

HOUSE BILL 412

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CF SB 501

By: **Delegate Feldman**

Introduced and read first time: January 29, 2010

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: March 10, 2010

CHAPTER _____

1 AN ACT concerning

2 **Real Estate Investment Trusts – Miscellaneous Provisions**

3 FOR the purpose of clarifying that a real estate investment trust may provide by its
4 declaration of trust that holders of one or more classes or series of shares have
5 exclusive voting rights on an amendment that would alter only the contract
6 rights of those shareholders; providing that, without action by the shareholders,
7 the majority of the entire board of trustees may amend the declaration of trust
8 in any respect in which the charter of a corporation may be amended, unless
9 prohibited in the declaration of trust in a certain manner; authorizing the board
10 of trustees of certain real estate investment trusts to amend the declaration of
11 trust, without shareholder action, to effect a certain reverse share split, unless
12 prohibited in the declaration of trust in a certain manner; requiring a certain
13 real estate investment trust to give certain notice of a certain reverse share split
14 to certain shareholders within a certain time after the effective date of the
15 reverse share split; authorizing a real estate investment trust to file a certain
16 certificate of notice for record with the State Department of Assessments and
17 Taxation; providing that a trustee of a real estate investment trust is not
18 required to authorize or direct the filing of a certificate of notice; providing that
19 a real estate investment trust is not required to file a certificate of notice;
20 providing that a certificate of notice shall be executed in a certain manner;
21 defining certain terms and altering a certain definition; and generally relating
22 to real estate investment trusts.

23 BY repealing and reenacting, with amendments,
24 Article – Corporations and Associations

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 8–101, 8–203(a) and (c), and 8–501
 2 Annotated Code of Maryland
 3 (2007 Replacement Volume and 2009 Supplement)

4 BY adding to
 5 Article – Corporations and Associations
 6 Section 8–503
 7 Annotated Code of Maryland
 8 (2007 Replacement Volume and 2009 Supplement)

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

11 **Article – Corporations and Associations**

12 8–101.

13 (a) In this title the following words have the meanings indicated.

14 **(B) “DECLARATION OF TRUST” MEANS THE DECLARATION OF TRUST**
 15 **FILED WITH THE DEPARTMENT FOR THE PURPOSE OF FORMING A REAL ESTATE**
 16 **INVESTMENT TRUST, AS SPECIFIED IN § 8–202 OF THIS TITLE, EITHER AS**
 17 **ORIGINALLY ACCEPTED FOR RECORD OR AS AMENDED, CORRECTED, OR**
 18 **SUPPLEMENTED BY ARTICLES OF AMENDMENT, ARTICLES OF AMENDMENT AND**
 19 **RESTATEMENT, ARTICLES SUPPLEMENTARY, ARTICLES OF MERGER, OR A**
 20 **CERTIFICATE OF CORRECTION.**

21 **[(b)] (C)** “Real estate investment trust” means an unincorporated business
 22 trust or association formed under this title in which property is acquired, held,
 23 managed, administered, controlled, invested, or disposed of for the benefit and profit
 24 of any person who may become a shareholder.

25 **[(c)] (D)** “Share” means a transferable unit of beneficial interest in a real
 26 estate investment trust.

27 8–203.

28 (a) A real estate investment trust may provide by its declaration of trust:

29 (1) That any specified class of shares is preferred over another class as
 30 to its distributive share of the assets on voluntary or involuntary liquidation of the
 31 real estate investment trust and the amount of the preference;

32 (2) That any specified class of shares may be redeemed at the option of
 33 the real estate investment trust or of the holders of the shares and the terms and
 34 conditions of redemption, including the time and price of redemption;

1 (3) That any specified class of shares is convertible into shares of one
2 or more other classes and the terms and conditions of conversion;

3 (4) That the holders of any specified securities issued or to be issued
4 by the real estate investment trust have any voting or other rights which, by law, are
5 or may be conferred on shareholders;

6 **(5) THAT THE HOLDERS OF ONE OR MORE CLASSES OR SERIES OF**
7 **SHARES HAVE EXCLUSIVE VOTING RIGHTS ON AN AMENDMENT TO THE**
8 **DECLARATION OF TRUST THAT WOULD ALTER ONLY THE CONTRACT RIGHTS, AS**
9 **EXPRESSLY SET FORTH IN THE DECLARATION OF TRUST, OF THE SPECIFIED**
10 **CLASS OR SERIES OF SHARES;**

11 **[(5) (6)** For any other preferences, rights, restrictions, including
12 restrictions on transferability or ownership designed to permit the real estate
13 investment trust to qualify under the Internal Revenue Code or regulations adopted
14 under the Code or for any other purpose, and qualifications not inconsistent with law;

15 **[(6) (7)** That the board of trustees may classify or reclassify any
16 unissued shares from time to time by setting or changing the preferences, conversion
17 or other rights, voting powers, restrictions, limitations as to dividends or distributions,
18 qualifications, or terms or conditions of redemption of the shares; and

19 **[(7) (8)** That the board of trustees may amend the declaration of
20 trust to increase or decrease the aggregate number of shares or the number of shares
21 of any class that the trust has authority to issue.

22 (c) (1) In this subsection, “facts **ASCERTAINABLE OUTSIDE THE**
23 **DECLARATION OF TRUST**” includes:

24 (i) **[The occurrence of any event, including a determination or**
25 **action by any person or body, including the real estate investment trust; and] AN**
26 **ACTION OR DETERMINATION BY ANY PERSON, INCLUDING THE REAL ESTATE**
27 **INVESTMENT TRUST, THE BOARD OF TRUSTEES OF THE REAL ESTATE**
28 **INVESTMENT TRUST, AN OFFICER OR AGENT OF THE REAL ESTATE INVESTMENT**
29 **TRUST, OR ANY OTHER PERSON AFFILIATED WITH THE REAL ESTATE**
30 **INVESTMENT TRUST;**

31 (ii) The contents of any agreement to which the real estate
32 investment trust is a party or any other document; **AND**

33 **(III) ANY OTHER EVENT.**

34 (2) Any of the preferences, conversion or other rights, voting powers,
35 restrictions, limitations as to dividends or distributions, qualifications, or terms or
36 conditions of redemption of any class or series of shares may be made dependent upon

1 facts ascertainable outside the declaration of trust and may vary among holders of the
2 shares, provided that the manner in which such facts or variations will operate upon
3 the preferences, conversion or other rights, voting powers, restrictions, limitations as
4 to dividends or distributions, qualifications, or terms or conditions of redemption of
5 such class or series of shares is clearly and expressly set forth in the declaration of
6 trust.

7 8–501.

8 (a) Except as provided in § 8–202(c) or § 8–203(a)(7) of this title, a
9 declaration of trust may be amended only as provided in this section.

10 (b) The board of trustees of a real estate investment trust proposing an
11 amendment to its declaration of trust shall:

12 (1) Adopt a resolution which sets forth the proposed amendment and
13 declares that it is advisable; and

14 (2) Direct that the proposed amendment be submitted for
15 consideration by the shareholders.

16 (c) (1) If the proposed amendment is to be considered at a meeting of the
17 shareholders, notice which states that a purpose of the meeting will be to act upon the
18 proposed amendment shall be given by the real estate investment trust in the manner
19 required by its declaration of trust or bylaws to:

20 (i) Each shareholder entitled to vote on the proposed
21 amendment; and

22 (ii) Each shareholder not entitled to vote on the proposed
23 amendment if the contract rights of the shareholder's shares, as expressly set forth in
24 the declaration of trust, would be altered by the amendment.

25 (2) The notice shall include a copy of the amendment or a summary of
26 the changes it will affect.

27 (d) The proposed amendment shall be approved by the shareholders of the
28 real estate investment trust by the affirmative vote or written consent of two thirds of
29 all the votes entitled to be cast on the matter.

30 (e) (1) A declaration of trust may [permit:

31 (1) The] **PERMIT THE** board of trustees, with the approval of two
32 thirds of its members, and without action by the shareholders, to amend the
33 declaration of trust from time to time to qualify as a real estate investment trust
34 under the Internal Revenue Code or under this title[; and].

1 (2) [A] NOTWITHSTANDING SUBSECTIONS (B) AND (D) OF THIS
2 SECTION, UNLESS PROHIBITED IN THE DECLARATION OF TRUST BY REFERENCE
3 TO THIS SUBSECTION OR TO THE SUBJECT MATTER OF THIS SUBSECTION, A
4 majority of the entire board of trustees, without action by the shareholders, [to] MAY
5 amend the declaration of trust in any respect in which the charter of a corporation
6 may be amended in accordance with § 2-605 of this article.

7 (F) (1) IN THIS SUBSECTION, “REVERSE SHARE SPLIT” MEANS A
8 COMBINATION OF OUTSTANDING SHARES OF BENEFICIAL INTEREST OF A REAL
9 ESTATE INVESTMENT TRUST INTO A LESSER NUMBER OF SHARES OF
10 BENEFICIAL INTEREST OF THE SAME CLASS WITHOUT ANY CHANGE TO THE
11 AGGREGATE PAR VALUE OF THE OUTSTANDING SHARES.

12 (2) THIS SUBSECTION APPLIES TO A REAL ESTATE INVESTMENT
13 TRUST WITH A CLASS OF EQUITY SECURITIES REGISTERED UNDER THE
14 SECURITIES EXCHANGE ACT OF 1934.

15 (3) UNLESS PROHIBITED IN THE DECLARATION OF TRUST BY
16 REFERENCE TO THIS SUBSECTION OR TO THE SUBJECT MATTER OF THIS
17 SUBSECTION, THE BOARD OF TRUSTEES OF A REAL ESTATE INVESTMENT TRUST
18 MAY AMEND THE DECLARATION OF TRUST, WITH THE APPROVAL OF A MAJORITY
19 OF THE BOARD OF TRUSTEES AND WITHOUT SHAREHOLDER ACTION, TO EFFECT
20 A REVERSE SHARE SPLIT THAT RESULTS IN A COMBINATION OF SHARES OF
21 BENEFICIAL INTEREST AT A RATIO OF NOT MORE THAN 10 SHARES INTO 1
22 SHARE IN ANY 12-MONTH PERIOD.

23 (4) WITHIN 20 DAYS AFTER THE EFFECTIVE DATE OF A REVERSE
24 SHARE SPLIT AUTHORIZED UNDER THIS SUBSECTION, THE REAL ESTATE
25 INVESTMENT TRUST SHALL GIVE WRITTEN NOTICE OF THE REVERSE SHARE
26 SPLIT TO EACH HOLDER OF RECORD OF THE COMBINED SHARES OF BENEFICIAL
27 INTEREST AS OF THE EFFECTIVE DATE.

28 [(f)] (G) Articles of amendment shall be executed for the real estate
29 investment trust in the manner required by § 1-301 of this article and filed for record
30 with the Department.

31 **8-503.**

32 (A) A REAL ESTATE INVESTMENT TRUST MAY FILE A CERTIFICATE OF
33 NOTICE FOR RECORD WITH THE DEPARTMENT.

34 (B) A CERTIFICATE OF NOTICE MAY DESCRIBE:

1 **(1) AN ACTION BY THE REAL ESTATE INVESTMENT TRUST, ITS**
2 **BOARD OF TRUSTEES, OR ITS SHAREHOLDERS;**

3 **(2) THE OCCURRENCE OF OR CHANGE TO FACTS ASCERTAINABLE**
4 **OUTSIDE OF THE DECLARATION OF TRUST, AS DEFINED IN § 8-203(C) OF THIS**
5 **TITLE; OR**

6 **(3) ANY OTHER INFORMATION THAT THE REAL ESTATE**
7 **INVESTMENT TRUST DETERMINES SHOULD BE DISCLOSED.**

8 **(C) A CERTIFICATE OF NOTICE MAY NOT:**

9 **(1) AMEND, SUPPLEMENT, OR CORRECT THE DECLARATION OF**
10 **TRUST OF THE REAL ESTATE INVESTMENT TRUST IN ANY MANNER; OR**

11 **(2) AFFECT ANY RIGHTS OR LIABILITIES OF SHAREHOLDERS,**
12 **WHETHER OR NOT ACCRUED OR INCURRED BEFORE THE CERTIFICATE OF**
13 **NOTICE IS FILED.**

14 **(D) A CERTIFICATE OF NOTICE IS NOT A PART OF THE DECLARATION OF**
15 **TRUST OF A REAL ESTATE INVESTMENT TRUST.**

16 **(E) A TRUSTEE OF A REAL ESTATE INVESTMENT TRUST IS NOT**
17 **REQUIRED TO AUTHORIZE OR DIRECT THE FILING OF A CERTIFICATE OF**
18 **NOTICE.**

19 **(F) A REAL ESTATE INVESTMENT TRUST IS NOT REQUIRED TO FILE A**
20 **CERTIFICATE OF NOTICE FOR ANY PURPOSE, INCLUDING TO INDICATE THAT**
21 **THERE HAS BEEN A CHANGE TO THE FACTS OR INFORMATION CONTAINED IN A**
22 **PREVIOUSLY FILED CERTIFICATE OF NOTICE.**

23 **(G) A CERTIFICATE OF NOTICE SHALL BE EXECUTED IN THE MANNER**
24 **REQUIRED FOR CHARTER DOCUMENTS BY § 1-301 OF THIS ARTICLE.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 June 1, 2010.