

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1065

(Senator Feldman)

Judicial Proceedings

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**Corporations - Maryland General Corporation Law - Miscellaneous Provisions**

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This bill establishes jurisdictional rules for adjudicating “internal corporate claims” and prohibits a Maryland corporation from imposing liability on a stockholder who is party to an “internal corporate claim” for attorney’s fees or other expenses of the corporation or any other party in connection with an internal corporate claim. These provisions also apply to real estate investment trusts (REITs). The bill also authorizes the expedited processing of certified lists of charter documents and certain other certificates and alters various other provisions of the Corporations and Associations Article concerning the execution of documents, the certification of beneficial owners of stock, the forfeiture of a corporate charter, and the consolidation or conversion of a nonstock corporation.

The bill takes effect July 1, 2016.

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**Fiscal Summary**

**State Effect:** Special fund revenues for the State Department of Assessments and Taxation (SDAT) increase minimally beginning in FY 2017 as the department charges an additional \$20 for the expedited processing of specified documents. Expenditures are not affected.

**Local Effect:** The bill does not materially affect local government operations or finances.

**Small Business Effect:** Minimal.

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## Analysis

### Bill Summary:

#### *Internal Corporate Claims*

The bill defines an “internal corporate claim” as a claim, including a claim brought by or in the right of a corporation, (1) based on an alleged breach by a director, an officer, or a stockholder of a duty owed to the corporation or its stockholders or a standard of conduct applicable to directors; (2) arising under the Corporations and Associations Article; or (3) arising under the charter or bylaws of the corporation.

The bill prohibits the charter or bylaws of a corporation from imposing liability on a stockholder who is party to an internal corporate claim for the attorney’s fees or expenses of the corporation or any other party in connection with an internal corporate claim. The prohibition also applies to REITs.

The bill permits the charter or bylaws of a corporation to require, consistent with applicable jurisdictional requirements, that any internal corporate claim be brought only in courts sitting in one or more specified jurisdictions. However, the charter or bylaws of a corporation *may not prohibit* bringing an internal corporate claim in the courts of Maryland or a federal court sitting in Maryland. The authorization for such a requirement does not apply to an existing provision contained in the charter or bylaws of a corporation on the bill’s effective date, unless and until the provision is altered or repealed by an amendment to the charter and bylaws of the corporation. The jurisdictional requirements also apply to REITs.

#### *Certified List of Charter Documents*

The bill establishes a \$20 fee for expedited processing of a certified list of the charter documents of a Maryland corporation or any certificate of a Maryland limited partnership, limited liability partnership, or limited liability company recorded or filed with SDAT.

#### *Signature and Seal on Certificates for Stock and Other Securities*

The bill permits *any officer* of a corporation to countersign a stock certificate; under existing law, only the secretary, the assistant secretary, the treasurer, or an assistant treasurer may do so.

### *Certification of Stock Registered in the Name of a Stockholder for Account of Another Person*

Under the bill, the charter or bylaws of a corporation may authorize (unless specifically prohibited by the charter or bylaws) the board of directors to adopt by resolution a procedure by which a stockholder of the corporation may certify in writing to the corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder.

### *Procedures for Revival of a Forfeited Charter*

The bill eases the requirements for procedures related to articles of revival for a corporation. Specifically, *any two* of the last acting officers of a corporation (rather than only the president or vice president and the secretary or treasurer) must sign and acknowledge articles of revival and file them for recordation with SDAT.

### *Powers of Directors on Forfeiture*

Under the bill, when the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the directors of the corporation must manage its assets for purposes of liquidation. Unless and until articles of revival are filed, the director must (1) collect and distribute the assets, applying them to the payment, satisfaction, and discharge of existing debts and obligations of the corporation, including necessary expenses of liquidation and (2) distribute the remaining assets among the stockholders.

The directors may (1) carry out the contracts of the corporation; (2) sell all or any part of the assets of the corporation at public or private sale; (3) sue or be sued in the name of the corporation; and (4) do all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and wind up its affairs.

Forfeiture of the charter of a corporation does not subject a director of the corporation to a standard of conduct other than the ordinarily prudent person standard of conduct set forth in the Corporation and Associations Article.

### *Consolidation, Merger, and Transfer of Assets of Nonstock Corporations*

The bill also establishes that a nonstock corporation may convert only into a foreign corporation that cannot issue stock. The conversion must be completed in accordance with requirements under Title 3 of the Corporations and Associations Article. Except as specified, a conversion of a nonstock corporation organized to hold title to property for a labor organization, and for related purposes, must be approved by the same affirmative

vote of the members of the corporation that the constitution or bylaws of the labor organization requires for the same action.

## **Current Law:**

### *Expedited Charter Documents*

A certificate of status of a corporation, partnership, limited partnership, limited liability partnership, limited liability company, or a name reservation can be requested for expedited processing. The additional fee is \$20. However, a “long form” certified list of the charter documents of a corporation of Maryland or any certificates of a limited partnership, limited liability partnership, or a limited liability company of Maryland recorded or filed with SDAT may not be processed on an expedited basis.

### *Execution of Articles*

State law establishes requirements for the execution of documents that are an integral part of the corporate structure. Articles supplementary and articles of amendment, restatement, amendment and restatement, consolidation, merger, share exchange, transfer, conversion, extension, and articles of dissolution (as specified) must be signed and acknowledged, then witnessed or attested to by corporate officers as enumerated in State law. Other officers may also be designated as signatories or witnesses, if authorized by the articles of incorporation.

### *Signature and Seal on Certificates for Stock and Other Securities*

Each stock certificate must be signed by the president, a vice president, the chief executive officer, the chief operating officer, the chief financial officer, the chairman of the board, or the vice chairman of the board and countersigned by the secretary, an assistant secretary, the treasurer, or an assistant treasurer.

### *Certification of Stock Registered in the Name of a Stockholder for Account of another Person*

If authorized under the charter or bylaws of a corporation, the board of directors may adopt by resolution a procedure by which a stockholder of the corporation may certify in writing to the corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder.

### *Procedures for Revival of a Forfeited Charter*

The charter of any corporation which is forfeited for nonpayment of taxes, unemployment insurance contributions, or reimbursement payments or failure to file an annual report may be revived in a specified manner. The last acting president or vice president and the secretary or treasurer of the corporation must sign and acknowledge articles of revival and file them for record with SDAT.

### *Powers of Directors on Forfeiture*

When the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the directors of the corporation become the trustees of its assets for purposes of liquidation. The director-trustees are vested in their capacity as trustees with full title to all the assets of the corporation. They must (1) collect and distribute the assets, applying them to the payment, satisfaction, and discharge of existing debts and obligations of the corporation, including necessary expenses of liquidation, and (2) distribute the remaining assets among the stockholders.

The director-trustees may (1) carry out the contracts of the corporation; (2) sell all or any part of the assets of the corporation at public or private sale; (3) sue or be sued in their own names as trustees or in the name of the corporation; and (4) do all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and end its affairs.

The director-trustees govern by majority vote.

### *Consolidation, Merger, and Transfer of Assets of Nonstock Corporations*

A nonstock corporation may consolidate or merge only with another nonstock corporation. A consolidation, merger, or transfer of assets of a nonstock corporation must be completed in accordance with requirements under Title 3 of the Corporations and Associations Article. Except as specified, a proposed consolidation, merger, or transfer of assets of a nonstock corporation organized to hold title to property for a labor organization, and for related purposes, must be approved by the same affirmative vote of the members of the corporation that the constitution or bylaws of the labor organization requires for the same action.

**Background:** The bill is a result of recommendations by the Committee on Corporation Law of the Business Law Section of the Maryland State Bar Association. According to the committee, it regularly reviews the Corporations and Associations Article in an attempt to clarify unclear provisions and eliminate outdated language.

**State Revenues:** Special fund revenues increase minimally due to the establishment of an additional \$20 fee for the expedited processing of the long form for charter documents of corporations. SDAT did not provide information on the number of documents that might be subject to this additional fee. Nevertheless, the overall impact is expected to be minimal.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1544 (Delegate Kramer) - Rules and Executive Nominations.

**Information Source(s):** State Department of Assessments and Taxation, Maryland State Bar Association, Department of Legislative Services

**Fiscal Note History:** First Reader - March 16, 2016  
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