

**FEDERALLY TAX-QUALIFIED**  
**REAL ESTATE INVESTMENT TRUSTS**  
**FORMED UNDER MARYLAND LAW**

**By James J. Hanks, Jr.**  
**Partner, Venable LLP**  
**Baltimore, MD\***

For many years real estate investment trusts (“REITs”) have been a popular form of investment in real estate. REITs have a long history in federal and state law; and there are multiple forms of state-law entities through which REITs may operate and people may invest. The two most common REIT entities – a Maryland corporation and a Maryland real estate investment trust – are essentially equivalent in their separate legal personhood, governance, operation and acceptability in the financial community. Accordingly, management, investors and others should expect that both of these forms of entity will be regarded and treated equally by courts, federal and state tax authorities and entity regulators like the State Department of Assessments and Taxation of Maryland (the “SDAT”) and state secretaries of state.

**REITs and the Internal Revenue Code**

Prior to 1935, real estate owners had for many decades sought to hold real estate in the trust form so as not to be subject to the federal income tax applicable to corporations. These efforts, including several decided cases,<sup>1</sup> culminated in the decision of the Supreme Court of the United States in *Morrissey v. Commissioner*,<sup>2</sup> in which the Court held that a business trust that “provided for centralized control, continuity, and limited liability, and . . . for the issue of

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\* A.B., Princeton University; LL.B., University of Maryland; LL.M., Harvard University. Mr. Hanks is also Distinguished Visiting Professor from Practice, University of Maryland School of Law, and the author of MARYLAND CORPORATION LAW (1990, rev. 2015) and co-author (with the late Stanford Law School Dean Bayless Manning) of LEGAL CAPITAL (4th ed. 2013).

<sup>1</sup> See A. Overton Durrett, *The Real Estate Investment Trust: A New Medium for Investors*, 3 WM. & MARY L. REV. 140 (1961), <http://scholarship.law.wm.edu/wmlr/vol13/iss1/8>.

<sup>2</sup> 296 U.S. 344, 360 (1935).

transferable certificates” was sufficiently similar to a corporation to be taxed as a corporation. Thus, in holding that a trust with these characteristics could be taxed as a corporation, it was almost axiomatic for the Court to recognize the substantial similarity between a corporation and a trust with the features of a corporation.

So matters stood for twenty-five years. Then, in 1960, Congress added a new Part II, entitled “Real Estate Investment Trusts,” to Subchapter M (dealing with “regulated investment companies,” often known as “RICs,” such as mutual funds, many of which are organized as corporations) of Chapter 1 of the Internal Revenue Code of 1954 (now the Internal Revenue Code of 1986, as amended) (the “Code”).<sup>3</sup> Part II included new Sections 856 through 858, enacting what are commonly known as the REIT provisions of the Code. In adopting these provisions, Congress sought to encourage public ownership of real estate in the United States by providing detailed tax treatment for a trust qualifying as a “real estate investment trust.”<sup>4</sup> As the Internal Revenue Service has noted:

The REIT provisions were enacted by P.L. 86-779, 1960-2 C.B. 709, to allow small investors to pool capital to diversify investments primarily in real property. These provisions were patterned after the earlier-enacted regulated investment company (RIC) provisions, which were designed to afford small investors a similar type of opportunity with respect to investments in stocks and securities. See, e.g., Revenue Act of 1938, section 361, 52 Stat. 447 (1938). For example, like the RIC provisions, the REIT provisions require diversified investments; eliminate the corporate

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<sup>3</sup> See Durrett, *supra* note 1.

<sup>4</sup> Cigar Excise Tax Extension of 1960, Pub. L. 86-779, § 10(a), 74 Stat. 1004.

level tax on income distributed to shareholders; and provide passthrough treatment with respect to the character of certain income distributed to shareholders (e.g., capital gains).<sup>5</sup>

Congress achieved this “partial pass-through,” sometimes called “partial conduit,” tax treatment by providing that a real estate investment trust (like a mutual fund) could deduct distributions to its shareholders against its taxable income, effectively reducing the REIT’s taxable income to the extent of its distributions to its shareholders and thus making it, to that extent, a non-tax-paying entity.

In enacting the REIT provisions of the Code, Congress was addressing the result of the *Morrissey* decision,<sup>6</sup> so it was natural for Congress (a) to provide – at that time – the new tax treatment only to certain trusts as defined, (b) to adopt the term “real estate investment trust” and (c) to assume that, in order to be eligible for the tax benefits of being a REIT under the Code, the state-law entity would have to be a trust or other form of unincorporated association. Congress defined “real estate investment trust” in Section 856(a), as “an unincorporated trust or an unincorporated association” that meets certain conditions, including (a) that it is “managed by one or more trustees;” (b) that its “beneficial ownership . . . is evidenced by transferable shares, or by transferable certificates of beneficial interest” and “is held by 100 or more persons;” (c) that “but for the provisions of this part . . . would be taxable as a domestic corporation . . . ;” and (d) that not more than 50% in value of its outstanding stock is owned, actually or constructively, by five or fewer individuals, including certain specified entities, during the last half of each taxable year. Thus, Congress recognized, indeed required, consistent with the Supreme Court’s

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<sup>5</sup> Rev. Rul. 89-130, 1989-2 C.B. 117.

<sup>6</sup> See 296 U.S. 344.

decision in *Morrissey*, that a federally tax-qualified REIT would have many of the fundamental elements of a corporation.

In 1976, recognizing the benefits of REITs,<sup>7</sup> Congress amended the Code to extend the tax treatment provided to real estate investment trusts in 1960 to corporations meeting the requirements of Section 856 through 860.<sup>8</sup> It is important to note that the current REIT provisions of the Code make no distinction between a trust and a corporation; both forms of entity are treated *exactly the same*. Further, the Code does not establish a “real estate investment trust” itself as a form of entity; rather, “real estate investment trust” is a label, like a “C corporation” or an “S corporation,” for an entity that (a) has elected to be taxed in a certain manner prescribed by, and meets certain conditions and limitations set forth in, the Code and (b) is operating in a form of entity governed by state law.

### **REITs under Maryland Law**

As noted above, when the REIT provisions of the Code were enacted in 1960, it was recognized that, in order for an entity to receive the benefits of these provisions, it would have to exist at state law. In *Johnston v. Helvering*,<sup>9</sup> Judge Learned Hand had wisely observed:

It is of course true, as the taxpayers argue, that the federal fiscal system is self-determined in the sense that the meaning of its terms

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<sup>7</sup> S. Rep. No. 938, 94th Cong., 2d Sess. 461 (1976): “Thus, the REIT serves as a means whereby numerous small investors can have a practical opportunity to invest in the real estate field. This allows these smaller investors to invest in real estate assets under professional management and allows them to spread the risk of loss by the greater diversification of investment which can be secured through the means of collectively financing projects.”

<sup>8</sup> Tax Relief Act of 1976, Pub. L. No. 94-455 § 1604, 90 Stat. 1749, 1751. The amendments to the Code also required REITs to have a calendar year tax year (Section 859) and granted REITs a special “deficiency dividend procedure” designed to protect their tax status in the face of a re-determination of distributable income pursuant to an Internal Revenue Service audit (Section 860). *Id.* § 1604, 90 Stat. at 1752 (calendar year tax year); *id.* § 1601, 90 Stat. 1742 (deficiency dividend procedure). As originally enacted in the Tax Relief Act of 1976, the requirement that REITs have a calendar year tax year was codified as Section 860, and the “deficiency dividend procedure” was codified as Section 859. *See id.* § 1604, 90 Stat. at 1752; *id.* § 1601, 90 Stat. 1742.

<sup>9</sup> 141 F.2d 208, 210 (2d Cir. 1944).

does not depend upon the law of the state; nevertheless, when Congress imposes taxes based upon the existence of legal rights or duties, it must be understood to refer to such rights and duties as the state law creates, since there are no others . . . .

Maryland was the first state to provide under state law for a form of separate legal person that was specifically designed to take advantage of the benefits of the then-new REIT provisions of the Code. In 1963, the General Assembly of Maryland enacted a separate, free-standing statute, now Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland, creating a new form of entity under Maryland law known as a “real estate investment trust.”<sup>10</sup> (The statutory short title for Title 8 is the “Maryland REIT Law.”<sup>11</sup>) Real estate investment trusts formed under Title 8 are distinguished from common-law and other trusts in that they are structured, are governed and operate in substantially the same manner as corporations. Indeed, as will be detailed more fully below, the Maryland REIT Law contains, either in the statute itself or by cross-reference to the Maryland General Corporation Law, all of the fundamental provisions of a general state corporation statute.

Section 8-101(c) of the Maryland REIT Law defines a real estate investment trust as “an unincorporated business trust or association formed under this title in which property is acquired, held, managed, administered, controlled, invested or disposed of for the benefit and profit of any person who may become a shareholder.” Further, Section 8-102 expressly recognizes a real estate investment trust as “a separate legal entity” that is “a permitted form of unincorporated business trust or association.” The terms “legal entity” and “association” are each included within the definition of “Person” in Section 1-101 of the Corporations and Associations Article

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<sup>10</sup> 1963 Md. Laws ch. 91, *codified as* MD. CODE. ANN. CORPS. & ASS’NS § 8-101 *et seq.* (West 1993) (“Title 8”).

<sup>11</sup> Title 8, § 8-901. “Title 8” and “the Maryland REIT Law” will be used interchangeably in this article.

of the Maryland Code, together with “individual,” “corporation,” “limited liability company” and several other entities, all of which are recognized as separate persons under the law.<sup>12</sup>

Thus, in Maryland, which is the state of formation of more than 80% of the public REITs,<sup>13</sup> it is now possible for a federally tax-qualified REIT to be formed as a separate legal person as a corporation formed under the Maryland General Corporation Law (a “*corporate* real estate investment trust,” which sounds like an oxymoron but is not) or as a real estate investment trust (a “*trust* real estate investment trust,” which sounds like a tautology but is not) formed under the Maryland REIT Law.<sup>14</sup> Further underscoring the similarity between a Maryland corporate REIT and a Maryland trust REIT is the fact that owners of shares of beneficial interest in a Title 8 real estate investment trust are known as “shareholders,”<sup>15</sup> not “beneficiaries,” which is the common term for the residual economic-interest holders of typical trusts.<sup>16</sup>

Among the particular advantages of the Maryland General Corporation Law for federally tax-qualified REITs are (a) authorization for a corporation “to issue shares of its stock without consideration for the purpose of qualifying the corporation as a real estate investment trust under the Internal Revenue Code,”<sup>17</sup> which, as noted above, requires that a REIT have at least 100 holders, and (b) authorization for provisions in the corporation’s charter designed to permit a corporation to qualify as a REIT under the Code to be used “for any purpose,” which could

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<sup>12</sup> The definitions in Section 1-101 are applicable to the entire Corporations and Associations Article, which includes both the Maryland General Corporation Law (“MGCL”) and Title 8. *See generally* JAMES J. HANKS, JR., MARYLAND CORPORATION LAW § 17.1 (1990, rev. 2015): “Thus, a real estate investment trust formed under Title 8 is as much a separate legal person under Maryland law as a corporation.”

<sup>13</sup> Calculated from a list of publicly-traded REITs on the NAREIT website and a list of non-traded REITs maintained by Robert A. Stanger & Co., Inc. For purposes of this article, a “public REIT” is a REIT that is subject to the reporting obligations of the Securities Exchange Act of 1934, as amended.

<sup>14</sup> As a result of the 1976 legislation permitting REITs to be corporations, many REITs began to form as Maryland (or sometimes Delaware) corporations (or in some cases in other business forms, often for state or local tax reasons). Of non-corporate REITs, Title 8 REITs are by far the most common.

<sup>15</sup> *See, e.g.*, Title 8, § 8-101(c).

<sup>16</sup> *See, e.g.*, BLACK’S LAW DICTIONARY 176 (9th ed. 2009).

<sup>17</sup> MGCL § 2-206(d).

include protection against unsolicited takeovers.<sup>18</sup> Even before the enactment of this statute by the Maryland legislature in 1997,<sup>19</sup> Judge Joseph Howard of the United States District Court for the District of Maryland upheld the use of this type of tax-protective provision as a takeover defense in *Realty Acquisition Corp. v. Property Trust of America*.<sup>20</sup>

Other advantages enjoyed by federally tax-qualified REITs formed as corporations under the Maryland General Corporation Law are (a) no franchise tax, (b) a statutory presumption that any act of a director satisfies the standard of conduct for directors,<sup>21</sup> (c) a statutory authorization for the charter to include a provision permitting the board to amend the charter to increase or decrease authorized stock without a stockholder vote,<sup>22</sup> (d) broad rights to exculpation<sup>23</sup> and indemnification<sup>24</sup> of directors and officers from money damages, (e) broad takeover defense statutes<sup>25</sup> and (f) express statutory authorization for restrictions in the charter on transferability of stock in order to permit the corporation to qualify as a REIT under the Code.<sup>26</sup>

These same statutory advantages are also enjoyed by federally tax-qualified REITs formed under the Maryland REIT Law.<sup>27</sup> Indeed, the governance and functionality of corporate REITs and Title 8 REITs are materially the same:<sup>28</sup>

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<sup>18</sup> MGCL § 2-105(a)(12).

<sup>19</sup> 1997 Md. Laws ch. 717.

<sup>20</sup> Fed. Sec. L. Rep. (CCH) ¶ 95,245, at 96,080 (D.Md. 1989).

<sup>21</sup> MGCL § 2-405.1(e).

<sup>22</sup> MGCL § 2-105(a)(13).

<sup>23</sup> MGCL § 2-405.2; CTS & JUD. PROC. § 5-418.

<sup>24</sup> MGCL § 2-418.

<sup>25</sup> MGCL § 2-201(c) (Stockholder Rights Plan); MGCL § 3-601 *et seq.* (Business Combination Moratorium); and MGCL § 3-701 *et seq.* (Control Share Acquisitions).

<sup>26</sup> MGCL § 2-105(a)(12).

<sup>27</sup> In addition, Maryland trust REITs enjoy advantages that are not available for corporations formed under the Maryland General Corporation Law, including (a) avoidance of the capital stock or franchise tax on real property owned in some states, (b) no limitation on board authority to delegate powers to board committees, and (c) availability of “free writing” in a declaration of trust as Title 8 does not address various issues covered in the Maryland General Corporation Law. Title 8, § 8-206(a).

<sup>28</sup> See *infra* Appendix for a more complete table of identical or substantially identical material provisions of the MGCL and Title 8 affecting the governance and operation of REITs.

- Each is a separate legal person;<sup>29</sup>
- Each is managed under the direction of a board elected by the stockholders or shareholders;<sup>30</sup>
- Each may have bylaws with provisions “not inconsistent with law or” the charter<sup>31</sup> or declaration of trust<sup>32</sup> relating to the regulation and management of the affairs of the entity;
- Each may have perpetual existence;<sup>33</sup>
- Each may sue and be sued;<sup>34</sup>
- Each may transact business throughout the United States and abroad;<sup>35</sup>
- Each may make contracts, incur liabilities and borrow money;<sup>36</sup>
- Each may sell, lease, exchange, transfer, convey, mortgage, pledge and otherwise dispose of any or all of its assets;<sup>37</sup>
- Each may issue and guarantee debt;<sup>38</sup>
- Each may acquire, hold, use and otherwise deal with real and personal property;<sup>39</sup>
- Each may purchase, receive, own, use and otherwise deal in and with stock or debt of other persons;<sup>40</sup>
- Each may elect or appoint officers and agents;<sup>41</sup>

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<sup>29</sup> MGCL § 1-101(s); Title 8, §§ 8-101(c), 8-102(2).

<sup>30</sup> MGCL § 2-401; Title 8, § 8-202(b)(v), (vi).

<sup>31</sup> MGCL § 2-110(a).

<sup>32</sup> Title 8, § 8-203(11).

<sup>33</sup> MGCL § 2-103(1); Title 8, § 8-301(1).

<sup>34</sup> MGCL § 2-103(2); Title 8, § 8-301(2).

<sup>35</sup> MGCL § 2-103(4); Title 8, § 8-301(3).

<sup>36</sup> MGCL § 2-103(5); Title 8, § 8-301(4).

<sup>37</sup> MGCL § 2-103(6); Title 8, § 8-301(5).

<sup>38</sup> MGCL § 2-103(7); Title 8, § 8-301(6).

<sup>39</sup> MGCL § 2-103(8); Title 8, § 8-301(7).

<sup>40</sup> MGCL § 2-103(9); Title 8, § 8-301(8).



- Each may adopt bylaws for the regulation and management of its affairs;<sup>42</sup>
- Each may provide for advance notice of any stockholder/shareholder nomination for director-trustee or proposal of business for consideration at a meeting of the stockholders/shareholders;<sup>43</sup>
- Each is authorized to have “blank check” shares, *i.e.*, authorized shares without any specific terms, which may be filled in by the board at the time of issuance of the shares and become part of the charter or declaration through articles supplementary filed with the SDAT;<sup>44</sup>
- Each may merge with another domestic or foreign entity,<sup>45</sup> convert into another form of entity<sup>46</sup> or dissolve or be dissolved;<sup>47</sup>
- Each may provide appraisal rights to objecting stockholders/shareholders in a merger to the same extent;<sup>48</sup>
- Each is permitted to have in its charter<sup>49</sup> or declaration<sup>50</sup> a provision allowing the board, in considering a potential acquisition of control, to consider the effect of the potential acquisition on stockholders/shareholders, employees, suppliers, customers, creditors and communities in which offices or other establishments of the entity are located;

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<sup>41</sup> MGCL § 2-103(14); Title 8, § 8-301(9).

<sup>42</sup> MGCL § 2-103(16); Title 8, § 8-301(11).

<sup>43</sup> MGCL § 2-504(f); Title 8, § 8-601.1.

<sup>44</sup> MGCL §§ 2-105(a)(10), 2-208, Title 8, § 8-203(a)(7), (b).

<sup>45</sup> MGCL § 3-101 *et seq.*; Title 8, § 8-501.1.

<sup>46</sup> MGCL § 3-901 *et seq.*; Title 8, § 8-701 *et seq.*

<sup>47</sup> MGCL § 3-401 *et seq.*; Title 8, § 8-502.

<sup>48</sup> MGCL § 3-201 *et seq.*; Title 8, §§ 8-501.1(j), 8-702(g).

<sup>49</sup> MGCL § 2-104(b)(9).

<sup>50</sup> Title 8, § 8-202(b)(2), (3).

- Each may exercise generally the powers set forth in its organizational document and those granted by law;<sup>51</sup> and
- Each files documents with the SDAT.<sup>52</sup>

It is especially important to note that each Maryland corporate REIT and each Title 8 REIT may engage in any or all of the foregoing activities *in its own name* and not in the name of its directors, trustees, stockholders or shareholders. Further augmenting the separate legal personhood of each of these forms of entity is the fact that an injury to either of them may be the basis for a claim either by the entity suing in its own name or by a stockholder/shareholder suing derivatively on behalf of the entity.<sup>53</sup>

In addition, Maryland corporate REITs and Title 8 REITs both file their own federal and state income tax returns (assuming they are not consolidated on other returns), and each public corporate REIT and public Title 8 REIT files with the Securities and Exchange Commission registration statements for the offer and sale of equity and debt securities; annual, quarterly and current reports; and proxy statements, information statements and other required information. Public corporate REITs and public Title 8 REITs even have the same Standard Industrial Classification code – 6798.<sup>54</sup>

To the extent required, the financial statements of Maryland corporate REITs and Title 8 REITs are audited as separate entities. The global financial community does not differentiate between corporate REITs and Title 8 REITs for investment or any other economic purpose and

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<sup>51</sup> MGCL § 2-103(17); Title 8, § 8-301(13).

<sup>52</sup> MGCL §§ 1-201, 2-102; Title 8, § 8-201(1).

<sup>53</sup> See generally JAMES J. HANKS, JR., MARYLAND CORPORATION LAW §§ 7.21(b), 17.16 (1990, rev. 2015).

<sup>54</sup> Standard Industrial Classification codes are four-digit numerical codes assigned by federal agencies, including the Securities and Exchange Commission, to identify the primary area of a company's business. The Securities and Exchange Commission uses Standard Industrial Classification codes as a means of sorting company filings.

shares of both corporate REITs and Title 8 REITs are traded without distinction on the New York Stock Exchange, NASDAQ and other securities exchanges.

As a result, today, Title 8 REITs, like their corporate counterparts, enjoy broad market acceptance among owners, investment bankers and institutional and retail investors.<sup>55</sup> Indeed, more than forty public REITs are formed as Title 8 REITs, including Public Storage (\$39.9 billion equity market capitalization), Equity Residential (\$27.6 billion equity market capitalization) and Vornado Realty Trust (\$17.7 billion equity market capitalization).

### **Conclusion**

In short, both Maryland corporate REITs and Title 8 REITs are statutorily created separate legal persons with virtually identical functional operations, governance and market perception and acceptance. Indeed, this similarity between a corporation and a trust with corporate characteristics was the basis for the conclusion reached by the Supreme Court in *Morrissey* when it held that a business trust that “provided for centralized control, continuity, and limited liability, and . . . for the issue of transferable certificates” was sufficiently similar to a corporation to be taxed as a corporation.<sup>56</sup> In light of the substantial similarities between Maryland corporate REITs and Maryland real estate investment trusts, it is only logical to extend *Morrissey*’s comparison between a trust and a corporation for tax purposes to the treatment of Maryland real estate investment trusts for all other relevant purposes.

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<sup>55</sup> The Title 8 REIT is by far the most common type of non-corporate REIT today. Of the fourteen REITs formed in Maryland and listed on the S&P 500, three are Title 8 REITs.

<sup>56</sup>*Morrissey v. Commissioner*, 296 U.S. 344, 360 (1935).

**Appendix\***

**IDENTICAL OR SUBSTANTIALLY IDENTICAL MATERIAL PROVISIONS OF THE  
MARYLAND GENERAL CORPORATION LAW AND TITLE 8  
AFFECTING GOVERNANCE AND OPERATION OF REITS**

<b>GOVERNANCE AND OPERATION</b>	<b>APPLICABLE TO REITS UNDER MGCL</b>	<b>APPLICABLE TO REITS UNDER TITLE 8</b>
<b>SEPARATE LEGAL PERSONHOOD</b>		
Separate Legal Personhood	✓ MGCL § 1-101(s)	✓ Title 8 §§ 8-101(c), 8-102(2)
<b>POWERS OF ENTITY</b>		
Perpetual existence	✓ § 2-103(1)	✓ § 8-301(1)
Sue or be sued	✓ § 2-103(2)	✓ § 8-301(2)
Transact business throughout United States and abroad	✓ § 2-103(4)	✓ § 8-301(3)
Make contracts, incur liabilities and borrow money	✓ § 2-103(5)	✓ § 8-301(4)
Sell, lease, dispose of any/all assets	✓ § 2-103(6)	✓ § 8-301(5)
Issue and guarantee debt	✓ § 2-103(7)	✓ § 8-301(6)
Acquire, own, hold, use, employ, improve and otherwise deal with any interest in real and personal property	✓ § 2-103(8)	✓ § 8-301(7)
Purchase, receive, own, use and otherwise deal with stock or debt of other persons	✓ § 2-103(9)	✓ § 8-301(8)
Merge with another domestic or foreign entity	✓ § 3-101 <i>et seq.</i>	✓ § 8-501.1
Convert into another form of entity	✓ § 3-901 <i>et seq.</i>	✓ § 8-701 <i>et seq.</i>
Dissolve/be dissolved	✓ § 3-401 <i>et seq.</i>	✓ § 8-502
Divide shares into classes	✓ § 2-105(a)	✓ § 8-203(a)
Issue shares with terms that may be made dependent upon facts ascertainable outside the charter/declaration of trust (“declaration”)	✓ § 2-105(b)	✓ § 8-203(c)
Have “blank check” shares	✓ §§ 2-105(a)(10), 2-208	✓ §§ 8-203(a)(7), (b)
Renounce business opportunities	✓ § 2-103(15)	✓ § 8-301(16)
File documents with State Department of Assessments and Taxation of Maryland	✓ §§ 1-201, 2-102	✓ § 8-201(1)
<b>BYLAWS</b>		
Power to require advance notice for stockholder/shareholder nominations and proposal of business at a meeting	✓ § 2-504(f)	✓ § 8-601.1
Bylaw provisions may be made	✓ § 2-110(c)	✓ § 8-202(e)

\* Further information on the provisions included in this Appendix may be found in JAMES J. HANKS, JR., MARYLAND CORPORATION LAW (1990, rev. 2015).

<b>GOVERNANCE AND OPERATION</b>	<b>APPLICABLE TO REITS UNDER MGCL</b>	<b>APPLICABLE TO REITS UNDER TITLE 8</b>
dependent upon facts ascertainable outside of the bylaws		
<b>BOARD OF DIRECTORS/TRUSTEES</b>		
Management by board elected by stockholders/shareholders	✓ § 2-401	✓ §§ 8-202(b)(1)(v), (vi)
Adopt bylaws containing any provision not inconsistent with law and charter/declaration	✓ § 2-103(16)	✓ § 8-301(11)
Exercise the powers set forth in its charter/declaration and those granted by law	✓ § 2-103(17)	✓ § 8-301(13)
Statutory standard of conduct	✓ § 2-405.1(a)	
Presumption that an act of a board member satisfies the standard of conduct	✓ § 2-405.1(e)	✓ § 8-601.1
Statutory protection of board member's reliance on information from committees, officers and personal advisors	✓ § 2-405.1(b)	
Indemnification of and advance of expenses to board members, officers, employees and agents	✓ §§ 2-418(b), (j)	✓ § 8-301(15)
Exculpation for directors/trustees and officers from personal liability for money damages	✓ § 2-405.2, CTS & JUD. PROC. § 5-418.	✓ § 8-601, CTS & JUD. PROC. § 5-419.
If charter/declaration provides, board may consider interests of non-stockholder/shareholder constituencies in considering a potential acquisition of control	✓ § 2-104(b)(9)	✓ §§ 8-202(b)(2), (3)
Elect/appoint officers, agents	✓ § 2-103(14)	✓ § 8-301(9)
Delegation of powers by board to board committee	Yes, except for the power to (i) issue stock unless pursuant to a general authorization from the board, (ii) recommend any action requiring stockholder approval (other than the election of directors), (iii) amend the bylaws or (iv) approve a merger or share exchange that does not require stockholder approval. § 2-411(a)	No restriction. § 8-206(a)
If charter/declaration provides, board may amend charter/declaration to increase number of authorized shares, without stockholder/shareholder approval	✓ § 2-105(a)(13)	✓ § 8-203(a)(8)

<b>GOVERNANCE AND OPERATION</b>	<b>APPLICABLE TO REITS UNDER MGCL</b>	<b>APPLICABLE TO REITS UNDER TITLE 8</b>
Unless charter/declaration expressly provides otherwise, board may amend charter/declaration to change name of entity, name or other designation or par value of any class or series and the aggregate par value of the shares of the entity	✓ § 2-605	✓ § 8-501(e)(2)
Adopt articles of restatement	✓ § 2-608	✓ § 8-501.2
Power to issue shares without consideration to qualify as a REIT	✓ § 2-206(d)	✓ § 8-207
Prohibited from paying distributions that would render the entity insolvent	✓ § 2-311(a)(1)	
<b>STOCKHOLDERS/SHAREHOLDERS</b>		
Approve amendments to charter/declaration by two-thirds vote after board approval, unless charter/declaration provides for a different percentage (but not less than a majority)	✓ §§ 2-602, 2-604	✓ § 8-501(a)
Approve certain mergers and conversions of the entity with or into another entity by two-thirds vote after board approval, unless charter/declaration provides for a different percentage (but not less than a majority)	✓ §§ 3-105(e), 3-902(e)	✓ §§ 8-501.1(g), 8-702(e)
Exercise appraisal rights	✓ § 3-201 <i>et seq.</i>	✓ §§ 8-501.1(j), 8-702(g)
Remove board member/s with or without cause	✓ § 2-406(a)	✓ § 8-205(a)
Availability of preferred shares	✓ § 2-104(a)(1)	✓ § 8-203(a)(1)
<b>TAKEOVERS</b>		
Board is not required to accept, recommend or respond to any proposal by an acquiring person (“just say no”)	✓ § 2-405.1(d)(1)	✓ § 8-601.1
Board is not required to authorize the redemption of any rights under, modify or render inapplicable, a stockholder/shareholder rights plan	✓ § 2-405.1(d)(2)	✓ § 8-601.1
Board is not required to elect to be subject to or refrain from electing to be subject to Subtitle 8	✓ §§ 2-405.1(d)(3), 3-801 <i>et seq.</i>	✓ §§ 8-601.1, 3-801 <i>et seq.</i>
Board is not required to make a determination with regard to the business combination statute or the control share acquisition statute	✓ § 2-405.1(d)(4)	✓ § 8-601.1
Board is not required to act or fail to act solely because of (i) the effect the act or	✓ § 2-405.1(d)(5)	✓ § 8-601.1

<b>GOVERNANCE AND OPERATION</b>	<b>APPLICABLE TO REITS UNDER MGCL</b>	<b>APPLICABLE TO REITS UNDER TITLE 8</b>
failure to act may have on an acquisition or potential acquisition of control of the corporation/trust; or (ii) the amount or type of any consideration that may be offered or paid to stockholders/shareholders in an acquisition		
Board power to adopt stockholder/shareholder rights plan	✓ § 2-201(c)	✓ § 8-601.1
Availability of stockholder/shareholder ownership/transfer provisions in charter/declaration as takeover defense	✓ § 2-105(a)(12)(i)	✓ § 8-203(a)(6)
Availability of Maryland Business Combination Act	✓ § 3-601 <i>et seq.</i>	✓ §§ 3-601 <i>et seq.</i> , 8-301(14)
Availability of Maryland Control Share Acquisition Act	✓ § 3-701 <i>et seq.</i>	✓ § 3-701 <i>et seq.</i>
<b>MISCELLANEOUS</b>		
Required to provide stockholders/shareholders an annual report	✓ § 2-313	✓ § 8-601.1
Required to give notice to stockholders/shareholders of special meetings	✓ § 2-504	
Service of process on agent or officer in accordance with Maryland Rules	✓ § 1-401(b)(1)	✓ § 1-401(b)(1)