
By: **Delegates Doory and Feldman**

Introduced and read first time: February 10, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Miscellaneous Provisions**

3 FOR the purpose of requiring a certificate of correction to be executed in the same
4 manner in which the document being corrected is required to be executed at the
5 time of the filing of the certificate of correction; authorizing a corporation to file
6 a certificate of notice for record with the State Department of Assessments and
7 Taxation; specifying the manner in which a certificate of notice must be
8 executed; specifying information that may be described in a certificate of notice;
9 prohibiting a certificate of notice from amending, supplementing, or correcting
10 the charter of a corporation or affecting certain rights or liabilities of
11 stockholders; providing that a certificate of notice is not part of the charter of a
12 corporation; providing that a director of a corporation is not required to
13 authorize or direct the filing of a certificate of notice; providing that a
14 corporation is not required to file a certificate of notice for any purpose;
15 authorizing a corporation to issue stock without consideration to an unlimited
16 number of persons for the purpose of qualifying the corporation as a real estate
17 investment trust under the Internal Revenue Code; requiring a director to be
18 indemnified against reasonable expenses incurred by the director in the defense
19 of certain claims, issues, or matters under certain circumstances; providing that
20 a single-director committee of the board of a corporation may make certain
21 determinations with respect to indemnification of certain directors of the
22 corporation; clarifying that the board of directors of a corporation may amend
23 the charter of the corporation without action by the stockholders unless
24 prohibited in the charter; authorizing a real estate investment trust to issue
25 shares of beneficial interest without consideration to an unlimited number of
26 persons for the purpose of qualifying the real estate investment trust as a real
27 estate investment trust under the Internal Revenue Code; conforming certain
28 reporting requirements for a real estate investment trust to the reporting
29 requirements for a corporation; conforming the requirements for executing
30 articles of amendment for a real estate investment trust to the requirements for
31 executing articles of amendment for a corporation; repealing a certain
32 definition; and generally relating to corporations and real estate investment
33 trusts.

34 BY repealing and reenacting, with amendments,

1 Article - Corporations and Associations
2 Section 1-207(d), 2-206(d), 2-418(d) and (e), 2-605(a), 3-101, 8-102, 8-207,
3 8-501(f), and 8-601.1
4 Annotated Code of Maryland
5 (1999 Replacement Volume and 2004 Supplement)

6 BY adding to
7 Article - Corporations and Associations
8 Section 1-207.1
9 Annotated Code of Maryland
10 (1999 Replacement Volume and 2004 Supplement)

11 BY repealing
12 Article - Corporations and Associations
13 Section 8-401
14 Annotated Code of Maryland
15 (1999 Replacement Volume and 2004 Supplement)

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

18 **Article - Corporations and Associations**

19 1-207.

20 (d) (1) Except as provided in paragraph (2) of this subsection, a certificate of
21 correction shall be executed in the same manner in which the document being
22 corrected [was] IS required to be executed AT THE TIME OF THE FILING OF THE
23 CERTIFICATE OF CORRECTION.

24 (2) A certificate of correction to articles of incorporation shall be executed
25 by the incorporator or in the manner provided in § 1-301 of this title.

26 1-207.1.

27 (A) A CORPORATION MAY FILE A CERTIFICATE OF NOTICE FOR RECORD WITH
28 THE DEPARTMENT.

29 (B) A CERTIFICATE OF NOTICE MAY DESCRIBE:

30 (1) AN ACTION BY THE CORPORATION, ITS BOARD OF DIRECTORS, OR ITS
31 STOCKHOLDERS;

32 (2) THE OCCURRENCE OF OR CHANGE TO FACTS ASCERTAINABLE
33 OUTSIDE OF THE CHARTER, AS DEFINED IN § 2-105(B) OF THIS ARTICLE;

34 (3) THE EXPIRATION OF THE PERIOD OF EXISTENCE OF THE
35 CORPORATION IN ACCORDANCE WITH § 3-519 OF THIS ARTICLE; OR

1 (4) ANY OTHER INFORMATION THAT THE CORPORATION DETERMINES
2 SHOULD BE DISCLOSED.

3 (C) A CERTIFICATE OF NOTICE MAY NOT:

4 (1) AMEND, SUPPLEMENT, OR CORRECT THE CHARTER OF THE
5 CORPORATION IN ANY MANNER; OR

6 (2) AFFECT ANY RIGHTS OR LIABILITIES OF STOCKHOLDERS, WHETHER
7 OR NOT ACCRUED OR INCURRED BEFORE THE CERTIFICATE OF NOTICE IS FILED.

8 (D) A CERTIFICATE OF NOTICE IS NOT A PART OF THE CHARTER OF A
9 CORPORATION.

10 (E) A DIRECTOR OF A CORPORATION IS NOT REQUIRED TO AUTHORIZE OR
11 DIRECT THE FILING OF A CERTIFICATE OF NOTICE.

12 (F) A CORPORATION IS NOT REQUIRED TO FILE A CERTIFICATE OF NOTICE
13 FOR ANY PURPOSE, INCLUDING TO INDICATE THAT THERE HAS BEEN A CHANGE TO
14 THE FACTS OR INFORMATION CONTAINED IN A PREVIOUSLY FILED CERTIFICATE OF
15 NOTICE.

16 (G) A CERTIFICATE OF NOTICE SHALL BE EXECUTED IN THE MANNER
17 REQUIRED FOR CHARTER DOCUMENTS BY § 1-301 OF THIS TITLE.

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 persons] without consideration for the purpose
21 of qualifying the corporation as a real estate investment trust under the Internal
22 Revenue Code.

23 2-418.

24 (d) Unless limited by the charter:

25 (1) A director who has been successful, on the merits or otherwise, in the
26 defense of any proceeding referred to in subsection (b) of this section, OR IN THE
27 DEFENSE OF ANY CLAIM, ISSUE, OR MATTER IN THE PROCEEDING, shall be
28 indemnified against reasonable expenses incurred by the director in connection with
29 the proceeding, CLAIM, ISSUE, OR MATTER IN WHICH THE DIRECTOR HAS BEEN
30 SUCCESSFUL.

31 (2) A court of appropriate jurisdiction, upon application of a director and
32 such notice as the court shall require, may order indemnification in the following
33 circumstances:

34 (i) If it determines a director is entitled to reimbursement under
35 paragraph (1) of this subsection, the court shall order indemnification, in which case

1 the director shall be entitled to recover the expenses of securing such reimbursement;
2 or

3 (ii) If it determines that the director is fairly and reasonably
4 entitled to indemnification in view of all the relevant circumstances, whether or not
5 the director has met the standards of conduct set forth in subsection (b) of this section
6 or has been adjudged liable under the circumstances described in subsection (c) of this
7 section, the court may order such indemnification as the court shall deem proper.
8 However, indemnification with respect to any proceeding by or in the right of the
9 corporation or in which liability shall have been adjudged in the circumstances
10 described in subsection (c) shall be limited to expenses.

11 (3) A court of appropriate jurisdiction may be the same court in which
12 the proceeding involving the director's liability took place.

13 (e) (1) Indemnification under subsection (b) of this section may not be made
14 by the corporation unless authorized for a specific proceeding after a determination
15 has been made that indemnification of the director is permissible in the
16 circumstances because the director has met the standard of conduct set forth in
17 subsection (b) of this section.

18 (2) Such determination shall be made:

19 (i) By the board of directors by a majority vote of a quorum
20 consisting of directors not, at the time, parties to the proceeding, or, if such a quorum
21 cannot be obtained, then by a majority vote of a committee of the board consisting
22 solely of [two] ONE or more directors not, at the time, parties to such proceeding and
23 who were duly designated to act in the matter by a majority vote of the full board in
24 which the designated directors who are parties may participate;

25 (ii) By special legal counsel selected by the board of directors or a
26 committee of the board by vote as set forth in subparagraph (i) of this paragraph, or,
27 if the requisite quorum of the full board cannot be obtained therefor and the
28 committee cannot be established, by a majority vote of the full board in which
29 directors who are parties may participate; or

30 (iii) By the stockholders.

31 (3) Authorization of indemnification and determination as to
32 reasonableness of expenses shall be made in the same manner as the determination
33 that indemnification is permissible. However, if the determination that
34 indemnification is permissible is made by special legal counsel, authorization of
35 indemnification and determination as to reasonableness of expenses shall be made in
36 the manner specified in subparagraph (ii) of paragraph (2) of this subsection for
37 selection of such counsel.

38 (4) Shares held by directors who are parties to the proceeding may not be
39 voted on the subject matter under this subsection.

1 2-605.

2 (a) Notwithstanding the provisions of § 2-604 of this subtitle, UNLESS
3 PROHIBITED IN THE CHARTER BY REFERENCE TO THIS SECTION OR THE SUBJECT
4 MATTER OF THIS SECTION, a majority of the entire board of directors, without action
5 by the stockholders, may amend the charter of a corporation to:

6 (1) Change the name of the corporation; or

7 (2) Change the name or other designation or the parvalue of any class or
8 series of stock of the corporation and the aggregate parvalue of the stock of the
9 corporation.

10 3-101.

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

12 (b) ["Foreign corporation" means a corporation organized under the laws of
13 the United States, another state of the United States, or a territory, possession, or
14 district of the United States, or under the laws of a foreign country.

15 (c) "Interest in land" means any interest in real property, the title to which
16 could be affected by recording an instrument in the land records.

17 [(d)] (C) "Business trust" means an unincorporated trust or association,
18 including a common-law trust, Massachusetts trust, or Maryland real estate
19 investment trust as defined in § 8-101(b) of this article, which is engaged in business
20 and in which property is acquired, held, managed, administered, controlled, invested,
21 or disposed of by trustees for the benefit and profit of any person who may become a
22 holder of a transferable unit of beneficial interest in the trust.

23 [(e)] (D) "Foreign business trust" means a business trust organized under the
24 laws of the United States, another state of the United States, or a territory,
25 possession, or district of the United States, or under the laws of a foreign country.

26 [(f)] (E) "Domestic limited partnership" or "limited partnership" means a
27 partnership formed by 2 or more persons under the laws of the State and having one
28 or more general partners and one or more limited partners.

29 [(g)] (F) "Foreign limited partnership" means a partnership formed under the
30 laws of any state other than the State of Maryland or under the laws of a foreign
31 country and having as partners one or more general partners and one or more limited
32 partners.

33 [(h)] (G) "Domestic limited liability company" or "limited liability company"
34 means a limited liability company formed under the laws of the State.

35 [(i)] (H) "Foreign limited liability company" means a limited liability company
36 formed under the laws of any state, other than the State of Maryland, or under the
37 laws of a foreign country.

1 [(j)] (I) "Domestic partnership" or "partnership" means a partnership formed
2 under the laws of the State.

3 [(k)] (J) "Foreign partnership" means a partnership formed under the laws of
4 any state, other than this State, or under the laws of a foreign country.

5 8-102.

6 A real estate investment trust is a permitted form of unincorporated BUSINESS
7 trust or association, and may conduct business in the State in accordance with this
8 title.

9 8-207.

10 Notwithstanding any other provision of this article, a real estate investment
11 trust may issue shares of beneficial interest [to up to 100 persons] without
12 consideration for the purpose of qualifying the real estate investment trust as a real
13 estate investment trust under the Internal Revenue Code.

14 [8-401.

15 (a) Each year, a real estate investment trust doing business in the State shall
16 prepare an annual report of its operations. The report shall include a balance sheet,
17 an income statement, and a surplus statement.

18 (b) The financial statements in the annual report shall be certified by an
19 independent certified public accountant based on the accountant's full examination of
20 the books and records of the real estate investment trust in accordance with generally
21 accepted auditing procedure.

22 (c) The annual report:

23 (1) Shall be submitted to shareholders at or before the annual meeting of
24 shareholders; and

25 (2) Within the earlier of 20 days after the annual meeting of
26 shareholders or 120 days after the end of the fiscal year, shall be placed on file at the
27 principal office of the real estate investment trust.]

28 8-501.

29 (f) Articles of amendment[, setting forth the amendment and stating the
30 manner in which it was approved,] shall be [signed and acknowledged by at least a
31 majority of the trustees, or an officer duly authorized by at least a majority of the
32 trustees,] EXECUTED FOR THE REAL ESTATE INVESTMENT TRUST IN THE MANNER
33 REQUIRED BY § 1-301 OF THIS ARTICLE and filed FOR RECORD with the Department.
34 8-601.1.

35 Sections 2-201(c), 2-313, 2-405.1(d) through (g), 2-502(e), and 2-504(f) of this
36 article shall apply to real estate investment trusts.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 June 1, 2005.