SB 992_MSBA Committee on Corporation Law (Carlson)
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2025 REPORT OF THE COMMITTEE ON CORPORATION LAW
OF THE SECTION ON BUSINESS LAW OF THE MARYLAND STATE BAR ASSOCIATION
WITH RESPECT TO

SENATE BILL 992 (*CROSS-FILED WITH* HOUSE BILL 1171)
"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, SB 992, the "Corporations and Associations – Revisions" Bill, which has been cross-filed in the House as HB 1171, addresses several revisions and clarifications.

OUR COMMITTEE IS <u>FAVORABLE</u> IN SUPPORT OF SB 992.

II. PROPOSED "CORPORATIONS AND ASSOCIATIONS - REVISIONS"

<u>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</u>

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

March 7, 2025

Senator West FWA SB992 2025.pdf
Uploaded by: Christopher West
Position: FWA

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Judicial Proceedings Committee

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THE SENATE OF MARYLAND
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March 7, 2025

Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: Testimony in Support of SB992 - Corporations and Associations - Revisions

Dear Chairman Smith and Members of the Committee:

Thank you for this opportunity to present SB992. This is the annual bill making technical corrections to Maryland's corporate laws. This bill is brought to us each year by the Business Law Section of the Maryland State Bar Association. The Business Law Section Executive Council is comprised of many of the State's most prominent business and corporate lawyers. In the spirit of full disclosure, prior to being elected to the General Assembly in 2014, I had been a member of the Executive Council for many years. Bill Carlson is with us once again this year to answer any questions about this bill. Bill is a longtime leader of the Business Law Section.

This year, SB992 focuses on the portion of the State's corporate laws that deals with what the stockholders of a corporation must explicitly approve in order for the corporation to proceed forward with a transaction. In this area of the Corporations and Associations Article, there are various provisions holding that unless the corporate charter or bylaws provide to the contrary, the corporation does not have to secure stockholder approval to take certain actions. SB992 merely adds another instance in which, unless the charter or bylaws provide to the contrary, stockholder approval need not be secured before the corporation does something.

The "something" in this case is to transfer assets of the corporation that previously had been pledged as collateral for a loan and are the subject of a mortgage, pledge or security interest. SB992 provides that if the secured party exercises its rights under a mortgage or deed of trust or a grant of a security interest to take possession of and sell corporate assets, stockholder consent is not necessary. Alternatively, if the board of directors of the corporation authorizes a sale of the assets with the holder of the mortgage or security interest that results in the reduction or elimination of the obligations secured by the assets and for which the assets are worth less than or equal to the amount of the obligations being discharged, stockholder consent is not necessary. SB992 goes on to say that even in there is an ultimate determination that that value of the assets was greater than the amount of the discharged obligations, so long as the person receiving the assets acted in good faith and provided value for the assets, the sale cannot be invalidated.

There is another distinct component of SB992. It provides that in the case of mergers, the document known as the articles of merger need not include ownership information about any partnership or limited partnership or limited liability company that is one of the parties to the articles of merger.

I am pleased to recommend that the Judicial Proceedings Committee report this bill favorably, and Bill and I look forward to answering any questions that you might have about the bill.

SB0992/933725/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

06 MAR 25
15:24:02

BY: Senator West
(To be offered in the Judicial Proceedings Committee)

AMENDMENT TO SENATE BILL 992
(First Reading File Bill)

On page 3, in line 28, strike "**LIABILITY FOR MONETARY DAMAGES ARISING FROM**" and substitute "**CLAIM, INCLUDING**"; and in line 29, strike "**THAT THE**" and substitute "**FOR MONETARY DAMAGES ARISING FROM THE**"; and in the same line strike "**DID NOT**" and substitute "**FAILING TO**".