
By: **Delegate Barve**

Introduced and read first time: February 11, 2000

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts - Miscellaneous Provisions**

3 FOR the purpose of altering the manner in which certificates of correction may be
4 executed; providing that certain officers of certain entities may execute certain
5 documents; providing that articles of incorporation may include a certain
6 provision; providing that provisions of the bylaws of a corporation or a real
7 estate investment trust may be made dependent on certain facts ascertainable
8 outside the bylaws; providing that the term "future director" may be defined in
9 a stockholder rights plan; altering certain provisions of law governing the
10 issuance of stock or convertible securities; clarifying that certain provisions of
11 law governing the issuance of stock and convertible securities do not apply to
12 certain consolidations, mergers, or share exchanges; authorizing a corporation
13 or real estate investment trust to issue shares without consideration to up to a
14 certain number of persons for certain purposes; altering the minimum number
15 of directors a corporation is required to have; authorizing the charter of a
16 corporation to provide that the voting powers of directors may vary among the
17 directors; authorizing the board of directors of a corporation or the board of
18 trustees of a real estate investment trust to establish certain committees;
19 authorizing the charter or bylaws of a corporation or real estate investment
20 trust or certain agreements to which the corporation or real estate investment
21 trust is a party to provide for the establishment of certain committees of boards
22 of directors or boards of trustees under certain circumstances; prohibiting a
23 corporation from indemnifying a director or advancing expenses for a certain
24 proceeding under certain circumstances; altering certain provisions of law
25 governing stockholder consent without a meeting; clarifying that certain
26 provisions of law with respect to mergers apply only to Maryland corporations;
27 altering the circumstances under which a stockholder is not entitled to exercise
28 certain appraisal rights; altering the time during which the board of directors of
29 a corporation or the board of trustees of a real estate investment trust may
30 exempt certain transactions with certain persons from certain laws governing
31 business combinations; altering certain exemptions from certain laws governing
32 business combinations and control share acquisitions; conforming certain
33 provisions of the Maryland REIT Law relating to trustee removal to certain
34 provisions of the Maryland General Corporation Law; clarifying that a real
35 estate investment trust has the power to make certain investments; establishing

1 certain short titles; altering certain definitions; defining a certain term; making
2 certain stylistic, technical, and conforming changes; and generally relating to
3 Maryland corporations and Maryland real estate investment trusts.

4 BY repealing and reenacting, with amendments,
5 Article - Corporations and Associations
6 Section 1-101(t), 1-207(d), 1-301, 2-104(a)(3), 2-201(c), 2-203, 2-402(a),
7 2-411(a), 2-418(b), 2-505, 2-607(a), 3-106(d), 3-202(c), 3-203, 3-603(c)
8 and (e), 3-701(d), 3-702(c), 3-803(a)(1), 3-804(a), 8-206, and 8-301(8)
9 Annotated Code of Maryland
10 (1999 Replacement Volume)

11 BY repealing
12 Article - Corporations and Associations
13 Section 8-205
14 Annotated Code of Maryland
15 (1999 Replacement Volume)

16 BY adding to
17 Article - Corporations and Associations
18 Section 2-110(d), 2-206(d), 2-408(d), 2-411(e), 3-605, 3-710, 8-202(e), 8-205,
19 and 8-207
20 Annotated Code of Maryland
21 (1999 Replacement Volume)

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

24 **Article - Corporations and Associations**

25 1-101.

26 (t) "Stockholder" means a person who [holds] IS A RECORD HOLDER OF
27 shares of stock in a corporation and includes a member of a corporation organized
28 without [capital] stock.

29 1-207.

30 (d) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
31 A certificate of correction shall be executed in the same manner in which the
32 document being corrected was required to be executed.

33 (2) A CERTIFICATE OF CORRECTION TO ARTICLES OF INCORPORATION
34 SHALL BE EXECUTED BY THE INCORPORATOR OR IN THE MANNER PROVIDED IN §
35 1-301 OF THIS TITLE.

1 1-301.

2 (a) Articles supplementary and articles of amendment, restatement,
3 restatement and amendment, consolidation, merger, share exchange, transfer, and
4 extension and, except as provided in § 3-406(b) of this article, articles of dissolution
5 shall be executed as follows:

6 (1) They shall be signed and acknowledged for each corporation or real
7 estate investment trust party to the articles, by its chairman or vice chairman of the
8 board of directors or board of trustees, its CHIEF EXECUTIVE OFFICER, CHIEF
9 OPERATING OFFICER, president or one of its vice presidents;

10 (2) They shall be witnessed or attested by the secretary or an assistant
11 secretary of each corporation or real estate investment trust party to the articles, or,
12 if authorized by the bylaws or resolution of the board of directors or board of trustees
13 and the articles so state, by any other officer or agent of the corporation or real estate
14 investment trust;

15 (3) They shall be signed and acknowledged for each other entity party to
16 the articles by a majority of the entire board of trustees or other governing body; and

17 (4) Except as provided in subsection (b) of this section, the matters and
18 facts set forth in the articles with respect to authorization and approval shall be
19 verified under oath as follows:

20 (i) With respect to any Maryland corporation or real estate
21 investment trust party to the articles, by the chairman or the secretary of the meeting
22 at which the articles or transaction were approved, or by the chairman or vice
23 chairman of the board of directors or board of trustees, CHIEF EXECUTIVE OFFICER,
24 CHIEF OPERATING OFFICER, president, vice president, secretary, or assistant
25 secretary of the corporation or real estate investment trust;

26 (ii) With respect to any foreign corporation party to articles of
27 consolidation, merger, or share exchange, by the CHIEF EXECUTIVE OFFICER, CHIEF
28 OPERATING OFFICER, president, vice president, secretary, or assistant secretary of
29 the corporation; and

30 (iii) With respect to any other Maryland or foreign entity party to
31 the articles, by the CHIEF EXECUTIVE OFFICER, CHIEF OPERATING OFFICER,
32 president, vice president, secretary, assistant secretary, managing trustee, or persons
33 acting in a similar position for the entity.

34 (b) When articles of transfer are executed:

35 (1) With respect to the transferor corporation, the requirements of
36 subsection (a)(4)(i) apply;

37 (2) With respect to a transferee corporation, the matters and facts set
38 forth in the articles with respect to authorization and approval shall be verified under

1 oath by the CHIEF EXECUTIVE OFFICER, CHIEF OPERATING OFFICER, president, vice
2 president, secretary, or assistant secretary of the corporation; and

3 (3) With respect to a transferee which is not a corporation, the articles
4 shall be signed and acknowledged by the transferee.

5 (c) All other instruments required to be filed with the Department may be
6 signed:

7 (1) By the chairman or vice chairman of the board of directors, the CHIEF
8 EXECUTIVE OFFICER, CHIEF OPERATING OFFICER, president, or any vice president
9 and witnessed or attested by the secretary or any assistant secretary, or by any other
10 officer or agent of the corporation who is authorized by the bylaws or resolution of the
11 board of directors to perform the duties usually performed by the secretary and the
12 instrument so states;

13 (2) If it appears from the instrument that there are no such officers, by a
14 majority of the directors or by such directors as may be designated by the board and
15 the instrument so states; or

16 (3) If it appears from the instrument that there are no officers or
17 directors, by the holders of a majority of outstanding stock.

18 2-104.

19 (a) The articles of incorporation shall include:

20 (3) The purposes for which the corporation is formed OR A STATEMENT
21 THAT THE CORPORATION MAY ENGAGE IN ANY LAWFUL BUSINESS OR OTHER
22 ACTIVITY;

23 2-110.

24 (D) (1) IN THIS SUBSECTION, "FACTS ASCERTAINABLE OUTSIDE THE
25 BYLAWS" INCLUDE:

26 (I) AN ACTION OR DETERMINATION BY ANY PERSON, INCLUDING
27 THE CORPORATION, ITS BOARD OF DIRECTORS, AN OFFICER OR AGENT OF THE
28 CORPORATION, AND ANY OTHER PERSON AFFILIATED WITH THE CORPORATION;

29 (II) ANY AGREEMENT OR OTHER DOCUMENT; OR

30 (III) ANY OTHER EVENT.

31 (2) ANY PROVISION OF THE BYLAWS PERMITTED UNDER SUBSECTION
32 (A) OF THIS SECTION MAY BE MADE DEPENDENT UPON FACTS ASCERTAINABLE
33 OUTSIDE THE BYLAWS.

34 2-201.

35 (c) (1) The board of directors of a corporation may, in its sole discretion:

1 (i) Set the terms and conditions of rights, options, or warrants
2 under a stockholder rights plan; and

3 (ii) Issue rights, options, or warrants under a stockholder rights
4 plan to designated persons or classes of persons.

5 (2) The rights, options, or warrants under paragraph (1) of this
6 subsection may, in the sole discretion of the board of directors, include any limitation,
7 restriction, or condition that:

8 (i) Precludes, limits, invalidates, or voids the exercise, transfer, or
9 receipt of the rights, options, or warrants by designated persons or classes of persons
10 in specified circumstances; or

11 (ii) Limits for a period not to exceed 180 days the power of a future
12 director, AS DEFINED IN THE STOCKHOLDER RIGHTS PLAN, to vote for the
13 redemption, modification, or termination of the rights, options, or warrants.

14 2-203.

15 (a) Before the issuance of stock or convertible securities, the board of directors
16 shall adopt a resolution which:

17 (1) Authorizes the issuance;

18 (2) Sets the minimum [price or value of] consideration for the stock or
19 convertible securities or a formula for its determination; and

20 (3) Fairly describes any consideration other than money.

21 (b) In the absence of actual fraud in the transaction, the [value of] MINIMUM
22 consideration stated in the charter or determined by the board of directors in its
23 resolution is conclusive for all purposes.

24 (c) For purposes of this section, the consideration for stock issued as a stock
25 dividend is the resulting capitalization of surplus.

26 (d) This section does not apply to the issuance of stock or convertible securities
27 as part of:

28 (1) A reclassification of stock effected by amendment of the charter; or

29 (2) A consolidation, merger, or share exchange, INCLUDING A
30 CONSOLIDATION, MERGER, OR SHARE EXCHANGE TO WHICH A WHOLLY OWNED
31 SUBSIDIARY OF THE CORPORATION IS A PARTY.

32 (e) If its issuance is authorized in accordance with this subtitle, stock with par
33 value and securities convertible into stock with par value may be issued as full paid
34 and nonassessable even if the price or value of the consideration received is less than
35 the par value of the stock issued or the stock into which the securities are convertible.

1 (f) Notwithstanding any other provision of this section or § 2-204 or § 2-206
2 of this subtitle, a corporation may issue stock or other securities of the corporation
3 pursuant to § 2-103(13) of this title without consideration of any kind.

4 2-206.

5 (D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A
6 CORPORATION MAY ISSUE SHARES OF ITS STOCK TO UP TO 100 PERSONS WITHOUT
7 CONSIDERATION FOR THE PURPOSE OF QUALIFYING THE CORPORATION AS A REAL
8 ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE.

9 2-402.

10 (a) Each corporation shall have at least [three directors at all times, provided
11 that:

12 (1) If there is no stock outstanding the number of directors may be less
13 than three but not less than one; and

14 (2) If there is stock outstanding and so long as there are less than three
15 stockholders, the number of directors may be less than three but not less than the
16 number of stockholders] ONE DIRECTOR.

17 2-408.

18 (D) (1) THE CHARTER MAY PROVIDE THAT ONE OR MORE DIRECTORS OR A
19 CLASS OF DIRECTORS SHALL HAVE MORE OR LESS THAN ONE VOTE PER DIRECTOR
20 ON ANY MATTER.

21 (2) IF THE CHARTER PROVIDES THAT ONE OR MORE DIRECTORS SHALL
22 HAVE MORE OR LESS THAN ONE VOTE PER DIRECTOR ON ANY MATTER, EVERY
23 REFERENCE IN THIS ARTICLE TO A MAJORITY OR OTHER PROPORTION OF
24 DIRECTORS SHALL REFER TO A MAJORITY OR OTHER PROPORTION OF VOTES OF THE
25 DIRECTORS.

26 2-411.

27 (a) The [bylaws of a corporation may authorize its] board of directors [to] OF
28 A CORPORATION MAY:

29 (1) Appoint from among its members an executive committee and other
30 committees composed of one or more directors; and

31 (2) Delegate to these committees any of the powers of the board of
32 directors, except the power to:

33 (i) Authorize dividends on stock;

34 (ii) Issue stock other than as provided in subsection (b) of this
35 section;

- 1 (iii) Recommend to the stockholders any action which requires
2 stockholder approval;
- 3 (iv) Amend the bylaws; or
- 4 (v) Approve any merger or share exchange which does not require
5 stockholder approval.

6 (E) NOTWITHSTANDING § 2-408(D) OF THIS SUBTITLE, THE CHARTER OR
7 BYLAWS OF A CORPORATION, OR ANY AGREEMENT TO WHICH THE CORPORATION IS
8 A PARTY AND WHICH HAS BEEN APPROVED BY THE BOARD OF DIRECTORS, MAY
9 PROVIDE FOR:

10 (1) THE ESTABLISHMENT OF ONE OR MORE STANDING COMMITTEES OR
11 FOR THE CREATION OF ONE OR MORE COMMITTEES UPON THE OCCURRENCE OF
12 CERTAIN EVENTS; AND

13 (2) THE COMPOSITION OF THE MEMBERSHIP, AND THE
14 QUALIFICATIONS AND THE VOTING AND OTHER RIGHTS OF MEMBERS OF ANY SUCH
15 COMMITTEE, SUBJECT TO THE CONTINUED SERVICE OF MEMBERS OF THE
16 COMMITTEE AS DIRECTORS.

17 2-418.

18 (b) (1) A corporation may indemnify any director made a party to any
19 proceeding by reason of service in that capacity unless it is established that:

20 (i) The act or omission of the director was material to the matter
21 giving rise to the proceeding; and

22 1. Was committed in bad faith; or

23 2. Was the result of active and deliberate dishonesty; or

24 (ii) The director actually received an improper personal benefit in
25 money, property, or services; or

26 (iii) In the case of any criminal proceeding, the director had
27 reasonable cause to believe that the act or omission was unlawful.

28 (2) (i) Indemnification may be against judgments, penalties, fines,
29 settlements, and reasonable expenses actually incurred by the director in connection
30 with the proceeding.

31 (ii) However, if the proceeding was one by or in the right of the
32 corporation, indemnification may not be made in respect of any proceeding in which
33 the director shall have been adjudged to be liable to the corporation.

34 (3) (i) The termination of any proceeding by judgment, order, or
35 settlement does not create a presumption that the director did not meet the requisite
36 standard of conduct set forth in this subsection.

1 (ii) The termination of any proceeding by conviction, or a plea of
2 nolo contendere or its equivalent, or an entry of an order of probation prior to
3 judgment, creates a rebuttable presumption that the director did not meet that
4 standard of conduct.

5 (4) A CORPORATION MAY NOT INDEMNIFY A DIRECTOR UNDER THIS
6 SECTION OR ADVANCE EXPENSES FOR A PROCEEDING BROUGHT BY THAT DIRECTOR
7 AGAINST THE CORPORATION, EXCEPT:

8 (I) FOR A PROCEEDING BROUGHT TO ENFORCE INDEMNIFICATION
9 UNDER THIS SECTION; OR

10 (II) IF THE CHARTER OR BYLAWS OF THE CORPORATION
11 EXPRESSLY PROVIDE OTHERWISE.

12 2-505.

13 (A) [Any] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ANY
14 action required or permitted to be taken at a meeting of stockholders may be taken
15 without a meeting if [the following are filed with the records of stockholders
16 meetings:

17 (1) An] A unanimous written consent which sets forth the action and is
18 signed by each stockholder entitled to vote on the matter IS FILED WITH THE
19 RECORDS OF STOCKHOLDERS MEETINGS[; and

20 (2) A written waiver of any right to dissent signed by each stockholder
21 entitled to notice of the meeting but not entitled to vote at it].

22 (B) UNLESS THE CHARTER REQUIRES OTHERWISE, THE HOLDERS OF ANY
23 CLASS OF STOCK OTHER THAN COMMON STOCK ENTITLED TO VOTE GENERALLY IN
24 THE ELECTION OF DIRECTORS MAY TAKE ACTION OR CONSENT TO ANY ACTION BY
25 THE WRITTEN CONSENT OF THE STOCKHOLDERS ENTITLED TO CAST NOT LESS THAN
26 THE MINIMUM NUMBER OF VOTES THAT WOULD BE NECESSARY TO AUTHORIZE OR
27 TAKE THE ACTION AT A STOCKHOLDERS MEETING IF THE CORPORATION GIVES
28 NOTICE OF THE ACTION TO EACH STOCKHOLDER NOT LATER THAN 10 DAYS AFTER
29 THE EFFECTIVE TIME OF THE ACTION.

30 2-607.

31 (a) Articles of amendment shall set forth the amendment and state:

32 (1) That the amendment was advised by the board of directors and
33 approved by the stockholders; or

34 (2) That the amendment was approved by a majority of the entire board
35 of directors and that:

36 (i) No stock entitled to be voted on the matter was outstanding or
37 subscribed for at the time of approval; or

1 (ii) The amendment is limited to a change expressly authorized by
2 [§§ 2-105(a)(12) and 2-605] § 2-105(A)(12) OR § 2-605 of this title to be made without
3 action by the stockholders.

4 3-106.

5 (d) (1) [Unless] IF THE PARENT AND SUBSIDIARY ARE BOTH MARYLAND
6 CORPORATIONS, AND UNLESS waived by all minority stockholders, at least 30 days
7 before the articles are filed with the Department, a parent corporation which owns
8 less than all of the outstanding stock of the subsidiary shall give notice of the
9 transaction to each of the subsidiary's minority stockholders of record on the date of
10 giving of the notice or on a record date fixed for that purpose which is not more than
11 10 days before the date of giving notice.

12 (2) A minority stockholder of the subsidiary has the right to demand and
13 receive payment of the fair value of his stock as provided in Subtitle 2 of this title
14 relating to objecting stockholders.

15 3-202.

16 (c) Unless the transaction is governed by § 3-602 of this title or is exempted
17 by § 3-603(b) of this title, a stockholder may not demand the fair value of [his] THE
18 STOCKHOLDER'S stock and is bound by the terms of the transaction if:

19 (1) The stock is listed on a national securities exchange [or], is
20 designated as a national market system security on an interdealer quotation system
21 by the National Association of Securities Dealers, Inc., OR IS DESIGNATED FOR
22 TRADING ON THE NASDAQ SMALL CAP MARKET:

23 (i) With respect to a merger under § 3-106 of this title of a 90
24 percent or more owned subsidiary with or into its parent corporation, on the date
25 notice is given or waived under § 3-106; or

26 (ii) With respect to any other transaction, on the record date for
27 determining stockholders entitled to vote on the transaction objected to;

28 (2) The stock is that of the successor in a merger, unless:

29 (i) The merger alters the contract rights of the stock as expressly
30 set forth in the charter, and the charter does not reserve the right to do so; or

31 (ii) The stock is to be changed or converted in whole or in part in
32 the merger into something other than either stock in the successor or cash, scrip, or
33 other rights or interests arising out of provisions for the treatment of fractional
34 shares of stock in the successor; [or]

35 (3) THE STOCK IS NOT ENTITLED TO BE VOTED ON THE TRANSACTION
36 OR THE STOCKHOLDER DID NOT OWN THE SHARES OF STOCK ON THE RECORD DATE
37 FOR DETERMINING STOCKHOLDERS ENTITLED TO VOTE ON THE TRANSACTION;

1 (4) THE CHARTER PROVIDES THAT THE HOLDERS OF THE STOCK ARE
2 NOT ENTITLED TO EXERCISE THE RIGHTS OF AN OBJECTING STOCKHOLDER UNDER
3 THIS SUBTITLE; OR

4 [(3)] (5) The stock is that of an open-end investment company
5 registered with the Securities and Exchange Commission under the Investment
6 Company Act of 1940 and the value placed on the stock in the transaction is its net
7 asset value.

8 3-203.

9 (a) A stockholder of a corporation who desires to receive payment of the fair
10 value of [his] THE STOCKHOLDER'S stock under this subtitle:

11 (1) Shall file with the corporation a written objection to the proposed
12 transaction:

13 (i) With respect to a merger under § 3-106 of this title of a 90
14 percent or more owned subsidiary with or into its parent corporation, within 30 days
15 after notice is given or waived under § 3-106; or

16 (ii) With respect to any other transaction, at or before the
17 stockholders' meeting at which the transaction will be considered OR, IN THE CASE OF
18 ACTION TAKEN UNDER § 2-505(B) OF THIS ARTICLE, WITHIN 10 DAYS AFTER THE
19 CORPORATION GIVES THE NOTICE REQUIRED BY § 2-505(B) OF THIS ARTICLE;

20 (2) May not vote in favor of the transaction; and

21 (3) Within 20 days after the Department accepts the articles for record,
22 shall make a written demand on the successor for payment for [his] THE
23 STOCKHOLDER'S stock, stating the number and class of shares for which [he] THE
24 STOCKHOLDER demands payment.

25 (b) A stockholder who fails to comply with this section is bound by the terms of
26 the consolidation, merger, share exchange, transfer of assets, or charter amendment.
27 3-603.

28 (c) (1) Whether or not such business combinations are authorized or
29 consummated in whole or in part after July 1, 1983 or after the determination date,
30 the provisions of § 3-602 of this subtitle do not apply to business combinations that
31 specifically, generally, or generally by types, as to specifically identified or
32 unidentified existing or future interested stockholders or their affiliates, have been
33 approved or exempted therefrom, in whole or in part, by resolution of the board of
34 directors of the corporation:

35 (i) Prior to September 1, 1983 or such earlier date as may be
36 irrevocably established by resolution of the board of directors; or

1 (ii) If involving transactions with a particular interested
2 stockholder or its existing or future affiliates, at any time prior to the [determination
3 date] MOST RECENT TIME THAT THE INTERESTED STOCKHOLDER BECAME AN
4 INTERESTED STOCKHOLDER.

5 (2) Unless by its terms a resolution adopted under this subsection is
6 made irrevocable, it may be altered or repealed by the board of directors, but this
7 shall not affect any business combinations that have been consummated, or are the
8 subject of an existing agreement entered into, prior to the alteration or repeal.

9 (e) (1) Unless the charter of the corporation provides otherwise, the
10 provisions of § 3-602 of this subtitle do not apply to any business combination of:

11 (i) A close corporation as defined in § 4-101(b) of this article;

12 (ii) A corporation having fewer than 100 beneficial owners of its
13 stock;

14 (iii) A corporation whose original articles of incorporation have a
15 provision, or whose stockholders adopt a charter amendment after June 30, 1983 by a
16 vote of at least 80 percent of the votes entitled to be cast by outstanding shares of
17 voting stock of the corporation, voting together as a single voting group, and
18 two-thirds of the votes entitled to be cast by persons (if any) who are not interested
19 stockholders of the corporation or affiliates or associates of interested stockholders,
20 voting together as a single voting group, expressly electing not to be governed by the
21 provisions of § 3-602 of this subtitle in whole or in part, or in either case as to
22 business combinations, specifically, generally, or generally by types, or as to identified
23 or unidentified existing or future interested stockholders or their affiliates, provided
24 that, other than in the case of the original articles of incorporation, an amendment
25 may not be effective until 18 months after the vote of stockholders and may not apply
26 to any business combination of the corporation with an interested stockholder (or any
27 affiliate of the interested stockholder) who became an interested stockholder on or
28 before the date of the vote;

29 (iv) [An investment company] A CORPORATION registered under
30 the Investment Company Act of 1940 AS AN OPEN END INVESTMENT COMPANY;

31 (V) A CORPORATION REGISTERED UNDER THE INVESTMENT
32 COMPANY ACT OF 1940 AS A CLOSED END INVESTMENT COMPANY UNLESS ITS BOARD
33 OF DIRECTORS ADOPTS A RESOLUTION TO BE SUBJECT TO § 3-602 OF THIS SUBTITLE
34 ON OR AFTER JUNE 1, 2000, PROVIDED THAT THE RESOLUTION SHALL NOT BE
35 EFFECTIVE WITH RESPECT TO A BUSINESS COMBINATION WITH ANY PERSON WHO
36 HAS BECOME AN INTERESTED STOCKHOLDER BEFORE THE TIME THAT THE
37 RESOLUTION IS ADOPTED; or

38 [(v)] (VI) A corporation with an interested stockholder that became
39 an interested stockholder inadvertently, if the interested stockholder:

40 1. As soon as practicable (but not more than 10 days after
41 the interested stockholder knew or should have known it had become an interested

1 (2) A corporation having fewer than 100 beneficial owners of its stock;
2 [or]

3 (3) [An investment company registered] A CORPORATION REGISTERED
4 under the Investment Company Act of 1940 AS AN OPEN END INVESTMENT
5 COMPANY; OR

6 (4) A CORPORATION REGISTERED UNDER THE INVESTMENT COMPANY
7 ACT OF 1940 AS A CLOSED END INVESTMENT COMPANY UNLESS ITS BOARD OF
8 DIRECTORS ADOPTS A RESOLUTION TO BE SUBJECT TO THIS SUBTITLE ON OR AFTER
9 JUNE 1, 2000, PROVIDED THAT THE RESOLUTION SHALL NOT BE EFFECTIVE WITH
10 RESPECT TO ANY PERSON WHO HAS BECOME A HOLDER OF CONTROL SHARES
11 BEFORE THE TIME THAT THE RESOLUTION IS ADOPTED.

12 3-710.

13 THIS SUBTITLE MAY BE CITED AS THE MARYLAND CONTROL SHARE
14 ACQUISITION ACT.

15 3-803.

16 (a) (1) [Before] EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,
17 NOTWITHSTANDING ANY PROVISION IN THE CHARTER OR THE BYLAWS OF A
18 CORPORATION, BEFORE the first annual meeting of stockholders after a corporation
19 elects to be subject to this subtitle, the board of directors shall designate by
20 resolution, from among its members, directors to serve as class I directors, class II
21 directors, and class III directors.

22 3-804.

23 (a) Notwithstanding any other lesser proportion of votes required by a
24 provision in the charter or the bylaws, but subject to § 2-406(b)(3) OR § 8-205(B)(3) of
25 this article the stockholders of a corporation may remove any director by the
26 affirmative vote of at least two-thirds of all the votes entitled to be cast by the
27 stockholders generally in the election of directors.

28 8-202.

29 (E) (1) IN THIS SUBSECTION, "FACTS ASCERTAINABLE OUTSIDE THE
30 BYLAWS" INCLUDE:

31 (I) AN ACTION OR DETERMINATION BY ANY PERSON, INCLUDING
32 THE REAL ESTATE INVESTMENT TRUST, ITS BOARD OF TRUSTEES, AN OFFICER OR
33 AGENT OF THE REAL ESTATE INVESTMENT TRUST, AND ANY OTHER PERSON
34 AFFILIATED WITH THE REAL ESTATE INVESTMENT TRUST;

35 (II) ANY AGREEMENT OR OTHER DOCUMENT; OR

36 (III) ANY OTHER EVENT.

1 (2) ANY PROVISION OF THE BYLAWS PERMITTED UNDER SUBSECTION
2 (A) OF THIS SECTION MAY BE MADE DEPENDENT UPON FACTS ASCERTAINABLE
3 OUTSIDE THE BYLAWS.

4 [8-205.

5 Unless the declaration of trust provides otherwise or the real estate investment
6 trust elects to be subject to § 3-804 (a) of this article, the shareholders of a real estate
7 investment trust may remove any trustee, with or without cause, by the affirmative
8 vote of a majority of all the votes entitled to be cast for the election of trustees.]

9 8-205.

10 (A) THE SHAREHOLDERS OF A REAL ESTATE INVESTMENT TRUST MAY
11 REMOVE ANY TRUSTEE, WITH OR WITHOUT CAUSE, BY THE AFFIRMATIVE VOTE OF A
12 MAJORITY OF ALL THE VOTES ENTITLED TO BE CAST GENERALLY FOR THE
13 ELECTION OF TRUSTEES, EXCEPT:

14 (1) AS PROVIDED IN SUBSECTION (B) OF THIS SECTION;

15 (2) AS OTHERWISE PROVIDED IN THE DECLARATION OF TRUST OF THE
16 REAL ESTATE INVESTMENT TRUST; OR

17 (3) FOR A REAL ESTATE INVESTMENT TRUST THAT HAS ELECTED TO BE
18 SUBJECT TO § 3-804(A) OF THIS ARTICLE.

19 (B) UNLESS THE DECLARATION OF TRUST OF THE REAL ESTATE INVESTMENT
20 TRUST PROVIDES OTHERWISE:

21 (1) IF THE SHAREHOLDERS OF ANY CLASS OR SERIES ARE ENTITLED
22 SEPARATELY TO ELECT ONE OR MORE TRUSTEES, A TRUSTEE ELECTED BY A CLASS
23 OR SERIES MAY NOT BE REMOVED WITHOUT CAUSE EXCEPT BY THE AFFIRMATIVE
24 VOTE OF A MAJORITY OF ALL THE VOTES OF THAT CLASS OR SERIES;

25 (2) IF A REAL ESTATE INVESTMENT TRUST HAS CUMULATIVE VOTING
26 FOR THE ELECTION OF TRUSTEES AND LESS THAN THE ENTIRE BOARD IS TO BE
27 REMOVED, A TRUSTEE MAY NOT BE REMOVED WITHOUT CAUSE IF THE VOTES CAST
28 AGAINST THE TRUSTEE'S REMOVAL WOULD BE SUFFICIENT TO ELECT THE TRUSTEE
29 IF THEN CUMULATIVELY VOTED AT AN ELECTION OF THE ENTIRE BOARD OF
30 TRUSTEES, OR, IF THERE IS MORE THAN ONE CLASS OF TRUSTEES, AT AN ELECTION
31 OF THE CLASS OF TRUSTEES OF WHICH THE TRUSTEE IS A MEMBER; AND

32 (3) IF THE TRUSTEES HAVE BEEN DIVIDED INTO CLASSES, A TRUSTEE
33 MAY NOT BE REMOVED WITHOUT CAUSE.

34 8-206.

35 (A) The [declaration of trust or bylaws of a real estate investment trust may
36 provide for] BOARD OF TRUSTEES OF A REAL ESTATE INVESTMENT TRUST MAY
37 ESTABLISH one or more committees of the board of trustees composed of one or more

1 trustees and for the delegation to those committees of any of the powers of the board
2 of trustees.

3 (B) THE DECLARATION OF TRUST OR BYLAWS OF A REAL ESTATE
4 INVESTMENT TRUST, OR ANY AGREEMENT TO WHICH THE REAL ESTATE
5 INVESTMENT TRUST IS A PARTY AND WHICH HAS BEEN APPROVED BY THE BOARD OF
6 TRUSTEES, MAY PROVIDE FOR:

7 (1) THE ESTABLISHMENT OF ONE OR MORE STANDING COMMITTEES OR
8 FOR THE CREATION OF ONE OR MORE COMMITTEES UPON THE OCCURRENCE OF
9 CERTAIN EVENTS; AND

10 (2) THE COMPOSITION OF THE MEMBERSHIP, AND THE
11 QUALIFICATIONS AND THE VOTING AND OTHER RIGHTS OF MEMBERS OF ANY SUCH
12 COMMITTEE, SUBJECT TO THE CONTINUED SERVICE OF MEMBERS OF THE
13 COMMITTEE AS TRUSTEES.

14 8-207.

15 NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A REAL ESTATE
16 INVESTMENT TRUST MAY ISSUE SHARES OF BENEFICIAL INTEREST TO UP TO 100
17 PERSONS WITHOUT CONSIDERATION FOR THE PURPOSE OF QUALIFYING THE REAL
18 ESTATE INVESTMENT TRUST AS A REAL ESTATE INVESTMENT TRUST UNDER THE
19 INTERNAL REVENUE CODE.

20 8-301.

21 A real estate investment trust has the power to:

22 (8) Purchase, take, receive, subscribe for, or otherwise acquire, own,
23 hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and deal
24 in and with:

25 (i) Securities, shares, and other interests in any obligations of
26 domestic and foreign corporations, other real estate investment trusts, associations,
27 partnerships, and [individuals] OTHER PERSONS; and

28 (ii) Direct and indirect obligations of the United States, any other
29 government, state, territory, government district, and municipality, and any
30 instrumentality of them;

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 June 1, 2000.