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The Maryland House of Delegates

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Testimony in Support of House Bill 781 – Corporations and Real Estate Investment Trusts – Miscellaneous

Good afternoon Mr. Chairman and members of the Committee. Thank you for the opportunity to speak to you on behalf of **House Bill 781 – Corporations and Real Estate Investment Trusts – Miscellaneous**.

This legislation is based on recommendations of the Business Law Section, Committee of Corporation Law of the Maryland State Bar Association (MSBA). House Bill 781 makes several changes regarding corporations and real estate investment trusts. There are three principle changes proposed.

First, many states permit companies organized in those states to include forum selection provisions in their charter or bylaws specifying the court or courts in which litigation about corporate governance issues must be filed. Such provisions can prevent simultaneous lawsuits in different courts, perhaps in different states. They can also ensure that Maryland courts familiar with Maryland law will be handling the lawsuits. House Bill 781 provides that any such forum selection provisions must include one or more courts in Maryland. The bill also resolves a dispute between various Maryland circuit courts by making it clear that the forum selection provision may specify a particular Maryland court rather than enabling a plaintiff to select any Maryland court, no matter how far away from where the litigants and their counsel are located. This measure will enable the forum selection provision to require that corporate governance suits be filed in the Circuit Court for Baltimore City or Montgomery County or another county in central Maryland, thus eliminating the possibility that the plaintiff might file the case in the Circuit Court for Somerset or Garrett County.

Second, on occasion a corporation or real estate investment trust classifies or reclassifies stock – or increases or decreases the permitted aggregate number of shares of stock – and then proceeds forward with the classification, reclassification, increase or decrease prior to filing Articles Supplementary or Articles of Amendment with the State Department of Assessments and Taxation. In such rare situations, there is an argument that the shares of stock so affected are voidable. The same situation exists with respect to Declarations of Trust for Real Estate Investment Trusts; occasionally new shares of the REIT are issued before an amendment to the

Declaration of Trust is filed. House Bill 781 provides that any such prematurely issued shares cease to be voidable at the time the appropriate Articles or amendment is filed.

Third, the bill makes minor changes to the Maryland Control Share Acquisition Act in order to clarify the law and eliminate an apparent ambiguity that then U.S. District Court Judge Andre Davis found in the 2007 reported decision of *Neuberger Berman Real Estate Income Fund, Inc. v Lola Brown Trust No. 1 B*. The revisions contained in this bill are consistent with the outcome reached by Judge Davis and eliminate the apparent ambiguity.

Additionally, there are several technical changes to Maryland corporation law offered in this proposal. With me today providing further insight into House Bill 781 is William Carlson from MSBA.

I respectfully request a favorable report for House Bill 781.