

SENATE BILL 720

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9lr3012
CF HB 245

By: **Senator Forehand**

Introduced and read first time: February 6, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate Investment Trusts – Declaration of Trust and Bylaws**

3 FOR the purpose of repealing a certain provision requiring that the annual meeting of
4 shareholders provided for in a real estate investment trust’s declaration of trust
5 be held after the delivery of the annual report; repealing a certain
6 cross–reference in a provision authorizing provisions of a real estate investment
7 trust’s bylaws to be made dependent on facts ascertainable outside the bylaws;
8 and generally relating to real estate investment trusts.

9 BY repealing and reenacting, with amendments,
10 Article – Corporations and Associations
11 Section 8–202
12 Annotated Code of Maryland
13 (2007 Replacement Volume and 2008 Supplement)

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

16 **Article – Corporations and Associations**

17 8–202.

18 (a) A real estate investment trust shall file its declaration of trust for record
19 with the Department.

20 (b) (1) The declaration of trust shall:

21 (i) Indicate clearly that the trust is a real estate investment
22 trust;

23 (ii) State the name of the trust;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (iii) State the total number of shares which the real estate
2 investment trust has authority to issue;

3 (iv) Provide for an annual meeting of shareholders [after the
4 delivery of the annual report,] at a convenient location and on proper notice;

5 (v) Provide for the election of trustees at least every third year
6 at an annual meeting of shareholders;

7 (vi) State the number of trustees and the names of those persons
8 who will serve as trustees until the first meeting of shareholders and until their
9 successors are elected and qualify or such later time as may be specified in the
10 declaration of trust;

11 (vii) State the name and address of a resident agent of the real
12 estate investment trust in the State; and

13 (viii) If the shares are divided into classes as permitted by §
14 8–203 of this subtitle, provide a description of each class, including any preferences,
15 conversion and other rights, voting powers, restrictions, limitations as to dividends or
16 distributions, qualifications, and terms and conditions of redemption.

17 (2) A declaration of trust may include a provision that allows the
18 trustees, in considering a potential acquisition of control of the real estate investment
19 trust, to consider the effect of the potential acquisition of control on:

20 (i) Shareholders, employees, suppliers, customers, and
21 creditors of the trust; and

22 (ii) Communities in which offices or other establishments of the
23 trust are located.

24 (3) The inclusion or omission of a provision in a declaration of trust
25 that allows the board of trustees to consider the effect of a potential acquisition of
26 control on persons specified in paragraph (2) of this subsection does not create an
27 inference concerning factors that may be considered by the board of trustees regarding
28 a potential acquisition of control.

29 (c) Notwithstanding any provision of this title which requires for any action
30 the concurrence of a greater proportion of the votes than a majority of the votes
31 entitled to be cast, a real estate investment trust may provide by its declaration of
32 trust that the action may be taken or authorized on the concurrence of a greater or
33 smaller proportion, but not less than a majority of the number of votes entitled to be
34 cast on the matter.

1 (d) The declaration of trust shall be signed and acknowledged by each
2 trustee.

3 (e) (1) In this subsection, “facts ascertainable outside the bylaws” include:

4 (i) An action or determination by any person, including the real
5 estate investment trust, its board of trustees, an officer or agent of the real estate
6 investment trust, and any other person affiliated with the real estate investment
7 trust;

8 (ii) Any agreement or other document; or

9 (iii) Any other event.

10 (2) Any provision of the bylaws [permitted under subsection (a) of this
11 section] may be made dependent upon facts ascertainable outside the bylaws.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2009.