

Chapter 96

(House Bill 972)

AN ACT concerning

Maryland General Corporation Law – Miscellaneous Provisions

FOR the purpose of altering the manner in which certain charter documents of certain business entities must be executed by authorizing certain officers, agents, and persons acting in a certain capacity to sign, acknowledge, witness, and attest the documents and to verify certain matters and facts; clarifying that a corporation may provide by its charter that holders of one or more classes or series of stock have certain voting rights under certain circumstances; clarifying that certain authority of a corporation to provide by its charter for classes of stock and certain rights, restrictions, and preferences of classes of stock applies to series of stock; altering the circumstances under which the board of directors of a corporation may effect a certain reverse stock split; expanding the authority of the board of directors of a corporation to delegate to certain committees powers of the board relating to the authorization of dividends on stock and other distributions; repealing certain unnecessary provisions of law relating to the time at which a stockholder of a corporation or a shareholder of a real estate investment trust who proposes a certain nominee or matter for consideration at a meeting of the stockholders or shareholders may be required to provide certain notice; altering the circumstances under which certain notice given by a corporation by a single notice to all stockholders who share an address is effective; providing that, prior to being convened, a meeting of stockholders may be postponed from time to time to a certain date; altering the contents of a certain notice of a proposed charter amendment that a corporation must give to certain stockholders; exempting corporations that have a class of securities registered under a certain federal law from the application of certain provisions of law relating to the dissolution of a corporation; clarifying that certain restrictions on voting rights apply to the holders of certain shares and not to the shares; making conforming and stylistic changes; and generally relating to corporations and other business entities.

BY repealing and reenacting, with amendments,

Article – Corporations and Associations

Section 1–301(a), 2–105(a), 2–309(d) and (e), 2–411(a), 2–504(f), 2–504.1,
2–511(d), 2–604, 3–413, and 3–702(a)

Annotated Code of Maryland

(2007 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, without amendments,

Article – Corporations and Associations

Section 8–601.1
Annotated Code of Maryland
(2007 Replacement Volume and 2009 Supplement)

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

Article – Corporations and Associations

1–301.

(a) Articles supplementary and articles of amendment, restatement, [restatement and] amendment **AND RESTATEMENT**, consolidation, merger, share exchange, transfer, and extension and, except as provided in § 3–406(b) of this article, articles of dissolution shall be executed as follows:

(1) They shall be signed and acknowledged for each corporation, business trust, or real estate investment trust party to the articles, by its chairman or vice chairman of the board of directors or board of trustees, **BY** its chief executive officer, chief operating officer, **CHIEF FINANCIAL OFFICER**, [president] **PRESIDENT**, or one of its vice presidents, **OR, IF AUTHORIZED BY THE BYLAWS OR RESOLUTION OF THE BOARD OF DIRECTORS OR BOARD OF TRUSTEES AND THE ARTICLES SO STATE, BY ANY OTHER OFFICER OR AGENT OF THE CORPORATION, BUSINESS TRUST, OR REAL ESTATE INVESTMENT TRUST;**

(2) They shall be witnessed or attested by the secretary, **TREASURER, CHIEF FINANCIAL OFFICER, ASSISTANT TREASURER**, or [an] assistant secretary of each corporation, business trust, or real estate investment trust party to the articles, or, if authorized by the bylaws or resolution of the board of directors or board of trustees and the articles so state, by any other officer or agent of the corporation, business trust, or real estate investment trust;

(3) They shall be signed and acknowledged for each other entity party to the articles by a majority of the entire board of trustees or other governing body **OR BY A PERSON ACTING IN A SIMILAR CAPACITY FOR THE ENTITY AS AN OFFICER DESCRIBED IN ITEM (1) OF THIS SUBSECTION;** and

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

(i) With respect to any Maryland corporation, business trust, or real estate investment trust party to the articles, by the chairman or the secretary of the meeting at which the articles or transaction were approved, [or] by the chairman or vice chairman of the board of directors or board of trustees, **BY THE** chief executive

officer, chief operating officer, **CHIEF FINANCIAL OFFICER**, president, vice president, secretary, or assistant secretary of the corporation, business trust, or real estate investment trust, **OR, IF AUTHORIZED IN ACCORDANCE WITH ITEM (1) OF THIS SUBSECTION AND THE ARTICLES SO STATE, BY ANY OTHER OFFICER OR AGENT OF THE CORPORATION, BUSINESS TRUST, OR REAL ESTATE INVESTMENT TRUST;**

(ii) With respect to any foreign corporation party to articles of consolidation, merger, or share exchange, by the chief executive officer, chief operating officer, president, vice president, secretary, or assistant secretary of the corporation; and

(iii) With respect to any other Maryland or foreign entity party to the articles, by the chief executive officer, chief operating officer, president, vice president, secretary, assistant secretary, managing trustee, or persons acting in a similar position for the entity.

2-105.

(a) A corporation may provide by its charter:

(1) For one or more classes **OR SERIES** of stock, the voting rights of each class **OR SERIES**, and any restriction on or denial of these rights;

(2) THAT THE HOLDERS OF ONE OR MORE CLASSES OR SERIES OF STOCK HAVE EXCLUSIVE VOTING RIGHTS ON A CHARTER AMENDMENT THAT WOULD ALTER ONLY THE CONTRACT RIGHTS, AS EXPRESSLY SET FORTH IN THE CHARTER, OF THE SPECIFIED CLASS OR SERIES OF STOCK;

[(2)] (3) As to each class **OR SERIES** of stock, either the par value of the shares or that the shares are without par value;

[(3)] (4) (i) That the corporation shall set apart dividends for or pay dividends to the holders of a specified class **OR SERIES** of stock before any dividends are set apart for or paid to the holders of another class **OR SERIES** of stock;

(ii) The rate, amount, and time of payment of the dividends; and

(iii) Whether the dividends are cumulative, cumulative to a limited extent, or noncumulative;

[(4)] (5) That any specified class **OR SERIES** of stock is preferred over another class **OR SERIES** as to its distributive share of the assets on voluntary or involuntary liquidation of the corporation and the amount of the preference;

[(5)] (6) That any specified class **OR SERIES** of stock may be redeemed at the option of the corporation or of the holders of the stock and the terms and conditions of redemption, including the time and price of redemption;

[(6)] (7) That any specified class **OR SERIES** of stock is convertible into shares of stock of one or more other classes **OR SERIES** and the terms and conditions of conversion;

[(7)] (8) That the holders of any specified securities issued or to be issued by the corporation have any voting or other rights which, by law, are or may be conferred on stockholders;

[(8)] (9) For any other preferences, rights, restrictions, including restrictions on transferability, and qualifications not inconsistent with law;

[(9)] (10) That the board of directors may classify or reclassify any unissued stock from time to time by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the stock;

[(10)] (11) (i) For any grant to the holders of the stock of the corporation, including a specified class or series of stock, of the preemptive right to subscribe to:

1. Any or all additional issues of the stock; or
2. Any securities of the corporation convertible into additional issues of stock; or

(ii) For any definition or limitation of the preemptive rights of stockholders to acquire additional stock or securities in the corporation;

[(11)] (12) For restrictions on transferability or ownership for any purpose, including restrictions designed to permit a corporation to qualify as:

(i) A real estate investment trust under the Internal Revenue Code or regulations adopted under the Internal Revenue Code; or

(ii) An investment company under the Investment Company Act of 1940 or regulations adopted under the Investment Company Act of 1940; and

[(12)] (13) That the board of directors, with the approval of a majority of the entire board, and without action by the stockholders, may amend the charter to increase or decrease the aggregate number of shares of stock of the corporation or the

number of shares of stock of any class **OR SERIES** that the corporation has authority to issue.

2–309.

(d) If the board of directors of a corporation has given general authorization for a distribution and provides for or establishes a method or procedure for determining the maximum amount of the distribution, the board may delegate to [a committee of the board or] an officer of the corporation the power, in accordance with the general authorization, to fix the amount and other terms of the distribution.

(e) (1) This subsection applies to a corporation:

(i) With a class of equity securities registered under the Securities Exchange Act of 1934; or

(ii) Registered as an open–end investment company under the Investment Company Act of 1940.

(2) Unless [the charter of a corporation provides otherwise] **PROHIBITED BY THE CHARTER OF A CORPORATION BY REFERENCE TO THIS SUBSECTION OR THE SUBJECT MATTER OF THIS SUBSECTION**, the board of directors of the corporation may amend the charter, with the approval of a majority of the board of directors and without stockholder action, to effect a reverse stock split that results in a combination of shares of stock at a ratio of not more than 10 shares of stock into one share of stock in any 12–month period.

(3) Within 20 days after the effective date of the reverse stock split, the corporation shall give written notice of the reverse stock split to each holder of record of the combined shares of stock as of the effective date.

2–411.

(a) The board of directors of a corporation may:

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

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

(i) [Authorize dividends on stock, except as provided in § 2–309(d) of this title;

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

[(iii)] (II) Recommend to the stockholders any action which requires stockholder approval, other than the election of directors;

[(iv)] (III) Amend the bylaws; or

[(v)] (IV) Approve any merger or share exchange which does not require stockholder approval.

2-504.

(f) The charter or bylaws may require any stockholder proposing a nominee for election as a director or any other matter for consideration at a meeting of the stockholders to provide advance notice of the nomination or proposal to the corporation **BEFORE A DATE OR WITHIN A PERIOD OF TIME** [of not more than:

(1) 90 days before the date of the meeting; or

(2) In the case of an annual meeting, 90 days before the first anniversary of:

(i) The mailing date of the notice of the preceding year's annual meeting; or

(ii) The preceding year's annual meeting; or

(3) Another time] specified in the charter or bylaws.

2-504.1.

(a) Subject to § 2-504(d) of this subtitle, any notice given by a corporation to a stockholder under this article or the charter or bylaws of the corporation is effective if given by a single notice, in writing or by electronic transmission, to all stockholders who share an address **UNLESS THE CORPORATION HAS RECEIVED A REQUEST FROM A STOCKHOLDER IN WRITING OR BY ELECTRONIC TRANSMISSION THAT A SINGLE NOTICE NOT BE GIVEN** [if:

(1) The corporation gives notice, in writing or by electronic transmission, to the stockholder of its intent to give a single notice; and

(2) The stockholder:

(i) Consents to receiving a single notice; or

(ii) Fails to object in writing within 60 days after the corporation gives notice to the stockholder of its intent to give a single notice.

(b) A stockholder may revoke consent given under subsection (a) of this section, whether affirmative or implied, by written notice to the corporation].

[(c)] (B) This section does not limit the manner in which a corporation otherwise may give notice to stockholders.

2-511.

(d) **(1)** A meeting of stockholders convened on the date for which it was called may be adjourned from time to time without further notice to a date not more than 120 days after the original record date.

(2) PRIOR TO BEING CONVENED, A MEETING OF STOCKHOLDERS MAY BE POSTPONED FROM TIME TO TIME TO A DATE NOT MORE THAN 120 DAYS AFTER THE ORIGINAL RECORD DATE.

2-604.

(a) This section does not apply to a charter amendment by the board of directors in accordance with § [2-105(a)(12)] **2-105(A)(13)** or § 2-309(e) of this title.

(b) If there is any stock outstanding or subscribed for and entitled to be voted on the charter amendment, it shall be approved as provided in this section.

(c) Except as provided in § 2-112 of this title, the board of directors of a corporation proposing a charter amendment shall:

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

(2) Direct that the proposed amendment be submitted for consideration at either an annual or a special meeting of the stockholders.

(d) **(1)** Notice which states that a purpose of the meeting will be to act on the proposed amendment shall be given by the corporation in the manner required by Subtitle 5 of this title to:

(i) Each stockholder entitled to vote on the proposed amendment; and

(ii) Each stockholder not entitled to vote on the proposed amendment if the contract rights of his stock, as expressly set forth in the charter, would be altered by the amendment.

(2) The notice shall [include]:

(I) **INCLUDE** a copy of the amendment or a summary of the changes it will effect; **OR**

(II) **1. IDENTIFY A WEBSITE AT WHICH THE AMENDMENT OR A SUMMARY OF THE CHANGES IT WILL EFFECT MAY BE ACCESSED; AND**

2. INCLUDE A TELEPHONE NUMBER OR AN ADDRESS WHERE THE STOCKHOLDER MAY REQUEST A PAPER COPY OF THE AMENDMENT OR SUMMARY WITHOUT CHARGE.

(e) The proposed amendment shall be approved by the stockholders of the corporation by the affirmative vote of two thirds of all the votes entitled to be cast on the matter.

3-413.

(a) **[Stockholders] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, STOCKHOLDERS** entitled to cast at least 25 percent of all the votes entitled to be cast in the election of directors of a corporation may petition a court of equity to dissolve the corporation on grounds that:

(1) The directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained; or

(2) The stockholders are so divided that directors cannot be elected.

(b) **[Any] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, ANY** stockholder entitled to vote in the election of directors of a corporation may petition a court of equity to dissolve the corporation on grounds that:

(1) The stockholders are so divided that they have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms would have expired on the election and qualification of their successors; or

(2) The acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent.

(c) Any stockholder or creditor of a corporation other than a railroad corporation may petition a court of equity to dissolve the corporation on grounds that it is unable to meet its debts as they mature in the ordinary course of its business.

(D) SUBSECTIONS (A)(2) AND (B)(1) OF THIS SECTION DO NOT APPLY TO ANY CORPORATION THAT HAS A CLASS OF EQUITY SECURITIES REGISTERED UNDER THE FEDERAL SECURITIES EXCHANGE ACT OF 1934.

3-702.

(a) (1) **[Control] HOLDERS OF CONTROL** shares of the corporation acquired in a control share acquisition have no voting rights **WITH RESPECT TO THE CONTROL SHARES** except to the extent approved by the stockholders at a meeting held under § 3-704 of this subtitle by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares.

(2) A charter provision permitted by § 2-104(b)(5) of this article may not apply to the proportion of votes required by paragraph (1) of this subsection.

8-601.1.

Sections 2-201(c), 2-313, 2-405.1(d) through (g), 2-502(e), and 2-504(f) of this article shall apply to real estate investment trusts.

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

Approved by the Governor, April 13, 2010.