

CHAPTER 94

(House Bill 245)

AN ACT concerning

Real Estate Investment Trusts – Declaration of Trust and Bylaws

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

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

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

Article – Corporations and Associations

8–202.

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

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

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

(ii) State the name of the trust;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) An action or determination by any person, including the real estate investment trust, its board of trustees, an officer or agent of the real estate

investment trust, and any other person affiliated with the real estate investment trust;

(ii) Any agreement or other document; or

(iii) Any other event.

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

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

Approved by the Governor, April 14, 2009.