

May 25, 2017

**Maryland Legislature Approves Changes to Maryland General Corporation Law
and Maryland REIT Law**

The General Assembly of Maryland has enacted House Bill 744 (the “General Corporate Legislation”), which makes several changes to the Maryland General Corporation Law (the “MGCL”) and the Maryland REIT Law (the “MRL”), as well as a related change to the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. The General Assembly has also enacted Senate Bill 398 and identical House Bill 759, relating to the formation of holding companies (the “Holding Company Legislation”). The General Corporate Legislation and the Holding Company Legislation have been signed by Governor Hogan and will be effective October 1, 2017.

Here are the key provisions of the bills:

GENERAL CORPORATE LEGISLATION

Exclusive Forum Bylaws. Although we believe that an exclusive forum charter or bylaw provision is permitted by existing law, the General Corporate Legislation amends the MGCL to expressly provide that the charter or bylaws of a Maryland corporation may require that an “Internal Corporate Claim” (as defined below) may be brought only in courts sitting in one or more jurisdictions specified in the charter or bylaws but must include the state and federal courts sitting in Maryland. Any charter or bylaw provision adopted prior to October 1, 2017 that specifies only a court sitting in a jurisdiction other than Maryland is grandfathered until such provision is altered or repealed by amendment. This new provision also applies to a Maryland real estate investment trust formed under the MRL (a “trust REIT”).

“Internal Corporate Claim” means a claim, including a claim brought by or in the right of a corporation or trust REIT: (a) based on an alleged breach by a director, a trustee, an officer or a shareholder of a duty owed to the corporation or the trust REIT or to the shareholders or breach by a director or trustee of a standard of conduct applicable to the director or trustee; (b) arising under the MGCL or the MRL; or (c) arising under the charter, declaration of trust or bylaws of the company.

No Fee Shifting. The MGCL has been amended to provide that the charter or bylaws of a corporation may not impose liability on a stockholder who is a party to an Internal Corporate Claim for the attorney’s fees or expenses of the corporation or any other party in connection with an Internal Corporate Claim. This provision also applies to a trust REIT.

Consent to Service of Process. New Section 6-102.1 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland has been adopted to provide that any individual who serves as a director of a Maryland corporation or as a trustee of a trust REIT on or after October 1, 2017, is deemed to have consented to the appointment of the resident agent of the corporation or trust REIT or, if there is no resident agent, the State Department of

Assessments and Taxation of Maryland (the “SDAT”), as an agent on which service of process may be made in any civil action or proceeding brought in the State of Maryland. This applies to actions brought either (a) by or on behalf of, or against, the corporation or trust REIT and to which the individual is a necessary or proper party or (b) against the individual for an Internal Corporate Claim. The consent to service of process is effective whether or not the individual is a director or trustee at the time a civil action or proceeding is commenced.

Although this provision is new to Maryland, it is consistent with a similar, more extensive provision that has been the law in Delaware for many years.

Long-Form Good Standing Certificates. The General Corporate Legislation expands the list of documents available for expedited processing by the SDAT to include the issuance of a long-form good standing certificate, which is a good standing certificate that includes a certified list of the charter documents of a Maryland entity.

Resident Agents. The MGCL has been amended to permit a Maryland limited liability company, as well as a Maryland corporation or resident individual, to serve as a resident agent for a Maryland corporation, real estate investment trust or statutory trust.

Execution of Certain Charter Documents and Stock Certificates. The General Corporate Legislation provides that any officer or agent of the company authorized by the bylaws or resolution of the board (in addition to the officers already enumerated in the statute) may execute articles supplementary, articles of amendment and articles of restatement and of merger, transfer and conversion, among other documents and instruments, without the need for reciting the authorization of the officer or agent in the articles or instrument. The MGCL has also been amended to clarify that any officer may countersign a stock certificate.

Certification of Beneficial Ownership. The MGCL currently permits the charter or bylaws of a corporation to provide that the board of directors may adopt a procedure for a stockholder to certify that any shares registered in that stockholder’s name are held for the account of a specified person other than the registered stockholder. This statute is expanded to eliminate the need for an enabling provision in the charter or bylaws and simply permits such certification, unless the charter or bylaws specifically provide otherwise.

Charter Forfeiture and Revival. The General Corporate Legislation includes amendments to the MGCL to clarify the role of directors during the period when a charter is forfeited, including clarification that forfeiture of a corporation’s charter does not subject a director to any standard of conduct other than the statutory standard of conduct applicable to all actions of a director. Additionally, the MGCL is amended to provide that any two of the last acting officers of the corporation may execute and acknowledge articles of revival.

HOLDING COMPANY LEGISLATION

The Holding Company Legislation enacts new Section 3-106.2 of the MGCL, which will permit a Maryland corporation to merge with or into a direct *or indirect* subsidiary, without

stockholder approval, unless the charter expressly provides otherwise, to form a holding company. The new statute is intended to eliminate the cost and delay of a stockholder vote to approve a merger or statutory share exchange to effect a transition to a holding company structure, while ensuring that the rights of the stockholders are not changed or diminished as a result of the transaction. Accordingly, the resulting holding company must be a Maryland corporation with the same charter, bylaws and other stockholder rights as the predecessor corporation. The procedure for forming a holding company under MGCL Section 3-106.2 is also available to a trust REIT.

* * * *

As always, please do not hesitate to call any of us or our colleagues if you have any questions or comments about any of the foregoing or any other matter of Maryland law.

Jim Hanks
Patsy McGowan
Michael Leber

This memorandum is provided for information purposes only and is not intended to provide legal advice. Such advice may be provided only after analysis of specific facts and circumstances and consideration of issues that may not be addressed in this document.