

HOUSE BILL 589

C1

7lr1359

By: **Delegate Frick**

Introduced and read first time: January 30, 2017

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts – Corporate Bylaws and**
3 **Elections of Directors and Trustees**

4 FOR the purpose of repealing a certain exception to the power of stockholders of a
5 corporation to adopt, amend, or repeal the bylaws of the corporation; providing that
6 a plurality of all the votes cast in favor of a nominee for a director position at a certain
7 meeting is sufficient to elect a director under certain circumstances; establishing
8 certain procedures for the election of the directors of a corporation under certain
9 circumstances; providing that an individual is not considered to be qualified for
10 election to a director position or a trustee position under certain circumstances;
11 providing that a plurality of all the votes cast in favor of a nominee for a trustee
12 position at a certain meeting is sufficient to elect a trustee under certain
13 circumstances; establishing certain procedures for the election of the trustees of a
14 real estate investment trust under certain circumstances; making conforming
15 changes; and generally relating to corporate bylaws and elections of directors and
16 trustees.

17 BY repealing and reenacting, with amendments,
18 Article – Corporations and Associations
19 Section 2–109(b), 2–404, and 8–202
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2016 Supplement)

22 BY adding to
23 Article – Corporations and Associations
24 Section 8–208
25 Annotated Code of Maryland
26 (2014 Replacement Volume and 2016 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Corporations and Associations**

2 2–109.

3 (b) After the organization meeting of the board of directors, the power to adopt,
4 alter, and repeal the bylaws of the corporation is vested in the stockholders [except to the
5 extent that the charter or bylaws vest it in the board of directors].

6 2–404.

7 (a) Until successors are elected and qualify, the board of directors consists of the
8 individuals named as directors in the charter.

9 (b) (1) Except as provided in paragraph (2) of this subsection **AND**
10 **SUBSECTION (E) OF THIS SECTION**, at each annual meeting of stockholders, the
11 stockholders shall elect directors to hold office until the earlier of:

12 (i) The next annual meeting of stockholders and until their
13 successors are elected and qualify;

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

16 (iii) The time a director ceases to have the qualifications that were
17 required by the charter or bylaws of the corporation at the time the director was elected, if
18 the charter or bylaws at the time the director was elected required the director's term to
19 end on a failure to have those qualifications.

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

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

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

27 (c) Each share of stock may be voted for as many individuals as there are directors
28 to be elected and for whose election the share is entitled to be voted.

29 (d) [Unless] **SUBJECT TO SUBSECTION (E) OF THIS SECTION, AND UNLESS**
30 the charter or bylaws of a corporation provide otherwise, a plurality of all the votes cast **IN**
31 **FAVOR OF A NOMINEE FOR A DIRECTOR POSITION** at a meeting at which a quorum is
32 present is sufficient to elect a director.

1 **(E) (1) UNLESS THE CHARTER OR BYLAWS OF A CORPORATION CONTAINS**
2 **A PROVISION APPROVED BY THE STOCKHOLDERS THAT PROVIDES OTHERWISE, IN**
3 **AN ELECTION IN WHICH THE NUMBER OF NOMINEES FOR A DIRECTOR POSITION IS**
4 **EQUAL TO THE NUMBER OF DIRECTOR POSITIONS TO BE FILLED IN THE ELECTION,**
5 **DIRECTORS SHALL BE ELECTED AS PROVIDED IN THIS SUBSECTION.**

6 **(2) A STOCKHOLDER MAY CAST VOTES FOR OR AGAINST A NOMINEE**
7 **OR MAY INDICATE AN ABSTENTION.**

8 **(3) A STOCKHOLDER WHO ABSTAINS FROM CASTING A VOTE FOR OR**
9 **AGAINST A NOMINEE MAY NOT USE THAT VOTE TO VOTE FOR OR AGAINST ANOTHER**
10 **NOMINEE.**

11 **(4) A NOMINEE WHO IS ELECTED TO A DIRECTOR POSITION, BUT**
12 **RECEIVED MORE VOTES AGAINST ELECTION THAN VOTES FOR ELECTION, SHALL BE**
13 **ENTITLED TO SERVE IN THE DIRECTOR POSITION FOR A TERM ENDING ON THE**
14 **EARLIER OF:**

15 **(I) 90 DAYS AFTER THE VOTING RESULTS ARE DETERMINED; OR**

16 **(II) THE DATE ON WHICH ANOTHER INDIVIDUAL IS SELECTED**
17 **BY THE BOARD OF DIRECTORS TO FILL THE OFFICE HELD BY THE DIRECTOR, WHICH**
18 **SHALL BE DEEMED TO CONSTITUTE THE FILLING OF A VACANCY BY THE BOARD.**

19 **(5) (I) AN INDIVIDUAL WHO SERVES AS A DIRECTOR UNDER**
20 **PARAGRAPH (4) OF THIS SUBSECTION MAY NOT HOLD THE DIRECTOR POSITION**
21 **BEYOND THE 90-DAY PERIOD PROVIDED IN PARAGRAPH (4)(I) OF THIS SUBSECTION.**

22 **(II) THE BOARD OF DIRECTORS, BEFORE THE END OF THE TERM**
23 **PROVIDED IN PARAGRAPH (4)(I) OF THIS SUBSECTION, SHALL SELECT A QUALIFIED**
24 **INDIVIDUAL, OTHER THAN THE INDIVIDUAL WHO IS SERVING AS DIRECTOR UNDER**
25 **PARAGRAPH (4) OF THIS SUBSECTION, TO FILL THE DIRECTOR POSITION.**

26 **(F) AN INDIVIDUAL IS NOT CONSIDERED TO BE QUALIFIED FOR ELECTION**
27 **TO A DIRECTOR POSITION IF THE BOARD OF DIRECTORS DETERMINES, BEFORE THE**
28 **NOTICE OF A MEETING HAS BEEN GIVEN TO THE STOCKHOLDERS, THAT THE**
29 **INDIVIDUAL IS NOT A QUALIFIED NOMINEE UNDER § 2-403 OF THIS SUBTITLE.**

30 8-202.

31 **(a) A real estate investment trust shall file its declaration of trust for record with**
32 **the Department.**

1 (b) (1) The declaration of trust shall:

2 (i) Indicate clearly that the trust is a real estate investment trust;

3 (ii) State the name of the trust;

4 (iii) State the total number of shares which the real estate
5 investment trust has authority to issue;

6 (iv) Provide for an annual meeting of shareholders at a convenient
7 location and on proper notice;

8 (v) Provide for the election of trustees at least every third year at an
9 annual meeting of shareholders;

10 (vi) State the number of trustees and the names of those persons who
11 will serve as trustees until the first meeting of shareholders and until their successors are
12 elected and qualify or such later time as may be specified in the declaration of trust;

13 (vii) State the name and address of a resident agent of the real estate
14 investment trust in the State; and

15 (viii) If the shares are divided into classes as permitted by § 8–203 of
16 this subtitle, provide a description of each class, including any preferences, conversion and
17 other rights, voting powers, restrictions, limitations as to dividends or distributions,
18 qualifications, and terms and conditions of redemption.

19 (2) A declaration of trust may include a provision that allows the trustees,
20 in considering a potential acquisition of control of the real estate investment trust, to
21 consider the effect of the potential acquisition of control on:

22 (i) Shareholders, employees, suppliers, customers, and creditors of
23 the trust; and

24 (ii) Communities in which offices or other establishments of the trust
25 are located.

26 (3) The inclusion or omission of a provision in a declaration of trust that
27 allows the board of trustees to consider the effect of a potential acquisition of control on
28 persons specified in paragraph (2) of this subsection does not create an inference concerning
29 factors that may be considered by the board of trustees regarding a potential acquisition of
30 control.

31 (c) Notwithstanding any provision of this title, **EXCEPT AS PROVIDED IN §**
32 **8–208 OF THIS SUBTITLE**, which requires for any action the concurrence of a greater
33 proportion of the votes than a majority of the votes entitled to be cast, a real estate
34 investment trust may provide by its declaration of trust that the action may be taken or

1 authorized on the concurrence of a greater or smaller proportion, but not less than a
2 majority of the number of votes entitled to be cast on the matter.

3 (d) The declaration of trust shall be signed and acknowledged by each trustee.

4 (e) (1) In this subsection, "facts ascertainable outside the bylaws" include:

5 (i) An action or determination by any person, including the real
6 estate investment trust, its board of trustees, an officer or agent of the real estate
7 investment trust, and any other person affiliated with the real estate investment trust;

8 (ii) Any agreement or other document; or

9 (iii) Any other event.

10 (2) Any provision of the bylaws may be made dependent upon facts
11 ascertainable outside the bylaws.

12 **8-208.**

13 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS
14 SECTION, AND UNLESS THE CHARTER OR BYLAWS OF A REAL ESTATE INVESTMENT
15 TRUST PROVIDE OTHERWISE, A PLURALITY OF ALL THE VOTES CAST IN FAVOR OF A
16 NOMINEE FOR A TRUSTEE POSITION AT A MEETING OF THE SHAREHOLDERS AT
17 WHICH A QUORUM IS PRESENT IS SUFFICIENT TO ELECT A TRUSTEE.

18 (B) (1) UNLESS THE DECLARATION OF TRUST OR BYLAWS OF A REAL
19 ESTATE INVESTMENT TRUST CONTAINS A PROVISION APPROVED BY THE
20 SHAREHOLDERS THAT PROVIDES OTHERWISE, IN AN ELECTION IN WHICH THE
21 NUMBER OF NOMINEES FOR A TRUSTEE POSITION IS EQUAL TO THE NUMBER OF
22 TRUSTEE POSITIONS TO BE FILLED IN THE ELECTION, TRUSTEES SHALL BE ELECTED
23 AS PROVIDED IN THIS SUBSECTION.

24 (2) EACH SHARE MAY BE VOTED FOR AS MANY INDIVIDUALS AS THERE
25 ARE TRUSTEES TO BE ELECTED AND FOR WHOSE ELECTION THE SHARE IS ENTITLED
26 TO BE VOTED.

27 (3) A SHAREHOLDER MAY CAST VOTES FOR OR AGAINST A NOMINEE
28 OR MAY INDICATE AN ABSTENTION.

29 (4) A SHAREHOLDER WHO ABSTAINS FROM CASTING A VOTE FOR OR
30 AGAINST A NOMINEE MAY NOT USE THAT VOTE TO VOTE FOR OR AGAINST ANOTHER
31 NOMINEE.

1 **(5) A NOMINEE WHO IS ELECTED TO A TRUSTEE POSITION, BUT**
2 **RECEIVED MORE VOTES AGAINST ELECTION THAN VOTES FOR ELECTION, SHALL BE**
3 **ENTITLED TO SERVE IN THE TRUSTEE POSITION FOR A TERM ENDING ON THE**
4 **EARLIER OF:**

5 **(I) 90 DAYS AFTER THE VOTING RESULTS ARE DETERMINED; OR**

6 **(II) THE DATE ON WHICH ANOTHER INDIVIDUAL IS SELECTED**
7 **BY THE BOARD OF TRUSTEES TO FILL THE OFFICE HELD BY THE TRUSTEE, WHICH**
8 **SHALL BE DEEMED TO CONSTITUTE THE FILLING OF A VACANCY BY THE BOARD.**

9 **(6) (I) AN INDIVIDUAL WHO SERVES AS A TRUSTEE UNDER**
10 **PARAGRAPH (5) OF THIS SUBSECTION MAY NOT HOLD THE TRUSTEE POSITION**
11 **BEYOND THE 90-DAY PERIOD PROVIDED IN PARAGRAPH (5)(I) OF THIS SUBSECTION.**

12 **(II) THE BOARD OF TRUSTEES, BEFORE THE END OF THE TERM**
13 **PROVIDED IN PARAGRAPH (5)(I) OF THIS SUBSECTION, SHALL SELECT A QUALIFIED**
14 **INDIVIDUAL, OTHER THAN THE INDIVIDUAL WHO IS SERVING AS TRUSTEE UNDER**
15 **PARAGRAPH (5) OF THIS SUBSECTION, TO FILL THE TRUSTEE POSITION.**

16 **(C) AN INDIVIDUAL IS NOT CONSIDERED TO BE QUALIFIED FOR ELECTION**
17 **TO A TRUSTEE POSITION IF THE BOARD OF TRUSTEES DETERMINES, BEFORE THE**
18 **NOTICE OF A MEETING HAS BEEN GIVEN TO THE SHAREHOLDERS, THAT THE**
19 **INDIVIDUAL IS NOT QUALIFIED TO SERVE AS A TRUSTEE.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2017.