

Chapter 551

(House Bill 916)

AN ACT concerning

Corporations and Real Estate Investment Trusts – Miscellaneous Provisions

FOR the purpose of providing that a Maryland corporation or a real estate investment trust has the power to renounce certain business opportunities in certain documents or by certain resolutions; repealing certain provisions of law prohibiting the declaration or payment of a dividend payable in shares of one class of a corporation's stock to holders of shares of another class of the corporation's stock unless approved in a certain manner; altering the circumstances under which a corporation registered as an open-end company may redeem shares of its stock from any stockholder; requiring each nominee for director of a corporation to have the qualifications required by the charter or bylaws of the corporation; providing that a director of a corporation holds office until the time the director ceases to have certain qualifications under certain circumstances; specifying how the directors who hold over and continue to serve as directors must be determined under certain circumstances; clarifying the circumstances under which certain actions may be taken without a meeting of the board of directors or a committee of the board; clarifying that certain references to a majority or other proportion of directors refer to a majority or other proportion of votes entitled to be cast by the directors; establishing a certain limitation on a board's sole power to take certain actions relating to special meetings of stockholders; providing that a certain interest with which a proxy may be coupled includes an interest as a party to a certain voting agreement; authorizing two or more stockholders to enter into a written agreement requiring voting rights to be exercised in a certain manner under certain circumstances; altering the circumstances under which the approval of the stockholders and articles of transfer or share exchange are not required; altering the manner in which a certain merger of a Maryland corporation or Maryland real estate investment trust must be approved; establishing that a merger of a subject corporation with or into an acquiring entity may be effected under certain circumstances; requiring the board of directors of a certain Maryland corporation to adopt a certain resolution approving a certain merger under certain circumstances; requiring an other entity to advise, authorize, and approve a certain transaction in a certain manner under certain circumstances; requiring a certain acquiring entity to give a certain notice of a certain transaction to certain stockholders of record under certain circumstances; providing that a minority stockholder of a subject corporation has a right to demand and receive certain payment of shares under certain circumstances; altering the information that must be included in articles of consolidation, merger, share exchange, or transfer under certain circumstances; providing that

certain information included in articles of consolidation, merger, share exchange, or transfer may be made dependent on facts ascertainable outside the articles; altering the basis for determining when fair value of the stock of a Maryland corporation is determined; altering the circumstances in which a certain stockholder is authorized to demand fair value of the stockholder's stock; altering the circumstances in which a certain stockholder must file a certain written objection to a certain transaction; repealing certain provisions of law requiring the president or director of a certain corporation, the charter of which has been revived, to call a meeting of the stockholders for a certain purpose; altering the manner in which an other entity converting to a certain Maryland corporation or a real estate investment trust must execute articles of incorporation or a declaration of trust; providing that a real estate investment trust is a separate legal entity; providing that a real estate investment trust is formed by filing a declaration of trust for record with the State Department of Assessments and Taxation; defining certain terms; making certain conforming and stylistic changes; and generally relating to corporations and real estate investment trusts.

BY repealing and reenacting, with amendments,

Article – Corporations and Associations

Section 2–103, 2–309(c), 2–310.1, 2–403(a), 2–404(b), 2–405, 2–408(c) and (d),
2–502(e), 2–507(d), 3–104(a), 3–105(a), 3–109, 3–202, 3–203, 3–901(c),
8–102, 8–201, 8–301, 8–501.1(c), and 8–701(c)

Annotated Code of Maryland

(2007 Replacement Volume and 2013 Supplement)

BY adding to

Article – Corporations and Associations

Section 2–510.1 and 3–106.1

Annotated Code of Maryland

(2007 Replacement Volume and 2013 Supplement)

BY repealing

Article – Corporations and Associations

Section 3–511

Annotated Code of Maryland

(2007 Replacement Volume and 2013 Supplement)

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

Article – Corporations and Associations

2–103.

Unless otherwise provided by law or its charter, a Maryland corporation has the general powers, whether or not they are set forth in its charter, to:

(1) Have perpetual existence, although existence may be limited to a specified period if the limitation is stated in a charter provision adopted after May 31, 1908;

(2) Sue, be sued, complain, and defend in all courts;

(3) Have, use, alter, or abandon a corporate seal;

(4) Transact its business, carry on its operations, and exercise the powers granted by this article in any state, territory, district, and possession of the United States and in any foreign country;

(5) Make contracts and guarantees, incur liabilities, and borrow money;

(6) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any or all of its assets;

(7) Issue bonds, notes, and other obligations and secure them by mortgage or deed of trust of any or all of its assets;

(8) Acquire by purchase or in any other manner, and take, receive, own, hold, use, employ, improve, and otherwise deal with any interest in real or personal property, wherever located;

(9) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock and other interests in and obligations of other Maryland and foreign corporations, associations, partnerships, and individuals;

(10) Subject to the limitations provided in this article, acquire any of its own stock, bonds, notes, and other obligations and securities;

(11) Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes specified in its charter, and take and hold real and personal property as security for the payment of funds so invested or loaned;

(12) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

(13) Make gifts or contributions in cash, other property, or stock or other securities of the corporation to or for the use of:

(i) The United States, this State, another state of the United States, a territory, possession, or district of the United States, or any institution, agency, or political subdivision of any of them; and

(ii) Any governmental or other organization, whether inside or outside the United States, for religious, charitable, scientific, civic, public welfare, literary, or educational purposes;

(14) Elect its officers and appoint its agents, define their duties, determine their compensation, and adopt and carry into effect employee and officer benefit plans;

(15) RENOUNCE, IN ITS CHARTER OR BY RESOLUTION OF ITS BOARD OF DIRECTORS, ANY INTEREST OR EXPECTANCY OF THE CORPORATION IN, OR IN BEING OFFERED AN OPPORTUNITY TO PARTICIPATE IN, BUSINESS OPPORTUNITIES OR CLASSES OR CATEGORIES OF BUSINESS OPPORTUNITIES THAT ARE:

(I) PRESENTED TO THE CORPORATION; OR

(II) DEVELOPED BY OR PRESENTED TO ONE OR MORE OF ITS DIRECTORS OR OFFICERS;

~~[(15)]~~ **(16)** Adopt, alter, and repeal bylaws not inconsistent with law or its charter for the regulation and management of its affairs;

~~[(16)]~~ **(17)** Exercise generally the powers set forth in its charter and those granted by law; and

~~[(17)]~~ **(18)** Do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its charter.

2-309.

(c) (1) A division of issued shares into a greater number of shares of the same class without any change in the aggregate amount of stated capital is a stock split, and a division with a change in the aggregate amount of stated capital is a stock dividend within the meaning of this subsection.

(2) If authorized by its board of directors and unless the charter provides otherwise, shares may be issued by a corporation, without consideration to the holders of one or more classes or series of stock, as a stock split or a stock dividend.

(3) If a stock dividend is payable in a corporation's own stock with par value, the shares shall be issued at par value and, at the time the stock dividend is paid, the corporation shall transfer from surplus to stated capital an amount at least equal to the aggregate par value of the shares to be issued.

(4) If a stock dividend is payable in a corporation's own stock without par value, the board of directors shall adopt at the time the stock dividend is declared a resolution which sets the aggregate amount to be attributed to stated capital with respect to the shares that constitute the stock dividend and, at the time the stock dividend is paid, the corporation shall transfer at least that amount from surplus to stated capital.

[(5) A dividend payable in shares of one class of a corporation's stock may not be declared or paid to the holders of shares of another class of stock unless the payment has been:

(i) Approved by the board of directors in accordance with specific authority in the charter; or

(ii) Approved at a meeting of stockholders by the affirmative vote of a majority of all the votes entitled to be cast on the matter of each class entitled to vote on it.]

2-310.1.

(a) This section applies only to a corporation registered as an open-end company under the Investment Company Act of 1940.

(b) Subject to the provisions of § 2-311 of this subtitle, [if authorized by its board of directors,] a corporation may redeem shares of its stock from any stockholder if [the]:

(1) THE corporation's charter expressly provides for the redemption of shares of its stock from any stockholder[.

(c) (1) Subject to the provisions of § 2-311 of this subtitle, unless prohibited by its charter, in the case of a corporation whose charter does not expressly provide for the redemption of shares of its stock, the corporation may redeem shares of its stock from any stockholder if:] **AND THE BOARD OF DIRECTORS AUTHORIZES THE REDEMPTION; OR**

(2) (1) THE CORPORATION'S CHARTER DOES NOT EXPRESSLY PROHIBIT THE REDEMPTION OF SHARES OF ITS STOCK;

[(i)] (II) The aggregate net asset value of the shares to be redeemed from the stockholder is, as of the date of the redemption, [\$1,000] **\$2,000** or less; and

[(ii)] (III) Written notice of the redemption to the stockholder of record:

1. Is mailed first-class to the stockholder's last known address of record;
2. States that all of the shares will be redeemed; and
3. Establishes a date for the redemption which is at least 45 days from the date of the notice.

[(2)] (C) The price to be paid for shares redeemed under **SUBSECTION (B)(2) OF** this [subsection] **SECTION** shall be the aggregate net asset value of the shares at the close of business on the date of the redemption.

[(3)] (D) If certificates representing the shares to be redeemed under **SUBSECTION (B)(2) OF** this [subsection] **SECTION** have been issued and are not surrendered for cancellation on the date of redemption:

[(i)] (1) The corporation may withhold payment for the redeemed shares until the certificates are surrendered for cancellation; and

[(ii)] (2) Except for the right to receive payment of the redemption price, the stockholder shall cease to have any rights as a stockholder of the corporation on the date of redemption.

[(4)] (E) If the aggregate net asset value of the shares to be redeemed under **SUBSECTION (B)(2) OF** this [subsection] **SECTION** should increase to an amount greater than [\$1,000] **\$2,000** between the date of the notice of redemption and the date of the redemption, then the notice of redemption shall have no further force or effect.

2-403.

(a) Each director **AND EACH NOMINEE FOR DIRECTOR** of a corporation shall have the qualifications required by the charter or bylaws of the corporation.

2-404.

(b) (1) Except as provided in paragraph (2) of this subsection, at each annual meeting of stockholders, the stockholders shall elect directors to hold office until the earlier of:

(i) The next annual meeting of stockholders and until their successors are elected and qualify; [or]

(ii) The time provided in the terms of any class or series of stock pursuant to which such directors are elected; **OR**

(III) THE TIME A DIRECTOR CEASES TO HAVE THE QUALIFICATIONS THAT WERE REQUIRED BY THE CHARTER OR BYLAWS OF THE CORPORATION AT THE TIME THE DIRECTOR WAS ELECTED, IF THE CHARTER OR BYLAWS AT THE TIME THE DIRECTOR WAS ELECTED REQUIRED THE DIRECTOR'S TERM TO END ON A FAILURE TO HAVE THOSE QUALIFICATIONS.

(2) Except for a corporation that has elected to be subject to § 3–803 of this article, if the directors are divided into classes, the term of office may be provided in the bylaws, except that:

(i) The term of office of a director may not be longer than 5 years or, except in the case of an initial or substitute director, shorter than the period between annual meetings; and

(ii) The term of office of at least one class shall expire each year.

2–405.

(a) (1) **[In] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IN** case of failure to elect directors at the designated time, the directors holding over shall continue to **[manage the business and affairs] SERVE AS DIRECTORS** of the corporation until their successors are elected and qualify.

(2) IF THE NUMBER OF DIRECTORS TO BE ELECTED AT THE DESIGNATED TIME, TOGETHER WITH THE NUMBER OF DIRECTORS WHO OTHERWISE WOULD HOLD OVER, EXCEEDS THE NUMBER OF DIRECTORS WHO WERE TO BE ELECTED, THEN THE DIRECTORS WHO WILL HOLD OVER AND CONTINUE TO SERVE AS DIRECTORS OF THE CORPORATION UNTIL THEIR SUCCESSORS ARE ELECTED AND QUALIFY SHALL BE DETERMINED:

(I) BY A MAJORITY VOTE OF THE DIRECTORS ELECTED AT THE DESIGNATED TIME AND, IF THE BOARD IS CLASSIFIED, ANY DIRECTORS WHOSE TERMS DID NOT EXPIRE AT THE DESIGNATED TIME, WHETHER OR NOT SUFFICIENT TO CONSTITUTE A QUORUM; OR

(II) AS OTHERWISE PROVIDED IN THE CHARTER OR BYLAWS OF THE CORPORATION.

(b) A director not elected annually in accordance with § 2–501(b) of this title shall be deemed to be continuing in office and shall not be deemed to be holding over under subsection (a) of this section until after the time at which an annual meeting is required to be held under § 2–501(b) of this title or the charter or bylaws of the corporation.

2–408.

(c) Any action required or permitted to be taken at a meeting of the board of directors or of a committee of the board may be taken without a meeting if a unanimous consent which sets forth the action is:

(1) Given in writing or by electronic transmission by each member of the board or committee **ENTITLED TO VOTE ON THE MATTER**; and

(2) Filed in paper or electronic form with the minutes of proceedings of the board or committee.

(d) (1) The charter may provide that one or more directors or a class of directors shall have more or less than one vote per director on any matter.

(2) If the charter provides that one or more directors shall have more or less than one vote per director on any matter, every reference in this article to a majority or other proportion of directors shall refer to a majority or other proportion of votes [of] **ENTITLED TO BE CAST BY** the directors.

2–502.

(e) [The] **UNLESS THE CHARTER OR BYLAWS EXPRESSLY PROVIDE OTHERWISE, THE** board of directors has the sole power to fix:

(1) The record date for determining stockholders entitled to request a special meeting of the stockholders and the record date for determining stockholders entitled to notice of and to vote at the special meeting; and

(2) The date, time, and place, if any, and the means of remote communication, if any, by which stockholders and proxy holders may be considered present in person and may vote at the special meeting.

2–507.

(d) (1) A proxy is revocable by a stockholder at any time without condition or qualification unless:

- (i) The proxy states that it is irrevocable; and
- (ii) The proxy is coupled with an interest.

(2) A proxy may be made irrevocable for as long as it is coupled with an interest.

(3) The interest with which a proxy may be coupled includes an interest in the stock to be voted under the proxy, **AN INTEREST AS A PARTY TO A VOTING AGREEMENT CREATED IN ACCORDANCE WITH § 2-510.1 OF THIS SUBTITLE**, or another general interest in the corporation or its assets or liabilities.

2-510.1.

TWO OR MORE STOCKHOLDERS OF A CORPORATION MAY ENTER INTO A WRITTEN AGREEMENT THAT SPECIFIES THAT, IN EXERCISING ANY VOTING RIGHTS, THE STOCK HELD BY THE PARTIES TO THE AGREEMENT SHALL BE VOTED:

- (1) AS PROVIDED IN THE AGREEMENT;**
- (2) AS THE PARTIES MAY AGREE; OR**
- (3) BASED ON A PROCEDURE SET FORTH IN THE AGREEMENT.**

3-104.

(a) Notwithstanding any other provision of this subtitle, unless the charter or bylaws of a corporation provide otherwise **BY REFERENCE TO THIS SECTION OR THE SUBJECT MATTER OF THIS SECTION**, the approval of the stockholders and articles of transfer or share exchange, as the case may be, are not required for any:

(1) Transfer of assets by a corporation in the ordinary course of business actually conducted by it or as a distribution as defined in § 2-301 of this article;

(2) Mortgage, pledge, or creation of any other security interest in any or all of the assets of a corporation, whether or not in the ordinary course of its business;

(3) Exchange of shares of stock through voluntary action or under any agreement with the stockholders;

(4) Transfer of assets by a corporation to one or more persons if all of the equity interests of the person or persons are owned, directly or indirectly, by the corporation; or

(5) Transfer of assets by a corporation registered as an open-end investment company under the Investment Company Act of 1940.

3-105.

(a) A consolidation, merger, share exchange, or transfer of assets shall be approved in the manner provided by this section, except that:

(1) A merger of a 90 percent or more owned subsidiary with or into its parent need be approved only in accordance with the provisions of § 3-106 of this subtitle;

(2) A MERGER OF A MARYLAND CORPORATION IN ACCORDANCE WITH § 3-106.1 OF THIS SUBTITLE NEED BE APPROVED ONLY IN THE MANNER PROVIDED IN § 3-106.1 OF THIS SUBTITLE;

[(2)] (3) A share exchange need be approved by a Maryland successor only by its board of directors and by any other action required by its charter;

[(3)] (4) A transfer of assets need be approved by a Maryland transferee corporation only by its board of directors and by any other action required by its charter;

[(4)] (5) A foreign corporation party to the transaction shall have the transaction advised, authorized, and approved in the manner and by the vote required by its charter and the laws of the place where it is organized;

[(5)] (6) A merger need be approved by a Maryland successor corporation only by a majority of its entire board of directors if:

(i) The merger does not reclassify or change the terms of any class or series of its stock that is outstanding immediately before the merger becomes effective or otherwise amend its charter and the number of its shares of stock of such class or series outstanding immediately after the effective time of the merger does not increase by more than 20 percent of the number of its shares of the class or series of stock that is outstanding immediately before the merger becomes effective; or

(ii) There is no stock outstanding or subscribed for and entitled to be voted on the merger; and

[(6)] (7) A business trust party to a merger shall have the merger advised, authorized, and approved in the manner and by the vote required by its declaration of trust and the laws of the place where it is organized.

3-106.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "ACQUIRING ENTITY" MEANS THE MARYLAND CORPORATION OR OTHER ENTITY, AS DEFINED IN § 3-901 OF THIS TITLE, CONSUMMATING A TENDER OR EXCHANGE OFFER UNDER THIS SECTION.

(3) "STOCKHOLDER" INCLUDES A SHAREHOLDER OF A REAL ESTATE INVESTMENT TRUST.

(4) (I) "SUBJECT CORPORATION" MEANS THE MARYLAND CORPORATION THAT IS THE SUBJECT OF A TENDER OR EXCHANGE OFFER UNDER THIS SECTION.

(II) "SUBJECT CORPORATION" INCLUDES A MARYLAND REAL ESTATE INVESTMENT TRUST AS DEFINED IN TITLE 8 OF THIS ARTICLE.

(B) THIS SECTION APPLIES ONLY TO AN AGREEMENT TO MERGE THAT PROVIDES FOR THE CONSUMMATION OF THE MERGER ON OR AFTER OCTOBER 1, 2014.

(C) NOTWITHSTANDING § 3-105 OF THIS SUBTITLE, UNLESS THE CHARTER OF A CORPORATION OR DECLARATION OF TRUST OF A REAL ESTATE INVESTMENT TRUST PROVIDES OTHERWISE, A MERGER OF A SUBJECT CORPORATION WITH OR INTO AN ACQUIRING ENTITY MAY BE EFFECTED UNDER THIS SECTION IF:

(1) THE SHARES OF THE SUBJECT CORPORATION ARE REGISTERED UNDER THE SECURITIES AND EXCHANGE ACT OF 1934 IMMEDIATELY PRIOR TO THE EXECUTION OF THE AGREEMENT TO MERGE BY THE SUBJECT CORPORATION;

(2) THE AGREEMENT TO MERGE EXPRESSLY PROVIDES THAT THE MERGER SHALL BE GOVERNED BY THIS SECTION AND SHALL BE EFFECTED FOLLOWING THE CONSUMMATION OF THE OFFER DESCRIBED IN ITEM (3) OF THIS SUBSECTION;

(3) AN ACQUIRING ENTITY CONSUMMATES A TENDER OR EXCHANGE OFFER FOR ANY AND ALL OF THE OUTSTANDING SHARES OF THE SUBJECT CORPORATION THAT WOULD, EXCEPT FOR THE APPLICATION OF THIS SECTION, ENTITLE THE HOLDER OF THE OUTSTANDING SHARES TO VOTE ON THE MERGER ON THE TERMS PROVIDED IN THE AGREEMENT TO MERGE;

(4) FOLLOWING THE CONSUMMATION OF THE OFFER, THE ACQUIRING ENTITY OWNS AT LEAST THAT PERCENTAGE OF THE SHARES, AND OF EACH CLASS OR SERIES OF THE SHARES, OF THE SUBJECT CORPORATION THAT WOULD, EXCEPT FOR THE APPLICATION OF THIS SECTION, BE REQUIRED TO APPROVE THE MERGER UNDER THIS ARTICLE AND THE CHARTER OF THE SUBJECT CORPORATION;

(5) THE ACQUIRING ENTITY MERGES WITH OR INTO THE SUBJECT CORPORATION; AND

(6) THE OUTSTANDING SHARES OF EACH CLASS OR SERIES OF SHARES OF THE SUBJECT CORPORATION NOT CANCELLED IN THE MERGER ARE CONVERTED IN THE MERGER INTO, OR INTO THE RIGHT TO RECEIVE, THE SAME AMOUNT AND KIND OF CASH, PROPERTY, RIGHTS, OR SECURITIES PAID FOR SHARES OF THE CLASS OR SERIES OF SHARES OF THE SUBJECT CORPORATION ON CONSUMMATION OF THE OFFER DESCRIBED IN ITEM (3) OF THIS SUBSECTION.

(D) (1) (I) THE BOARD OF DIRECTORS OF EACH MARYLAND CORPORATION PROPOSING TO BECOME A PARTY TO THE MERGER SHALL ADOPT A RESOLUTION THAT APPROVES THE PROPOSED MERGER ON SUBSTANTIALLY THE TERMS AND CONDITIONS SET FORTH OR REFERRED TO IN THE RESOLUTION.

(II) THE APPROVAL SHALL BE BY A MAJORITY VOTE OF THE ENTIRE BOARD OF DIRECTORS.

(III) A MEETING OF THE STOCKHOLDERS IS NOT NECESSARY.

(2) IF AN OTHER ENTITY, AS DEFINED IN § 3-901 OF THIS TITLE, IS A PARTY TO THE MERGER, THE TRANSACTION SHALL BE ADVISED, AUTHORIZED, AND APPROVED BY THE OTHER ENTITY IN THE MANNER AND BY THE VOTE REQUIRED BY ITS GOVERNING DOCUMENTS AND THE LAWS OF THE PLACE WHERE THE OTHER ENTITY IS ORGANIZED.

(E) (1) UNLESS WAIVED BY ALL STOCKHOLDERS WHO, EXCEPT FOR THE APPLICATION OF THIS SECTION, WOULD BE ENTITLED TO VOTE ON THE MERGER, AT LEAST 30 DAYS BEFORE THE ARTICLES ARE FILED WITH THE DEPARTMENT, AN ACQUIRING ENTITY THAT OWNS LESS THAN ALL OF THE OUTSTANDING SHARES OF THE SUBJECT CORPORATION AS OF IMMEDIATELY BEFORE THE EFFECTIVE TIME OF THE MERGER MUST HAVE GIVEN NOTICE OF THE TRANSACTION TO EACH OF THE SUBJECT CORPORATION'S STOCKHOLDERS OF RECORD WHO, EXCEPT FOR THE APPLICATION OF THIS SECTION, WOULD BE ENTITLED TO VOTE ON THE MERGER ON THE DATE THAT NOTICE IS GIVEN OR ON A RECORD DATE FIXED FOR THAT PURPOSE THAT IS NOT MORE THAN 10 DAYS BEFORE THE DATE THAT NOTICE IS GIVEN.

(2) A MINORITY STOCKHOLDER OF THE SUBJECT CORPORATION HAS THE RIGHT TO DEMAND AND RECEIVE PAYMENT OF THE FAIR VALUE OF THE MINORITY STOCKHOLDER'S SHARES AS, AND TO THE EXTENT, PROVIDED IN SUBTITLE 2 OF THIS TITLE RELATING TO OBJECTING STOCKHOLDERS.

3-109.

(A) IN THIS SECTION, "FACTS ASCERTAINABLE OUTSIDE THE ARTICLES" INCLUDES:

(1) AN ACTION OR A DETERMINATION BY ANY PERSON, INCLUDING THE CORPORATION, ITS BOARD OF DIRECTORS, AN OFFICER OR AGENT OF THE CORPORATION, AND ANY OTHER PERSON AFFILIATED WITH THE CORPORATION;

(2) THE CONTENTS OF ANY AGREEMENT TO WHICH THE CORPORATION IS A PARTY OR ANY OTHER DOCUMENT; AND

(3) ANY OTHER EVENT.

[(a)] (B) Articles of consolidation, merger, share exchange, or transfer shall contain the terms and conditions of the transaction and the manner of carrying it into effect, including:

(1) A statement:

(i) In a merger, consolidation, or share exchange, that each party to the articles agrees to merge, to consolidate to form a new corporation, or to acquire stock or have its stock acquired in a share exchange, as the case may be; or

(ii) In a transfer, that the transferor agrees to sell, lease, exchange, or transfer all or substantially all of its property and assets;

- (2) The name and place of incorporation or organization of:
 - (i) Each party to the articles; and
 - (ii) The successor corporation in a consolidation, merger, or share exchange or the successor domestic partnership, limited partnership or limited liability company in a merger;
- (3) As to each foreign corporation:
 - (i) The date of its incorporation;
 - (ii) A statement whether it is incorporated under general law or by special act and, if incorporated by special act, the chapter number and year of passage; and
 - (iii) If the corporation is registered or qualified to do business in this State, the date of its registration or qualification;
- (4) As to each foreign business trust:
 - (i) The date of its organization; and
 - (ii) If the business trust is registered or qualified to do business in this State, the date of its registration or qualification;
- (5) As to each foreign partnership, limited partnership or limited liability company:
 - (i) The date of its formation; and
 - (ii) If the foreign partnership, limited partnership or limited liability company is registered or qualified to do business in this State, the date of its registration or qualification;
- (6) The name, address, and principal place of business of the transferee in a transfer of assets;
- (7) Each county in this State where:
 - (i) Each corporation, partnership, limited partnership, limited liability company, and business trust party to the articles has its principal office; and
 - (ii) Any of the parties in a consolidation, merger, or transfer, other than the successor, owns an interest in land;

(8) If the successor is a foreign corporation, foreign partnership, limited partnership, limited liability company, or a foreign business trust:

(i) The location of its principal office in the place where it is organized; and

(ii) The name and address of its resident agent in **[this State]**
THE PLACE WHERE IT IS ORGANIZED;

(9) A statement that the terms and conditions of the transaction set forth in the articles were advised, authorized, and approved by each corporation, partnership, limited partnership, limited liability company, or business trust party to the articles in the manner and by the vote required by its charter or declaration of trust and the laws of the place where it is organized, and a statement of the manner of approval; and

(10) Every other provision necessary to effect the consolidation, merger, share exchange, or transfer of assets.

[(b)] (C) In addition to the requirements of subsection **[(a)] (B)** of this section, articles of consolidation shall include:

(1) Every matter and fact required to be stated in articles of incorporation except the provisions about incorporators;

(2) As to each corporation party to the articles:

(i) The total number of shares of stock of all classes which the corporation has authority to issue;

(ii) The number of shares of stock of each class;

(iii) The par value of the shares of stock of each class or a statement that the shares are without par value; and

(iv) If there are any shares of stock with par value, the aggregate par value of all the shares of all classes; and

(3) The manner and basis of converting or exchanging issued stock of the consolidating corporations into different stock or other consideration, and the treatment of any issued stock of the consolidating corporations not to be converted or exchanged, **ANY OR ALL OF WHICH MAY BE MADE DEPENDENT ON FACTS ASCERTAINABLE OUTSIDE THE ARTICLES OF CONSOLIDATION.**

[(c)] (D) In addition to the requirements of subsection **[(a)] (B)** of this section, articles of merger shall include:

(1) Any amendment to the charter, certificate of limited partnership, articles of organization of a limited liability company, or declaration of trust of the successor to be effected as part of the merger;

(2) As to each corporation party to the articles:

(i) The total number of shares of stock of all classes which the corporation has authority to issue;

(ii) The number of shares of stock of each class;

(iii) The par value of the shares of stock of each class or a statement that the shares are without par value; and

(iv) If there are any shares of stock with par value, the aggregate par value of all the shares of all classes;

(3) As to each business trust party to the articles:

(i) The total number of shares of beneficial interest of all classes which the business trust has authority to issue; and

(ii) The number of shares of beneficial interest of each class;

(4) As to each limited partnership party to the articles:

(i) The percentages of partnership interest of each class of partnership interest of the limited partnership; and

(ii) The class of partners and the respective percentage of partnership interests in each class of partnership interest;

(5) As to each limited liability company party to the articles:

(i) The percentages of membership interest of each class of membership interest of the limited liability company; and

(ii) The class of members and the respective percentage of membership interests in each class of membership interest;

(6) As to each partnership party to the articles:

(i) The percentages of partnership interest of each class of partnership interest of the partnership; and

(ii) The class of partners and the respective percentage of partnership interests in each class of partnership interest;

(7) If the charter, certificate of limited partnership, articles of organization of a limited liability company, or declaration of trust of the successor is amended in a manner which changes any of the information required by paragraphs (2) through (5) of this subsection, that information as it was both immediately before and as changed by the merger; and

(8) The manner and basis of converting or exchanging issued stock of the merging corporations, outstanding partnership interest of the merging partnership or limited partnership, or shares of beneficial interest of the merging business trusts into different stock of a corporation, partnership interest of a partnership or limited partnership, outstanding membership interest of a limited liability company, shares of beneficial interest of a business trust, or other consideration, and the treatment of any issued stock of the merging corporations, partnership interest of the merging partnership or limited partnerships, membership interest of the merging limited liability company, or shares of beneficial interest of the merging business trusts not to be converted or exchanged, **ANY OR ALL OF WHICH MAY BE MADE DEPENDENT ON FACTS ASCERTAINABLE OUTSIDE THE ARTICLES OF MERGER.**

[(d)] (E) In addition to the requirements of subsection **[(a)] (B)** of this section, articles of share exchange shall include:

(1) As to the corporation the shares of which are to be acquired in the exchange:

(i) The total number of shares of stock of all classes which the corporation has authority to issue;

(ii) The number of shares of stock of each class;

(iii) The par value of the shares of stock of each class or a statement that the shares are without par value; and

(iv) If there are any shares of stock with par value, the aggregate par value of all the shares of all classes; and

(2) The manner and basis of exchanging the stock to be acquired for stock or other consideration to be issued or delivered by or on behalf of the successor, **ANY OR ALL OF WHICH MAY BE MADE DEPENDENT ON FACTS ASCERTAINABLE OUTSIDE THE ARTICLES OF SHARE EXCHANGE.**

[(e)] (F) In addition to the requirements of subsection **[(a)] (B)** of this section, articles of transfer shall include:

(1) The nature and amount of the consideration to be paid, transferred, or issued for the assets of the transferor or a statement of the method by which the consideration is to be determined, **ANY OR ALL OF WHICH MAY BE MADE DEPENDENT ON FACTS ASCERTAINABLE OUTSIDE THE ARTICLES OF TRANSFER**; and

(2) In the case of a noncorporate transferee which is a nonresident of the State, the name and address of a resident agent of the transferee in this State.

[(f)] (G) Articles of consolidation, merger, or share exchange may provide:

(1) The number and names of the directors or trustees of the successor, or of persons acting in similar positions, who will hold those positions as of the effective time of the consolidation, merger, or share exchange, if the persons serving in those positions will be changed in the consolidation, merger, or share exchange; and

(2) The titles and names of one or more officers of the successor, or of persons acting in similar positions, who will hold those positions as of the effective time of the consolidation, merger, or share exchange, if the persons serving in those positions will be changed in the consolidation, merger, or share exchange.

3-202.

(a) Except as provided in subsection (c) of this section, a stockholder of a Maryland corporation has the right to demand and receive payment of the fair value of the stockholder's stock from the successor if:

(1) The corporation consolidates or merges with another corporation;

(2) The stockholder's stock is to be acquired in a share exchange;

(3) The corporation transfers its assets in a manner requiring action under § 3-105(e) of this title;

(4) The corporation amends its charter in a way which alters the contract rights, as expressly set forth in the charter, of any outstanding stock and substantially adversely affects the stockholder's rights, unless the right to do so is reserved by the charter of the corporation;

(5) The transaction is governed by § 3-602 of this title or exempted by § 3-603(b) of this title; or

(6) The corporation is converted in accordance with § 3-901 of this title.

(b) (1) Fair value is determined as of the close of business:

(i) With respect to a merger under § 3-106 **OR § 3-106.1** of this title [of a 90 percent or more owned subsidiary with or into its parent corporation], on the day notice is given or waived under § 3-106 **OR § 3-106.1** of this title; or

(ii) With respect to any other transaction, on the day the stockholders voted on the transaction objected to.

(2) Except as provided in paragraph (3) of this subsection, fair value may not include any appreciation or depreciation which directly or indirectly results from the transaction objected to or from its proposal.

(3) In any transaction governed by § 3-602 of this title or exempted by § 3-603(b) of this title, fair value shall be value determined in accordance with the requirements of § 3-603(b) of this title.

(c) Unless the transaction is governed by § 3-602 of this title or is exempted by § 3-603(b) of this title, a stockholder may not demand the fair value of the stockholder's stock and is bound by the terms of the transaction if:

(1) Except as provided in subsection (d) of this section, any shares of the class or series of the stock are listed on a national securities exchange:

(i) With respect to a merger under § 3-106 **OR § 3-106.1** of this title [of a 90 percent or more owned subsidiary with or into its parent corporation], on the date notice is given or waived under § 3-106 **OR § 3-106.1** of this title; or

(ii) With respect to any other transaction, on the record date for determining stockholders entitled to vote on the transaction objected to;

(2) The stock is that of the successor in a merger, unless:

(i) The merger alters the contract rights of the stock as expressly set forth in the charter, and the charter does not reserve the right to do so; or

(ii) The stock is to be changed or converted in whole or in part in the merger into something other than either stock in the successor or cash, scrip, or other rights or interests arising out of provisions for the treatment of fractional shares of stock in the successor;

(3) The stock is not entitled, other than solely because of § 3–106 OR § 3–106.1 of this title, to be voted on the transaction or the stockholder did not own the shares of stock on the record date for determining stockholders entitled to vote on the transaction;

(4) The charter provides that the holders of the stock are not entitled to exercise the rights of an objecting stockholder under this subtitle; or

(5) The stock is that of an open–end investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the value placed on the stock in the transaction is its net asset value.

(d) With respect to a merger, consolidation, or share exchange, a stockholder of a Maryland corporation who otherwise would be bound by the terms of the transaction under subsection (c)(1) of this section may demand the fair value of the stockholder’s stock if:

(1) In the transaction, stock of the corporation is required to be converted into or exchanged for anything of value except:

(i) Stock of the corporation surviving or resulting from the merger, consolidation, or share exchange, stock of any other corporation, or depositary receipts for any stock described in this item;

(ii) Cash in lieu of fractional shares of stock or fractional depositary receipts described in item (i) of this item; or

(iii) Any combination of the stock, depositary receipts, and cash in lieu of fractional shares or fractional depositary receipts described in items (i) and (ii) of this item;

(2) The directors and executive officers of the corporation were the beneficial owners, in the aggregate, of 5 percent or more of the outstanding voting stock of the corporation at any time within the 1–year period ending on:

(i) The day the stockholders voted on the transaction objected to; or

(ii) With respect to a merger under § 3–106 OR § 3–106.1 of this title, the effective date of the merger; and

(3) Unless the stock is held in accordance with a compensatory plan or arrangement approved by the board of directors of the corporation and the treatment of the stock in the transaction is approved by the board of directors of the corporation, any stock held by persons described in item (2) of this subsection, as part of or in

connection with the transaction and within the 1-year period described in item (2) of this subsection, will be or was converted into or exchanged for stock of a person, or an affiliate of a person, who is a party to the transaction on terms that are not available to all holders of stock of the same class or series.

(e) If directors or executive officers of the corporation are beneficial owners of stock in accordance with § 3-201(d)(2)(i) of this subtitle, the stock is considered outstanding for purposes of determining beneficial ownership by a person under subsection (d)(2) of this section.

3-203.

(a) A stockholder of a corporation who desires to receive payment of the fair value of the stockholder's stock under this subtitle:

(1) Shall file with the corporation a written objection to the proposed transaction:

(i) With respect to a merger under § 3-106 OR § 3-106.1 of this title [of a 90 percent or more owned subsidiary with or into its parent corporation], within 30 days after notice is given or waived under § 3-106 OR § 3-106.1 of this title; or

(ii) With respect to any other transaction, at or before the stockholders' meeting at which the transaction will be considered or, in the case of action taken under § 2-505(b) of this article, within 10 days after the corporation gives the notice required by § 2-505(b) of this article;

(2) May not vote in favor of the transaction; and

(3) Within 20 days after the Department accepts the articles for record, shall make a written demand on the successor for payment for the stockholder's stock, stating the number and class of shares for which the stockholder demands payment.

(b) A stockholder who fails to comply with this section is bound by the terms of the consolidation, merger, share exchange, transfer of assets, or charter amendment.

[3-511.

(a) Except as provided in subsection (b) of this section, promptly after the charter of the corporation is revived, the president or a director of the corporation shall call a meeting of the stockholders to elect a full board of directors, giving notice in the manner required by Title 2 of this article.

(b) The president or a director of a corporation registered under the Investment Company Act of 1940 shall not be required to call a meeting of stockholders to elect a full board of directors until the corporation is required to hold an annual meeting under § 2–501 of this article.]

3–901.

(c) An other entity may convert to a Maryland corporation having capital stock by complying with § 3–902 of this subtitle and filing for record with the Department:

(1) Articles of conversion executed in the manner required by Title 1 of this article; and

(2) Articles of incorporation, which shall include the name of the converting other entity, executed in the manner required by Title [1] 2 of this article and otherwise complying with the Maryland General Corporation Law.

8–102.

A real estate investment trust [is]:

(1) IS a permitted form of unincorporated business trust or association[, and may];

(2) IS A SEPARATE LEGAL ENTITY; AND

(3) MAY conduct business in the State in accordance with this title.

8–201.

A real estate investment trust [may]:

(1) IS FORMED BY FILING A DECLARATION OF TRUST FOR RECORD WITH THE DEPARTMENT; AND

(2) MAY not do business in the State until it complies with this title.

8–301.

A real estate investment trust has the power to:

(1) Unless the declaration of trust provides otherwise, have perpetual existence unaffected by any rule against perpetuities;

- (2) Sue, be sued, complain, and defend in all courts;
- (3) Transact its business, carry on its operations, and exercise the powers granted by this title in any state, territory, district, or possession of the United States and in any foreign country;
- (4) Make contracts, incur liabilities, and borrow money;
- (5) Sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of all or any part of its assets;
- (6) Issue bonds, notes, and other obligations and secure them by mortgage or deed of trust of all or any part of its assets;
- (7) Acquire by purchase or in any other manner and take, receive, own, hold, use, employ, improve, encumber, and otherwise deal with any interest in real and personal property, wherever located;
- (8) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and deal in and with:
 - (i) Securities, shares, and other interests in any obligations of domestic and foreign corporations, other real estate investment trusts, associations, partnerships, and other persons; and
 - (ii) Direct and indirect obligations of the United States, any other government, state, territory, government district, and municipality, and any instrumentality of them;
- (9) Elect or appoint trustees, officers, and agents of the trust for the period of time the declaration of trust or bylaws provide, define their duties, and determine their compensation;
- (10) Adopt and implement employee and officer benefit plans;
- (11) Make and alter bylaws not inconsistent with law or with its declaration of trust to regulate the government of the real estate investment trust and the administration of its affairs;
- (12) Exercise these powers, including the power to take, hold, and dispose of the title to real and personal property in the name of the trust or in the name of its trustees, without the filing of any bond, except a bond required under § 8–204 of this title;

(13) Generally exercise the powers set forth in its declaration of trust which are not inconsistent with law and are appropriate to promote and attain the purposes set forth in its declaration of trust;

(14) Enter into a business combination subject to the provisions of Title 3, Subtitle 6 of this article; [and]

(15) Indemnify or advance expenses to trustees, officers, employees, and agents of the trust to the same extent as is permitted for directors, officers, employees, and agents of a Maryland corporation under § 2-418 of this article; **AND**

(16) RENOUNCE, IN ITS DECLARATION OF TRUST OR BY RESOLUTION OF ITS BOARD OF TRUSTEES, ANY INTEREST OR EXPECTANCY OF THE REAL ESTATE INVESTMENT TRUST IN, OR IN BEING OFFERED AN OPPORTUNITY TO PARTICIPATE IN, BUSINESS OPPORTUNITIES OR CLASSES OR CATEGORIES OF BUSINESS OPPORTUNITIES THAT ARE:

(I) PRESENTED TO THE REAL ESTATE INVESTMENT TRUST;
OR

(II) DEVELOPED BY OR PRESENTED TO ONE OR MORE OF ITS TRUSTEES OR OFFICERS.

8-501.1.

(c) A merger shall be approved in the manner provided by this section, except that:

(1) A foreign business trust, a Maryland business trust, other than a Maryland real estate investment trust, a corporation, a domestic or foreign partnership, or a domestic or foreign limited partnership party to the merger shall have the merger advised, authorized, and approved in the manner and by the vote required by its declaration of trust, governing instrument, charter, or partnership agreement and the laws of the place where it is organized;

(2) (i) A foreign limited liability company party to the merger shall have the merger advised, authorized, and approved in the manner and by the vote required by the laws of the place where it is organized; and

(ii) A domestic limited liability company shall have the merger approved in the manner provided under § 4A-703 of this article;

(3) A merger need be approved by a Maryland real estate investment trust successor only by a majority of its entire board of trustees if the merger does not reclassify or change the terms of any class or series of its shares that are outstanding

immediately before the merger becomes effective or otherwise amend its declaration of trust and the number of shares of such class or series outstanding immediately after the effective time of the merger does not increase by more than 20 percent of the number of its shares of the class or series of shares outstanding immediately before the merger becomes effective; [and]

(4) A merger of a subsidiary with or into its parent need be approved only in the manner provided in § 3–106 of this article, provided the parent owns at least 90 percent of the subsidiary; **AND**

(5) A MERGER OF A MARYLAND REAL ESTATE INVESTMENT TRUST IN ACCORDANCE WITH § 3–106.1 OF THIS ARTICLE NEED BE APPROVED ONLY IN THE MANNER PROVIDED IN § 3–106.1 OF THIS ARTICLE.

8–701.

(c) An other entity may convert to a real estate investment trust by complying with § 8–702 of this subtitle and filing for record with the Department:

(1) Articles of conversion executed in the manner required by Title 1 of this article; and

(2) A declaration of trust, which shall include the name of the converting other entity, executed in the manner required by [Title 1 of this article] § **8–202 OF THIS TITLE** and otherwise complying with this title.

SECTION 2. **AND BE IT FURTHER ENACTED**, That this Act shall take effect October 1, 2014.

Approved by the Governor, May 15, 2014.