

# SENATE BILL 501

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CF HB 412

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By: **Senator Raskin**

Introduced and read first time: February 3, 2010

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate Investment Trusts – Miscellaneous Provisions**

3 FOR the purpose of clarifying that a real estate investment trust may provide by its  
4 declaration of trust that holders of one or more classes or series of shares have  
5 exclusive voting rights on an amendment that would alter only the contract  
6 rights of those shareholders; providing that, without action by the shareholders,  
7 the majority of the entire board of trustees may amend the declaration of trust  
8 in any respect in which the charter of a corporation may be amended, unless  
9 prohibited in the declaration of trust in a certain manner; authorizing the board  
10 of trustees of certain real estate investment trusts to amend the declaration of  
11 trust, without shareholder action, to effect a certain reverse share split, unless  
12 prohibited in the declaration of trust in a certain manner; requiring a certain  
13 real estate investment trust to give certain notice of a certain reverse share split  
14 to certain shareholders within a certain time after the effective date of the  
15 reverse share split; authorizing a real estate investment trust to file a certain  
16 certificate of notice for record with the State Department of Assessments and  
17 Taxation; providing that a trustee of a real estate investment trust is not  
18 required to authorize or direct the filing of a certificate of notice; providing that  
19 a real estate investment trust is not required to file a certificate of notice;  
20 providing that a certificate of notice shall be executed in a certain manner;  
21 defining certain terms and altering a certain definition; and generally relating  
22 to real estate investment trusts.

23 BY repealing and reenacting, with amendments,  
24 Article – Corporations and Associations  
25 Section 8–101, 8–203(a) and (c), and 8–501  
26 Annotated Code of Maryland  
27 (2007 Replacement Volume and 2009 Supplement)

28 BY adding to  
29 Article – Corporations and Associations

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 8–503  
2 Annotated Code of Maryland  
3 (2007 Replacement Volume and 2009 Supplement)

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

6 **Article – Corporations and Associations**

7 8–101.

8 (a) In this title the following words have the meanings indicated.

9 **(B) “DECLARATION OF TRUST” MEANS THE DECLARATION OF TRUST**  
10 **FILED WITH THE DEPARTMENT FOR THE PURPOSE OF FORMING A REAL ESTATE**  
11 **INVESTMENT TRUST, AS SPECIFIED IN § 8–202 OF THIS TITLE, EITHER AS**  
12 **ORIGINALLY ACCEPTED FOR RECORD OR AS AMENDED, CORRECTED, OR**  
13 **SUPPLEMENTED BY ARTICLES OF AMENDMENT, ARTICLES OF AMENDMENT AND**  
14 **RESTATEMENT, ARTICLES SUPPLEMENTARY, ARTICLES OF MERGER, OR A**  
15 **CERTIFICATE OF CORRECTION.**

16 **[(b)] (C)** “Real estate investment trust” means an unincorporated business  
17 trust or association formed under this title in which property is acquired, held,  
18 managed, administered, controlled, invested, or disposed of for the benefit and profit  
19 of any person who may become a shareholder.

20 **[(c)] (D)** “Share” means a transferable unit of beneficial interest in a real  
21 estate investment trust.

22 8–203.

23 (a) A real estate investment trust may provide by its declaration of trust:

24 (1) That any specified class of shares is preferred over another class as  
25 to its distributive share of the assets on voluntary or involuntary liquidation of the  
26 real estate investment trust and the amount of the preference;

27 (2) That any specified class of shares may be redeemed at the option of  
28 the real estate investment trust or of the holders of the shares and the terms and  
29 conditions of redemption, including the time and price of redemption;

30 (3) That any specified class of shares is convertible into shares of one  
31 or more other classes and the terms and conditions of conversion;

32 (4) That the holders of any specified securities issued or to be issued  
33 by the real estate investment trust have any voting or other rights which, by law, are  
34 or may be conferred on shareholders;

1           **(5) THAT THE HOLDERS OF ONE OR MORE CLASSES OR SERIES OF**  
2 **SHARES HAVE EXCLUSIVE VOTING RIGHTS ON AN AMENDMENT TO THE**  
3 **DECLARATION OF TRUST THAT WOULD ALTER ONLY THE CONTRACT RIGHTS, AS**  
4 **EXPRESSLY SET FORTH IN THE DECLARATION OF TRUST, OF THE SPECIFIED**  
5 **CLASS OR SERIES OF SHARES;**

6           **[(5)] (6)** For any other preferences, rights, restrictions, including  
7 restrictions on transferability or ownership designed to permit the real estate  
8 investment trust to qualify under the Internal Revenue Code or regulations adopted  
9 under the Code or for any other purpose, and qualifications not inconsistent with law;

10           **[(6)] (7)** That the board of trustees may classify or reclassify any  
11 unissued shares from time to time by setting or changing the preferences, conversion  
12 or other rights, voting powers, restrictions, limitations as to dividends or distributions,  
13 qualifications, or terms or conditions of redemption of the shares; and

14           **[(7)] (8)** That the board of trustees may amend the declaration of  
15 trust to increase or decrease the aggregate number of shares or the number of shares  
16 of any class that the trust has authority to issue.

17           (c) (1) In this subsection, “facts **ASCERTAINABLE OUTSIDE THE**  
18 **DECLARATION OF TRUST**” includes:

19           (i) [The occurrence of any event, including a determination or  
20 action by any person or body, including the real estate investment trust; and] **AN**  
21 **ACTION OR DETERMINATION BY ANY PERSON, INCLUDING THE REAL ESTATE**  
22 **INVESTMENT TRUST, THE BOARD OF TRUSTEES OF THE REAL ESTATE**  
23 **INVESTMENT TRUST, AN OFFICER OR AGENT OF THE REAL ESTATE INVESTMENT**  
24 **TRUST, OR ANY OTHER PERSON AFFILIATED WITH THE REAL ESTATE**  
25 **INVESTMENT TRUST;**

26           (ii) The contents of any agreement to which the real estate  
27 investment trust is a party or any other document; **AND**

28           **(III) ANY OTHER EVENT.**

29           (2) Any of the preferences, conversion or other rights, voting powers,  
30 restrictions, limitations as to dividends or distributions, qualifications, or terms or  
31 conditions of redemption of any class or series of shares may be made dependent upon  
32 facts ascertainable outside the declaration of trust and may vary among holders of the  
33 shares, provided that the manner in which such facts or variations will operate upon  
34 the preferences, conversion or other rights, voting powers, restrictions, limitations as  
35 to dividends or distributions, qualifications, or terms or conditions of redemption of  
36 such class or series of shares is clearly and expressly set forth in the declaration of  
37 trust.

1 8-501.

2 (a) Except as provided in § 8-202(c) or § 8-203(a)(7) of this title, a  
3 declaration of trust may be amended only as provided in this section.

4 (b) The board of trustees of a real estate investment trust proposing an  
5 amendment to its declaration of trust shall:

6 (1) Adopt a resolution which sets forth the proposed amendment and  
7 declares that it is advisable; and

8 (2) Direct that the proposed amendment be submitted for  
9 consideration by the shareholders.

10 (c) (1) If the proposed amendment is to be considered at a meeting of the  
11 shareholders, notice which states that a purpose of the meeting will be to act upon the  
12 proposed amendment shall be given by the real estate investment trust in the manner  
13 required by its declaration of trust or bylaws to:

14 (i) Each shareholder entitled to vote on the proposed  
15 amendment; and

16 (ii) Each shareholder not entitled to vote on the proposed  
17 amendment if the contract rights of the shareholder's shares, as expressly set forth in  
18 the declaration of trust, would be altered by the amendment.

19 (2) The notice shall include a copy of the amendment or a summary of  
20 the changes it will affect.

21 (d) The proposed amendment shall be approved by the shareholders of the  
22 real estate investment trust by the affirmative vote or written consent of two thirds of  
23 all the votes entitled to be cast on the matter.

24 (e) **(1)** A declaration of trust may [permit:

25 (1) The] **PERMIT THE** board of trustees, with the approval of two  
26 thirds of its members, and without action by the shareholders, to amend the  
27 declaration of trust from time to time to qualify as a real estate investment trust  
28 under the Internal Revenue Code or under this title[; and].

29 (2) **[A] NOTWITHSTANDING SUBSECTIONS (B) AND (D) OF THIS**  
30 **SECTION, UNLESS PROHIBITED IN THE DECLARATION OF TRUST BY REFERENCE**  
31 **TO THIS SUBSECTION OR TO THE SUBJECT MATTER OF THIS SUBSECTION, A**  
32 majority of the entire board of trustees, without action by the shareholders, [to] **MAY**  
33 amend the declaration of trust in any respect in which the charter of a corporation  
34 may be amended in accordance with § 2-605 of this article.

1           **(F) (1)** IN THIS SUBSECTION, “REVERSE SHARE SPLIT” MEANS A  
2 COMBINATION OF OUTSTANDING SHARES OF BENEFICIAL INTEREST OF A REAL  
3 ESTATE INVESTMENT TRUST INTO A LESSER NUMBER OF SHARES OF  
4 BENEFICIAL INTEREST OF THE SAME CLASS WITHOUT ANY CHANGE TO THE  
5 AGGREGATE PAR VALUE OF THE OUTSTANDING SHARES.

6           **(2)** THIS SUBSECTION APPLIES TO A REAL ESTATE INVESTMENT  
7 TRUST WITH A CLASS OF EQUITY SECURITIES REGISTERED UNDER THE  
8 SECURITIES EXCHANGE ACT OF 1934.

9           **(3)** UNLESS PROHIBITED IN THE DECLARATION OF TRUST BY  
10 REFERENCE TO THIS SUBSECTION OR TO THE SUBJECT MATTER OF THIS  
11 SUBSECTION, THE BOARD OF TRUSTEES OF A REAL ESTATE INVESTMENT TRUST  
12 MAY AMEND THE DECLARATION OF TRUST, WITH THE APPROVAL OF A MAJORITY  
13 OF THE BOARD OF TRUSTEES AND WITHOUT SHAREHOLDER ACTION, TO EFFECT  
14 A REVERSE SHARE SPLIT THAT RESULTS IN A COMBINATION OF SHARES OF  
15 BENEFICIAL INTEREST AT A RATIO OF NOT MORE THAN 10 SHARES INTO 1  
16 SHARE IN ANY 12-MONTH PERIOD.

17           **(4)** WITHIN 20 DAYS AFTER THE EFFECTIVE DATE OF A REVERSE  
18 SHARE SPLIT AUTHORIZED UNDER THIS SUBSECTION, THE REAL ESTATE  
19 INVESTMENT TRUST SHALL GIVE WRITTEN NOTICE OF THE REVERSE SHARE  
20 SPLIT TO EACH HOLDER OF RECORD OF THE COMBINED SHARES OF BENEFICIAL  
21 INTEREST AS OF THE EFFECTIVE DATE.

22           **[(f)] (G)** Articles of amendment shall be executed for the real estate  
23 investment trust in the manner required by § 1-301 of this article and filed for record  
24 with the Department.

25           **8-503.**

26           **(A)** A REAL ESTATE INVESTMENT TRUST MAY FILE A CERTIFICATE OF  
27 NOTICE FOR RECORD WITH THE DEPARTMENT.

28           **(B)** A CERTIFICATE OF NOTICE MAY DESCRIBE:

29           **(1)** AN ACTION BY THE REAL ESTATE INVESTMENT TRUST, ITS  
30 BOARD OF TRUSTEES, OR ITS SHAREHOLDERS;

31           **(2)** THE OCCURRENCE OF OR CHANGE TO FACTS ASCERTAINABLE  
32 OUTSIDE OF THE DECLARATION OF TRUST, AS DEFINED IN § 8-203(C) OF THIS  
33 TITLE; OR

1           **(3) ANY OTHER INFORMATION THAT THE REAL ESTATE**  
2 **INVESTMENT TRUST DETERMINES SHOULD BE DISCLOSED.**

3           **(C) A CERTIFICATE OF NOTICE MAY NOT:**

4                 **(1) AMEND, SUPPLEMENT, OR CORRECT THE DECLARATION OF**  
5 **TRUST OF THE REAL ESTATE INVESTMENT TRUST IN ANY MANNER; OR**

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

9           **(D) A CERTIFICATE OF NOTICE IS NOT A PART OF THE DECLARATION OF**  
10 **TRUST OF A REAL ESTATE INVESTMENT TRUST.**

11           **(E) A TRUSTEE OF A REAL ESTATE INVESTMENT TRUST IS NOT**  
12 **REQUIRED TO AUTHORIZE OR DIRECT THE FILING OF A CERTIFICATE OF**  
13 **NOTICE.**

14           **(F) A REAL ESTATE INVESTMENT TRUST IS NOT REQUIRED TO FILE A**  
15 **CERTIFICATE OF NOTICE FOR ANY PURPOSE, INCLUDING TO INDICATE THAT**  
16 **THERE HAS BEEN A CHANGE TO THE FACTS OR INFORMATION CONTAINED IN A**  
17 **PREVIOUSLY FILED CERTIFICATE OF NOTICE.**

18           **(G) A CERTIFICATE OF NOTICE SHALL BE EXECUTED IN THE MANNER**  
19 **REQUIRED FOR CHARTER DOCUMENTS BY § 1-301 OF THIS ARTICLE.**

20           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 June 1, 2010.