

SENATE BILL 481

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CF 7lr2013

By: **Senator Feldman**

Introduced and read first time: January 30, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations – Maryland General Corporation Law – Miscellaneous Provisions**

3 FOR the purpose of providing that certain individuals, under certain circumstances, are
4 deemed to have consented to the appointment of the resident agent of a Maryland
5 corporation or a Maryland real estate investment trust or, if there is no resident
6 agent, the State Department of Assessments and Taxation, as an agent on which
7 service of process may be made in certain actions or proceedings; providing that a
8 certain consent to service of process is effective under certain circumstances and has
9 certain legal force and validity; providing that a certain appointment as an agent for
10 service of process is irrevocable; requiring the Department to collect a certain
11 additional fee for processing a certified list of certain charter documents or
12 certificates of certain business entities on an expedited basis; altering certain
13 requirements for the execution and signing of certain documents; altering certain
14 requirements for the resident agent of a Maryland corporation, a limited
15 partnership, and a Maryland statutory trust; prohibiting the charter or bylaws of a
16 corporation from imposing liability on a certain stockholder for the attorney's fees or
17 expenses of the corporation or any other party in connection with a certain claim;
18 authorizing the charter or bylaws of a corporation, consistent with certain
19 requirements, to require that certain claims be brought only in certain courts;
20 prohibiting certain provisions of the charter or bylaws of a corporation from
21 prohibiting certain claims from being brought in certain courts; altering the officers
22 of a corporation required to countersign a stock certificate; authorizing the board of
23 directors of a corporation to adopt a certain procedure by resolution unless the
24 charter or bylaws provide otherwise; requiring a certain number of the last acting
25 officers of a corporation, the charter of which has been forfeited for certain reasons,
26 instead of the president or vice president, the secretary, and the treasurer, to sign
27 and acknowledge articles of revival and file them with the Department; requiring
28 that the directors manage the assets, rather than become the trustees of the assets,
29 of a corporation for purposes of liquidating the assets when the corporation's charter
30 has been forfeited; requiring the directors to take certain actions unless and until
31 articles of revival are filed; repealing a provision of law authorizing the directors to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



sue or be sued in their own names as trustees; repealing a provision of law establishing that the director–trustees govern by majority vote; providing that forfeiture of the charter of a corporation does not subject a director of the corporation to a certain standard of conduct; authorizing a nonstock corporation to convert only into a certain foreign corporation; making certain provisions of this Act applicable to real estate investment trusts; providing for the application of certain provisions of this Act; making certain conforming changes; defining a certain term; and generally relating to the Maryland General Corporation Law and real estate investment trusts.

10 BY renumbering

11 Article – Corporations and Associations
 12 Section 1–101(p) through (cc), respectively
 13 to be Section 1–101(q) through (dd), respectively
 14 Annotated Code of Maryland
 15 (2014 Replacement Volume and 2016 Supplement)

16 BY adding to

17 Article – Corporations and Associations
 18 Section 1–101(p) and 2–113
 19 Annotated Code of Maryland
 20 (2014 Replacement Volume and 2016 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – Corporations and Associations
 23 Section 1–203(b)(8), 1–301, 2–108(a), 2–212(a), 2–514(a), 3–507(b)(1), 3–515, 5–207,
 24 8–601.1, 10–104(a), and 12–203(a)
 25 Annotated Code of Maryland
 26 (2014 Replacement Volume and 2016 Supplement)

27 BY adding to

28 Article – Courts and Judicial Proceedings
 29 Section 6–102.1
 30 Annotated Code of Maryland
 31 (2013 Replacement Volume and 2016 Supplement)

32 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 33 That Section(s) 1–101(p) through (cc), respectively, of Article – Corporations and
 34 Associations of the Annotated Code of Maryland be renumbered to be Section(s) 1–101(q)
 35 through (dd), respectively.

36 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
 37 as follows:

38 **Article – Corporations and Associations**

39 1–101.

1 (P) "INTERNAL CORPORATE CLAIM" MEANS A CLAIM, INCLUDING A CLAIM
2 BROUGHT BY OR IN THE RIGHT OF A CORPORATION:

3 (1) BASED ON AN ALLEGED BREACH BY A DIRECTOR, AN OFFICER, OR
4 A STOCKHOLDER OF A DUTY OWED TO THE CORPORATION OR THE STOCKHOLDERS
5 OF THE CORPORATION OR A STANDARD OF CONDUCT APPLICABLE TO DIRECTORS;

6 (2) ARISING UNDER THIS ARTICLE; OR

7 (3) ARISING UNDER THE CHARTER OR BYLAWS OF THE
8 CORPORATION.

9 1-203.

10 (b) (8) For processing each of the following documents on an expedited basis,
11 the additional fee is as indicated:

12 Recording any document, including financing statements, or
13 submitting for preclearance any document listed in paragraph (1) or (4) of
14 this subsection, if processing under § 1-203.2(b)(1) of this subtitle is
15 requested..... \$425

16 Recording any document, including financing statements, or
17 submitting for preclearance any document listed in paragraph (1) or (4) of
18 this subsection, if processing under § 1-203.2(b)(1) is not requested \$50

19 Certificate of status of a corporation, partnership, limited
20 partnership, limited liability partnership, or limited liability company, or a
21 name reservation \$20

22 CERTIFIED LIST OF THE CHARTER DOCUMENTS OF A MARYLAND
23 CORPORATION OR ANY CERTIFICATE OF A MARYLAND LIMITED
24 PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, OR LIMITED
25 LIABILITY COMPANY RECORDED OR FILED WITH THE DEPARTMENT .. \$20

26 A copy of any document recorded or filed with the Department, or a
27 corporate abstract..... \$20

28 Application for a ground rent redemption or a ground rent
29 extinguishment, or payment of a redemption or extinguishment amount to
30 the former owner of the ground rent..... \$50

31 1-301.

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

5 (1) They shall be signed and acknowledged for each corporation, statutory
6 trust, or real estate investment trust party to the articles, by its chairman or vice chairman
7 of the board of directors or board of trustees, by its chief executive officer, chief operating
8 officer, chief financial officer, president, or one of its vice presidents, or, if authorized by the
9 bylaws or resolution of the board of directors or board of trustees [and the articles so state],
10 by any other officer or agent of the corporation, statutory trust, or real estate investment
11 trust;

12 (2) They shall be witnessed or attested by the secretary, treasurer, chief
13 financial officer, assistant treasurer, or assistant secretary of each corporation, statutory
14 trust, or real estate investment trust party to the articles, or, if authorized by the bylaws
15 or resolution of the board of directors or board of trustees [and the articles so state], by any
16 other officer or agent of the corporation, statutory trust, or real estate investment trust;

17 (3) They shall be signed and acknowledged for each other entity party to
18 the articles by a person authorized to act for the entity by law or by the governing document;
19 and

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

23 (i) With respect to any Maryland corporation, statutory trust, or
24 real estate investment trust party to the articles, by the chairman or the secretary of the
25 meeting at which the articles or transaction were approved, by the chairman or vice
26 chairman of the board of directors or board of trustees, by the chief executive officer, chief
27 operating officer, chief financial officer, president, vice president, secretary, or assistant
28 secretary of the corporation, statutory trust, or real estate investment trust, or, if
29 authorized in accordance with item (1) of this subsection [and the articles so state], by any
30 other officer or agent of the corporation, statutory trust, or real estate investment trust;

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

35 (iii) With respect to any other Maryland or foreign entity party to the
36 articles, by a person authorized by law or by the governing document to act for the entity.

37 (b) When articles of transfer are executed:

1 (1) With respect to the transferor corporation, the requirements of
2 subsection (a)(4)(i) of this section apply;

3 (2) With respect to a transferee corporation, the matters and facts set forth
4 in the articles with respect to authorization and approval shall be verified under oath by
5 the chief executive officer, chief operating officer, president, vice president, secretary, or
6 assistant secretary of the corporation; and

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

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

10 (1) By the chairman or vice chairman of the board of directors, the chief
11 executive officer, chief operating officer, president, or any vice president and witnessed or
12 attested by the secretary or any assistant secretary, or by any other officer or agent of the
13 corporation who is authorized by the bylaws or resolution of the board of directors to
14 perform the duties usually performed by the secretary [and the instrument so states];

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

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

20 2-108.

21 (a) Each Maryland corporation shall have:

22 (1) A principal office in this State; and

23 (2) At least one resident agent [who shall be either:

24 (i) A citizen of this State who resides here; or

25 (ii) A Maryland corporation].

26 2-113.

27 **(A) THE CHARTER OR BYLAWS OF A CORPORATION MAY NOT IMPOSE**
28 **LIABILITY ON A STOCKHOLDER WHO IS A PARTY TO AN INTERNAL CORPORATE CLAIM**
29 **FOR THE ATTORNEY'S FEES OR EXPENSES OF THE CORPORATION OR ANY OTHER**
30 **PARTY IN CONNECTION WITH AN INTERNAL CORPORATE CLAIM.**

1 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
2 **THE CHARTER OR BYLAWS OF A CORPORATION MAY REQUIRE, CONSISTENT WITH**
3 **APPLICABLE JURISDICTIONAL REQUIREMENTS, THAT ANY INTERNAL CORPORATE**
4 **CLAIM BE BROUGHT ONLY IN COURTS SITTING IN ONE OR MORE SPECIFIED**
5 **JURISDICTIONS.**

6 **(2) (I) THIS PARAGRAPH DOES NOT APPLY TO A PROVISION**
7 **CONTAINED IN THE CHARTER OR BYLAWS OF A CORPORATION ON OCTOBER 1, 2017,**
8 **UNLESS AND UNTIL THE PROVISION IS ALTERED OR REPEALED BY AN AMENDMENT**
9 **TO THE CHARTER OR BYLAWS OF THE CORPORATION, AS APPLICABLE.**

10 **(II) THE CHARTER OR BYLAWS OF A CORPORATION MAY NOT**
11 **PROHIBIT BRINGING AN INTERNAL CORPORATE CLAIM IN THE COURTS OF THIS**
12 **STATE OR A FEDERAL COURT SITTING IN THIS STATE.**

13 2-212.

14 (a) Each stock certificate shall be signed by the president, a vice president, the
15 chief executive officer, the chief operating officer, the chief financial officer, the chairman
16 of the board, or the vice chairman of the board and countersigned by the secretary, an
17 assistant secretary, the treasurer, [or] an assistant treasurer, **OR ANY OTHER OFFICER.**

18 2-514.

19 (a) [If the] **THE** charter or bylaws of a corporation [so] **MAY** provide[,] **AND,**
20 **UNLESS THE CHARTER OR BYLAWS PROVIDE OTHERWISE,** the board of directors may
21 adopt by resolution a procedure by which a stockholder of the corporation may certify in
22 writing to the corporation that any shares of stock registered in the name of the stockholder
23 are held for the account of a specified person other than the stockholder.

24 3-507.

25 (b) (1) [The] **ANY TWO OF THE** last acting [president or vice president and
26 secretary or treasurer] **OFFICERS** of the corporation shall sign and acknowledge articles of
27 revival and file them for record with the Department.

28 3-515.

29 (a) When the charter of a Maryland corporation has been forfeited, until a court
30 appoints a receiver, the directors of the corporation [become the trustees of] **SHALL**
31 **MANAGE** its assets for purposes of liquidation.

32 (b) [The director-trustees are vested in their capacity as trustees with full title
33 to all the assets of the corporation. They] **UNLESS AND UNTIL ARTICLES OF REVIVAL**
34 **ARE FILED, THE DIRECTORS** shall:

1 (1) Collect and distribute the assets, applying them to the payment,
2 satisfaction, and discharge of existing debts and obligations of the corporation, including
3 necessary expenses of liquidation; and

4 (2) Distribute the remaining assets among the stockholders.

5 (c) The [director–trustees] **DIRECTORS** may:

6 (1) Carry out the contracts of the corporation;

7 (2) Sell all or any part of the assets of the corporation at public or private
8 sale;

9 (3) Sue or be sued [in their own names as trustees or] in the name of the
10 corporation; and

11 (4) Do all other acts consistent with law and the charter of the corporation
12 necessary or proper to liquidate the corporation and wind up its affairs.

13 [(d) The director–trustees govern by majority vote.]

14 **(D) FORFEITURE OF THE CHARTER OF A CORPORATION DOES NOT SUBJECT**
15 **A DIRECTOR OF THE CORPORATION TO A STANDARD OF CONDUCT OTHER THAN THE**
16 **STANDARD OF CONDUCT SET FORTH IN § 2–405.1 OF THIS ARTICLE.**

17 5–207.

18 (a) A nonstock corporation may [consolidate]:

19 **(1) CONSOLIDATE** or merge only with another nonstock corporation; **AND**

20 **(2) CONVERT ONLY INTO A FOREIGN CORPORATION THAT DOES NOT**
21 **HAVE THE AUTHORITY TO ISSUE STOCK.**

22 (b) A consolidation, merger, [or] transfer of assets, **OR CONVERSION** of a
23 nonstock corporation shall be effected as provided in Title 3 of this article.

24 (c) Notwithstanding § 3–105(e) of this article, a proposed consolidation, merger,
25 [or] transfer of assets, **OR CONVERSION** of a nonstock corporation organized to hold title
26 to property for a labor organization, and for related purposes, shall be approved by the same
27 affirmative vote of the members of the corporation that the constitution or bylaws of the
28 labor organization requires for the same action.

29 8–601.1.

1 Sections **2-113**, 2-201(c), 2-313, 2-502(e), and 2-504(f) of this article and, except as
 2 otherwise provided in § 8-601 of this subtitle or in the declaration of trust, § 2-405.1 of this
 3 article shall apply to real estate investment trusts.

4 10-104.

5 (a) Each limited partnership shall have:

6 (1) A principal office in this State; and

7 (2) At least one resident agent [who shall be either:

8 (i) A citizen of the State who resides here; or

9 (ii) A Maryland corporation].

10 12-203.

11 (a) A Maryland statutory trust shall have:

12 (1) A principal office in this State; and

13 (2) At least one resident agent [who is:

14 (i) An individual who resides in the State; or

15 (ii) A Maryland corporation].

16 **Article – Courts and Judicial Proceedings**

17 **6-102.1.**

18 **(A) THIS SECTION APPLIES TO AN INDIVIDUAL WHO, ON OR AFTER**
 19 **OCTOBER 1, 2017:**

20 **(1) ACCEPTS THE ELECTION OR APPOINTMENT AS A DIRECTOR OF A**
 21 **MARYLAND CORPORATION OR A TRUSTEE OF A MARYLAND REAL ESTATE**
 22 **INVESTMENT TRUST; OR**

23 **(2) SERVES AS A DIRECTOR OF A MARYLAND CORPORATION OR A**
 24 **TRUSTEE OF A MARYLAND REAL ESTATE INVESTMENT TRUST.**

25 **(B) AN INDIVIDUAL SUBJECT TO THIS SECTION IS DEEMED, BY THE**
 26 **ACCEPTANCE OR SERVICE, TO HAVE CONSENTED TO THE APPOINTMENT OF THE**
 27 **RESIDENT AGENT OF THE CORPORATION OR REAL ESTATE INVESTMENT TRUST OR,**

1 IF THERE IS NO RESIDENT AGENT, THE STATE DEPARTMENT OF ASSESSMENTS AND
2 TAXATION, AS AN AGENT ON WHICH SERVICE OF PROCESS MAY BE MADE IN ANY
3 CIVIL ACTION OR PROCEEDING BROUGHT IN THE STATE:

4 (1) (I) BY OR ON BEHALF OF, OR AGAINST, THE CORPORATION OR
5 REAL ESTATE INVESTMENT TRUST; AND

6 (II) TO WHICH THE INDIVIDUAL IS A NECESSARY OR PROPER
7 PARTY; OR

8 (2) AGAINST THE INDIVIDUAL FOR AN INTERNAL CORPORATE CLAIM
9 AS DEFINED IN § 1-101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

10 (C) THE CONSENT TO SERVICE OF PROCESS BY AN INDIVIDUAL UNDER
11 SUBSECTION (B) OF THIS SECTION:

12 (1) IS EFFECTIVE WHETHER OR NOT THE INDIVIDUAL IS A DIRECTOR
13 OR TRUSTEE AT THE TIME A CIVIL ACTION OR PROCEEDING IS COMMENCED; AND

14 (2) CONSTITUTES THE CONSENT OF THE INDIVIDUAL THAT ANY
15 PROCESS SERVED IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION HAS THE
16 SAME LEGAL FORCE AND VALIDITY AS IF SERVED ON THE INDIVIDUAL.

17 (D) THE APPOINTMENT UNDER SUBSECTION (B) OF THIS SECTION OF THE
18 RESIDENT AGENT OF A CORPORATION OR A REAL ESTATE INVESTMENT TRUST OR
19 THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION AS AN AGENT FOR
20 SERVICE OF PROCESS IS IRREVOCABLE.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2017.