real estate
12 investment trusts may be called only under specified circumstances; providing
13 for the effective date of this Act; defining certain terms; and generally relating to
14 corporations and real estate investment trusts.

15 BY adding to

16 Article - Corporations and Associations
17 Section 1-101(t-1), 2-201(c), 2-405.1(d) through (g), inclusive; 3-801 through
18 3-805, inclusive, to be under the new subtitle "Subtitle 8. Corporations and
19 Real Estate Investment Trusts - Unsolicited Takeovers"; and 8-601.1 to be
20 under the amended subtitle "Subtitle 6. Liabilities, Service of Process, and
21 Miscellaneous Provisions"
22 Annotated Code of Maryland
23 (1993 Replacement Volume and 1998 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article - Corporations and Associations
26 Section 2-104(b), 2-402, 2-404(b)(2), 2-406, 2-502, 2-504, 8-202(b), and 8-205
27 Annotated Code of Maryland
28 (1993 Replacement Volume and 1998 Supplement)

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

1 (8) A provision which varies in accordance with § 2-405.2 of this title the
2 standards for liability of the directors and officers of a corporation for money
3 damages; AND

4 (9) A PROVISION THAT ALLOWS THE BOARD OF DIRECTORS, IN
5 CONSIDERING A POTENTIAL ACQUISITION OF CONTROL OF A CORPORATION, TO
6 CONSIDER THE EFFECT OF THE POTENTIAL ACQUISITION OF CONTROL ON:

7 (I) STOCKHOLDERS, EMPLOYEES, SUPPLIERS, CUSTOMERS, AND
8 CREDITORS OF THE CORPORATION; AND

9 (II) COMMUNITIES IN WHICH OFFICES OR OTHER
10 ESTABLISHMENTS OF THE CORPORATION ARE LOCATED.

11 2-201.

12 (C) (1) THE BOARD OF DIRECTORS OF A CORPORATION MAY, IN ITS SOLE
13 DISCRETION:

14 (I) SET THE TERMS AND CONDITIONS OF RIGHTS, OPTIONS, OR
15 WARRANTS UNDER A STOCKHOLDER RIGHTS PLAN; AND

16 (II) ISSUE RIGHTS, OPTIONS, OR WARRANTS TO DESIGNATED
17 PERSONS OR CLASSES OF PERSONS.

18 (2) THE RIGHTS, OPTIONS, OR WARRANTS MAY, IN THE SOLE
19 DISCRETION OF THE BOARD OF DIRECTORS, INCLUDE ANY LIMITATION,
20 RESTRICTION, OR CONDITION THAT:

21 (I) PRECLUDES, LIMITS, INVALIDATES, OR VOIDS THE EXERCISE,
22 TRANSFER, OR RECEIPT OF THE RIGHTS, OPTIONS, OR WARRANTS BY DESIGNATED
23 PERSONS OR CLASSES OF PERSONS IN SPECIFIED CIRCUMSTANCES; OR

24 (II) LIMITS FOR A PERIOD NOT TO EXCEED 180 DAYS THE POWER OF
25 A FUTURE DIRECTOR TO REDEEM, MODIFY, OR TERMINATE THE RIGHTS, OPTIONS, OR
26 WARRANTS.

27 2-402.

28 (a) Each corporation shall have at least three directors at all times, provided
29 that:

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

32 (2) If there is stock outstanding and so long as there are less than three
33 stockholders, the number of directors may be less than three but not less than the
34 number of stockholders.

35 (b) Subject to the provisions of subsection (a) of this section AND EXCEPT FOR
36 A CORPORATION THAT HAS ELECTED TO BE SUBJECT TO § 3-804(B) OF THIS ARTICLE,

1 a Maryland corporation shall have the number of directors provided in its charter
2 until changed by the bylaws.

3 (c) Subject to the provisions of subsection (a) of this section AND EXCEPT FOR
4 A CORPORATION THAT HAS ELECTED TO BE SUBJECT TO § 3-804(B) OF THIS ARTICLE,
5 the bylaws may:

6 (1) Alter the number of directors set by the charter; and

7 (2) Authorize a majority of the entire board of directors to alter within
8 specified limits the number of directors set by the charter or the bylaws, but the
9 action may not affect the tenure of office of any director.

10 2-404.

11 (b) (2) [If] EXCEPT FOR A CORPORATION THAT HAS ELECTED TO BE
12 SUBJECT TO § 3-803 OF THIS ARTICLE, IF the directors are divided into classes, the
13 term of office may be provided in the bylaws, except that:

14 (i) The term of office of a director may not be longer than five years
15 or, except in the case of an initial or substitute director, shorter than the period
16 between annual meetings; and

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

18 2-405.1.

19 (D) THE DUTY OF THE DIRECTORS OF A CORPORATION DOES NOT REQUIRE
20 THEM TO:

21 (1) ACCEPT, RECOMMEND, OR RESPOND TO ANY PROPOSAL BY AN
22 ACQUIRING PERSON AS DEFINED IN § 3-801 OF THIS ARTICLE;

23 (2) AUTHORIZE THE CORPORATION TO REDEEM ANY RIGHTS UNDER OR
24 MODIFY OR RENDER INAPPLICABLE, A STOCKHOLDER RIGHTS PLAN;

25 (3) ELECT TO BE SUBJECT TO OR REFRAIN FROM ELECTING TO BE
26 SUBJECT TO ANY OR ALL OF THE PROVISIONS OF TITLE 3, SUBTITLE 8 OF THIS
27 ARTICLE;

28 (4) MAKE A DETERMINATION UNDER THE PROVISIONS OF TITLE 3,
29 SUBTITLE 6 OR SUBTITLE 7 OF THIS ARTICLE; OR

30 (5) ACT OR FAIL TO ACT SOLELY BECAUSE OF:

31 (I) THE EFFECT THE ACT OR FAILURE TO ACT MAY HAVE ON AN
32 ACQUISITION OR POTENTIAL ACQUISITION OF CONTROL OF THE CORPORATION; OR

33 (II) THE AMOUNT OR TYPE OF ANY CONSIDERATION THAT MAY BE
34 OFFERED OR PAID TO STOCKHOLDERS IN AN ACQUISITION.

1 (E) AN ACT OF THE DIRECTORS OF A CORPORATION IS PRESUMED TO SATISFY
2 THE STANDARDS OF SUBSECTION (A) OF THIS SECTION.

3 (F) AN ACT OF A DIRECTOR RELATING TO OR AFFECTING AN ACQUISITION OR
4 A POTENTIAL ACQUISITION OF CONTROL OF A CORPORATION MAY NOT BE SUBJECT
5 TO A HIGHER DUTY OR GREATER SCRUTINY THAN IS APPLIED TO ANY OTHER ACT OF
6 A DIRECTOR.

7 (G) NOTHING IN THIS SECTION CREATES A DUTY OF ANY DIRECTOR OF A
8 CORPORATION ENFORCEABLE OTHERWISE THAN BY THE CORPORATION OR IN THE
9 RIGHT OF THE CORPORATION.

10 2-406.

11 (a) [Except as provided in subsection (b) of this section and unless the charter
12 of the corporation provides otherwise, the] THE stockholders of a corporation may
13 remove any director, with or without cause, by the affirmative vote of a majority of all
14 the votes entitled to be cast for the election of directors, EXCEPT:

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

16 (2) AS OTHERWISE PROVIDED IN THE CHARTER OF THE CORPORATION;
17 OR

18 (3) FOR A CORPORATION THAT HAS ELECTED TO BE SUBJECT TO §
19 3-804(A) OF THIS ARTICLE.

20 (b) Unless the charter of the corporation provides otherwise:

21 (1) If the stockholders of any class or series are entitled separately to
22 elect one or more directors, a director elected by a class or series may not be removed
23 without cause except by the affirmative vote of a majority of all the votes of that class
24 or series;

25 (2) If a corporation has cumulative voting for the election of directors and
26 less than the entire board is to be removed, a director may not be removed without
27 cause if the votes cast against his removal would be sufficient to elect him if then
28 cumulatively voted at an election of the entire board of directors, or, if there is more
29 than one class of directors, at an election of the class of directors of which he is a
30 member; and

31 (3) If the directors have been divided into classes, a director may not be
32 removed without cause.

33 2-502.

34 (a) A special meeting of the stockholders of a corporation may be called by:

35 (1) The president;

36 (2) The board of directors; or

1 (3) Any other person specified in the charter or the bylaws.

2 (b) (1) Except as provided in subsections (c) and (d) of this section, AND
3 EXCEPT FOR A CORPORATION THAT HAS ELECTED TO BE SUBJECT TO § 3-805 OF THIS
4 ARTICLE, the secretary of a corporation shall call a special meeting of the stockholders
5 on the written request of stockholders entitled to cast at least 25 percent of all the
6 votes entitled to be cast at the meeting.

7 (2) A request for a special meeting shall state the purpose of the meeting
8 and the matters proposed to be acted on at it.

9 (3) The secretary shall:

10 (i) Inform the stockholders who make the request of the reasonably
11 estimated cost of preparing and mailing a notice of the meeting; and

12 (ii) On payment of these costs to the corporation, notify each
13 stockholder entitled to notice of the meeting.

14 (c) Unless requested by stockholders entitled to cast a majority of all the votes
15 entitled to be cast at the meeting, a special meeting need not be called to consider any
16 matter which is substantially the same as a matter voted on at any special meeting of
17 the stockholders held during the preceding 12 months.

18 (d) (1) Subject to paragraph (2) of this subsection, a corporation may include
19 in its charter or bylaws a provision that requires the written request of stockholders
20 entitled to cast a greater or lesser percentage of all votes entitled to be cast at the
21 meeting than that required by subsection (b)(1) of this section in order to call a special
22 meeting of the stockholders.

23 (2) The percentage provided for in the charter or bylaws may not be
24 greater than a majority of all the votes entitled to be cast at the meeting.

25 (E) THE BOARD OF DIRECTORS HAS THE SOLE POWER TO FIX THE RECORD
26 DATE FOR DETERMINING STOCKHOLDERS ENTITLED TO REQUEST A SPECIAL
27 MEETING OF THE STOCKHOLDERS AND THE RECORD DATE FOR DETERMINING
28 STOCKHOLDERS ENTITLED TO NOTICE OF AND TO VOTE AT THE MEETING AND TO
29 SET THE DATE, TIME, AND PLACE OF THE MEETING.

30 2-504.

31 (a) Not less than ten nor more than 90 days before each stockholders' meeting,
32 the secretary of the corporation shall give written notice of the meeting to:

33 (1) Each stockholder entitled to vote at the meeting; and

34 (2) Each other stockholder entitled to notice of the meeting.

35 (b) The notice shall state:

36 (1) The time and place of the meeting; and

- 1 (2) The purpose of the meeting, if:
2 (i) The meeting is a special meeting; or
3 (ii) Notice of the purpose is required by any other provision of this
4 article.

5 (c) For purposes of this section, notice is given to a stockholder when it is:

- 6 (1) Personally delivered to him;
7 (2) Left at his residence or usual place of business; or
8 (3) Mailed to him at his address as it appears on the records of the
9 corporation.

10 (d) Whenever this article or the charter or bylaws of a corporation require
11 notice of the time, place, or purpose of a meeting of the stockholders, each person who
12 is entitled to the notice waives notice if he:

- 13 (1) Before or after the meeting signs a waiver of the notice which is filed
14 with the records of stockholders meetings; or
15 (2) Is present at the meeting in person or by proxy.

16 (E) THE CHARTER OR BYLAWS MAY REQUIRE ANY STOCKHOLDER PROPOSING
17 A NOMINEE FOR ELECTION AS A DIRECTOR OR ANY OTHER MATTER FOR
18 CONSIDERATION AT A MEETING OF THE STOCKHOLDERS TO PROVIDE ADVANCE
19 NOTICE OF THE NOMINATION OR PROPOSAL TO THE CORPORATION OF NOT MORE
20 THAN 90 DAYS BEFORE THE DATE OF THE MEETING.

21 SUBTITLE 8. CORPORATIONS AND REAL ESTATE INVESTMENT TRUSTS -
22 UNSOLICITED TAKEOVERS.

23 3-801.

24 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
25 INDICATED.

26 (B) "ACQUIRING PERSON" MEANS A PERSON WHO IS SEEKING TO ACQUIRE
27 CONTROL OF A CORPORATION.

28 (C) "ACT" INCLUDES AN OMISSION OR FAILURE TO ACT.

29 (D) "AFFILIATE" MEANS A PERSON THAT DIRECTLY, OR INDIRECTLY THROUGH
30 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER
31 COMMON CONTROL WITH, A SPECIFIED PERSON.

32 (E) "ASSOCIATE", WHEN USED TO INDICATE A RELATIONSHIP WITH ANY
33 PERSON, MEANS:

1 (1) ANY CORPORATION OR ORGANIZATION (OTHER THAN THE
2 CORPORATION OR A SUBSIDIARY OF THE CORPORATION) OF WHICH SUCH PERSON IS
3 AN OFFICER, DIRECTOR, OR PARTNER OR IS, DIRECTLY OR INDIRECTLY, THE
4 BENEFICIAL OWNER OF 10 PERCENT OR MORE OF ANY CLASS OF EQUITY
5 SECURITIES;

6 (2) ANY TRUST OR OTHER ESTATE IN WHICH SUCH PERSON HAS A
7 SUBSTANTIAL BENEFICIAL INTEREST OR AS TO WHICH SUCH PERSON SERVES AS
8 TRUSTEE OR IN A SIMILAR FIDUCIARY CAPACITY; AND

9 (3) ANY RELATIVE OR SPOUSE OF SUCH PERSON, OR ANY RELATIVE OF
10 SUCH SPOUSE, WHO HAS THE SAME HOME AS SUCH PERSON OR WHO IS A DIRECTOR
11 OR OFFICER OF THE CORPORATION OR ANY OF ITS AFFILIATES.

12 (F) "BENEFICIAL OWNER", WHEN USED WITH RESPECT TO ANY STOCK, MEANS
13 A PERSON:

14 (1) THAT, INDIVIDUALLY OR WITH ANY OF ITS AFFILIATES OR
15 ASSOCIATES, BENEFICIALLY OWNS STOCK, DIRECTLY OR INDIRECTLY; OR

16 (2) THAT, INDIVIDUALLY OR WITH ANY OF ITS AFFILIATES OR
17 ASSOCIATES, HAS:

18 (I) THE RIGHT TO ACQUIRE STOCK (WHETHER SUCH RIGHT IS
19 EXERCISABLE IMMEDIATELY OR ONLY AFTER THE PASSAGE OF TIME), PURSUANT TO
20 ANY AGREEMENT, ARRANGEMENT, OR UNDERSTANDING OR UPON THE EXERCISE OF
21 CONVERSION RIGHTS, EXCHANGE RIGHTS, WARRANTS OR OPTIONS, OR OTHERWISE;
22 OR

23 (II) THE RIGHT TO VOTE STOCK PURSUANT TO ANY AGREEMENT,
24 ARRANGEMENT, OR UNDERSTANDING; OR

25 (3) THAT HAS ANY AGREEMENT, ARRANGEMENT, OR UNDERSTANDING
26 FOR THE PURPOSE OF ACQUIRING, HOLDING, VOTING, OR DISPOSING OF STOCK WITH
27 ANY OTHER PERSON THAT BENEFICIALLY OWNS, OR WHOSE AFFILIATES OR
28 ASSOCIATES BENEFICIALLY OWN, DIRECTLY OR INDIRECTLY, SUCH SHARES OF
29 STOCK.

30 (G) (1) "CHARTER" HAS THE MEANING STATED IN § 1-101(E) OF THIS
31 ARTICLE.

32 (2) "CHARTER" INCLUDES THE DECLARATION OF TRUST OF A REAL
33 ESTATE INVESTMENT TRUST.

34 (H) "CONTROL", INCLUDING THE TERMS "CONTROLLING", "CONTROLLED BY",
35 AND "UNDER COMMON CONTROL WITH", MEANS THE POSSESSION, DIRECTLY OR
36 INDIRECTLY, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE
37 MANAGEMENT AND POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP
38 OF VOTING SECURITIES, BY CONTRACT, OR OTHERWISE, AND THE BENEFICIAL

1 OWNERSHIP OF 10 PERCENT OR MORE OF THE VOTES ENTITLED TO BE CAST BY A
2 CORPORATION'S STOCK CREATES A PRESUMPTION OF CONTROL.

3 (I) "CORPORATION" INCLUDES A REAL ESTATE INVESTMENT TRUST AS
4 DEFINED IN TITLE 8 OF THIS ARTICLE.

5 (J) "DIRECTOR" INCLUDES A TRUSTEE OF A REAL ESTATE INVESTMENT
6 TRUST.

7 (K) "EQUITY SECURITY" MEANS:

8 (1) ANY STOCK OR SIMILAR SECURITY, CERTIFICATE OF INTEREST, OR
9 PARTICIPATION IN ANY PROFIT SHARING AGREEMENT, VOTING TRUST CERTIFICATE,
10 OR CERTIFICATE OF DEPOSIT FOR AN EQUITY SECURITY;

11 (2) ANY SECURITY CONVERTIBLE, WITH OR WITHOUT CONSIDERATION,
12 INTO AN EQUITY SECURITY, OR ANY WARRANT OR OTHER SECURITY CARRYING ANY
13 RIGHT TO SUBSCRIBE TO OR PURCHASE AN EQUITY SECURITY; OR

14 (3) ANY PUT, CALL, STRADDLE, OR OTHER OPTION OR PRIVILEGE OF
15 BUYING AN EQUITY SECURITY FROM OR SELLING AN EQUITY SECURITY TO ANOTHER
16 WITHOUT BEING BOUND TO DO SO.

17 (L) "REAL ESTATE INVESTMENT TRUST" HAS THE MEANING STATED IN TITLE
18 8 OF THIS ARTICLE.

19 (M) "STOCKHOLDER" INCLUDES A SHAREHOLDER OF A REAL ESTATE
20 INVESTMENT TRUST.

21 (N) "SUBSIDIARY" MEANS ANY CORPORATION OF WHICH STOCK HAVING A
22 MAJORITY OF THE VOTES ENTITLED TO BE CAST IS OWNED, DIRECTLY OR
23 INDIRECTLY, BY THE CORPORATION.

24 3-802.

25 (A) NOTWITHSTANDING ANY OTHER PROVISION IN THIS ARTICLE EXCEPT
26 SUBSECTION (B) OF THIS SECTION, THIS SUBTITLE APPLIES TO EACH CORPORATION
27 THAT:

28 (1) HAS A CLASS OF EQUITY SECURITIES REGISTERED UNDER THE
29 FEDERAL SECURITIES EXCHANGE ACT OF 1934; AND

30 (2) ELECTS TO BE SUBJECT TO ANY OR ALL PROVISIONS, IN WHOLE OR
31 IN PART, OF THIS SUBTITLE BY PROVISION IN:

32 (I) ITS CHARTER OR BYLAWS;

33 (II) A RESOLUTION OF ITS BOARD OF DIRECTORS; OR

34 (III) ARTICLES SUPPLEMENTARY FILED WITH THE DEPARTMENT.

1 (B) (1) THIS SUBTITLE MAY APPLY ONLY TO A CORPORATION THAT HAS AT
2 LEAST THREE DIRECTORS EACH OF WHOM AT THE TIME OF ANY ACT:

3 (I) IS NOT AN OFFICER OR EMPLOYEE OF THE CORPORATION;

4 (II) IS NOT AN ACQUIRING PERSON;

5 (III) IS NOT A DIRECTOR, OFFICER, AFFILIATE, OR ASSOCIATE OF AN
6 ACQUIRING PERSON; AND

7 (IV) WAS NOT NOMINATED OR DESIGNATED AS A DIRECTOR BY AN
8 ACQUIRING PERSON.

9 (2) A DIRECTOR DOES NOT FAIL TO SATISFY PARAGRAPH (1) OF THIS
10 SUBSECTION BECAUSE THE DIRECTOR:

11 (I) OWNS SECURITIES ISSUED BY THE CORPORATION;

12 (II) IS ENTITLED TO COMPENSATION, RETIREMENT, SEVERANCE,
13 OR OTHER BENEFITS AS A DIRECTOR OF THE CORPORATION; OR

14 (III) MIGHT CONTINUE TO SERVE AS A DIRECTOR OF THE
15 CORPORATION OR OF AN ACQUIRING PERSON.

16 (3) THIS SUBTITLE DOES NOT APPLY TO A CORPORATION TO THE
17 EXTENT THAT THE CORPORATION ELECTS NOT TO BE SUBJECT TO ANY PROVISION
18 OF THIS SUBTITLE TO WHICH IT HAS PREVIOUSLY ELECTED TO BE SUBJECT, IF THE
19 CORPORATION ELECTS NOT TO BE SUBJECT TO THE PROVISION IN THE SAME
20 MANNER IN WHICH IT ELECTED TO BECOME SUBJECT TO THE PROVISION.

21 (C) NOTHING IN THIS SUBTITLE MAY BE DEEMED TO PRESCRIBE, MODIFY, OR
22 CREATE ANY INFERENCE CONCERNING THE DUTIES OF DIRECTORS TO THE EXTENT
23 THAT THIS SUBTITLE IS IN WHOLE OR IN PART INAPPLICABLE, BECAUSE:

24 (1) THE CORPORATION FAILS TO ELECT TO BE GOVERNED BY ALL OR
25 PART OF THIS SUBTITLE; OR

26 (2) THIS SUBTITLE DOES NOT OTHERWISE APPLY.

27 3-803.

28 (A) (1) BEFORE THE FIRST ANNUAL MEETING OF STOCKHOLDERS AFTER A
29 CORPORATION BECOMES SUBJECT TO THIS SUBTITLE, THE BOARD OF DIRECTORS
30 SHALL DESIGNATE BY RESOLUTION, FROM AMONG ITS MEMBERS, DIRECTORS TO
31 SERVE AS CLASS I DIRECTORS, CLASS II DIRECTORS, AND CLASS III DIRECTORS.

32 (2) TO THE EXTENT POSSIBLE, THE CLASSES SHALL HAVE THE SAME
33 NUMBER OF DIRECTORS.

34 (B) THE TERM OF OFFICE OF THE CLASS I DIRECTORS SHALL CONTINUE
35 UNTIL THE FIRST ANNUAL MEETING OF STOCKHOLDERS AFTER THE DATE ON

1 WHICH THE CORPORATION BECOMES SUBJECT TO THIS SUBTITLE AND UNTIL THEIR
2 SUCCESSORS ARE ELECTED AND QUALIFY.

3 (C) THE TERM OF OFFICE OF THE CLASS II DIRECTORS SHALL CONTINUE
4 UNTIL THE SECOND ANNUAL MEETING OF STOCKHOLDERS AFTER THE DATE ON
5 WHICH THE CORPORATION BECOMES SUBJECT TO THIS SUBTITLE AND UNTIL THEIR
6 SUCCESSORS ARE ELECTED AND QUALIFY.

7 (D) THE TERM OF OFFICE OF THE CLASS III DIRECTORS SHALL CONTINUE
8 UNTIL THE THIRD ANNUAL MEETING OF STOCKHOLDERS FOLLOWING THE DATE ON
9 WHICH THE CORPORATION BECOMES SUBJECT TO THIS SUBTITLE AND UNTIL THEIR
10 SUCCESSORS ARE ELECTED AND QUALIFY.

11 (E) AT EACH ANNUAL MEETING OF THE STOCKHOLDERS OF A CORPORATION,
12 THE SUCCESSORS TO THE CLASS OF DIRECTORS WHOSE TERM EXPIRES AT THAT
13 MEETING SHALL BE ELECTED TO HOLD OFFICE FOR A TERM CONTINUING UNTIL:

14 (1) THE ANNUAL MEETING OF STOCKHOLDERS HELD IN THE THIRD
15 YEAR FOLLOWING THE YEAR OF THEIR ELECTION; AND

16 (2) THEIR SUCCESSORS ARE ELECTED AND QUALIFY.

17 (F) THIS SUBTITLE DOES NOT LIMIT THE POWER OF A CORPORATION BY
18 PROVISION IN ITS CHARTER TO:

19 (1) CONFER ON THE HOLDERS OF ANY CLASS OR SERIES OF
20 PREFERENCE OR PREFERRED STOCK THE RIGHT TO ELECT ONE OR MORE
21 DIRECTORS; AND

22 (2) DESIGNATE THE TERMS AND VOTING POWERS OF THE DIRECTORS,
23 WHICH MAY VARY AMONG THE DIRECTORS.

24 3-804.

25 (A) NOTWITHSTANDING ANY OTHER LESSER PROPORTION OF VOTES
26 REQUIRED BY A PROVISION IN THE CHARTER OR THE BYLAWS, BUT SUBJECT TO §
27 2-406(B) OF THIS ARTICLE THE STOCKHOLDERS OF A CORPORATION MAY REMOVE
28 ANY DIRECTOR BY THE AFFIRMATIVE VOTE OF AT LEAST TWO-THIRDS OF ALL THE
29 VOTES ENTITLED TO BE CAST BY THE STOCKHOLDERS.

30 (B) SUBJECT TO § 2-402 OF THIS ARTICLE BUT NOTWITHSTANDING ANY
31 PROVISION IN THE CHARTER OR BYLAWS, THE NUMBER OF DIRECTORS OF A
32 CORPORATION SHALL BE FIXED ONLY BY VOTE OF THE BOARD OF DIRECTORS.

33 (C) (1) NOTWITHSTANDING ANY PROVISION IN THE CHARTER OR BYLAWS,
34 THIS SUBSECTION APPLIES TO A VACANCY THAT RESULTS FROM:

35 (I) AN INCREASE IN THE SIZE OF THE BOARD OF DIRECTORS; OR

36 (II) THE DEATH, RESIGNATION, OR REMOVAL OF A DIRECTOR.

1 (2) EACH VACANCY ON THE BOARD OF DIRECTORS OF A CORPORATION
2 MAY BE FILLED ONLY BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE
3 REMAINING DIRECTORS IN OFFICE, EVEN IF THE REMAINING DIRECTORS DO NOT
4 CONSTITUTE A QUORUM.

5 (3) ANY DIRECTOR ELECTED TO FILL A VACANCY SHALL HOLD OFFICE:

6 (I) FOR THE REMAINDER OF THE FULL TERM OF THE CLASS OF
7 DIRECTORS IN WHICH THE VACANCY OCCURRED; AND

8 (II) UNTIL A SUCCESSOR IS ELECTED AND QUALIFIES.

9 3-805.

10 NOTWITHSTANDING ANY PROVISION IN THE CHARTER OR BYLAWS, THE
11 SECRETARY OF A CORPORATION MAY CALL A SPECIAL MEETING OF STOCKHOLDERS
12 ONLY:

13 (1) ON THE WRITTEN REQUEST OF THE STOCKHOLDERS ENTITLED TO
14 CAST AT LEAST A MAJORITY OF ALL THE VOTES ENTITLED TO BE CAST AT THE
15 MEETING; AND

16 (2) IN ACCORDANCE WITH THE PROCEDURES SET FORTH UNDER § 2-502
17 OF THIS ARTICLE.

18 8-202.

19 (b) (1) The declaration of trust shall:

20 [(1)] (I) Indicate clearly that the trust is a real estate investment trust;

21 [(2)] (II) State the name of the trust;

22 [(3)] (III) State the total number of shares which the real estate
23 investment trust has authority to issue;

24 [(4)] (IV) Provide for an annual meeting of shareholders after the
25 delivery of the annual report, at a convenient location and on proper notice;

26 [(5)] (V) Provide for the election of trustees at least every third year at
27 an annual meeting of shareholders;

28 [(6)] (VI) State the number of trustees and the names of those persons
29 who will serve as trustees until the first meeting of shareholders and until their
30 successors are elected and qualify or such later time as may be specified in the
31 declaration of trust;

32 [(7)] (VII) State the name and address of a resident agent of the real
33 estate investment trust in the State; and

1 [(8)] (VIII) If the shares are divided into classes as permitted by § 8-203
2 of this subtitle, provide a description of each class, including any preferences,
3 conversion and other rights, voting powers, restrictions, limitations as to dividends or
4 distributions, qualifications, and terms and conditions of redemption.

5 (2) A DECLARATION OF TRUST MAY INCLUDE A PROVISION THAT
6 ALLOWS THE TRUSTEES, IN CONSIDERING A POTENTIAL ACQUISITION OF CONTROL
7 OF A REAL ESTATE INVESTMENT TRUST, TO CONSIDER THE EFFECT OF THE
8 POTENTIAL ACQUISITION OF CONTROL ON:

9 (I) SHAREHOLDERS, EMPLOYEES, SUPPLIERS, CUSTOMERS, AND
10 CREDITORS OF THE TRUST; AND

11 (II) COMMUNITIES IN WHICH OFFICES OR OTHER
12 ESTABLISHMENTS OF THE TRUST ARE LOCATED.

13 8-205.

14 Unless the declaration of trust provides otherwise OR THE REAL ESTATE
15 INVESTMENT TRUST ELECTS TO BE SUBJECT TO § 3-804(A) OF THIS ARTICLE, the
16 shareholders of a real estate investment trust may remove any trustee, with or
17 without cause, by the affirmative vote of a majority of all the votes entitled to be cast
18 for the election of trustees.

19 Subtitle 6. Liabilities [and], Service of Process, AND MISCELLANEOUS PROVISIONS.

20 8-601.1.

21 SECTIONS 2-201(C), 2-405.1, 2-502(E), AND 2-504(E) OF THIS ARTICLE SHALL
22 APPLY TO REAL ESTATE INVESTMENT TRUSTS.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 June 1, 1999.