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Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts**

3 FOR the purpose of providing that signatures on certain documents filed with the  
4 State Department of Assessments and Taxation may be facsimiles; providing  
5 that a certain determination required or permitted to be made relating to assets  
6 and liabilities, book value, fair value, or the authorization of a distribution is  
7 prima facie proper under certain circumstances; providing that certain  
8 determinations may be made for a corporation separately or for the corporation  
9 and its subsidiaries on a consolidated basis; altering the maximum number of  
10 persons to whom a corporation may issue shares of its stock without  
11 consideration for the purpose of qualifying the corporation as a real estate  
12 investment trust under the Internal Revenue Code; authorizing chief executive  
13 officers, chief operating officers, chief financial officers, and vice chairmen of the  
14 board of directors of a corporation to sign stock certificates; clarifying that a  
15 direct or indirect transfer of money or other property of a corporation in respect  
16 of its own shares is a distribution; repealing a requirement that the board of  
17 directors make a certain allocation of consideration for stock without par value  
18 before the stock is issued; repealing a requirement that the application of the  
19 capital surplus of a corporation be disclosed to stockholders under certain  
20 circumstances; altering certain provisions of law governing indemnification of  
21 certain individuals to include a managing member of a limited liability  
22 company; clarifying that a corporation may obligate itself to indemnify and to  
23 pay or reimburse certain expenses under certain circumstances; providing that  
24 the status of certain judicial proceedings does not, of itself, create a presumption  
25 that certain persons have not satisfied a certain standard of conduct for  
26 directors of a Maryland corporation; repealing a requirement that a certain  
27 report be given to stockholders of a corporation; authorizing consent by  
28 electronic transmission under certain circumstances; providing for less than  
29 unanimous consent for certain stockholder actions; clarifying a certain notice  
30 provision; clarifying that a certain percentage of votes cast at a meeting of  
31 stockholders on certain matters is sufficient to approve those matters; limiting  
32 certain stockholder inspection rights; altering the number of days within which  
33 a corporation must respond to certain requests for information; altering certain  
34 notice provisions with respect to certain parent and subsidiary mergers;  
35 clarifying that certain stockholders retain their appraisal rights under certain

1 circumstances; altering the time within which a stockholder exercising the  
2 stockholder's appraisal rights must file a certain written objection; repealing a  
3 requirement that a certain notice be mailed to employees of certain corporations;  
4 altering certain provisions of law relating to business combinations and  
5 interested stockholders under the Maryland Business Combination Act;  
6 clarifying certain provisions that may be contained in the declaration of trust of  
7 a real estate investment trust formed under the Maryland REIT Law; clarifying  
8 the powers of Maryland real estate investment trusts; altering the requirements  
9 for making certain amendments to the declaration of trust of a Maryland real  
10 estate investment trust; clarifying the standard of conduct for the trustees of a  
11 Maryland real estate investment trust; altering certain definitions; making  
12 certain technical and stylistic changes; and generally relating to Maryland  
13 corporations and Maryland real estate investment trusts.

14 BY repealing and reenacting, without amendments,  
15 Article - Corporations and Associations  
16 Section 1-101(a) and 3-601(a)  
17 Annotated Code of Maryland  
18 (1999 Replacement Volume and 2000 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article - Corporations and Associations  
21 Section 1-101(v), 1-402, 2-206(d), 2-212(a), 2-301(a), 2-303(b), 2-304, 2-308,  
22 2-418(a)(1) and (4), (b)(3), (g), and (k), 2-505, 2-506(a), 2-513, 3-106(d),  
23 3-202(c), 3-203(a), 3-404, 3-601(e) and (j), 3-602(a), 8-202(b)(2) and (3),  
24 8-301, 8-501(e), and 8-601.1  
25 Annotated Code of Maryland  
26 (1999 Replacement Volume and 2000 Supplement)

27 BY adding to  
28 Article - Corporations and Associations  
29 Section 1-201(d)  
30 Annotated Code of Maryland  
31 (1999 Replacement Volume and 2000 Supplement)

32 BY repealing  
33 Article - Corporations and Associations  
34 Section 2-418(l)  
35 Annotated Code of Maryland  
36 (1999 Replacement Volume and 2000 Supplement)

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

1 **Article - Corporations and Associations**

2 1-101.

3 (a) In this article, unless the context clearly requires otherwise, the following  
4 words have the meanings indicated.

5 (v) (1) "Transfer assets", "transfer its assets", and "transfer of assets" mean  
6 to sell, lease, exchange, or otherwise transfer all or substantially all of the assets of a  
7 corporation.

8 (2) "TRANSFER ASSETS", "TRANSFER ITS ASSETS", AND "TRANSFER OF  
9 ASSETS" DOES NOT INCLUDE A TRANSACTION AFTER WHICH THE CORPORATION  
10 CONTINUES TO:

11 (I) OWN ASSETS CONSTITUTING 25 PERCENT OF TOTAL ASSETS AT  
12 THE END OF THE MOST RECENTLY COMPLETED FISCAL YEAR, DETERMINED ON THE  
13 BASIS OF BOOK VALUE, A FAIR VALUATION AS DETERMINED BY THE BOARD OF  
14 DIRECTORS, OR ANY OTHER METHOD THAT IS REASONABLE IN THE  
15 CIRCUMSTANCES; AND

16 (II) ENGAGE IN A BUSINESS ACTIVITY THAT REPRESENTED 25  
17 PERCENT OF EITHER INCOME FROM CONTINUING OPERATIONS BEFORE TAXES OR  
18 REVENUES FROM CONTINUING OPERATIONS FOR THE MOST RECENTLY COMPLETED  
19 FISCAL YEAR.

20 (3) THE FAILURE OF A TRANSACTION TO COME WITHIN THE SCOPE OF  
21 PARAGRAPH (2) OF THIS SUBSECTION DOES NOT CREATE AN INFERENCE THAT A  
22 CORPORATION IS SELLING, LEASING, EXCHANGING, OR OTHERWISE TRANSFERRING  
23 ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE CORPORATION.

24 1-201.

25 (D) A SIGNATURE ON ANY DOCUMENT REQUIRED OR PERMITTED TO BE FILED  
26 WITH THE DEPARTMENT UNDER ANY PROVISION OF THE MARYLAND GENERAL  
27 CORPORATION LAW OR THE MARYLAND REIT LAW MAY BE A FACSIMILE.

28 1-402.

29 (A) A determination required or permitted to be made under any provision of  
30 this article relating to stated capital, surplus, capital surplus, earned surplus, ASSETS  
31 AND LIABILITIES, BOOK VALUE, FAIR VALUE, AUTHORIZATION OF A DISTRIBUTION,  
32 or any other account or matter relating to the financial position or results of  
33 operations of a Maryland corporation is prima facie proper and in accordance with  
34 this article if:

35 (1) Specific provisions of this article do not require otherwise; and

36 (2) It is made in good faith in accordance with generally accepted  
37 accounting practices and principles.

1 (B) A DETERMINATION UNDER SUBSECTION (A) OF THIS SECTION MAY BE  
2 MADE FOR THE CORPORATION SEPARATELY OR FOR THE CORPORATION AND ITS  
3 SUBSIDIARIES ON A CONSOLIDATED BASIS.

4 2-206.

5 (d) Notwithstanding any other provision of this article, a corporation may  
6 issue shares of its stock to up to [100] 110 persons without consideration for the  
7 purpose of qualifying the corporation as a real estate investment trust under the  
8 Internal Revenue Code.

9 2-212.

10 (a) Each stock certificate shall be signed by the president, a vice president,  
11 THE CHIEF EXECUTIVE OFFICER, THE CHIEF OPERATING OFFICER, THE CHIEF  
12 FINANCIAL OFFICER, [or] the chairman of the board, OR THE VICE CHAIRMAN OF  
13 THE BOARD and countersigned by the secretary, an assistant secretary, the treasurer,  
14 or an assistant treasurer.

15 2-301.

16 (a) (1) In this [subtitle] SUBTITLE, "distribution" means:

17 [(1)] (I) A direct or indirect transfer of money or other property OF THE  
18 CORPORATION IN RESPECT OF ANY OF ITS SHARES[, except a corporation's own  
19 shares declared or paid as a stock dividend or stock split]; or

20 [(2)] (II) An incurrence or forgiveness of indebtedness by a corporation to  
21 or for the benefit of the corporation's stockholders in respect of any of its shares.

22 (2) "DISTRIBUTION" DOES NOT INCLUDE A STOCK DIVIDEND OR STOCK  
23 SPLIT AS AUTHORIZED IN ACCORDANCE WITH § 2-309(B) OF THIS SUBTITLE.

24 2-303.

25 (b) (1) Except as permitted by paragraph (2) of this subsection, the entire  
26 consideration received by a corporation for issuing stock without par value constitutes  
27 stated capital.

28 (2) [Before issuing stock without par value, the] THE board of directors  
29 may allocate any portion of the consideration to capital surplus. However, if the stock  
30 has a preference in the assets of the corporation in the event of involuntary  
31 liquidation, the board may allocate to capital surplus only a portion which does not  
32 exceed the amount by which the consideration exceeds the aggregate amount of the  
33 preference.

34 2-304.

35 [(a)] By resolution of its board of directors, a corporation may apply any part of  
36 its capital surplus for:

1 (1) The reduction or elimination of a corporate deficit arising from a loss,  
2 however incurred, or from diminution in the value of its assets, but only after earned  
3 surplus is exhausted; or

4 (2) Any other proper corporate purpose.

5 [(b) An application of capital surplus under subsection (a) of this section shall  
6 be disclosed to the stockholders of the corporation in its next annual report.]

7 2-308.

8 [(a) Subject to the limitations of subsection (b) of this section, any] ANY surplus  
9 which arises from a reduction of stated capital becomes capital surplus and may be  
10 made the basis of:

11 (1) A distribution or payment to stockholders; and

12 (2) A reduction of the liability of stockholders whose shares of stock are  
13 not fully paid.

14 [(b) The net assets of the corporation which remain after a distribution,  
15 payment, or reduction of liability shall be at least equal to the aggregate preferential  
16 amount payable in the event of voluntary liquidation to the holders of all stock having  
17 rights preferred to the rights of holders who received the distribution, payment, or  
18 whose liability was reduced.]

19 2-418.

20 (a) In this section the following words have the meanings indicated.

21 (1) "Director" means any person who is or was a director of a corporation  
22 and any person who, while a director of a corporation, is or was serving at the request  
23 of the corporation as a director, officer, partner, trustee, MANAGING MEMBER,  
24 employee, or agent of another foreign or domestic corporation, partnership, joint  
25 venture, trust, LIMITED LIABILITY COMPANY, other enterprise, or employee benefit  
26 plan.

27 (4) "Official capacity" means the following:

28 (i) When used with respect to a director, the office of director in the  
29 corporation; and

30 (ii) When used with respect to a person other than a director as  
31 contemplated in subsection (j), the elective or appointive office in the corporation held  
32 by the officer, or the employment or agency relationship undertaken by the employee  
33 or agent in behalf of the corporation.

34 (iii) "Official capacity" does not include service for any other foreign  
35 or domestic corporation or any partnership, joint venture, trust, LIMITED LIABILITY  
36 COMPANY, other enterprise, or employee benefit plan.

1 (b) (3) [(i)] The termination of any proceeding by judgment, order, [or]  
2 settlement, OR CONVICTION, OR UPON A PLEA OF NOLO CONTENDERE OR ITS  
3 EQUIVALENT, does not, OF ITSELF, create a presumption that the director did not  
4 meet the requisite standard of conduct set forth in this subsection.

5 [(ii)] The termination of any proceeding by conviction, or a plea of  
6 nolo contendere or its equivalent, or an entry of an order of probation prior to  
7 judgment, creates a rebuttable presumption that the director did not meet that  
8 standard of conduct.]

9 (g) (1) The indemnification and advancement of expenses provided or  
10 authorized by this section may not be deemed exclusive of any other rights, by  
11 indemnification or otherwise, to which a director may be entitled under the charter,  
12 the bylaws, a resolution of stockholders or directors, an agreement or otherwise, both  
13 as to action in an official capacity and as to action in another capacity while holding  
14 such office.

15 (2) A CORPORATION MAY OBLIGATE ITSELF TO INDEMNIFY AND TO PAY  
16 OR REIMBURSE REASONABLE EXPENSES IN ADVANCE OF THE FINAL DISPOSITION OF  
17 THE PROCEEDING TO THE FULLEST EXTENT PERMITTED BY MARYLAND LAW.

18 (k) (1) A corporation may purchase and maintain insurance on behalf of any  
19 person who is or was a director, officer, employee, or agent of the corporation, or who,  
20 while a director, officer, employee, or agent of the corporation, is or was serving at the  
21 request of the corporation as a director, officer, partner, trustee, MANAGING MEMBER,  
22 employee, or agent of another foreign or domestic corporation, partnership, joint  
23 venture, trust, LIMITED LIABILITY COMPANY, other enterprise, or employee benefit  
24 plan against any liability asserted against and incurred by such person in any such  
25 capacity or arising out of such person's position, whether or not the corporation would  
26 have the power to indemnify against liability under the provisions of this section.

27 (2) A corporation may provide similar protection, including a trust fund,  
28 letter of credit, or surety bond, not inconsistent with this section.

29 (3) The insurance or similar protection may be provided by a subsidiary  
30 or an affiliate of the corporation.

31 [(l) Any indemnification of, or advance of expenses to, a director in accordance  
32 with this section, if arising out of a proceeding by or in the right of the corporation,  
33 shall be reported in writing to the stockholders with the notice of the next  
34 stockholders' meeting or prior to the meeting.]

35 2-505.

36 (a) Except as provided in subsection (b) of this section, any action required or  
37 permitted to be taken at a meeting of stockholders may be taken without a meeting  
38 [if]:

1 (1) IF a unanimous [written] consent which sets forth the action and is  
2 signed OR DELIVERED BY ELECTRONIC TRANSMISSION by each stockholder entitled  
3 to vote on the matter is filed with the records of stockholders meetings; OR

4 (2) IF THE CHARTER OF A CORPORATION PROVIDES, A CONSENT WHICH  
5 SETS FORTH THE ACTION AND IS SIGNED OR DELIVERED BY ELECTRONIC  
6 TRANSMISSION BY STOCKHOLDERS HAVING NOT LESS THAN THE MINIMUM NUMBER  
7 OF VOTES THAT WOULD BE NECESSARY TO AUTHORIZE OR TAKE THE ACTION AT A  
8 MEETING AT WHICH ALL SHARES ENTITLED TO VOTE ON THE MATTER WERE  
9 PRESENT AND VOTED IS FILED WITH THE RECORDS OF STOCKHOLDERS' MEETINGS  
10 AND THE CORPORATION GIVES NOTICE OF THE ACTION TO EACH STOCKHOLDER NOT  
11 LATER THAN 10 DAYS AFTER THE EFFECTIVE TIME OF THE ACTION.

12 (b) Unless the charter requires otherwise, the holders of any class of [stock]  
13 STOCK, other than common stock[,] entitled to vote generally in the election of  
14 directors, may take action or consent to any action by DELIVERING A [the written]  
15 consent IN WRITING OR BY ELECTRONIC TRANSMISSION of the stockholders entitled  
16 to cast not less than the minimum number of votes that would be necessary to  
17 authorize or take the action at a stockholders meeting if the corporation gives notice  
18 of the action to each stockholder OF SUCH CLASS not later than 10 days after the  
19 effective time of the action.

20 2-506.

21 (a) Unless this article or the charter of a corporation provides otherwise, at a  
22 meeting of stockholders:

23 (1) The presence in person or by proxy of stockholders entitled to cast a  
24 majority of all the votes entitled to be cast at the meeting constitutes a quorum; and

25 (2) A majority of all the votes cast [at] ON A MATTER WHICH PROPERLY  
26 COMES BEFORE a meeting at which a quorum is present is sufficient to approve THE  
27 MATTER [any matter which properly comes before the meeting].

28 2-513.

29 (a) One or more persons who together are and for at least six months have  
30 been stockholders of record or holders of voting trust certificates [of at least 5 percent  
31 of the outstanding stock of any class of a corporation] REPRESENTING SHARES OF  
32 STOCK OF ANY CLASS OF THE CORPORATION ENTITLED TO CAST 5 PERCENT OF THE  
33 VOTES ENTITLED TO BE CAST GENERALLY IN THE ELECTION OF DIRECTORS may:

34 (1) In person or by agent, on written request, inspect and copy during  
35 usual business hours the corporation's books of account and its stock ledger;

36 (2) Present to any officer or resident agent of the corporation a written  
37 request for a statement of its affairs; and

1           (3)     In the case of any corporation which does not maintain the original or  
2 a duplicate stock ledger at its principal office, present to any officer or resident agent  
3 of the corporation a written request for a list of its stockholders.

4           (b)     Within 20 BUSINESS days after a request for information is made under  
5 subsection (a) of this section, the corporation shall prepare and have available on file  
6 at its principal office:

7           (1)     In the case of a request for a statement of affairs, a statement  
8 verified under oath by its president or treasurer or one of its vice-presidents or  
9 assistant treasurers which sets forth in reasonable detail the corporation's assets and  
10 liabilities as of a reasonably current date; and

11          (2)     In the case of a request for a list of stockholders, a list verified under  
12 oath by one of its officers or its stock transfer agent or registrar which sets forth the  
13 name and address of each stockholder and the number of shares of each class which  
14 the stockholder holds.

15 3-106.

16          (d)     (1)     [If the parent and subsidiary are both Maryland corporations, and  
17 unless] UNLESS waived by all [minority] stockholders WHO, EXCEPT FOR THE  
18 APPLICATION OF THIS SECTION, WOULD BE ENTITLED TO VOTE ON THE MERGER, at  
19 least [30] 15 days before the articles are filed with the Department, a parent  
20 corporation which owns less than all of the outstanding stock of the subsidiary [shall  
21 give] AS OF IMMEDIATELY BEFORE THE EFFECTIVE TIME OF THE MERGER MUST  
22 HAVE GIVEN notice of the transaction to each of the subsidiary's [minority]  
23 stockholders of record WHO, EXCEPT FOR THE APPLICATION OF THIS SECTION,  
24 WOULD BE ENTITLED TO VOTE ON THE MERGER on the date of giving of the notice or  
25 on a record date fixed for that purpose which is not more than 10 days before the date  
26 of giving notice.

27          (2)     A minority stockholder of the subsidiary has the right to demand and  
28 receive payment of the fair value of [his] THE MINORITY STOCKHOLDER'S stock as  
29 AND TO THE EXTENT provided in Subtitle 2 of this title relating to objecting  
30 stockholders.

31 3-202.

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

35          (1)     The stock is listed on a national securities exchange, is designated as  
36 a national market system security on an interdealer quotation system by the National  
37 Association of Securities Dealers, Inc., or is designated for trading on the NASDAQ  
38 Small Cap Market:



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;

13 (3) The stock is not entitled, OTHER THAN SOLELY BECAUSE OF § 3-106  
14 OF THIS TITLE, to be voted on the transaction or the stockholder did not own the  
15 shares of stock on the record date for determining stockholders entitled to vote on the  
16 transaction;

17 (4) The charter provides that the holders of the stock are not entitled to  
18 exercise the rights of an objecting stockholder under this subtitle; or

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

22 3-203.

23 (a) A stockholder of a corporation who desires to receive payment of the fair  
24 value of the stockholder's stock under this subtitle:

25 (1) Shall file with the corporation a written objection to the proposed  
26 transaction:

27 (i) With respect to a merger under § 3-106 of this title of a 90  
28 percent or more owned subsidiary with or into its parent corporation, within [30] 15  
29 days after notice is given or waived under § 3-106; or

30 (ii) With respect to any other transaction, at or before the  
31 stockholders' meeting at which the transaction will be considered or, in the case of  
32 action taken under § 2-505(b) of this article, within 10 days after the corporation  
33 gives the notice required by § 2-505(b) of this article;

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

1           (3)     Within 20 days after the Department accepts the articles for record,  
2 shall make a written demand on the successor for payment for the stockholder's stock,  
3 stating the number and class of shares for which the stockholder demands payment.  
4 3-404.

5           Not less than 20 days prior to the filing of articles of dissolution with the  
6 Department, the corporation shall mail notice that dissolution of the corporation has  
7 been approved to all its known creditors at their addresses as shown on the records of  
8 the corporation [and to its employees, either at their home addresses as shown on the  
9 records of the corporation, or at their business addresses].

10 3-601.

11       (a)     In this subtitle, the following words have the meanings indicated.

12       (e)     "Business combination" means:

13           (1)     Unless the merger, consolidation, or share exchange does not alter  
14 the contract rights of the stock as expressly set forth in the charter or change or  
15 convert in whole or in part the outstanding shares of stock of the corporation, any  
16 merger, consolidation, or share exchange of the corporation or any subsidiary with (i)  
17 any interested stockholder or (ii) any other corporation (whether or not itself an  
18 interested stockholder) which is, or after the merger, consolidation, or share exchange  
19 would be, an affiliate of an interested stockholder that was an interested stockholder  
20 prior to the transaction;

21           (2)     Any sale, lease, transfer, or other disposition, other than in the  
22 ordinary course of business or pursuant to a dividend or any other method affording  
23 substantially proportionate treatment to the holders of voting stock, in one  
24 transaction or a series of transactions in any 12-month period, to any interested  
25 stockholder or any affiliate of any interested stockholder (other than the corporation  
26 or any of its subsidiaries) of any assets of the corporation or any subsidiary having,  
27 measured at the time the transaction or transactions are approved by the board of  
28 directors of the corporation, an aggregate book value as of the end of the corporation's  
29 most recently ended fiscal quarter of 10 percent or more of the total market value of  
30 the outstanding stock of the corporation or of its net worth as of the end of its most  
31 recently ended fiscal quarter;

32           (3)     The issuance or transfer by the corporation, or any subsidiary, in one  
33 transaction or a series of transactions, of any equity securities of the corporation or  
34 any subsidiary which have an aggregate market value of 5 percent or more of the total  
35 market value of the outstanding stock of the corporation to any interested stockholder  
36 or any affiliate of any interested stockholder (other than the corporation or any of its  
37 subsidiaries) except pursuant to the exercise of warrants or rights to purchase  
38 securities offered pro rata to all holders of the corporation's voting stock or any other  
39 method affording substantially proportionate treatment to the holders of voting stock;

1 (4) The adoption of any plan or proposal for the liquidation or dissolution  
2 of the corporation in which anything other than cash will be received by an interested  
3 stockholder or any affiliate of any interested stockholder;

4 (5) Any reclassification of securities (including any reverse stock split),  
5 or recapitalization of the corporation, or any merger, consolidation, or share exchange  
6 of the corporation with any of its subsidiaries which has the effect, directly or  
7 indirectly, in one transaction or a series of transactions, of increasing by 5 percent or  
8 more of the total number of outstanding shares, the proportionate amount of the  
9 outstanding shares of any class of equity securities of the corporation or any  
10 subsidiary which is directly or indirectly owned by any interested stockholder or any  
11 affiliate of any interested stockholder; [or]

12 (6) The receipt by any interested stockholder or any affiliate of any  
13 interested stockholder (other than the corporation or any of its subsidiaries) of the  
14 benefit, directly or indirectly (except proportionately as a stockholder), of any loan,  
15 advance, guarantee, pledge, or other financial assistance or any tax credit or other tax  
16 advantage provided by the corporation or any of its subsidiaries;

17 (7) THE ADOPTION OF ANY PLAN OR PROPOSAL FOR THE LIQUIDATION  
18 OR DISSOLUTION OF THE CORPORATION;

19 (8) ANY PURCHASE OR OTHER ACQUISITION BY THE CORPORATION OF  
20 ITS OWN SHARES OF VOTING STOCK, IN ONE TRANSACTION OR IN A SERIES OF  
21 TRANSACTIONS IN ANY 12-MONTH PERIOD, IN AN AGGREGATE AMOUNT OF MORE  
22 THAN 25 PERCENT OF THE TOTAL NUMBER OF OUTSTANDING SHARES OF ITS VOTING  
23 STOCK, DETERMINED AS OF THE TIME OF THE FIRST PURCHASE OR OTHER  
24 ACQUISITION; OR

25 (9) ANY AMENDMENT TO THE CHARTER OF THE CORPORATION OR  
26 OTHER ACTION OR SERIES OF ACTIONS, THAT IF CONSUMMATED, WOULD RESULT IN  
27 THE CHANGE OR CONVERSION OF SHARES OF VOTING STOCK OF THE CORPORATION  
28 THAT ARE NOT REDEEMABLE AT THE OPTION OF THE HOLDER INTO SECURITIES OF  
29 THE CORPORATION OR ANOTHER ENTITY THAT ARE REDEEMABLE AT THE OPTION  
30 OF THE HOLDER.

31 (j) (1) "Interested stockholder" means any person (other than the  
32 corporation or any subsidiary) that:

33 [(1)] (i) Is the beneficial owner, directly or indirectly, of 10 percent or  
34 more of the voting power of the outstanding voting stock of the corporation after the  
35 date on which the corporation had 100 or more beneficial owners of its stock; or

36 (ii) Is an affiliate or associate of the corporation and was the  
37 beneficial owner, directly or indirectly, of 10 percent or more of the voting power of the  
38 then outstanding stock of the corporation:

39 1. At any time within the 2-year period immediately prior to  
40 the date in question; and

1                                   2.           After the date on which the corporation had 100 or more  
2 beneficial owners of its stock.

3                   (2)       For the purpose of determining whether a person is an interested  
4 stockholder, the number of shares of voting stock deemed to be outstanding shall  
5 include shares deemed owned by the person through application of subsection (d) of  
6 this section but may not include any other shares of voting stock which may be  
7 issuable pursuant to any agreement, arrangement, or understanding, or upon  
8 exercise of conversion rights, warrants or options, or otherwise.

9                   (3)       A person is not an interested stockholder if[,]:

10                   (I)       [prior] PRIOR to the most recent time at which the person  
11 would otherwise have become an interested stockholder, the board of directors of the  
12 corporation approved the transaction which otherwise would have resulted in the  
13 person becoming an interested stockholder; OR

14                   (II)       FOR PURPOSES OF SUBSECTION (E)(7), (8), OR (9) OF THIS  
15 SECTION, THE PERSON BECAME AN INTERESTED STOCKHOLDER BEFORE THE LATER  
16 OF JUNE 1, 2001 OR THE ELECTION TO BE SUBJECT TO § 3-602(A)(1)(II) OF THIS  
17 SUBTITLE.

18                   (4)       In approving a transaction in accordance with paragraph [(3)] (3)(I)  
19 of this subsection, the board of directors may provide that its approval is subject to  
20 compliance, at or after the time of approval, with any terms and conditions  
21 determined by the board.

22 3-602.

23       (a)       (1)       Unless an exemption under § 3-603(c), (d), or (e) of this subtitle  
24 applies, [a corporation may not engage in any business combination with any  
25 interested stockholder or any affiliate of the interested stockholder] for a period of 5  
26 years following the most recent date on which [the] AN interested stockholder  
27 became an interested stockholder, A CORPORATION MAY NOT ENGAGE IN:

28                   (I)       ANY BUSINESS COMBINATION DESCRIBED IN § 3-601(E)(1)  
29 THROUGH (6) OF THIS SUBTITLE WITH AN INTERESTED STOCKHOLDER OR AN  
30 AFFILIATE OF THE INTERESTED STOCKHOLDER; OR

31                   (II)       ANY BUSINESS COMBINATION DESCRIBED IN § 3-601(E)(7), (8),  
32 OR (9) OF THIS SUBTITLE IF THE BOARD OF DIRECTORS OF THE CORPORATION HAS  
33 ELECTED FOR THE CORPORATION TO BE SUBJECT, IN WHOLE OR IN PART, TO THIS  
34 SECTION, AS IT APPLIES TO § 3-601(E)(7), (8), OR (9).

35                   (2)       IN ELECTING FOR THE CORPORATION TO BE SUBJECT TO  
36 PARAGRAPH (1)(II) OF THIS SUBSECTION, THE BOARD OF DIRECTORS MAY PROVIDE  
37 THAT THE ELECTION IS SUBJECT TO COMPLIANCE, AT OR AFTER THE TIME OF THE  
38 ELECTION, WITH ANY TERMS AND CONDITIONS APPROVED BY THE BOARD.

1 8-202.

2 (b) (2) A declaration of trust may include:

3 (I) ANY PROVISION NOT INCONSISTENT WITH LAW WHICH  
4 DEFINES, LIMITS, OR REGULATES THE POWERS OF THE REAL ESTATE INVESTMENT  
5 TRUST, ITS TRUSTEES, ITS SHAREHOLDERS, A CLASS OF ITS SHAREHOLDERS, OR  
6 HOLDERS OF ANY BONDS, NOTES, OR OTHER SECURITIES THAT IT MAY ISSUE; AND

7 (II) [a] A provision that allows the trustees, in considering a  
8 potential acquisition of control of the real estate investment trust, to consider the  
9 effect of the potential acquisition of control on:

10 [(i)] 1. Shareholders, employees, suppliers, customers, and  
11 creditors of the trust; and

12 [(ii)] 2. Communities in which offices or other establishments of  
13 the trust are located.

14 (3) The inclusion or omission of a provision in a declaration of trust that  
15 allows the board of trustees to consider the effect of a potential acquisition of control  
16 on persons specified in [paragraph (2)] PARAGRAPH (2)(II) of this subsection does not  
17 create an inference concerning factors that may be considered by the board of trustees  
18 regarding a potential acquisition of control.

19 8-301.

20 A real estate investment trust has the power to:

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

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

24 (3) Transact its business, carry on its operations, and exercise the  
25 powers granted by this title in any state, territory, district, [or] AND possession of the  
26 United States and in any foreign country;

27 (4) Make contracts AND GUARANTEES, incur liabilities, and borrow  
28 money;

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

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

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

1 (8) Purchase, take, receive, subscribe for, or otherwise acquire, own,  
2 hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and  
3 OTHERWISE USE AND deal in and with:

4 (i) Securities, shares, and other interests in any obligations of THE  
5 REAL ESTATE INVESTMENT TRUST, domestic and foreign corporations, other real  
6 estate investment trusts, associations, partnerships, and other persons; and

7 (ii) Direct and indirect obligations of the United States, any other  
8 government, state, territory, government district, and municipality, and any  
9 instrumentality of them;

10 (9) Elect or appoint trustees, officers, and agents of the [trust for the  
11 period of time the declaration of trust or bylaws provide] TRUST, define their duties,  
12 and determine their compensation;

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

14 (11) [Make and] ADOPT, alter, AND REPEAL bylaws not inconsistent with  
15 law or with its declaration of trust [to regulate the government of the real estate  
16 investment trust and the administration] FOR THE REGULATION AND MANAGEMENT  
17 of its affairs;

18 (12) Exercise these powers, including the power to take, hold, and dispose  
19 of the title to real and personal property in the name of the trust or in the name of its  
20 trustees, without the filing of any bond, except a bond required under § 8-204 of this  
21 title;

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

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

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

30 (16) INVEST ITS SURPLUS FUNDS, LEND MONEY FROM TIME TO TIME IN  
31 ANY MANNER WHICH MAY BE APPROPRIATE TO ENABLE IT TO CARRY ON THE  
32 OPERATIONS OR FULFILL THE PURPOSES SPECIFIED IN ITS DECLARATION OF TRUST,  
33 AND TAKE AND HOLD REAL AND PERSONAL PROPERTY AS SECURITY FOR THE  
34 PAYMENT OF FUNDS SO INVESTED OR LOANED;

35 (17) BE A PROMOTER, PARTNER, MEMBER, ASSOCIATE, OR MANAGER OF  
36 ANY PARTNERSHIP, JOINT VENTURE, TRUST, OR OTHER ENTERPRISE; AND

37 (18) MAKE GIFTS OR CONTRIBUTIONS IN CASH, OTHER PROPERTY, OR  
38 SHARES OR OTHER SECURITIES OF THE TRUST TO OR FOR THE USE OF:

1 (I) THE UNITED STATES, THIS STATE, ANOTHER STATE OF THE  
2 UNITED STATES, A TERRITORY, POSSESSION, OR DISTRICT OF THE UNITED STATES,  
3 OR ANY INSTITUTION, AGENCY, OR POLITICAL SUBDIVISION OF ANY OF THEM; AND

4 (II) ANY GOVERNMENTAL OR OTHER ORGANIZATION, WHETHER  
5 INSIDE OR OUTSIDE THE UNITED STATES, FOR RELIGIOUS, CHARITABLE, SCIENTIFIC,  
6 CIVIC, PUBLIC WELFARE, LITERARY, OR EDUCATIONAL PURPOSES.

7 8-501.

8 (e) [A declaration of trust may permit:]

9 (1) The board of trustees, with the approval of two thirds of its members,  
10 and without action by the shareholders, [to] MAY amend the declaration of trust from  
11 time to time to qualify as a real estate investment trust under the Internal Revenue  
12 Code or under this title[; and].

13 (2) A majority of the entire board of trustees, without action by the  
14 shareholders, [to] MAY amend the declaration of trust in any respect in which the  
15 charter of a corporation may be amended in accordance with § 2-605 of this article.

16 8-601.1.

17 Sections 2-201(c), 2-405.1[(d) through (g)], 2-502(e), and 2-504(e) of this  
18 article shall apply to real estate investment trusts.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 June 1, 2001.