

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 992

(Senators West and Waldstreicher)

Judicial Proceedings

Rules and Executive Nominations

Corporations and Associations - Revisions

This bill (1) establishes a process for the transfer of assets that are collateral for securing a mortgage, pledge, or security interest without the approval of stockholders; (2) establishes certain exceptions to the process for the transfer of assets that are secured collateral without the approval of the stockholders; and (3) repeals statutory provisions that specify what must be included in the articles of merger if a limited partnership, limited liability company, or partnership is a party to the articles. The bill also corrects an erroneous cross reference.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Stockholder Approval Not Required – Transfer of Assets

Under current law (§ 3-104 of the Corporations and Associations Article), unless the charter or bylaws of a corporation provide otherwise by reference to § 3-104 or its subject matter, the approval of the stockholders is not required for any:

- transfer of assets by a corporation in the ordinary course of business actually conducted by it or as a distribution, as specified;

- 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;
- 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;
- transfer of assets by a corporation registered as an open-end investment company under the Investment Company Act of 1940, including a transfer between or among classes or series of stock of a corporation; or
- transfers of assets by a corporation that is dissolved.

Further, unless the charter or bylaws of a corporation provide otherwise by reference to § 3-104 or its subject matter, the approval of the stockholders and articles of share exchange are not required for an exchange of shares of stock through voluntary action or under an agreement with the stockholders participating in the exchange.

The bill adds provisions to those specified above related to a transfer of assets. Specifically, unless the charter or bylaws of a corporation provide otherwise, as specified, stockholder approval is not required for a transfer of assets that is collateral for securing a mortgage, pledge, or security interest if:

- the mortgagee, pledgee, or secured party exercises its rights under Title 9 of the Maryland Uniform Commercial Code, the Real Property Article, or other applicable law to affect the transfer of assets without the consent of the corporation; or
- the board of directors of the corporation authorizes an alternative sale of assets with the mortgagee, the pledgee, a secured party, or another person (1) that results in the reduction or elimination of the liabilities or obligations secured by the assets and (2) for which the value of the assets is less than or equal to the amount of the liabilities or obligations being reduced or eliminated.

The receipt of consideration by the corporation or its stockholders in an alternative sale of assets, as specified above, may not create a presumption that the value of the assets is greater than the amount of liabilities or obligations being eliminated or reduced, as specified.

Except for any proceeding against a corporation and another necessary party to enjoin a sale before the sale is completed, failure to satisfy the bill's condition that the value of assets be less than or equal to the amount of the liabilities or obligations being reduced or eliminated in an alternative sale of assets authorized, as specified, may not invalidate a sale if the transferee of the assets (1) provided value for the assets, including the reduction or elimination of the liabilities or obligations secured by the assets and (2) acted in good faith. However, the aforementioned provisions may not be interpreted to eliminate any claim,

including (1) a claim for monetary damages arising from the director failing to satisfy the standard of conduct for directors, as specified, including a claim by or in the right of the corporation or (2) a claim for equitable relief.

Articles of Merger – Content

Under current law, in addition to the statutory provisions specifying the required content of articles of consolidation, merger, or share exchange, the articles of merger for a limited partnership, limited liability company, or partnership must include (1) the percentages of partnership (or membership) interest of each class or series of partnership or membership interest and (2) the class of partners or members and the respective percentage of partnership or membership interests in each class or series of partnership or membership interest. The bill repeals these requirements for a limited partnership, limited liability company, and partnership and makes conforming changes.

Small Business Effect: By authorizing the transfer of assets that are collateral for securing specified interests without the approval of stockholders, the bill may benefit the finances and operation of a corporation.

Additional Comments: The bill implements recommendations of the Maryland State Bar Association, whose Committee on Corporation Law regularly reviews the Corporations and Associations Article in an attempt to clarify unclear provisions and eliminate outdated language.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1171 (Delegate Amprey) - Economic Matters.

Information Source(s): Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2025
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