

HOUSE BILL 388

Unofficial Copy
C1
HB 684/01 - ECM

2002 Regular Session
2r1585
CF SB 123

By: **Delegates Barve and Brown**
Introduced and read first time: January 28, 2002
Assigned to: Economic Matters

Committee Report: Favorable
House action: Adopted
Read second time: March 5, 2002

CHAPTER _____

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; providing that stock
15 issued prior to the time the articles supplementary with respect to the issuance
16 of the stock are effective shall cease to be voidable at the time the articles
17 supplementary become effective; providing that a right or liability accrued by
18 reason of the issuance of the stock prior to the time the articles supplementary
19 are effective shall be extinguished at the time the articles supplementary
20 become effective under certain circumstances; providing that under certain
21 circumstances certain debts, liabilities, obligations, and expenses existing with
22 respect to a particular class or series of stock of an investment company are
23 enforceable only against the assets associated with that class or series;
24 clarifying that a direct or indirect transfer of money or other property of a
25 corporation in respect of its own shares is a distribution; repealing a
26 requirement that the board of directors make a certain allocation of
27 consideration for stock without par value before the stock is issued; repealing a
28 requirement that the application of the capital surplus of a corporation be

1 disclosed to stockholders under certain circumstances; altering certain
2 provisions of law governing indemnification of certain individuals to include a
3 managing member of a limited liability company; clarifying that a corporation
4 may obligate itself to indemnify and to pay or reimburse certain expenses under
5 certain circumstances; providing that the status of certain judicial proceedings
6 does not, of itself, create a presumption that certain persons have not satisfied a
7 certain standard of conduct for directors of a Maryland corporation; repealing a
8 requirement that a certain report be given to stockholders of a corporation;
9 authorizing consent by electronic transmission under certain circumstances;
10 providing for less than unanimous consent for certain stockholder actions;
11 clarifying a certain notice provision; clarifying that a certain percentage of votes
12 cast at a meeting of stockholders on certain matters is sufficient to approve
13 those matters; limiting certain stockholder inspection rights; altering the
14 number of days within which a corporation must respond to certain requests for
15 information; altering certain notice provisions with respect to certain parent
16 and subsidiary mergers; clarifying that certain stockholders retain their
17 appraisal rights under certain circumstances; altering the time within which a
18 stockholder exercising the stockholder's appraisal rights must file a certain
19 written objection; repealing a requirement that a certain notice be mailed to
20 employees of certain corporations; altering certain provisions of law relating to
21 business combinations and interested stockholders under the Maryland
22 Business Combination Act; clarifying certain provisions that may be contained
23 in the declaration of trust of a real estate investment trust formed under the
24 Maryland REIT Law; clarifying the powers of Maryland real estate investment
25 trusts; altering the requirements for making certain amendments to the
26 declaration of trust of a Maryland real estate investment trust; clarifying the
27 standard of conduct for the trustees of a Maryland real estate investment trust;
28 altering certain definitions; making certain technical and stylistic changes; and
29 generally relating to Maryland corporations and Maryland real estate
30 investment trusts.

31 BY repealing and reenacting, without amendments,
32 Article - Corporations and Associations
33 Section 1-101(a) and 3-601(a)
34 Annotated Code of Maryland
35 (1999 Replacement Volume and 2001 Supplement)

36 BY repealing and reenacting, with amendments,
37 Article - Corporations and Associations
38 Section 1-101(v), 1-402, 2-206(d), 2-208, 2-208.1, 2-212(a), 2-301(a), 2-303(b),
39 2-304, 2-308, 2-418(a)(1) and (4), (b)(3), (g), and (k), 2-505, 2-506(a),
40 2-513, 3-106(d), 3-202(c), 3-203(a), 3-404, 3-601(e) and (j), 3-602(a),
41 8-202(b)(2) and (3), 8-301, 8-501(e), and 8-601.1
42 Annotated Code of Maryland
43 (1999 Replacement Volume and 2001 Supplement)

44 BY adding to

1 Article - Corporations and Associations
2 Section 1-201(d) and 2-208.2
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2001 Supplement)

5 BY repealing
6 Article - Corporations and Associations
7 Section 2-418(l)
8 Annotated Code of Maryland
9 (1999 Replacement Volume and 2000 Supplement)

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

12 **Article - Corporations and Associations**

13 1-101.

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

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

19 (2) "TRANSFER ASSETS", "TRANSFER ITS ASSETS", AND "TRANSFER OF
20 ASSETS" DO NOT INCLUDE A TRANSACTION AFTER WHICH THE CORPORATION
21 CONTINUES TO:

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

27 (II) ENGAGE IN A BUSINESS ACTIVITY THAT REPRESENTED 25
28 PERCENT OF EITHER INCOME FROM CONTINUING OPERATIONS BEFORE TAXES OR
29 REVENUES FROM CONTINUING OPERATIONS FOR THE MOST RECENTLY COMPLETED
30 FISCAL YEAR.

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

1 1-201.

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

5 1-402.

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

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

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

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

18 2-206.

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

23 2-208.

24 (a) (1) If, under a power contained in the charter, the board of directors
25 classifies or reclassifies any unissued stock by setting or changing the preferences,
26 conversion or other rights, voting powers, restrictions, limitations as to dividends,
27 qualifications, or terms or conditions of redemption, the board shall file articles
28 supplementary for record with the Department.

29 (2) The board may not issue any of the stock that is classified or
30 reclassified prior to the time the articles supplementary are effective, as provided in
31 this section.

32 (b) Articles supplementary shall include:

33 (1) A description of the stock, including the preferences, conversion and
34 other rights, voting powers, restrictions, limitations as to dividends, qualifications,
35 and terms and conditions of redemption, as set or changed by the board of directors;
36 and

1 (2) A statement that the stock has been classified or reclassified by the
2 board of directors under the authority contained in the charter.

3 (c) Articles supplementary shall be executed in the manner required by Title 1
4 of this article.

5 (d) Articles supplementary are effective as of the later of:

6 (1) The time the Department accepts the articles for record; or

7 (2) The time established under the articles, not to exceed 30 days after
8 the articles are accepted for record.

9 (E) NOTWITHSTANDING SUBSECTION (A)(2) OF THIS SECTION:

10 (1) THE STOCK ISSUED BY A CORPORATION BEFORE THE TIME THE
11 ARTICLES SUPPLEMENTARY, WITH RESPECT TO THE ISSUANCE OF THE STOCK ARE
12 EFFECTIVE, SHALL CEASE TO BE VOIDABLE AT THE TIME THE ARTICLES
13 SUPPLEMENTARY BECOME EFFECTIVE; AND

14 (2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF
15 STOCK BY A CORPORATION BEFORE THE TIME THE ARTICLES SUPPLEMENTARY,
16 WITH RESPECT TO THE ISSUANCE OF THE STOCK ARE EFFECTIVE, SHALL BE
17 EXTINGUISHED AT THE TIME THE ARTICLES SUPPLEMENTARY BECOME EFFECTIVE,
18 EXCEPT TO THE EXTENT THAT THE PERSON HAVING THE RIGHT HAS ACTED
19 DETRIMENTALLY IN RELIANCE ON THE RIGHT OR LIABILITY.

20 2-208.1.

21 (a) (1) If the board of directors of a corporation registered as an open-end
22 company under the Investment Company Act of 1940 increases or decreases the
23 aggregate number of shares of stock or the number of shares of stock of any class that
24 the corporation has authority to issue in accordance with § 2-105(c) of this title, the
25 board shall file articles supplementary for record with the Department.

26 (2) The board may not issue any of the newly authorized stock prior to
27 the time the articles supplementary are effective, as provided in this section.

28 (b) Articles supplementary shall include:

29 (1) Both as of immediately before the increase or decrease and as
30 increased or decreased:

31 (i) The total number of shares of stock of all classes that the
32 corporation has authority to issue;

33 (ii) The number of shares of stock of each class;

34 (iii) The par value of the shares of stock of each class or a statement
35 that the shares are without par value; and

1 (iv) If there are any shares of stock with par value, the aggregate
2 par value of all the shares of all classes;

3 (2) A statement that the corporation is registered as an open-end
4 company under the Investment Company Act of 1940; and

5 (3) A statement that the total number of shares of capital stock that the
6 corporation has authority to issue has been increased or decreased by the board of
7 directors in accordance with § 2-105(c) of this title.

8 (c) Articles supplementary shall be executed in the manner required by Title 1
9 of this article.

10 (d) Articles supplementary are effective as of the later of:

11 (1) The time the Department accepts the articles for record; or

12 (2) The time established under the articles, not to exceed 30 days after
13 the articles are accepted for record.

14 (E) NOTWITHSTANDING SUBSECTION (A)(2) OF THIS SECTION:

15 (1) THE ISSUANCE OF STOCK BY A CORPORATION BEFORE THE TIME
16 THE ARTICLES SUPPLEMENTARY, WITH RESPECT TO THE ISSUANCE OF THE STOCK
17 ARE EFFECTIVE, SHALL CEASE TO BE VOIDABLE AT THE TIME THE ARTICLES
18 SUPPLEMENTARY BECOME EFFECTIVE; AND

19 (2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF
20 STOCK BY A CORPORATION BEFORE THE TIME THE ARTICLES SUPPLEMENTARY,
21 WITH RESPECT TO THE ISSUANCE OF THE STOCK ARE EFFECTIVE, SHALL BE
22 EXTINGUISHED AT THE TIME THE ARTICLES SUPPLEMENTARY BECOME EFFECTIVE,
23 EXCEPT TO THE EXTENT THAT THE PERSON HAVING THE RIGHT HAS ACTED
24 DETRIMENTALLY IN RELIANCE ON THE RIGHT OR LIABILITY.

25 2-208.2.

26 IF THE CHARTER OF A CORPORATION REGISTERED AS AN INVESTMENT
27 COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 CREATES ONE OR MORE
28 CLASSES OR SERIES OF STOCK, AND IF SEPARATE AND DISTINCT RECORDS ARE
29 MAINTAINED FOR THE CLASS OR SERIES AND THE ASSETS ASSOCIATED WITH THE
30 CLASS OR SERIES ARE HELD AND ACCOUNTED FOR SEPARATELY FROM THE OTHER
31 ASSETS OF THE CORPORATION, OR ASSETS ASSOCIATED WITH ANY OTHER CLASS OR
32 SERIES:

33 (1) THE DEBTS, LIABILITIES, OBLIGATIONS, AND EXPENSES INCURRED,
34 CONTRACTED FOR, OR OTHERWISE EXISTING WITH RESPECT TO A PARTICULAR
35 CLASS OR SERIES ARE ENFORCEABLE AGAINST THE ASSETS ASSOCIATED WITH THAT
36 CLASS OR SERIES ONLY, AND NOT AGAINST THE ASSETS OF THE CORPORATION
37 GENERALLY OR ANY OTHER CLASS OR SERIES OF STOCK; AND

1 (2) NONE OF THE DEBTS, LIABILITIES, OBLIGATIONS, AND EXPENSES
2 INCURRED, CONTRACTED FOR, OR OTHERWISE EXISTING WITH RESPECT TO THE
3 CORPORATION GENERALLY OR ASSOCIATED WITH ANY OTHER CLASS OR SERIES ARE
4 ENFORCEABLE AGAINST THE ASSETS ASSOCIATED WITH THAT CLASS OR SERIES.

5 2-212.

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

11 2-301.

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

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

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

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

20 2-303.

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

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

30 2-304.

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

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

36 (2) Any other proper corporate purpose.

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

3 2-308.

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

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

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

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

15 2-418.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 2-505.

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

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

38 (2) IF THE CHARTER OF A CORPORATION PROVIDES, A CONSENT WHICH
39 SETS FORTH THE ACTION AND IS SIGNED OR DELIVERED BY ELECTRONIC
40 TRANSMISSION BY STOCKHOLDERS HAVING NOT LESS THAN THE MINIMUM NUMBER

1 OF VOTES THAT WOULD BE NECESSARY TO AUTHORIZE OR TAKE THE ACTION AT A
2 MEETING AT WHICH ALL SHARES ENTITLED TO VOTE ON THE MATTER WERE
3 PRESENT AND VOTED IS FILED WITH THE RECORDS OF STOCKHOLDERS' MEETINGS
4 AND THE CORPORATION GIVES NOTICE OF THE ACTION TO EACH STOCKHOLDER NOT
5 LATER THAN 10 DAYS AFTER THE EFFECTIVE TIME OF THE ACTION.

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

14 2-506.

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

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

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

22 2-513.

23 (a) One or more persons who together are and for at least [six] 6 months have
24 been stockholders of record or holders of voting trust certificates [of at least 5 percent
25 of the outstanding stock of any class of a corporation] REPRESENTING SHARES OF
26 STOCK OF ANY CLASS OF THE CORPORATION ENTITLED TO CAST 5 PERCENT OF THE
27 VOTES ENTITLED TO BE CAST GENERALLY IN THE ELECTION OF DIRECTORS may:

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

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

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

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

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

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

9 3-106.

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

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

25 3-202.

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

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

33 (i) With respect to a merger under § 3-106 of this title of a 90
34 percent or more owned subsidiary with or into its parent corporation, on the date
35 notice is given or waived under § 3-106; or

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

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

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

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

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

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

13 (5) 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 the stockholder's 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] 15
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 or, in the case of
26 action taken under § 2-505(b) of this article, within 10 days after the corporation
27 gives the notice required by § 2-505(b) of this article;

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

29 (3) Within 20 days after the Department accepts the articles for record,
30 shall make a written demand on the successor for payment for the stockholder's stock,
31 stating the number and class of shares for which the stockholder demands payment.
32 3-404.

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

1 3-601.

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

3 (e) "Business combination" means:

4 (1) Unless the merger, consolidation, or share exchange does not alter
5 the contract rights of the stock as expressly set forth in the charter or change or
6 convert in whole or in part the outstanding shares of stock of the corporation, any
7 merger, consolidation, or share exchange of the corporation or any subsidiary with (i)
8 any interested stockholder or (ii) any other corporation (whether or not itself an
9 interested stockholder) which is, or after the merger, consolidation, or share exchange
10 would be, an affiliate of an interested stockholder that was an interested stockholder
11 prior to the transaction;

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

23 (3) The issuance or transfer by the corporation, or any subsidiary, in one
24 transaction or a series of transactions, of any equity securities of the corporation or
25 any subsidiary which have an aggregate market value of 5 percent or more of the total
26 market value of the outstanding stock of the corporation to any interested stockholder
27 or any affiliate of any interested stockholder (other than the corporation or any of its
28 subsidiaries) except pursuant to the exercise of warrants or rights to purchase
29 securities offered pro rata to all holders of the corporation's voting stock or any other
30 method affording substantially proportionate treatment to the holders of voting stock;

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

34 (5) Any reclassification of securities (including any reverse stock split),
35 or recapitalization of the corporation, or any merger, consolidation, or share exchange
36 of the corporation with any of its subsidiaries which has the effect, directly or
37 indirectly, in one transaction or a series of transactions, of increasing by 5 percent or
38 more of the total number of outstanding shares, the proportionate amount of the
39 outstanding shares of any class of equity securities of the corporation or any
40 subsidiary which is directly or indirectly owned by any interested stockholder or any
41 affiliate of any interested stockholder; [or]

1 (6) The receipt by any interested stockholder or any affiliate of any
2 interested stockholder (other than the corporation or any of its subsidiaries) of the
3 benefit, directly or indirectly (except proportionately as a stockholder), of any loan,
4 advance, guarantee, pledge, or other financial assistance or any tax credit or other tax
5 advantage provided by the corporation or any of its subsidiaries;

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

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

14 (9) ANY AMENDMENT TO THE CHARTER OF THE CORPORATION OR
15 OTHER ACTION OR SERIES OF ACTIONS THAT, IF CONSUMMATED, WOULD RESULT IN
16 THE CHANGE OR CONVERSION OF SHARES OF VOTING STOCK OF THE CORPORATION
17 THAT ARE NOT REDEEMABLE AT THE OPTION OF THE HOLDER INTO SECURITIES OF
18 THE CORPORATION OR ANOTHER ENTITY THAT ARE REDEEMABLE AT THE OPTION
19 OF THE HOLDER.

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

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

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

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

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

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

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

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

5 (II) FOR PURPOSES OF SUBSECTION (E)(7), (8), OR (9) OF THIS
6 SECTION, THE PERSON BECAME AN INTERESTED STOCKHOLDER BEFORE THE LATER
7 OF JUNE 1, 2002 OR THE ELECTION TO BE SUBJECT TO § 3-602(A)(1)(II) OF THIS
8 SUBTITLE.

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

13 3-602.

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

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

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

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

30 8-202.

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

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

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

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

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

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

10 8-301.

11 A real estate investment trust has the power to:

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

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

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

18 (4) Make contracts AND GUARANTEES, incur liabilities, and borrow
19 money;

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

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

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

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

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

33 (ii) Direct and indirect obligations of the United States, any other
34 government, state, territory, government district, and municipality, and any
35 instrumentality of them;

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

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

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

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

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

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

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

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

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

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

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

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

36 8-501.

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

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

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

8 8-601.1.

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2002.