

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 501

(Senator Raskin)

Judicial Proceedings

Economic Matters

Real Estate Investment Trusts - Miscellaneous Provisions

This bill alters various provisions pertaining to a real estate investment trust's (REIT) declaration of trust. The bill, among other things, allows a REIT's board of trustees to amend the declaration of trust to effect a reverse share split upon a majority vote of the board and without shareholder action. The bill further authorizes a REIT to file a certificate of notice for record with the State Department of Assessments and Taxation (SDAT).

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues from filings of certificates of notice of record. No effect on expenditures.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a "declaration of trust" as the declaration of trust filed with SDAT for the purpose of forming a REIT, either as originally accepted for record or as amended, corrected, or supplemented by articles of amendment, articles of amendment and reinstatement, articles supplementary, articles of merger, or a certificate of correction.

A REIT's declaration of trust may provide that the 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. The bill also allows a majority of the REIT's entire board of trustees, without shareholder action, to amend the REIT's declaration of trust in any manner in which a corporate charter may be amended, unless prohibited by the declaration of trust.

The board of trustees of a REIT with equity securities registered under the federal Securities Exchange Act of 1934 may amend the REIT's declaration of trust, unless prohibited therein, to authorize a reverse share split at a ratio not to exceed 1:10 (1 new share for 10 existing shares) in any 12-month period. This amendment to the declaration of trust requires the approval of a majority of the board of trustees and does not require shareholder action. A REIT must notify each shareholder in writing within 20 days after the effective date of the reverse split.

The bill also allows a REIT to file a certificate of notice for record with SDAT that describes an action by the REIT, its board of trustees, or its shareholders; the occurrence of or changes to facts ascertainable outside the declaration of trust; or any other information the REIT determines should be disclosed. However, the certificate of notice may not amend, supplement, or correct the declaration or trust and it may not affect the rights or liabilities of shareholders. A trustee of a REIT is not required to authorize or direct the filing of a certificate of notice. In addition, a REIT is not required to file a certificate of notice with SDAT for any purpose, and the certificate of notice is not considered part of the REIT's declaration of trust. The certificate of notice must be executed in the manner required of other similar corporate charter documents.

Current Law: A REIT is an unincorporated business trust or association 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. A REIT's declaration of trust must be filed with SDAT, signed and acknowledged by each trustee, and:

- clearly indicate that the trust is a REIT;
- state the name of the trust and the REIT's total number of authorized shares;
- provide for an annual shareholders' meeting at a convenient location and on proper notice;
- provide for the election of trustees at least every third year at an annual shareholders' meeting;
- state the names and number of individuals serving as the REIT's trustees until the first shareholders' meeting and until their successors are elected and qualify, or such later time specified in the declaration of trust;

- state the name and address of the REIT's resident agent in the State; and
- include a description of each class of shares, including any preferences, conversion and other rights, voting powers, restrictions, and limitations as to dividends, distributions, qualifications, and terms and conditions of redemption.

Background: Chapters 93 and 94 of 2009 made several technical corrections to Maryland's REIT laws. Specifically, Chapters 93 and 94 repealed the requirement that a REIT's annual meeting be held after delivery of the annual report, as an annual report is no longer required to be provided to shareholders. That requirement was repealed by Chapter 586 of 2005. As of February 2010, SDAT reports that there are 415 REITs recorded with the State.

Additional Information

Prior Introductions: None.

Cross File: HB 412 (Delegate Feldman) - Economic Matters.

Information Source(s): State Department of Assessments and Taxation, Department of Legislative Services

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mpc/kdm

Analysis by: Jason F. Weintraub

Direct Inquiries to:
(410) 946-5510
(301) 970-5510