



**2025 REPORT OF THE COMMITTEE ON CORPORATION LAW
OF THE SECTION ON BUSINESS LAW OF THE MARYLAND STATE BAR ASSOCIATION
WITH RESPECT TO**

**HOUSE BILL 1171 (*CROSS-FILED WITH SENATE BILL 992*)
“CORPORATIONS AND ASSOCIATIONS – REVISIONS”**

I. INTRODUCTION AND BACKGROUND

The Committee on Corporation Law of the Section on Business Law of the Maryland State Bar Association monitors the Maryland General Corporation Law, the Maryland REIT Law, and the application and utility of other Maryland business-related laws. To that end, the Committee on Corporation Law regularly proposes “Miscellaneous” Bills relating to corporations and REITs and, on occasion, Bills on specific topics to the General Assembly of the State of Maryland.

This Session’s “MGCL-Miscellaneous” Bill, HB 1171, the “Corporations and Associations – Revisions” Bill, which has been cross-filed in the Senate as SB 992, addresses several revisions and clarifications.

OUR COMMITTEE IS FAVORABLE IN SUPPORT OF HB 1171.

II. PROPOSED “CORPORATIONS AND ASSOCIATIONS - REVISIONS”

Authorizing the Creation of a Statutory Safe Harbor for a Bank or Other Lender
in a Foreclosure or in a Secured Party Sale to Sell Mortgaged, Pledged,
or Secured Assets in an “Alternative Sale” Without Obtaining Stockholder Approval

Section 3-105 of the Maryland General Corporation Law requires that a sale or transfer of all or substantially all of a corporation’s assets requires that the corporation’s board of directors declares that the proposed transaction is advisable and further that the corporation’s stockholders, typically by a majority vote, approve the transaction. Section 3-104 provides for several exceptions to this required procedure, including that a mortgage, pledge, or creation of any other security in any or all of the assets of a corporation, whether or not in the ordinary course of business, does not require stockholder approval. Accordingly, no stockholder approval is required when a property is sold at auction in a foreclosure sale of real property or secured lender’s sale of other property.

On occasion, a corporation facing a foreclosure sale or a secured party’s sale will agree with the mortgagee, secured party, pledgee, or other lender to forgo an auction and enter into a deed-in-

lieu-of-foreclosure or other “alternative sale” agreement. This approach may be attractive to the corporation for cost savings, to obtain higher sales proceeds, or for other reasons. Practitioners in Maryland corporate law, Maryland real estate law, and Maryland Uniform Commercial Code law, even without any express carveout in Section 3-104, generally undertake such alternative sales without any need to then seek approval from the stockholders under Section 3-105.

New Section 3-104(c) would clarify and confirm present practice and understanding in regard to alternative sales by providing a statutory safe harbor if the conditions of the new Section are satisfied. In this respect, we note that Delaware – in new Section 272(b) of the Delaware General Corporation Law – recently provided a safe harbor for alternative sales.

New Section 3-104(c) provides that after a deed-in-lieu or an alternative sale transaction has been completed, it cannot be invalidated, but that any transaction may be enjoined prior to its completion if there are grounds to do so. The Section also provides that this safe harbor does not change the standard of conduct applicable to directors under the Maryland General Corporation Law.

Authorizing the Removal of Antiquated and Misunderstood Requirements
for Certain Statements in Articles of Merger Between Corporations
and Other Types of Entities (such as Limited Liability Companies)

Section 3-109(d) specifies certain information that is required to be stated in articles of mergers between corporations and other corporations, between corporations and business trusts, between corporations and limited liability companies, between corporations and limited partnerships, and between corporations and other types of partnerships. Present sub-subsection (8) of Section 3-109(d) requires that the articles of merger state the manner and basis for exchanging shares of stock of two corporations, exchanging membership interests in a limited liability company for shares of stock in a corporation, and so forth.

Present sub-subsections (4) pertaining to limited partnerships, (5) pertaining to limited liability companies, and (6) pertaining to other partnerships require also that the “percentages” of those non-corporate entities being exchanged be stated. With the multitude of ways that limited partnerships, limited liability companies, and other partnerships can express their ownership interests (which are not always expressed as percentages), sub-sections (4), (5), and (6) can be nonsensical in certain situations. In any event, sub-sections (4), (5), and (6) are superfluous to the continuing requirements of section 3-109(d)(8), which – with the deletion of sub-sections (4), (5), and (6) - will be re-numbered to be Section 3-109(d)(5).

Correcting an Error in Section 2-411(e) of the MGCL
that Occurred with an Amendment in 2015

When Section 2-408 (pertaining to action by directors) was amended in 2015 to create a new subsection (d), the former subsection (d) was relettered to be subsection (e). However, the cross-reference to Section 2-408(d) in Section 2-411(e) (pertaining to the creation and composition of

Board committees) was not then relettered to Section 2-408(e). The proposed revision to Section 2-411(e) will correct this oversight.

Respectfully submitted,

MSBA Section of Business Law, Committee on
Corporation Law

William E. Carlson, Chair
Scott R. Wilson, Vice Chair

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