

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE
Revised

House Bill 684

(Delegates Barve and Brown)

Economic Matters

Judicial Proceedings

Corporations and Real Estate Investment Trusts

This bill makes numerous changes to the governance provisions applicable to Maryland Corporations and Real Estate Investment Trusts (REITs).

The bill is effective June 1, 2001.

Fiscal Summary

State Effect: None. The bill pertains almost exclusively to private sector activities.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill's changes include:

- providing that signatures on any document that is required or permitted to be filed with the State Department of Assessments and Taxation may be facsimiles;
- clarifying the terms "transfer of assets," "distribution," and "business combination;"
- providing that a conviction or a plea of *nolo contendere* by a director in a proceeding arising from an action the director took in his or her official capacity does not, by itself, create a presumption that a director did not meet the requisite

standard of conduct so as to disqualify the director for indemnification by the corporation;

- clarifying the status of stock issued before the related articles supplementary are filed;
- providing that if an investment company maintains separate assets and records for each series or class of stock; then the debts, liabilities, expenses, and obligations related to a separate and distinct series or class of stock are only enforceable against that series or class and that general corporate debts, liabilities, obligations, and expenses are not enforceable against any separate series or class of stock;
- providing that a corporation may obligate itself to indemnify and pay or reimburse reasonable expenses prior to a final disposition;
- providing that, if provided by the corporate charter, stockholders may communicate with a corporation and vote on corporate matters by electronic transmission;
- providing that the parent company must give notice of a merger at least 15 days in advance to all of the subsidiary's stockholders entitled to vote on the merger, unless the stockholders waive this requirement;
- providing new conditions under which an interested stockholder and a corporation may engage in business activities; and
- providing that a REIT may invest surplus funds, lend money, participate in a partnership or other enterprise, and make gifts and contributions to the United States, any state, political subdivision or governmental or other organization for religious, charitable, scientific, civic, public welfare, literary, or educational purposes.

Current Law:

- There are no provisions regarding facsimile signatures.
- A conviction or a plea of *nolo contendere* by a director in a proceeding arising from an action the director took in his or her official capacity creates a rebuttable presumption that the director did not meet the requisite standard of conduct so as to disqualify the director for indemnification by the corporation.

- There are no provisions regarding electronic transmission communication.
- If a parent and subsidiary are both Maryland corporations, a parent corporation that owns less than all of the outstanding stock of the subsidiary shall give notice of a merger to each of the subsidiary's *minority* stockholders at least 30 days in advance, unless the requirement is waived.
- Unless an exemption applies, a corporation may not engage in any business combination with any interested stockholder or any affiliate of the interested stockholder for a period of five years following the most recent date on which the interested stockholder became an interested stockholder.
- There are no specific provisions regarding how a REIT may use any surplus money.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Assessments and Taxation, Office of the Comptroller, Department of Legislative Services

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Analysis by: Brian D. Baugus

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510