

**SELECTED PRINCIPAL ADVANTAGES OF BEING FORMED
AS A CORPORATE OR TRUST REIT UNDER MARYLAND LAW**

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Set forth below is a list some of the principal advantages of being formed as a corporate or trust REIT (“REIT”) under Maryland law.

- Over 80% of the public REITs are formed under Maryland law.
- Charter may permit board to amend charter to increase or decrease authorized stock without a stockholder vote. (Maryland is first and perhaps only state with this provision.)
- Specific statutory validation of REIT share ownership and transfer limitations (including those designed to protect REIT tax status and “for any other purpose,” *e.g.*, protection against hostile takeovers).
- Unlike Delaware, Maryland does not prohibit charter amendments related to share ownership and transfer provisions (including those designed to protect REIT tax status) from becoming effective against an existing stockholder who does not approve the amendment.
- No franchise taxes in Maryland (vs. Delaware, where the franchise tax for a publicly traded corporation can be as high as \$180,000 per year).
- Broader statutory exculpation for directors and officers from personal liability for money damages than almost any other state, including Delaware, which (a) has more and broader exceptions (including “acts not in good faith,” which was litigated for over ten years in the *Disney* case in Delaware) and (b) does not cover officers.
- Broader indemnification rights for directors and officers (vs. Delaware, which prohibits indemnification of derivative suit settlements).
- Clear statutory standard of conduct for directors (good faith, reasonable belief, ordinary prudence) vs. constantly shifting case-based standard in Delaware.
- Statutory presumption that any act of a director satisfies the standard of conduct for directors (vs. no such statute in Delaware).

- Broader takeover defense statutes than most other states (including Delaware):
 - Five-year moratorium on transactions with an unfriendly more-than-ten-percent holder (vs. three years in Delaware, a 15% threshold on holder's shares and an exception for a more-than-85% holder)
 - After the five-year moratorium, two supermajority votes (80% of outstanding shares and two-thirds of disinterested shares) required for transactions with an unfriendly more-than-ten-percent holder (vs. Delaware, which has no such statute)
 - "Just say no" validation statute (vs. Delaware, which has no such statute)
 - Poison pill validation statute, including 180-day "slow hand" provision (vs. Delaware, which prohibits slow hands)
 - Control share acquisition statute limiting voting rights of an unfriendly more-than-ten-percent holder (vs. Delaware, which has no such statute)
 - Single standard of judicial review (no *Unocal* enhanced scrutiny or *Weinberger* entire fairness).
- If a board of directors has at least three disinterested directors and a class of securities registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the board may elect, notwithstanding a contrary charter or bylaw provision, to (1) classify the board, (2) increase the vote required to remove a director to two-thirds of the outstanding shares, (3) increase the threshold required for stockholders to compel the company to call a special meeting of the stockholders to a majority of the outstanding shares, (4) vest in the board the exclusive power to set the number of directorships and fill vacancies and (5) provide that any director vacancy shall be filled for the entire remainder of the term in which the vacancy occurred. Delaware has no such statute.
- Statutory authorization for advance notice bylaws.
- No appraisal rights for shares not entitled to vote on the transaction (vs. Delaware, where this is not permitted).
- Charter may eliminate appraisal rights (vs. Delaware, where this is not permitted).
- "Market out" exception for appraisal rights applies to all stock listed on a national securities exchange (with limited exception for cash mergers in

which directors and officers own five percent or more of the outstanding shares and any stock held by any of them is converted in the merger into stock of the acquirer) (vs. Delaware, where the market out does not apply to any cash merger).

- Board power, without stockholder approval, to reverse-split stock of a corporation with a class of equity securities registered under the Exchange Act so long as the split does not combine more than ten shares into one in any twelve-month period. (Delaware has no such statute.)
- Stockholders may act by less-than-unanimous written consent only if charter specifically permits it (vs. Delaware, which permits less-than-unanimous stockholder action by written consent unless charter prohibits it).
- Modern, flexible statute on dividends and other distributions (based on the Model Business Corporation Act).
- Statutory presumption that GAAP-based financial statements are *prima facie* proper and in accordance with Maryland General Corporation Law.
- More favorable case law re power of directors to dismiss derivative suits (vs. Delaware, where demand futility exception is still quite broad).
- Specific authority for REIT to issue stock to up to 100 holders for no consideration (no such statute in Delaware).
- No significant corporate plaintiffs' bar (vs. Delaware).
- Maryland courts are familiar with REITs and have decided numerous cases involving REIT issues.
- Charter may permit variation of rights of stockholders within the same class.
- No statutory restriction (as there is in Delaware) on deferring annual meeting past 13 months.
- Date for stockholders meeting may be as long as 90 days after the record date (vs. only 60 days in Delaware).
- More favorable abandoned property laws.

Please feel free to call if you have any questions or comments.