

By: **Delegate Barve**
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Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts**

3 FOR the purpose of authorizing the board of directors of a corporation with a certain
4 class of equity securities or registered as an open-end investment company to
5 amend the charter of the corporation to effectuate certain reverse stock splits
6 without stockholder action under certain circumstances; requiring the board to
7 give certain notice of the reverse stock split to certain holders of record;
8 authorizing the board of directors of a corporation to delegate to a committee of
9 the board or an officer of the corporation the power to fix the amount and other
10 terms of a distribution under certain circumstances; providing for the election of
11 a successor to fill a vacancy on the board of directors which results from the
12 death or resignation of a director or an increase in the number of directors on
13 the board; clarifying the term of a director elected to fill a vacancy on the board;
14 altering certain provisions of law relating to the voluntary dissolution of a
15 Maryland corporation; repealing certain provisions of law that provide that
16 directors of a corporation that is voluntarily dissolving become trustees for
17 certain purposes and act as director-trustees; requiring the directors of a
18 corporation that is voluntarily dissolving to manage the affairs of the
19 corporation solely for a certain purpose; clarifying the standard of conduct for
20 directors of a corporation that is voluntarily dissolving; expanding the
21 application of a certain limitation on the liability of directors of a corporation to
22 trustees of a real estate investment trust; repealing certain exceptions to the
23 immunity from personal liability of a shareholder or trustee of a real estate
24 investment trust for obligations of the real estate investment trust; defining a
25 certain term; correcting a certain erroneous reference; making certain technical,
26 conforming, and stylistic changes; and generally relating to Maryland
27 corporations and shareholders and trustees of Maryland real estate investment
28 trusts.

29 BY adding to
30 Article - Corporations and Associations
31 Section 2-309(c) and (d) and 2-605.1
32 Annotated Code of Maryland
33 (1999 Replacement Volume and 2001 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - Corporations and Associations
3 Section 2-407, 2-411(a), 2-604(a), 2-607(a), 3-410, 3-411, 3-412, 3-418(b)(1),
4 8-601(b), and 8-601.1
5 Annotated Code of Maryland
6 (1999 Replacement Volume and 2001 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article - Courts and Judicial Proceedings
9 Section 5-417 and 5-419
10 Annotated Code of Maryland
11 (1998 Replacement Volume and 2001 Supplement)

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

14 **Article - Corporations and Associations**

15 2-309.

16 (C) (1) IN THIS SUBSECTION, "REVERSE STOCK SPLIT" MEANS A
17 COMBINATION OF OUTSTANDING SHARES OF STOCK OF A CORPORATION INTO A
18 LESSER NUMBER OF SHARES OF STOCK OF THE SAME CLASS WITHOUT ANY CHANGE
19 IN THE AGGREGATE AMOUNT OF STATED CAPITAL OF THE CORPORATION, EXCEPT
20 FOR ANY CHANGE RESULTING FROM THE ELIMINATION OF FRACTIONAL SHARES IN
21 ACCORDANCE WITH § 2-214 OF THIS TITLE.

22 (2) THIS SUBSECTION APPLIES TO A CORPORATION:

23 (I) WITH A CLASS OF EQUITY SECURITIES REGISTERED UNDER
24 THE SECURITIES AND EXCHANGE ACT OF 1934; OR

25 (II) REGISTERED AS AN OPEN-END INVESTMENT COMPANY UNDER
26 THE INVESTMENT COMPANY ACT OF 1940.

27 (3) UNLESS THE CHARTER OF THE CORPORATION PROVIDES
28 OTHERWISE, THE BOARD OF DIRECTORS OF A CORPORATION MAY AMEND THE
29 CHARTER, WITH THE APPROVAL OF A MAJORITY OF THE ENTIRE BOARD OF
30 DIRECTORS AND WITHOUT STOCKHOLDER ACTION, TO EFFECT A REVERSE STOCK
31 SPLIT THAT RESULTS IN A COMBINATION OF SHARES OF STOCK AT A RATIO OF NOT
32 MORE THAN 10 SHARES OF STOCK INTO ONE SHARE OF STOCK IN ANY 12-MONTH
33 PERIOD.

34 (4) WITHIN 20 DAYS AFTER THE EFFECTIVE TIME OF THE REVERSE
35 STOCK SPLIT, THE CORPORATION SHALL GIVE WRITTEN NOTICE OF THE REVERSE
36 STOCK SPLIT TO EACH HOLDER OF RECORD OF THE COMBINED SHARES OF STOCK AS
37 OF THE EFFECTIVE TIME.

1 (D) IF THE BOARD OF DIRECTORS OF A CORPORATION HAS GIVEN GENERAL
2 AUTHORIZATION FOR A DISTRIBUTION, AND THE BOARD IN THE GENERAL
3 AUTHORIZATION PROVIDES FOR OR ESTABLISHES A METHOD OR PROCEDURE FOR
4 DETERMINING THE MAXIMUM AMOUNT OF THE DISTRIBUTION, THE BOARD MAY
5 DELEGATE TO A COMMITTEE OF THE BOARD OR AN OFFICER OF THE CORPORATION
6 THE POWER, IN ACCORDANCE WITH THE GENERAL AUTHORIZATION, TO FIX THE
7 AMOUNT AND OTHER TERMS OF THE DISTRIBUTION.

8 2-407.

9 (a) (1) Except as provided in paragraph (2) of this subsection AND EXCEPT
10 FOR A CORPORATION THAT HAS ELECTED TO BECOME SUBJECT TO § 3-804(C) OF THIS
11 ARTICLE, the stockholders may elect a successor to fill a vacancy on the board of
12 directors [which results from the removal of a director].

13 (2) If the stockholders of any class or series are entitled separately to
14 elect one or more directors, the stockholders of that class or series may elect [a
15 successor] AN INDIVIDUAL to fill a vacancy on the board of directors which results
16 from [the]:

17 (I) THE DEATH, RESIGNATION, OR removal of a director elected by
18 THE HOLDERS OF STOCK OF that class or series; OR

19 (II) AN INCREASE IN THE NUMBER OF DIRECTORS THAT MAY BE
20 ELECTED BY THE HOLDERS OF STOCK OF THAT CLASS OR SERIES.

21 (b) (1) Except as provided in paragraph (2) of this subsection AND EXCEPT
22 FOR A CORPORATION THAT HAS ELECTED TO BECOME SUBJECT TO § 3-804(C) OF THIS
23 ARTICLE, or unless the charter or the bylaws of the corporation provide otherwise:

24 (i) A majority of the remaining directors, whether or not sufficient
25 to constitute a quorum, may fill a vacancy on the board of directors which results
26 from any cause except an increase in the number of directors; and

27 (ii) A majority of the entire board of directors may fill a vacancy
28 which results from an increase in the number of directors.

29 (2) If the stockholders of any class or series are entitled separately to
30 elect one or more directors, a majority of the remaining directors elected by that class
31 or series or the sole remaining director elected by that class or series may fill any
32 vacancy among the number of directors elected by that class or series.

33 (c) (1) A director elected by the board of directors to fill a vacancy serves
34 until the next annual meeting of stockholders and until his successor is elected and
35 qualifies.

36 (2) A director elected by the stockholders to fill a vacancy which results
37 from the DEATH, RESIGNATION, OR removal of a director serves for the balance of the
38 term of the [removed] director WHO HAS DIED, RESIGNED, OR BEEN REMOVED AND
39 UNTIL A SUCCESSOR IS ELECTED AND QUALIFIES.

1 (3) A DIRECTOR ELECTED BY THE STOCKHOLDERS TO FILL A VACANCY
2 THAT RESULTS FROM AN INCREASE IN THE NUMBER OF DIRECTORS ON THE BOARD
3 SERVES UNTIL THE END OF THE TERM TO WHICH THE DIRECTOR HAS BEEN ELECTED
4 AND UNTIL A SUCCESSOR IS ELECTED AND QUALIFIES.

5 2-411.

6 (a) The board of directors of a corporation may:

7 (1) Appoint from among its members an executive committee and other
8 committees composed of one or more directors; and

9 (2) Delegate to these committees any of the powers of the board of
10 directors, except the power to:

11 (i) Authorize dividends on stock, EXCEPT AS PROVIDED IN §
12 2-309(D) OF THIS TITLE;

13 (ii) Issue stock other than as provided in subsection (b) of this
14 section;

15 (iii) Recommend to the stockholders any action which requires
16 stockholder approval;

17 (iv) Amend the bylaws; or

18 (v) Approve any merger or share exchange which does not require
19 stockholder approval.

20 2-604.

21 (a) This section does not apply to a charter amendment by the board of
22 directors in accordance with § 2-105(a)(12) OR § 2-309(C) of this title.

23 2-605.1.

24 (A) THIS SECTION APPLIES TO A CORPORATION THAT IS REGISTERED AS AN
25 OPEN-END COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940.

26 (B) NOTWITHSTANDING THE PROVISIONS OF § 2-604 OR § 2-605 OF THIS
27 SUBTITLE AND EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
28 MAJORITY OF THE ENTIRE BOARD OF DIRECTORS OF A CORPORATION, WITHOUT
29 ACTION BY THE STOCKHOLDERS, MAY AMEND THE CHARTER OF THE CORPORATION.

30 (C) THE CHARTER OF A CORPORATION MAY CONTAIN A PROVISION THAT
31 SPECIFICALLY PROHIBITS, BY REFERENCE TO THIS SUBSECTION, THE CORPORATION
32 FROM AMENDING ITS CHARTER IN ACCORDANCE WITH SUBSECTION (B) OF THIS
33 SECTION.

1 2-607.

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

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

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

7 (i) No stock entitled to be voted on the matter was outstanding or
8 subscribed for at the time of approval; [or]

9 (ii) The amendment is limited to a change expressly authorized by §
10 2-105(a)(12) OR § 2-309(C) of this title or § 2-605 of this subtitle to be made without
11 action by the stockholders; OR

12 (III) THE AMENDMENT IS AUTHORIZED BY § 2-605.1 OF THIS
13 SUBTITLE TO BE MADE WITHOUT ACTION BY THE STOCKHOLDERS.

14 3-410.

15 (a) When a Maryland corporation is voluntarily dissolved, until a court
16 appoints a receiver, the directors [of the corporation become the trustees of its assets
17 for purposes of liquidation] SHALL MANAGE THE AFFAIRS OF THE CORPORATION
18 SOLELY FOR THE PURPOSE SET FORTH IN § 3-408(B) OF THIS SUBTITLE.

19 (b) [The director-trustees are vested in their capacity as trustees with full
20 title to all the assets of the corporation. They] ON BEHALF OF THE CORPORATION,
21 THE DIRECTORS shall:

22 (1) Collect and distribute the assets, applying them to the payment,
23 satisfaction, and discharge of existing debts and obligations of the corporation,
24 including necessary expenses of liquidation; and

25 (2) Distribute the remaining assets among the stockholders.

26 (c) The [director-trustees] DIRECTORS may:

27 (1) Carry out the contracts of the corporation;

28 (2) Sell all or any part of the assets of the corporation at public or private
29 sale;

30 (3) Sue or be sued [in their own names as trustees or] in the name of the
31 corporation; and

32 (4) Do all other acts consistent with law and the charter of the
33 corporation necessary or proper to liquidate the corporation and wind up its affairs.

1 (d) [The director-trustees govern by majority vote] DISSOLUTION OF A
2 CORPORATION DOES NOT SUBJECT THE DIRECTORS OF THE CORPORATION TO
3 STANDARDS OF CONDUCT THAT VARY FROM THE STANDARDS OF CONDUCT
4 OTHERWISE APPLICABLE TO DIRECTORS OF THE CORPORATION.

5 3-411.

6 (a) A director, stockholder, or creditor of a Maryland corporation which is
7 dissolving voluntarily may petition a court of equity to take jurisdiction of the
8 liquidation of the corporation.

9 (b) After notice and hearing, the court for good cause shown may order the
10 corporation liquidated under court supervision either by the directors [as trustees] or
11 by one or more receivers appointed by the court.

12 (c) The authority of the [director-trustees] DIRECTORS terminates when a
13 court appoints a receiver.

14 3-412.

15 (a) If a Maryland corporation is voluntarily dissolved and assets are available
16 for distribution to stockholders, the [director-trustees] DIRECTORS or receiver may
17 notify the stockholders to prove their interests within a specified time at least 60 days
18 after the date of the notice. The notice shall be mailed to each stockholder at his
19 address as it appears on the records of the corporation and published at least once a
20 week for three successive weeks in a newspaper of general circulation published in
21 the county in which the principal office of the corporation is located. The date of the
22 notice is the later of the date of mailing or the date of first publication.

23 (b) After the expiration of the time specified in the notice, the
24 [director-trustees] DIRECTORS or receiver may distribute to each stockholder who
25 has proved his interest his proportionate share of the assets, reserving the shares of
26 those who have not proved their interests. Thereafter, the [director-trustees]
27 DIRECTORS or receiver may incur reasonable expenses in locating the remaining
28 stockholders and securing proof of interests from them and may charge the expenses
29 against the funds undistributed at the time the expenses are incurred. From time to
30 time the [director-trustees] DIRECTORS or receiver may distribute a proportionate
31 share to any stockholder who has proved his interest since the prior distribution.

32 (c) No earlier than three years from the date of the original notice, the
33 [director-trustees] DIRECTORS or receiver may distribute all surplus assets
34 remaining under his control to those stockholders who have proved their interests
35 and are entitled to distribution. After final distribution, the interest of any
36 stockholder who has not proved his interest is forever barred and foreclosed.

37 (d) (1) Any assets remaining unclaimed 60 days after the final distribution,
38 whether through failure or inability of the postal authorities to deliver the
39 distribution checks or for any other reason is presumed abandoned and shall be
40 reported to the abandoned property unit of the State Comptroller's office in

1 accordance with Title 17 of the Commercial Law Article, the Maryland Uniform
2 Disposition of Abandoned Property Act.

3 (2) The [director-trustees] DIRECTORS or receiver are released and
4 discharged from all further liability in the matter on payment or delivery of all
5 unclaimed assets to the abandoned property unit of the State Comptroller's office.

6 3-418.

7 (b) (1) Any preference, payment, or transfer made by the corporation which
8 would be void, voidable, or fraudulent under State law or the federal Bankruptcy
9 [Act] CODE if made by an insolvent or bankrupt is to the same extent void, voidable,
10 or fraudulent, respectively, as to the corporation, and the receiver has the powers of a
11 trustee in bankruptcy with respect to setting them aside.

12 8-601.

13 (b) A shareholder or trustee of a real estate investment trust shall have the
14 immunity from liability described under [§ 5-419] §§ 5-417 AND 5-419 of the Courts
15 and Judicial Proceedings 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 **Article - Courts and Judicial Proceedings**

20 5-417.

21 A person who performs the duties of that person in accordance with the
22 standard provided under § 2-405.1 of the Corporations and Associations Article has
23 no liability by reason of being or having been [a]:

24 (1) A director of a corporation;

25 (2) A TRUSTEE OF A REAL ESTATE INVESTMENT TRUST, AS DEFINED IN §
26 8-101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

27 5-419.

28 (a) [Subject to the provisions of subsection (b) of this section, a] A shareholder
29 or trustee of a real estate investment TRUST, AS defined [under Title 8, Subtitle 1] IN
30 § 8-101 of the Corporations and Associations Article, is not personally liable for the
31 obligations of the real estate investment trust.

32 (b) [If a trustee otherwise would be liable, the provisions of subsection (a) of
33 this section do not relieve the trustee from any liability to the trust or its security
34 holders for any act that constitutes:

- 1 (1) Bad faith;
- 2 (2) Willful misfeasance;
- 3 (3) Gross negligence; or
- 4 (4) Reckless disregard of the trustee's duties.

5 (c)] (1) Except as provided in paragraph (2) of this subsection, the
6 declaration of trust of a real estate investment trust may include any provision
7 expanding or limiting the liability of its trustees and officers to the trust or its
8 shareholders for money damages.

9 (2) The declaration of trust of a real estate investment trust may not
10 include any provision that restricts or limits the liability of its trustees or officers to
11 the trust or its shareholders:

12 (i) To the extent that it is proved that the person actually received
13 an improper benefit or profit in money, property, or services, for the amount of the
14 benefit or profit in money, property, or services actually received; or

15 (ii) To the extent that a judgment or other final adjudication
16 adverse to the person is entered in a proceeding based on a finding in the proceeding
17 that the person's action or failure to act was the result of active and deliberate
18 dishonesty and was material to the cause of action adjudicated in the proceeding.

19 (3) This subsection may not be construed to affect the liability of a
20 person in any capacity other than the person's capacity as a trustee or officer of a real
21 estate investment trust.

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