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By: **Delegates Doory and Feldman**

Introduced and read first time: February 10, 2005

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2005

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CHAPTER\_\_\_\_\_

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

1 requirements for a corporation; conforming the requirements for executing  
2 articles of amendment for a real estate investment trust to the requirements for  
3 executing articles of amendment for a corporation; repealing a certain  
4 definition; and generally relating to corporations and real estate investment  
5 trusts.

6 BY repealing and reenacting, with amendments,  
7 Article - Corporations and Associations  
8 Section 1-207(d), 2-206(d), 2-418(d) and (e), 2-605(a), 3-101, 8-102, 8-207,  
9 8-501(f), and 8-601.1  
10 Annotated Code of Maryland  
11 (1999 Replacement Volume and 2004 Supplement)

12 BY adding to  
13 Article - Corporations and Associations  
14 Section 1-207.1  
15 Annotated Code of Maryland  
16 (1999 Replacement Volume and 2004 Supplement)

17 BY repealing  
18 Article - Corporations and Associations  
19 Section 8-401  
20 Annotated Code of Maryland  
21 (1999 Replacement Volume and 2004 Supplement)

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

24 **Article - Corporations and Associations**

25 1-207.

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

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

32 1-207.1.

33 (A) A CORPORATION MAY FILE A CERTIFICATE OF NOTICE FOR RECORD WITH  
34 THE DEPARTMENT.

35 (B) A CERTIFICATE OF NOTICE MAY DESCRIBE:

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

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

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

7 (4) ANY OTHER INFORMATION THAT THE CORPORATION DETERMINES  
8 SHOULD BE DISCLOSED.

9 (C) A CERTIFICATE OF NOTICE MAY NOT:

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

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

14 (D) A CERTIFICATE OF NOTICE IS NOT A PART OF THE CHARTER OF A  
15 CORPORATION.

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

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

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

24 2-206.

25 (d) Notwithstanding any other provision of ~~this article~~ THE MARYLAND  
26 GENERAL CORPORATION LAW, a corporation may issue shares of its stock [to up to  
27 100 persons] without consideration for the purpose of qualifying the corporation as a  
28 real estate investment trust under the Internal Revenue Code.

29 2-418.

30 (d) Unless limited by the charter:

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

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

4                   (i)     If it determines a director is entitled to reimbursement under  
5 paragraph (1) of this subsection, the court shall order indemnification, in which case  
6 the director shall be entitled to recover the expenses of securing such reimbursement;  
7 or

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

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

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

23                  (2)     Such determination shall be made:

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

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

35                         (iii)   By the stockholders.

36                  (3)     Authorization of indemnification and determination as to  
37 reasonableness of expenses shall be made in the same manner as the determination  
38 that indemnification is permissible. However, if the determination that  
39 indemnification is permissible is made by special legal counsel, authorization of  
40 indemnification and determination as to reasonableness of expenses shall be made in

1 the manner specified in subparagraph (ii) of paragraph (2) of this subsection for  
2 selection of such counsel.

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

5 2-605.

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

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

11 (2) Change the name or other designation or the parvalue of any class or  
12 series of stock of the corporation and the aggregate parvalue of the stock of the  
13 corporation.

14 3-101.

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

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

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

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

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

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

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

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

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

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

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

10 8-102.

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

14 8-207.

15 Notwithstanding any other provision of ~~this article~~ THE MARYLAND REIT LAW, a  
16 real estate investment trust may issue shares of beneficial interest [to up to 100  
17 persons] without consideration for the purpose of qualifying the real estate  
18 investment trust as a real estate investment trust under the Internal Revenue Code.

19 [8-401.

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

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

27 (c) The annual report:

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

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

33 8-501.

34 (f) Articles of amendment[, setting forth the amendment and stating the  
35 manner in which it was approved,] shall be [signed and acknowledged by at least a  
36 majority of the trustees, or an officer duly authorized by at least a majority of the

1 trustees,] EXECUTED FOR THE REAL ESTATE INVESTMENT TRUST IN THE MANNER  
2 REQUIRED BY § 1-301 OF THIS ARTICLE and filed FOR RECORD with the Department.  
3 8-601.1.

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

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