

HOUSE BILL 1513

C1

6lr3407
CF 6lr3429

By: **Delegate Kramer**

Introduced and read first time: February 17, 2016

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations – Formation of a Holding Company by Merger**

3 FOR the purpose of establishing a process for the formation of a certain holding company
4 through the merger of a Maryland parent corporation with or into a certain
5 wholly owned subsidiary of the Maryland parent corporation; providing that a vote
6 of the stockholders of the parent corporation is not necessary to authorize the merger
7 under certain circumstances, unless the charter of the parent corporation expressly
8 provides otherwise; requiring that the merger be approved by a majority of the entire
9 board of directors of the parent corporation; establishing the conditions under which
10 the merger may be effectuated; establishing the effects of the merger; authorizing a
11 merger of a parent real estate investment trust into a certain subsidiary real estate
12 investment trust to be approved in a certain manner, under certain circumstances;
13 defining a certain term; and generally relating to the establishment of a process for
14 forming a holding company through a merger.

15 BY adding to

16 Article – Corporations and Associations
17 Section 3–106.2
18 Annotated Code of Maryland
19 (2014 Replacement Volume and 2015 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article – Corporations and Associations
22 Section 8–501.1(c)
23 Annotated Code of Maryland
24 (2014 Replacement Volume and 2015 Supplement)

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

27 **Article – Corporations and Associations**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **3-106.2.**

2 (A) IN THIS SECTION, "HOLDING COMPANY" MEANS A MARYLAND
3 CORPORATION:

4 (1) THAT, FROM ITS INCORPORATION UNTIL CONSUMMATION OF A
5 MERGER GOVERNED BY THIS SECTION, HAS BEEN AT ALL TIMES A DIRECT OR
6 INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION; AND

7 (2) THE STOCK OF WHICH IS ISSUED IN THE MERGER.

8 (B) NOTWITHSTANDING § 3-105 OF THIS SUBTITLE, UNLESS THE CHARTER
9 OF A PARENT CORPORATION EXPRESSLY PROVIDES OTHERWISE, A VOTE OF THE
10 STOCKHOLDERS OF THE PARENT CORPORATION IS NOT NECESSARY TO AUTHORIZE
11 A MERGER WITH OR INTO A SINGLE DIRECT OR INDIRECT WHOLLY OWNED
12 SUBSIDIARY CORPORATION OF THE PARENT CORPORATION IF:

13 (1) THE PARENT CORPORATION AND THE DIRECT OR INDIRECT
14 WHOLLY OWNED SUBSIDIARY CORPORATION ARE THE ONLY PARTIES TO THE
15 MERGER;

16 (2) EACH SHARE OR FRACTION OF A SHARE OF THE STOCK OF THE
17 PARENT CORPORATION OUTSTANDING IMMEDIATELY PRIOR TO THE EFFECTIVE
18 TIME OF THE MERGER IS CONVERTED IN THE MERGER INTO A SHARE OR EQUAL
19 FRACTION OF A SHARE OF THE STOCK OF A HOLDING COMPANY HAVING THE SAME
20 CONTRACT RIGHTS AS THE SHARE OF STOCK OF THE PARENT CORPORATION BEING
21 CONVERTED IN THE MERGER;

22 (3) THE HOLDING COMPANY, THE PARENT CORPORATION, AND THE
23 DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION THAT IS THE
24 OTHER PARTY TO THE MERGER ARE MARYLAND CORPORATIONS;

25 (4) THE CHARTER AND BYLAWS OF THE HOLDING COMPANY
26 IMMEDIATELY FOLLOWING THE EFFECTIVE TIME OF THE MERGER ARE IDENTICAL
27 TO THE CHARTER AND BYLAWS OF THE PARENT CORPORATION IN EFFECT
28 IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER, OTHER THAN:

29 (I) PROVISIONS, IF ANY, REGARDING THE INCORPORATOR OR
30 INCORPORATORS, THE PRINCIPAL OFFICE, THE RESIDENT AGENT, AND THE INITIAL
31 BOARD OF DIRECTORS;

1 **(II) PROVISIONS AUTHORIZED UNDER § 2-605 OF THIS**
2 **ARTICLE; AND**

3 **(III) ANY AMENDMENT TO THE CHARTER THAT WAS NECESSARY**
4 **TO EFFECT A CHANGE, EXCHANGE, RECLASSIFICATION, SUBDIVISION,**
5 **COMBINATION, OR CANCELLATION OF STOCK, IF THE CHANGE, EXCHANGE,**
6 **RECLASSIFICATION, SUBDIVISION, COMBINATION, OR CANCELLATION OF STOCK**
7 **HAS BECOME EFFECTIVE;**

8 **(5) AS A RESULT OF THE MERGER, THE PARENT CORPORATION OR ITS**
9 **SUCCESSOR BECOMES A DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY**
10 **CORPORATION OF THE HOLDING COMPANY;**

11 **(6) THE DIRECTORS OF THE PARENT CORPORATION BECOME OR**
12 **REMAIN THE DIRECTORS OF THE HOLDING COMPANY AT THE EFFECTIVE TIME OF**
13 **THE MERGER;**

14 **(7) THE STOCKHOLDERS OF THE PARENT CORPORATION DO NOT**
15 **RECOGNIZE GAIN OR LOSS FOR FEDERAL INCOME TAX PURPOSES, AS DETERMINED**
16 **BY THE BOARD OF DIRECTORS OF THE PARENT CORPORATION; AND**

17 **(8) A MAJORITY OF THE ENTIRE BOARD OF DIRECTORS OF THE**
18 **PARENT CORPORATION APPROVES THE MERGER.**

19 **(C) FROM AND AFTER THE EFFECTIVE TIME OF A MERGER UNDER**
20 **SUBSECTION (B) OF THIS SECTION:**

21 **(1) TO THE EXTENT THAT THE RESTRICTIONS UNDER § 3-602 OF THIS**
22 **TITLE APPLIED TO THE PARENT CORPORATION AND THE STOCKHOLDERS OF THE**
23 **PARENT CORPORATION AT THE EFFECTIVE TIME OF THE MERGER:**

24 **(I) THE RESTRICTIONS SHALL APPLY TO THE HOLDING**
25 **COMPANY AND THE STOCKHOLDERS OF THE HOLDING COMPANY IMMEDIATELY**
26 **AFTER THE EFFECTIVE TIME OF THE MERGER AS THOUGH THE HOLDING COMPANY**
27 **WAS THE PARENT COMPANY;**

28 **(II) FOR PURPOSES OF § 3-602 OF THIS TITLE, ALL SHARES OF**
29 **STOCK OF THE HOLDING COMPANY ACQUIRED IN THE MERGER SHALL BE DEEMED**
30 **TO HAVE BEEN ACQUIRED AT THE TIME THAT THE SHARES OF STOCK OF THE PARENT**
31 **CORPORATION CONVERTED IN THE MERGER WERE ACQUIRED; AND**

32 **(III) 1. ANY STOCKHOLDER THAT IMMEDIATELY PRIOR TO**
33 **THE EFFECTIVE TIME OF THE MERGER WAS NOT AN INTERESTED STOCKHOLDER, AS**

1 DEFINED IN § 3-601 OF THIS TITLE, DOES NOT, SOLELY BY REASON OF THE MERGER,
2 BECOME AN INTERESTED STOCKHOLDER OF THE HOLDING COMPANY; AND

3 2. ANY STOCKHOLDER THAT IMMEDIATELY PRIOR TO
4 THE EFFECTIVE TIME OF THE MERGER WAS AN INTERESTED STOCKHOLDER, AS
5 DEFINED IN § 3-601 OF THIS TITLE, REMAINS AN INTERESTED STOCKHOLDER OF
6 THE HOLDING COMPANY;

7 (2) TO THE EXTENT THAT, AT THE EFFECTIVE TIME OF THE MERGER,
8 ANY APPROVAL BY THE STOCKHOLDERS OF THE PARENT CORPORATION UNDER §
9 3-702(A) OF THIS TITLE APPLIED TO THE PARENT CORPORATION AND ANY CONTROL
10 SHARES OF THE PARENT CORPORATION, THE APPROVAL SHALL APPLY TO THE
11 HOLDING COMPANY AND ANY CONTROL SHARES OF THE HOLDING COMPANY
12 IMMEDIATELY AFTER THE EFFECTIVE TIME OF THE MERGER AS IF THE HOLDING
13 COMPANY WERE THE PARENT CORPORATION;

14 (3) TO THE EXTENT THAT, AT THE EFFECTIVE TIME OF THE MERGER,
15 THE BOARD OF DIRECTORS OF THE PARENT CORPORATION HAD ELECTED BY
16 RESOLUTION TO BE SUBJECT TO OR NOT TO BE SUBJECT TO, WHOLLY OR PARTLY,
17 ANY OR ALL PROVISIONS OF SUBTITLE 8 OF THIS TITLE, THE ELECTION SHALL
18 APPLY TO THE HOLDING COMPANY IMMEDIATELY AFTER THE EFFECTIVE TIME OF
19 THE MERGER AS IF THE HOLDING COMPANY WERE THE PARENT CORPORATION;

20 (4) IF THE CORPORATE NAME OF THE HOLDING COMPANY
21 IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THE MERGER IS THE SAME AS
22 THE CORPORATE NAME OF THE PARENT CORPORATION IMMEDIATELY PRIOR TO THE
23 EFFECTIVE TIME OF THE MERGER, THE SHARES OF STOCK OF THE HOLDING
24 COMPANY INTO WHICH THE SHARES OF STOCK OF THE PARENT CORPORATION ARE
25 CONVERTED IN THE MERGER MAY CONTINUE TO BE REPRESENTED BY THE STOCK
26 CERTIFICATES THAT PREVIOUSLY REPRESENTED SHARES OF STOCK OF THE PARENT
27 CORPORATION; AND

28 (5) TO THE EXTENT THAT A STOCKHOLDER OF THE PARENT
29 CORPORATION IMMEDIATELY PRIOR TO THE MERGER HAD STANDING TO INSTITUTE
30 OR MAINTAIN DERIVATIVE LITIGATION ON BEHALF OF THE PARENT CORPORATION,
31 THE STOCKHOLDER SHALL HAVE STANDING TO INSTITUTE OR MAINTAIN
32 DERIVATIVE LITIGATION ON BEHALF OF THE HOLDING COMPANY.

33 8-501.1.

34 (c) A merger shall be approved in the manner provided by this section, except
35 that:

1 (1) A foreign business trust, a Maryland business trust, other than a
2 Maryland real estate investment trust, a corporation, a domestic or foreign partnership, or
3 a domestic or foreign limited partnership party to the merger shall have the merger
4 advised, authorized, and approved in the manner and by the vote required by its declaration
5 of trust, governing instrument, charter, or partnership agreement and the laws of the place
6 where it is organized;

7 (2) (i) A foreign limited liability company party to the merger shall
8 have the merger advised, authorized, and approved in the manner and by the vote required
9 by the laws of the place where it is organized; and

10 (ii) A domestic limited liability company shall have the merger
11 approved in the manner provided under § 4A-703 of this article;

12 (3) A merger need be approved by a Maryland real estate investment trust
13 successor only by a majority of its entire board of trustees if the merger does not reclassify
14 or change the terms of any class or series of its shares that are outstanding immediately
15 before the merger becomes effective or otherwise amend its declaration of trust and the
16 number of shares of such class or series outstanding immediately after the effective time of
17 the merger does not increase by more than 20 percent of the number of its shares of the
18 class or series of shares outstanding immediately before the merger becomes effective;

19 (4) A merger of a subsidiary with or into its parent need be approved only
20 in the manner provided in § 3-106 of this article, provided the parent owns at least 90
21 percent of the subsidiary; [and]

22 (5) A merger of a Maryland real estate investment trust in accordance with
23 § 3-106.1 of this article need be approved only in the manner provided in § 3-106.1 of this
24 article; AND

25 **(6) A MERGER OF A PARENT REAL ESTATE INVESTMENT TRUST WITH**
26 **OR INTO A SINGLE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY REAL ESTATE**
27 **INVESTMENT TRUST MAY BE APPROVED IN THE MANNER PROVIDED IN § 3-106.2 OF**
28 **THIS ARTICLE, PROVIDED THE MERGER OTHERWISE CONFORMS TO THE**
29 **REQUIREMENTS UNDER § 3-106.2 OF THIS ARTICLE.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2016.