

SENATE BILL 123

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HB 684/01 - ECM

2002 Regular Session
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By: **Senator Baker**

Introduced and read first time: January 11, 2002

Assigned to: Judicial Proceedings

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; 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
29 disclosed to stockholders under certain circumstances; altering certain
30 provisions of law governing indemnification of certain individuals to include a
31 managing member of a limited liability company; clarifying that a corporation
32 may obligate itself to indemnify and to pay or reimburse certain expenses under
33 certain circumstances; providing that the status of certain judicial proceedings
34 does not, of itself, create a presumption that certain persons have not satisfied a
35 certain standard of conduct for directors of a Maryland corporation; repealing a

1 requirement that a certain report be given to stockholders of a corporation;
2 authorizing consent by electronic transmission under certain circumstances;
3 providing for less than unanimous consent for certain stockholder actions;
4 clarifying a certain notice provision; clarifying that a certain percentage of votes
5 cast at a meeting of stockholders on certain matters is sufficient to approve
6 those matters; limiting certain stockholder inspection rights; altering the
7 number of days within which a corporation must respond to certain requests for
8 information; altering certain notice provisions with respect to certain parent
9 and subsidiary mergers; clarifying that certain stockholders retain their
10 appraisal rights under certain circumstances; altering the time within which a
11 stockholder exercising the stockholder's appraisal rights must file a certain
12 written objection; repealing a requirement that a certain notice be mailed to
13 employees of certain corporations; altering certain provisions of law relating to
14 business combinations and interested stockholders under the Maryland
15 Business Combination Act; clarifying certain provisions that may be contained
16 in the declaration of trust of a real estate investment trust formed under the
17 Maryland REIT Law; clarifying the powers of Maryland real estate investment
18 trusts; altering the requirements for making certain amendments to the
19 declaration of trust of a Maryland real estate investment trust; clarifying the
20 standard of conduct for the trustees of a Maryland real estate investment trust;
21 altering certain definitions; making certain technical and stylistic changes; and
22 generally relating to Maryland corporations and Maryland real estate
23 investment trusts.

24 BY repealing and reenacting, without amendments,
25 Article - Corporations and Associations
26 Section 1-101(a) and 3-601(a)
27 Annotated Code of Maryland
28 (1999 Replacement Volume and 2001 Supplement)

29 BY repealing and reenacting, with amendments,
30 Article - Corporations and Associations
31 Section 1-101(v), 1-402, 2-206(d), 2-208, 2-208.1, 2-212(a), 2-301(a), 2-303(b),
32 2-304, 2-308, 2-418(a)(1) and (4), (b)(3), (g), and (k), 2-505, 2-506(a),
33 2-513, 3-106(d), 3-202(c), 3-203(a), 3-404, 3-601(e) and (j), 3-602(a),
34 8-202(b)(2) and (3), 8-301, 8-501(e), and 8-601.1
35 Annotated Code of Maryland
36 (1999 Replacement Volume and 2001 Supplement)

37 BY adding to
38 Article - Corporations and Associations
39 Section 1-201(d) and 2-208.2
40 Annotated Code of Maryland
41 (1999 Replacement Volume and 2001 Supplement)

42 BY repealing

1 Article - Corporations and Associations
2 Section 2-418(l)
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2000 Supplement)

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

7 **Article - Corporations and Associations**

8 1-101.

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

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

14 (2) "TRANSFER ASSETS", "TRANSFER ITS ASSETS", AND "TRANSFER OF
15 ASSETS" DO NOT INCLUDE A TRANSACTION AFTER WHICH THE CORPORATION
16 CONTINUES TO:

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

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

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

30 1-201.

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

34 1-402.

35 (A) A determination required or permitted to be made under any provision of
36 this article relating to stated capital, surplus, capital surplus, earned surplus, ASSETS

1 AND LIABILITIES, BOOK VALUE, FAIR VALUE, AUTHORIZATION OF A DISTRIBUTION,
2 or any other account or matter relating to the financial position or results of
3 operations of a Maryland corporation is prima facie proper and in accordance with
4 this article if:

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

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

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

11 2-206.

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

16 2-208.

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

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

25 (b) Articles supplementary shall include:

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

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

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

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

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

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

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

4 (1) THE STOCK ISSUED BY A CORPORATION BEFORE THE TIME THE
5 ARTICLES SUPPLEMENTARY, WITH RESPECT TO THE ISSUANCE OF THE STOCK ARE
6 EFFECTIVE, SHALL CEASE TO BE VOIDABLE AT THE TIME THE ARTICLES
7 SUPPLEMENTARY BECOME EFFECTIVE; AND

8 (2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF
9 STOCK BY A CORPORATION BEFORE THE TIME THE ARTICLES SUPPLEMENTARY,
10 WITH RESPECT TO THE ISSUANCE OF THE STOCK ARE EFFECTIVE, SHALL BE
11 EXTINGUISHED AT THE TIME THE ARTICLES SUPPLEMENTARY BECOME EFFECTIVE,
12 EXCEPT TO THE EXTENT THAT THE PERSON HAVING THE RIGHT HAS ACTED
13 DETRIMENTALLY IN RELIANCE ON THE RIGHT OR LIABILITY.

14 2-208.1.

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

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

22 (b) Articles supplementary shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 2-208.2.

19 IF THE CHARTER OF A CORPORATION REGISTERED AS AN INVESTMENT
20 COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 CREATES ONE OR MORE
21 CLASSES OR SERIES OF STOCK, AND IF SEPARATE AND DISTINCT RECORDS ARE
22 MAINTAINED FOR THE CLASS OR SERIES AND THE ASSETS ASSOCIATED WITH THE
23 CLASS OR SERIES ARE HELD AND ACCOUNTED FOR SEPARATELY FROM THE OTHER
24 ASSETS OF THE CORPORATION, OR ASSETS ASSOCIATED WITH ANY OTHER CLASS OR
25 SERIES:

26 (1) THE DEBTS, LIABILITIES, OBLIGATIONS, AND EXPENSES INCURRED,
27 CONTRACTED FOR, OR OTHERWISE EXISTING WITH RESPECT TO A PARTICULAR
28 CLASS OR SERIES ARE ENFORCEABLE AGAINST THE ASSETS ASSOCIATED WITH THAT
29 CLASS OR SERIES ONLY, AND NOT AGAINST THE ASSETS OF THE CORPORATION
30 GENERALLY OR ANY OTHER CLASS OR SERIES OF STOCK; AND

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

35 2-212.

36 (a) Each stock certificate shall be signed by the president, a vice president,
37 THE CHIEF EXECUTIVE OFFICER, THE CHIEF OPERATING OFFICER, THE CHIEF
38 FINANCIAL OFFICER, [or] the chairman of the board, OR THE VICE CHAIRMAN OF

1 THE BOARD and countersigned by the secretary, an assistant secretary, the treasurer,
2 or an assistant treasurer.

3 2-301.

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

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

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

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

12 2-303.

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

16 (2) [Before issuing stock without par value, the] THE board of directors
17 may allocate any portion of the consideration to capital surplus. However, if the stock
18 has a preference in the assets of the corporation in the event of involuntary
19 liquidation, the board may allocate to capital surplus only a portion which does not
20 exceed the amount by which the consideration exceeds the aggregate amount of the
21 preference.

22 2-304.

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

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

28 (2) Any other proper corporate purpose.

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

31 2-308.

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

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

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

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

8 2-418.

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

10 (1) "Director" means any person who is or was a director of a corporation
11 and any person who, while a director of a corporation, is or was serving at the request
12 of the corporation as a director, officer, partner, trustee, MANAGING MEMBER,
13 employee, or agent of another foreign or domestic corporation, partnership, joint
14 venture, trust, LIMITED LIABILITY COMPANY, other enterprise, or employee benefit
15 plan.

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

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

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

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

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

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

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

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

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

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

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

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

21 2-505.

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

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

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

36 (b) Unless the charter requires otherwise, the holders of any class of [stock]
37 STOCK, other than common stock[,] entitled to vote generally in the election of
38 directors, may take action or consent to any action by DELIVERING A [the written]
39 consent IN WRITING OR BY ELECTRONIC TRANSMISSION of the stockholders entitled
40 to cast not less than the minimum number of votes that would be necessary to
41 authorize or take the action at a stockholders meeting if the corporation gives notice

1 of the action to each stockholder OF SUCH CLASS not later than 10 days after the
2 effective time of the action.

3 2-506.

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

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

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

11 2-513.

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

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

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

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

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

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

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

1 3-106.

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

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

17 3-202.

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

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

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

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

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

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

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

37 (3) The stock is not entitled, OTHER THAN SOLELY BECAUSE OF § 3-106
38 OF THIS TITLE, to be voted on the transaction or the stockholder did not own the

1 shares of stock on the record date for determining stockholders entitled to vote on the
2 transaction;

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

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

8 3-203.

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

11 (1) Shall file with the corporation a written objection to the proposed
12 transaction:

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

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

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

21 (3) Within 20 days after the Department accepts the articles for record,
22 shall make a written demand on the successor for payment for the stockholder's stock,
23 stating the number and class of shares for which the stockholder demands payment.
24 3-404.

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

30 3-601.

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

32 (e) "Business combination" means:

33 (1) Unless the merger, consolidation, or share exchange does not alter
34 the contract rights of the stock as expressly set forth in the charter or change or
35 convert in whole or in part the outstanding shares of stock of the corporation, any
36 merger, consolidation, or share exchange of the corporation or any subsidiary with (i)

1 any interested stockholder or (ii) any other corporation (whether or not itself an
2 interested stockholder) which is, or after the merger, consolidation, or share exchange
3 would be, an affiliate of an interested stockholder that was an interested stockholder
4 prior to the transaction;

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

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

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

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

35 (6) The receipt by any interested stockholder or any affiliate of any
36 interested stockholder (other than the corporation or any of its subsidiaries) of the
37 benefit, directly or indirectly (except proportionately as a stockholder), of any loan,
38 advance, guarantee, pledge, or other financial assistance or any tax credit or other tax
39 advantage provided by the corporation or any of its subsidiaries;

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

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

7 (9) ANY AMENDMENT TO THE CHARTER OF THE CORPORATION OR
8 OTHER ACTION OR SERIES OF ACTIONS THAT, IF CONSUMMATED, WOULD RESULT IN
9 THE CHANGE OR CONVERSION OF SHARES OF VOTING STOCK OF THE CORPORATION
10 THAT ARE NOT REDEEMABLE AT THE OPTION OF THE HOLDER INTO SECURITIES OF
11 THE CORPORATION OR ANOTHER ENTITY THAT ARE REDEEMABLE AT THE OPTION
12 OF THE HOLDER.

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

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

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

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

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

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

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

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

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

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

5 3-602.

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

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

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

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

22 8-202.

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

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

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

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

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

35 (3) The inclusion or omission of a provision in a declaration of trust that
36 allows the board of trustees to consider the effect of a potential acquisition of control
37 on persons specified in [paragraph (2)] PARAGRAPH (2)(II) of this subsection does not

1 create an inference concerning factors that may be considered by the board of trustees
2 regarding a potential acquisition of control.

3 8-301.

4 A real estate investment trust has the power to:

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

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

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

11 (4) Make contracts AND GUARANTEES, incur liabilities, and borrow
12 money;

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

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

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

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

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

26 (ii) Direct and indirect obligations of the United States, any other
27 government, state, territory, government district, and municipality, and any
28 instrumentality of them;

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

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

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

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

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

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

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

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

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

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

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

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

28 8-501.

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

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

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

1 8-601.1.

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

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