

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1392
(Representatives Maragos, DeKrey)
(Senator Krebsbach)

AN ACT to create and enact a new chapter to title 10 of the North Dakota Century Code, relating to real estate investment trusts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 10 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the content otherwise requires:

1. "Real estate investment trust" means an unincorporated trust or association formed under this chapter under which property is acquired, held, managed, administered, controlled, invested, or disposed of by trustees for the benefit and profit of any person who may become a shareholder.
2. "Share" means a transferable unit of beneficial interest in a real estate investment trust.

Real estate investment trust authorized. A real estate investment trust is a permitted form of an unincorporated trust or association and may conduct business in this state in accordance with this chapter.

Relationship to other laws.

1. This chapter does not limit any law as that law applies to the creation of or doing business in this state by a common-law trust, business trust, or Massachusetts trust.
2. A provision of this chapter is unenforceable if it makes a real estate investment trust unable to qualify as a real estate investment trust under sections 856 through 858 of the federal Internal Revenue Code or the regulations adopted under those sections.

Compliance with title - Registered office and agent.

1. A real estate investment trust may not do business in this state until it complies with this title.
2. Each real estate investment trust shall maintain in this state:
 - a. A registered office, which need not be the same as the principal place of business or the principal executive office of the real estate investment trust.
 - b. An agent for service of process on the real estate investment trust. The agent must be an individual resident of this state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company authorized to do business in this state.
3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
 - a. The name of the real estate investment trust which may not be the same or deceptively similar to the name of any other real estate investment trust registered with the secretary of state, or any corporation, limited liability company, limited

partnership, limited liability partnership, or any name that is in some manner reserved with the secretary of state, that is a fictitious trade name registered in the manner provided in chapter 45-11, or that is a trade name registered in the manner provided in chapter 47-25 unless there is filed with the secretary of state a written consent of the holder of the similar trade name to use the name proposed by the real estate investment trust. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or any abbreviation of these words.

- b. The state and date of its formation.
 - c. The name, address, and principal place of business of each trustee and officer.
 - d. The address of its registered office and the name of its registered agent located at that office with the written consent of the registered agent attached to the application.
 - e. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process if the registered agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
4. If the secretary of state finds that an application for registration of a real estate investment trust conforms to law and all fees have been paid, the secretary of state shall:
 - a. Endorse on the application the word "filed", and the month, day, and year of the filing.
 - b. File the application in the office of the secretary of state.
5. A real estate investment trust may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in this chapter, a statement containing:
 - a. The name of the real estate investment trust.
 - b. If the address of its registered office is to be changed, the new address of its registered office.
 - c. If its registered agent is to be changed, the name of its new registered agent.
 - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
 - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
 - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the real estate investment trust.
6. A registered agent of a real estate investment trust may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the real estate investment trust at its principal executive office or to a legal representative of the real estate investment trust. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
7. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each real estate investment trust represented by that agent by filing with the secretary of state a statement as required in subsection 5, except that it need be signed only by the registered agent, need not be responsive to subdivision f, and must state that a copy of the statement has been mailed to each of those real estate investment trusts or to the legal representative of each of those real estate investment trusts.

8. The fee prescribed in this chapter for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.
9. If any statement in the application was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the real estate investment trust shall file promptly with the secretary of state an application for an amended application executed by an authorized person correcting the statement.
10. The secretary of state may revoke the registration of a domestic or foreign real estate investment trust for failure to maintain a registered office and agent as required by this chapter. Before revoking the registration, the secretary of state shall give not less than sixty days' notice by mail addressed to the registered office and the principal office of record of a foreign real estate investment trust of the deficiency.

Renewal of registration. Any registration of a real estate investment trust filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the real estate investment trust on forms prescribed and furnished by the secretary of state and sent to the address of the registered office at least sixty days before the deadline for filing. The statement must include the name of the real estate investment trust, the state or country of organization, the name and principal place of business of each trustee and officer, the address of the registered office and the name of the registered agent, and a statement that the real estate investment trust is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement. If the secretary of state finds that the statement does not conform, the secretary of state promptly shall return the statement to the real estate investment trust for any necessary corrections, and the certificate of registration must be canceled if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any real estate investment trust fails to file the statement of renewal when due, the secretary of state shall cancel the registration and shall mail notice of cancellation to the address of the registered office. Upon cancellation, the real estate investment trust shall cease to exist.

Service of process on real estate investment trust and nonresident trustees.

1. The registered agent must be an agent of the real estate investment trust and any nonresident trustee upon whom any process, notice, or demand required or permitted by law to be served on the real estate investment trust or trustee may be served. Acceptance of a trusteeship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a real estate investment trust may be served either upon the registered agent, or upon a trustee of the real estate investment trust, or upon the secretary of state as provided in this section.
3. If neither the registered agent nor a trustee of the real estate investment trust can be found at the registered office, or if a real estate investment trust fails to maintain a registered agent in this state and a trustee cannot be found at the registered office, then the secretary of state is the agent upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or trustee can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the real estate investment trust and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand. The secretary of state immediately shall forward, by registered mail, addressed to the real estate investment trust at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

4. A record of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it, must be maintained in the office of the secretary of state.
5. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a real estate investment trust in any other manner permitted by law.

Powers. A real estate investment trust has the power to:

1. Unless the declaration of trust provides otherwise, have perpetual existence unaffected by any rule against perpetuities.
2. Sue, be sued, complain, and defend in all courts.
3. Transact its business, carry on its operations, and exercise the powers granted by this title in any state, territory, district, or possession of the United States and in any foreign country.
4. Make contracts, incur liabilities, and borrow money.
5. Sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of all or any part of its assets.
6. Issue bonds, notes, and other obligations and secure them by mortgage or deed of trust of all or any part of its assets.
7. Acquire by purchase or in any other manner and take, receive, own, hold title in the name of the trust, use, employ, improve, encumber, and otherwise deal with any interest in real and personal property, wherever located.
8. Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and deal in and with:
 - a. Securities, shares, and other interests in any obligations of domestic and foreign corporations, other real estate investment trusts, associations, partnerships, and individuals; and
 - b. Direct and indirect obligations of the United States, any other government, state, territory, government district, and municipality, and any instrumentality of them.
9. Elect or appoint trustees, officers, and agents of the trust for the period of time the declaration of trust or bylaws provide, define their duties, and determine their compensation.
10. Adopt and implement employee and officer benefit plans.
11. Make and alter bylaws not inconsistent with law or with its declaration of trust to regulate the government of the real estate investment trust and the administration of its affairs.
12. Exercise these powers, including the power to take, hold, and dispose of the title to property in the name of the trust or in the name of its trustees, without the filing of any bond.
13. Generally exercise the powers set forth in its declaration of trust which are not inconsistent with law and are appropriate to promote and attain the purposes set forth in its declaration of trust.

Restrictions on investments and use - Ownership of farmland prohibited.

1. A real estate trust shall hold at least seventy-five percent of the value of its assets in real estate assets, government securities, cash, and cash items, including receivables.

2. A real estate investment trust, whether domestic or foreign, may not own, use, or apply land within this state for farming or ranching as defined in section 10-06.1-01. A violation of this subsection is deemed a violation of chapter 10-06.1. A real estate investment trust is subject to chapter 10-06.1.

Fees. The secretary of state shall charge and collect the following fees with respect to real estate investment trusts:

1. Filing a registration of a real estate investment trust, one hundred dollars.
2. Filing a registered agent's consent or any amendment changing the registered agent or registered office, ten dollars.
3. Filing a resignation of a registered agent, ten dollars.
4. Filing a renewal or amendment of registration of a real estate investment trust, forty dollars.
5. Issuing a certificate of good standing, twenty-five dollars.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1392.

House Vote: Yeas 94 Nays 0 Absent 3

Senate Vote: Yeas 48 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State