

Chapter 80

(House Bill 412)

AN ACT concerning

Real Estate Investment Trusts – Miscellaneous Provisions

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

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

BY adding to
Article – Corporations and Associations
Section 8–503
Annotated Code of Maryland
(2007 Replacement Volume and 2009 Supplement)

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

Article – Corporations and Associations

8-101.

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

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

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

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

8-203.

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

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

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

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

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

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

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

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

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

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

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

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

(III) ANY OTHER EVENT.

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

8-501.

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

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

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

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

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

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

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

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

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

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

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

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

(F) (1) IN THIS SUBSECTION, "REVERSE SHARE SPLIT" MEANS A COMBINATION OF OUTSTANDING SHARES OF BENEFICIAL INTEREST OF A REAL

ESTATE INVESTMENT TRUST INTO A LESSER NUMBER OF SHARES OF BENEFICIAL INTEREST OF THE SAME CLASS WITHOUT ANY CHANGE TO THE AGGREGATE PAR VALUE OF THE OUTSTANDING SHARES.

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

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

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

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

8-503.

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

(B) A CERTIFICATE OF NOTICE MAY DESCRIBE:

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

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

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

(C) A CERTIFICATE OF NOTICE MAY NOT:

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

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

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

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

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

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

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

Approved by the Governor, April 13, 2010.