

BUSINESS ORGANIZATIONS CODE  
TITLE 5. REAL ESTATE INVESTMENT TRUSTS  
CHAPTER 200. REAL ESTATE INVESTMENT TRUSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 200.001. DEFINITION. In this chapter, "real estate investment trust" means an unincorporated trust:

(1) formed by one or more trust managers under this chapter and Chapter 3; and

(2) managed under this chapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.002. APPLICABILITY OF CHAPTER. (a) The provisions of Chapters 20 and 21 govern a matter to the extent that this chapter or Title 1 does not govern the matter.

(b) An unincorporated trust that does not meet the requirements of this chapter is an unincorporated association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.003. CONFLICT WITH OTHER LAW. In case of conflict between this chapter and Chapters 20 and 21, this chapter controls. Chapters 20 and 21 do not control over this chapter merely because a provision of Chapter 20 or 21 is more or less extensive, restrictive, or detailed than a similar provision of this chapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.004. ULTRA VIRES ACTS. (a) Lack of capacity of a real estate investment trust may not be the basis of any claim or defense at law or in equity.

(b) An act of a real estate investment trust or a transfer of property by or to a real estate investment trust is not invalid because the act or transfer was:

(1) beyond the scope of the purpose or purposes of the real estate investment trust as expressed in the real estate investment trust's certificate of formation; or

(2) inconsistent with a limitation on the authority of

an officer or trust manager to exercise a statutory power of the real estate investment trust, as that limitation is expressed in the real estate investment trust's certificate of formation.

(c) The fact that an act or transfer is beyond the scope of the expressed purpose or purposes of the real estate investment trust or is inconsistent with an expressed limitation on the authority of an officer or trust manager may be asserted in a proceeding:

(1) by a shareholder against the real estate investment trust to enjoin the performance of an act or the transfer of property by or to the real estate investment trust; or

(2) by the real estate investment trust, acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against an officer or trust manager or former officer or trust manager of the real estate investment trust for exceeding that person's authority.

(d) If the unauthorized act or transfer sought to be enjoined under Subsection (c)(1) is being or is to be performed or made under a contract to which the real estate investment trust is a party and if each party to the contract is a party to the proceeding, the court may set aside and enjoin the performance of the contract. The court may award to the real estate investment trust or to another party to the contract, as appropriate, compensation for loss or damage resulting from the action of the court in setting aside and enjoining the performance of the contract, excluding loss of anticipated profits.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.005. SUPPLEMENTARY POWERS OF REAL ESTATE INVESTMENT TRUST. (a) Subject to Section 2.113(a) and in addition to the powers specified in Section 2.101, a real estate investment trust may engage in activities mandated or authorized by:

(1) provisions of the Internal Revenue Code that are related to or govern real estate investment trusts; and

(2) regulations adopted under the Internal Revenue Code.

(b) This section does not authorize a real estate investment trust or an officer or trust manager of a real estate investment trust to exercise a power in a manner inconsistent with a limitation on the purposes or powers of the real estate investment trust contained in:

- (1) the trust's certificate of formation;
- (2) this code; or
- (3) another law of this state.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.006. REQUIREMENT THAT FILING INSTRUMENT BE SIGNED BY OFFICER. Unless otherwise provided by this chapter, a filing instrument of a real estate investment trust may be signed by an officer of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Sec. 200.051. DECLARATION OF TRUST. For purposes of this code, the certificate of formation of a real estate investment trust is a declaration of trust. The certificate of formation may be titled "declaration of trust" or "certificate of formation."

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.052. NO PROPERTY RIGHT IN CERTIFICATE OF FORMATION. A shareholder of a real estate investment trust does not have a vested property right resulting from the certificate of formation, including a provision in the certificate of formation relating to the management, control, capital structure, dividend entitlement, purpose, or duration of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.053. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION. (a) To adopt an amendment to the certificate of formation of a real estate investment trust as provided by Subchapter B, Chapter 3, the trust managers shall:

(1) adopt a resolution stating the proposed amendment;  
and

(2) follow the procedures prescribed by Sections 200.054-200.056.

(b) The resolution may incorporate the proposed amendment in a restated certificate of formation that complies with Section [3.059](#).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.054. ADOPTION OF AMENDMENT BY TRUST MANAGERS. If a real estate investment trust does not have any issued and outstanding shares, the trust managers may adopt a proposed amendment to the real estate investment trust's certificate of formation by resolution without shareholder approval.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.055. ADOPTION OF AMENDMENT BY SHAREHOLDERS. If a real estate investment trust has issued and outstanding shares:

(1) a resolution described by Section [200.053](#) must also direct that the proposed amendment be submitted to a vote of the shareholders at a meeting; and

(2) the shareholders must approve the proposed amendment in the manner provided by Section [200.056](#).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.056. NOTICE OF AND MEETING TO CONSIDER PROPOSED AMENDMENT. (a) Each shareholder of record entitled to vote shall be given written notice containing the proposed amendment or a summary of the changes to be effected within the time and in the manner provided by this code for giving notice of meetings to shareholders. If the proposed amendment is to be considered at an annual meeting, the proposed amendment or summary may be included in the notice required to be provided for an annual meeting.

(b) At the meeting, the proposed amendment shall be adopted only on receiving the affirmative vote of shareholders entitled to vote required by Section [200.261](#).

(c) An unlimited number of amendments may be submitted for

adoption by the shareholders at a meeting.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.057. ADOPTION OF RESTATED CERTIFICATE OF FORMATION. (a) A real estate investment trust may adopt a restated certificate of formation as provided by Subchapter B, Chapter 3, by following the same procedures to amend its certificate of formation under Sections 200.053-200.056, except that shareholder approval is not required if an amendment is not adopted.

(b) If shares of the real estate investment trust have not been issued and the restated certificate of formation is adopted by the trust managers, the majority of the trust managers may sign the restated certificate of formation on behalf of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.058. BYLAWS. (a) The trust managers of a real estate investment trust shall adopt initial bylaws.

(b) The bylaws may contain provisions for the regulation and management of the affairs of the real estate investment trust that are consistent with law and the real estate investment trust's certificate of formation.

(c) The trust managers of a real estate investment trust may amend or repeal bylaws or adopt new bylaws unless:

(1) the real estate investment trust's certificate of formation or this chapter wholly or partly reserves the power exclusively to the real estate investment trust's shareholders; or

(2) in amending, repealing, or adopting a bylaw, the shareholders expressly provide that the trust managers may not amend, repeal, or readopt that bylaw.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.059. DUAL AUTHORITY. Unless the certificate of formation or a bylaw adopted by the shareholders provides otherwise as to all or a part of a real estate investment trust's bylaws, the shareholders of a real estate investment trust may amend, repeal, or adopt the bylaws of the real estate investment trust even if the

bylaws may also be amended, repealed, or adopted by the trust managers of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.060. ORGANIZATION MEETING. (a) After the real estate investment trust has been formed, the initial trust managers of the real estate investment trust shall hold an organization meeting, at the call of a majority of those trust managers, for the purpose of adopting bylaws, electing officers, and transacting other business.

(b) Not later than the third day before the date of the meeting, the initial trust managers calling the meeting shall send notice of the time and place of the meeting to the other initial trust managers named in the certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER C. SHARES

Sec. 200.101. NUMBER. A real estate investment trust may issue the number of shares stated in the real estate investment trust's certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.102. CLASSIFICATION OF SHARES. A real estate investment trust may provide in the real estate investment trust's certificate of formation:

(1) that a specified class of shares is preferred over another class of shares as to its distributive share of the assets on voluntary or involuntary liquidation of the real estate investment trust;

(2) the amount of a preference described by Subdivision (1);

(3) that a specified class of shares may be redeemed at the option of the real estate investment trust or of the holders of the shares;

(4) the terms and conditions of a redemption of shares described by Subdivision (3), including the time and price of

redemption;

(5) that a specified class of shares may be converted into shares of one or more other classes;

(6) the terms and conditions of a conversion described by Subdivision (5);

(7) that a holder of a specified security issued or to be issued by the real estate investment trust has voting or other rights authorized by law; and

(8) for other preferences, rights, restrictions, including restrictions on transferability, and qualifications consistent with law.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.103. CLASSES OF SHARES ESTABLISHED BY TRUST MANAGERS. (a) A real estate investment trust may provide in the real estate investment trust's certificate of formation that the trust managers may classify or reclassify any unissued shares by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the shares.

(b) Before issuing shares, the trust managers who perform as authorized by the certificate of formation an action described by Subsection (a) must file with the county clerk of the county of the principal place of business of the real estate investment trust a statement of designation that contains:

(1) a description of the shares, including the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption, as set or changed by the trust managers; and

(2) a statement that the shares have been classified or reclassified by the trust managers as authorized by the certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.104. ISSUANCE OF SHARES. (a) A real estate investment trust may issue shares for consideration if authorized

by the trust managers.

(b) Shares may not be issued until the consideration, determined in accordance with this subchapter, has been paid to the real estate investment trust or to another entity of which all of the outstanding ownership interests are directly or indirectly owned by the real estate investment trust. When the consideration is paid:

(1) the shares are considered to be issued;

(2) the shareholder entitled to receive the shares is a shareholder with respect to the shares; and

(3) the shares are considered fully paid and nonassessable.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.105. TYPES OF CONSIDERATION FOR ISSUANCE OF SHARES. Shares with or without par value may be issued by a real estate investment trust for the following types of consideration:

(1) a tangible or intangible benefit to the real estate investment trust;

(2) cash;

(3) a promissory note;

(4) services performed or a contract for services to be performed;

(5) a security of the real estate investment trust or any other organization; and

(6) any other property of any kind or nature.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.106. DETERMINATION OF CONSIDERATION FOR SHARES. Consideration to be received by a real estate investment trust for shares shall be determined by the trust managers.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.107. AMOUNT OF CONSIDERATION FOR ISSUANCE OF SHARES WITH PAR VALUE. Consideration to be received by a real estate investment trust for the issuance of shares with par value may not be less than the par value of the shares.



Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.108. VALUE OF CONSIDERATION. In the absence of fraud in the transaction, the judgment of the trust managers is conclusive in determining the value of the consideration received for the shares.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.109. LIABILITY OF ASSIGNEE OR TRANSFEREE. An assignee or transferee of certificated shares, uncertificated shares, or a subscription for shares in good faith and without knowledge that full consideration for the shares or subscription has not been paid may not be held personally liable to the real estate investment trust or a creditor of the real estate investment trust for an unpaid portion of the consideration.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.110. SUBSCRIPTIONS. (a) A real estate investment trust may accept a subscription by notifying the subscriber in writing.

(b) A subscription to purchase shares in a real estate investment trust that is in the process of being formed is irrevocable for six months if the subscription is in writing and signed by the subscriber unless the subscription provides for a longer or shorter period or all of the other subscribers agree to the revocation of the subscription.

(c) A written subscription entered into after the real estate investment trust is formed is a contract between the subscriber and the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.111. PREFORMATION SUBSCRIPTION. (a) A real estate investment trust may determine the payment terms of a preformation subscription unless the payment terms are specified by the subscription. The payment terms may authorize payment in full on acceptance or by installments.

(b) Unless the subscription provides otherwise, a real

estate investment trust shall make calls placed to all subscribers of similar interests for payment on preformation subscriptions uniform as far as practicable.

(c) After the real estate investment trust is formed, if a subscriber fails to pay any installment or call when due, the real estate investment trust may:

(1) collect in the same manner as any other debt the amount due on any unpaid preformation subscription; or

(2) forfeit the subscription if the installment or call remains unpaid for 20 days after written notice to the subscriber.

(d) Although the forfeiture of a subscription terminates all the rights and obligations of the subscriber, the real estate investment trust may retain any amount previously paid on the subscription.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.112. COMMITMENT IN CONNECTION WITH PURCHASE OF SHARES. (a) A person who contemplates the acquisition of shares in a real estate investment trust may commit to act in a specified manner with respect to the shares after the acquisition, including the voting of the shares or the retention or disposition of the shares. To be binding, the commitment must be in writing and be signed by the person acquiring the shares.

(b) A written commitment entered into under Subsection (a) is a contract between the shareholder and the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.113. SUPPLEMENTAL REQUIRED RECORDS. In addition to the books and records required to be kept under Section 3.151, a real estate investment trust must keep at its principal office or place of business, or at the office of its transfer agent or registrar, a record of the number of shares held by each shareholder.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

SUBCHAPTER D. SHAREHOLDER RIGHTS AND RESTRICTIONS

Sec. 200.151. REGISTERED HOLDERS AS OWNERS. Except as otherwise provided by this code and subject to Chapter 8, Business & Commerce Code, a real estate investment trust may consider the person registered as the owner of a share in the share transfer records of the real estate investment trust at a particular time, including a record date set under Section 6.102, as the owner of that share at that time for purposes of:

- (1) voting the share;
- (2) receiving distributions on the share;
- (3) transferring the share;
- (4) receiving notice, exercising rights of dissent and appraisal, exercising or waiving a preemptive right, or giving proxies with respect to that share; or
- (5) entering into agreements with respect to that share in accordance with Section 6.251 or 6.252 or with this subchapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.152. NO STATUTORY PREEMPTIVE RIGHT UNLESS SPECIFICALLY PROVIDED BY CERTIFICATE OF FORMATION. A shareholder of a real estate investment trust does not have a preemptive right to acquire securities except to the extent specifically provided by the certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.153. CHARACTERIZATION AND TRANSFER OF SHARES AND OTHER SECURITIES. Except as otherwise provided by this code, the shares and other securities of a real estate investment trust are:

- (1) personal property for all purposes; and
- (2) transferable in accordance with Chapter 8, Business & Commerce Code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.154. RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES. (a) A restriction on the transfer or registration of

transfer of a security may be imposed by:

(1) the real estate investment trust's certificate of formation;

(2) the real estate investment trust's bylaws;

(3) a written agreement among two or more holders of the securities; or

(4) a written agreement among one or more holders of the securities and the real estate investment trust if:

(A) the real estate investment trust files a copy of the agreement at the principal place of business or registered office of the real estate investment trust; and

(B) the copy of the agreement is subject to the same right of examination by a shareholder of the real estate investment trust, in person or by agent, attorney, or accountant, as the books and records of the real estate investment trust.

(b) A restriction imposed under Subsection (a) is not valid with respect to a security issued before the restriction has been adopted, unless the holder of the security voted in favor of the restriction or is a party to the agreement imposing the restriction.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.155. VALID RESTRICTION ON TRANSFER. Notwithstanding Sections [200.154](#) and [200.157](#), a restriction placed on the transfer or registration of transfer of a security of a real estate investment trust is valid if the restriction reasonably:

(1) obligates the holder of the restricted security to offer a person, including the real estate investment trust or other holders of securities of the real estate investment trust, an opportunity to acquire the restricted security within a reasonable time before the transfer;

(2) obligates the real estate investment trust, to the extent provided by this code, or another person to purchase a security that is the subject of an agreement relating to the purchase and sale of the restricted security;

(3) requires the real estate investment trust or the holders of a class of the real estate investment trust's securities

to consent to a proposed transfer of the restricted security or to approve the proposed transferee of the restricted security for the purpose of preventing a violation of law;

(4) prohibits the transfer of the restricted security to a designated person or group of persons and the designation is not manifestly unreasonable; or

(5) maintains a tax advantage to the real estate investment trust, including maintaining its status as a real estate investment trust under the relevant provisions of the Internal Revenue Code and regulations adopted under the Internal Revenue Code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.156. BYLAW OR AGREEMENT RESTRICTING TRANSFER OF SHARES OR OTHER SECURITIES. (a) A real estate investment trust that has adopted a bylaw or is a party to an agreement that restricts the transfer of the shares or other securities of the real estate investment trust may file with the county clerk of the county of the principal place of business of the real estate investment trust a copy of the bylaw or agreement and a statement attached to the copy that:

(1) contains the name of the real estate investment trust;

(2) states that the attached copy of the bylaw or agreement is a true and correct copy of the bylaw or agreement; and

(3) states that the filing has been authorized by the trust managers or shareholders, as appropriate.

(b) After the statement is filed with the county clerk, the bylaws or agreement restricting the transfer of shares or other securities is a public record, and the fact that the statement has been filed must be stated on a certificate representing the restricted shares or securities if required by Section 3.202.

(c) A real estate investment trust that is a party to an agreement restricting the transfer of the shares or other securities of the real estate investment trust may make the agreement part of the real estate investment trust's certificate of formation without restating the provisions of the agreement in the

certificate of formation by complying with this code or amending the certificate of formation. If the agreement alters the original or amended certificate of formation, the altered provision must be identified by reference or description in the certificate of amendment. If the agreement is an addition to the original or amended certificate of formation, the certificate of amendment must state that fact.

(d) The certificate of amendment must:

(1) include a copy of the agreement restricting the transfer of shares or other securities;

(2) state that the attached copy of the agreement is a true and correct copy of the agreement; and

(3) state that inclusion of the certificate of amendment as part of the certificate of formation has been authorized in the manner required by this code to amend the certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.157. ENFORCEABILITY OF RESTRICTION ON TRANSFER OF CERTAIN SECURITIES. (a) A restriction placed on the transfer or registration of the transfer of a security of a real estate investment trust is specifically enforceable against the holder, or a successor or transferee of the holder, if:

(1) the restriction is reasonable and noted conspicuously on the certificate or other instrument representing the security; or

(2) with respect to an uncertificated security, the restriction is reasonable and a notation of the restriction is contained in the notice sent with respect to the security under Section 3.205.

(b) Unless noted in the manner specified by Subsection (a) with respect to a certificate or other instrument or an uncertificated security, an otherwise enforceable restriction is ineffective against a transferee for value without actual knowledge of the restriction at the time of the transfer or against a subsequent transferee, regardless of whether the transfer is for value. A restriction is specifically enforceable against a person

other than a transferee for value from the time the person acquires actual knowledge of the restriction's existence.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.158. JOINT OWNERSHIP OF SHARES. (a) If shares are registered on the books of a real estate investment trust in the names of two or more persons as joint owners with the right of survivorship and one of the owners dies, the real estate investment trust may record on its books and effect the transfer of the shares to a person, including the surviving joint owner, and pay any distributions made with respect to the shares, as if the surviving joint owner was the sole owner of the shares. The recording and distribution authorized by this subsection must be made after the death of a joint owner and before the real estate investment trust receives actual written notice that a party other than a surviving joint owner is claiming an interest in the shares or distribution.

(b) The discharge of a real estate investment trust from liability under Section 200.160 and the transfer of full legal and equitable title of the shares does not affect, reduce, or limit any cause of action existing in favor of an owner of an interest in the shares or distribution against the surviving owner.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.159. LIABILITY FOR DESIGNATING OWNER OF SHARES. A real estate investment trust or an officer, trust manager, employee, or agent of the real estate investment trust may not be held liable for considering a person to be the owner of a share for a purpose described by Section 200.151, regardless of whether the person possesses a certificate for those shares.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.160. LIABILITY REGARDING JOINT OWNERSHIP OF SHARES. A real estate investment trust that transfers shares or makes a distribution to a surviving joint owner under Section 200.158 before the real estate investment trust has received a written claim for the shares or distribution from another person is discharged from liability for the transfer or payment.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.161. LIMITATION OF LIABILITY FOR OBLIGATIONS. (a) A holder of shares, an owner of any beneficial interest in shares, or a subscriber for shares whose subscription has been accepted is not under an obligation to the real estate investment trust or its obligees with respect to:

(1) the shares, other than the obligation to pay to the real estate investment trust the full amount of consideration, fixed in compliance with Sections 200.104-200.108, for which the shares were or are to be issued;

(2) any contractual obligation of the real estate investment trust on the basis that the holder, beneficial owner, or subscriber is or was the alter ego of the real estate investment trust or on the basis of actual or constructive fraud, a sham to perpetrate a fraud, or other similar theory; or

(3) any obligation of the real estate investment trust on the basis of the failure of the real estate investment trust to observe any formality, including the failure to:

(A) comply with this code or the declaration of trust or bylaws of the real estate investment trust; or

(B) observe any requirement prescribed by this code or the declaration of trust or bylaws of the real estate investment trust for acts to be taken by the real estate investment trust or its trust managers or shareholders.

(b) Subsection (a)(2) does not prevent or limit the liability of a holder, beneficial owner, or subscriber if the obligee demonstrates that the holder, beneficial owner, or subscriber caused the real estate investment trust to be used for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the holder, beneficial owner, or subscriber.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.162. PREEMPTION OF LIABILITY. The liability of a holder, beneficial owner, or subscriber of shares of a real estate investment trust for an obligation that is limited by Section



200.161 is exclusive and preempts any other liability imposed for that obligation under common law or otherwise.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.163. EXCEPTIONS TO LIMITATIONS. Section 200.161 or 200.162 does not limit the obligation of a holder, beneficial owner, or subscriber to the obligee of the real estate investment trust if that person:

(1) expressly assumes, guarantees, or agrees to be personally liable to the obligee for the obligation; or

(2) is otherwise liable to the obligee for the obligation under this code or other applicable statute.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.164. PLEDGEEES AND TRUST ADMINISTRATORS. (a) A pledgee or other holder of shares as collateral security is not personally liable as a shareholder.

(b) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver is not personally liable as a holder of or subscriber to shares of a real estate investment trust.

(c) The estate and funds administered by an executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver are liable for the full amount of the consideration for which the shares were or are to be issued.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER E. DISTRIBUTIONS AND SHARE DIVIDENDS

Sec. 200.201. AUTHORITY FOR DISTRIBUTIONS. The trust managers of a real estate investment trust may authorize a distribution and the real estate investment trust may make a distribution, subject to Section 200.202 and any restriction in the certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.202. LIMITATIONS ON DISTRIBUTIONS. (a) A real

estate investment trust may not make a distribution:

(1) if the real estate investment trust would be insolvent after the distribution; or

(2) that is more than the surplus of the real estate investment trust.

(b) Notwithstanding Subsection (a)(2), if the net assets of a real estate investment trust are not less than the amount of the proposed distribution, the real estate investment trust may make a distribution involving a purchase or redemption of its own shares if the purchase or redemption is made by the real estate investment trust to:

(1) eliminate fractional shares;

(2) collect or settle indebtedness owed by or to the real estate investment trust;

(3) pay dissenting shareholders entitled to receive payment for their shares under this chapter; or

(4) effect the purchase or redemption of redeemable shares in accordance with this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.203. PRIORITY OF DISTRIBUTIONS. A real estate investment trust's indebtedness that arises as a result of the declaration of a distribution and a real estate investment trust's indebtedness issued in a distribution are at parity with the real estate investment trust's indebtedness to its general, unsecured creditors, except to the extent the indebtedness is subordinated, or payment of that indebtedness is secured, by agreement.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.204. RESERVES, DESIGNATIONS, AND ALLOCATIONS FROM SURPLUS. (a) A real estate investment trust, by resolution of the trust managers of the real estate investment trust, may:

(1) create a reserve out of the surplus of the real estate investment trust; or

(2) designate or allocate in any manner a part or all of the real estate investment trust's surplus for a proper purpose.

(b) A real estate investment trust may increase, decrease,

or abolish a reserve, designation, or allocation in the manner provided by Subsection (a).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.205. AUTHORITY FOR SHARE DIVIDENDS. The trust managers of a real estate investment trust may authorize a share dividend, and the real estate investment trust may pay a share dividend subject to Section 200.206 and any restriction in the certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.206. LIMITATIONS ON SHARE DIVIDENDS. (a) A real estate investment trust may not pay a share dividend in authorized but unissued shares of any class if the surplus of the real estate investment trust is less than the amount required by Section 200.208 to be transferred to stated capital at the time the share dividend is made.

(b) A share dividend in shares of any class may not be made to a holder of shares of any other class unless:

(1) the real estate investment trust's certificate of formation provides for the dividend; or

(2) the share dividend is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the share dividend is to be made.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.207. VALUE OF SHARES ISSUED AS SHARE DIVIDENDS.

(a) A share dividend payable in authorized but unissued shares with par value shall be issued at the par value of the shares.

(b) A share dividend payable in authorized but unissued shares without par value shall be issued at the value set by the trust managers when the share dividend is authorized.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.208. TRANSFER OF SURPLUS FOR SHARE DIVIDENDS. (a)

When a share dividend payable in authorized but unissued shares

with par value is made by a real estate investment trust, an amount of surplus designated by the trust managers that is not less than the aggregate par value of the shares issued as a share dividend shall be transferred to stated capital.

(b) When a share dividend payable in authorized but unissued shares without par value is made by a real estate investment trust, an amount of surplus equal to the aggregate value set by the trust managers with respect to the shares under Section 200.207(b) shall be transferred to stated capital.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.209. DETERMINATION OF SOLVENCY, NET ASSETS, STATED CAPITAL, AND SURPLUS. (a) The determination of whether a real estate investment trust is or would be insolvent and the determination of the amount of a real estate investment trust's stated capital or surplus or any component of the trust's stated capital or surplus, or the value of the real estate investment trust's net assets or any component of the trust's net assets, may be based on:

(1) financial statements of the real estate investment trust that present the financial condition of the real estate investment trust in accordance with generally accepted accounting principles or international financial reporting standards, including financial statements that include subsidiary entities or other entities accounted for on a consolidated basis or on the equity method of accounting;

(2) financial statements prepared using the method of accounting used to file the real estate investment trust's federal income tax return or using any other accounting practices and principles that are reasonable under the circumstances;

(3) financial information, including condensed or summary financial statements, that is prepared on the same basis as financial statements described by Subdivision (1) or (2);

(4) a projection, a forecast, or other forward-looking information relating to the future economic performance, financial condition, or liquidity of the real estate investment trust that is reasonable under the circumstances;

(5) a fair valuation or information from any other method that is reasonable under the circumstances; or

(6) a combination of a statement, a valuation, or information authorized by this section.

(b) Subsection (a) does not apply to the computation of the franchise tax or any other tax imposed on a real estate investment trust under the laws of this state.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 39 (S.B. 1203), Sec. 33, eff. September 1, 2021.

Sec. 200.210. DATE OF DETERMINATION OF SURPLUS. (a) For purposes of this subchapter, a determination of whether a real estate investment trust is or would be made insolvent by a distribution or share dividend or a determination of the value of a real estate investment trust's surplus shall be made:

(1) on the date the distribution or share dividend is authorized by the trust managers of the real estate investment trust if the distribution or the share dividend is made not later than the 120th day after the date of authorization; or

(2) if the distribution or the share dividend is made more than 120 days after the date of authorization:

(A) on the date designated by the trust managers if the date so designated is not earlier than 120 days before the date the distribution or the share dividend is made; or

(B) on the date the distribution or the share dividend is made if the trust managers do not designate a date as described in Paragraph (A).

(b) For purposes of this section, a distribution that involves:

(1) the incurrence by a real estate investment trust of indebtedness or a deferred payment obligation is considered to have been made on the date the indebtedness or obligation is incurred; or

(2) a contract by the real estate investment trust to acquire any of its own shares is considered to have been made on the

date when the contract is made or takes effect or on the date the shares are acquired, at the option of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.211. SPLIT-UP OR DIVISION OF SHARES. The trust managers of a real estate investment trust may authorize the real estate investment trust to carry out any split-up or division of the issued shares of a class of the real estate investment trust into a larger number of shares within the same class that does not increase the stated capital of the real estate investment trust because the split-up or division of issued shares is not a share dividend or a distribution.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER F. SHAREHOLDERS' MEETINGS; VOTING AND QUORUM

Sec. 200.251. ANNUAL MEETING. (a) An annual meeting of the shareholders of a real estate investment trust shall be held at a time that is stated in or set in accordance with the bylaws of the real estate investment trust.

(b) If the annual meeting is not held at the designated time, a shareholder may make a written request to an officer or trust manager of the real estate investment trust that the meeting be held within a reasonable time. The request calling for the meeting must be made by:

(1) certified or registered mail, return receipt requested; or

(2) other means specified in the real estate investment trust's governing documents.

(b-1) If the annual meeting is not called before the 61st day after the date the written request calling for a meeting is made under Subsection (b), any shareholder may bring suit at law or in equity to compel the meeting to be held.

(c) Each shareholder has a justifiable interest sufficient to enable the shareholder to institute and prosecute a legal proceeding described by this section.

(d) The failure to hold an annual meeting at the designated time does not result in the winding up or termination of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 31, eff. September 1, 2017.

Sec. 200.252. SPECIAL MEETINGS. A special meeting of the shareholders of a real estate investment trust may be called by:

(1) a trust manager, an officer of the real estate investment trust, or any other person authorized to call special meetings by the certificate of formation or bylaws of the real estate investment trust; or

(2) the holders of at least 10 percent of all of the shares of the real estate investment trust entitled to vote at the proposed special meeting unless a greater or lesser percentage of shares is specified in the certificate of formation, not to exceed 50 percent of the shares entitled to vote.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.253. NOTICE OF MEETING. (a) Written notice of a meeting in accordance with Section 6.051 shall be given to each shareholder entitled to vote at the meeting not later than the 10th day and not earlier than the 60th day before the date of the meeting. Notice shall be given in person or by mail by or at the direction of a trust manager, officer, or other person calling the meeting.

(b) The notice of a special meeting must contain a statement regarding the purpose or purposes of the meeting.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.254. CLOSING OF SHARE TRANSFER RECORDS. Share transfer records that are closed in accordance with Section 6.101 for the purpose of determining which shareholders are entitled to receive notice of a meeting of shareholders shall remain closed for at least 10 days immediately preceding the date of the meeting.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.255. RECORD DATE FOR WRITTEN CONSENT TO ACTION. The record date provided in accordance with Section 6.102(a) may not be more than 10 days after the date on which the trust managers adopt the resolution setting the record date.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.256. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN CONSENT TO ACTION. The record date provided by the trust managers in accordance with Section 6.101 must be at least 10 days before the date on which the particular action requiring the determination of shareholders is to be taken.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.257. QUORUM. (a) Subject to Subsection (b), the holders of the majority of the shares entitled to vote at a meeting of the shareholders of a real estate investment trust that are present or represented by proxy at the meeting are a quorum for the consideration of a matter to be presented at that meeting.

(b) The certificate of formation of a real estate investment trust may provide that a quorum is present only if:

(1) the holders of a specified portion of the shares that is greater than the majority of the shares entitled to vote are represented at the meeting in person or by proxy; or

(2) the holders of a specified portion of the shares that is less than the majority but not less than one-third of the shares entitled to vote are represented at the meeting in person or by proxy.

(c) Unless provided by the certificate of formation or bylaws of the real estate investment trust, after a quorum is present at a meeting of shareholders, the shareholders may conduct business properly brought before the meeting until the meeting is adjourned. The subsequent withdrawal from the meeting of a shareholder or the refusal of a shareholder present at or represented by proxy at the meeting to vote does not negate the presence of a quorum at the meeting.



(d) Unless provided by the certificate of formation or bylaws, the shareholders of the real estate investment trust at a meeting at which a quorum is not present may adjourn the meeting until the time and to the place as may be determined by a vote of the holders of the majority of the shares who are present or represented by proxy at the meeting.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.258. VOTING IN ELECTION OF TRUST MANAGERS. (a) Subject to Subsection (b), trust managers of a real estate investment trust shall be elected by two-thirds of the votes cast by the holders of shares entitled to vote in the election of trust managers at a meeting of shareholders at which a quorum is present.

(b) The certificate of formation or bylaws of a real estate investment trust may provide that a trust manager of the real estate investment trust shall be elected only if the trust manager receives:

(1) the vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote in the election of trust managers;

(2) the vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote in the election of trust managers and represented in person or by proxy at a meeting of shareholders at which a quorum is present; or

(3) the vote of the holders of a specified portion, but not less than the majority, of the votes cast by the holders of shares entitled to vote in the election of trust managers at a meeting of shareholders at which a quorum is present.

(c) Subject to Section 200.259, at each election of trust managers of a real estate investment trust, each shareholder entitled to vote at the election is entitled to vote, in person or by proxy, the number of shares owned by the shareholder for as many candidates as there are trust managers to be elected and for whose election the shareholder is entitled to vote.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.259. CUMULATIVE VOTING IN ELECTION OF TRUST

MANAGERS. (a) Cumulative voting is allowed only if specifically authorized by the certificate of formation of a real estate investment trust.

(b) Cumulative voting occurs when a shareholder:

(1) gives one candidate as many votes as the total of the number of the trust managers to be elected multiplied by the shareholder's shares; or

(2) distributes the votes among one or more candidates using the same principle.

(c) If cumulative voting is specifically authorized by the certificate of formation, a shareholder who intends to cumulate votes must give written notice of that intention to the trust managers on or before the day preceding the date of the election at which the shareholder intends to cumulate votes.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.260. VOTING ON MATTERS OTHER THAN ELECTION OF TRUST MANAGERS. (a) Subject to Subsection (b), with respect to a matter other than the election of trust managers or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the affirmative vote of the holders of the majority of the shares entitled to vote on, and who voted for, against, or expressly abstained with respect to, the matter at a shareholders' meeting of a real estate investment trust at which a quorum is present is the act of the shareholders.

(b) With respect to a matter other than the election of trust managers or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the certificate of formation or bylaws of a real estate investment trust may provide that the act of the shareholders of the real estate investment trust is:

(1) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on that matter;

(2) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to

vote on that matter and represented in person or by proxy at a shareholders' meeting at which a quorum is present;

(3) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on, and who voted for or against, the matter at a shareholders' meeting at which a quorum is present; or

(4) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on, and who voted for, against, or expressly abstained with respect to, the matter at a shareholders' meeting at which a quorum is present.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.261. VOTE REQUIRED TO APPROVE FUNDAMENTAL ACTION.

(a) In this section, a "fundamental action" means:

(1) an amendment of a certificate of formation, including an amendment required for cancellation of an event requiring winding up in accordance with Section 11.152(b);

(2) a voluntary winding up under Chapter 11;

(3) a revocation of a voluntary decision to wind up under Section 11.151;

(4) a cancellation of an event requiring winding up under Section 11.152(a); or

(5) a reinstatement under Section 11.202.

(b) Except as otherwise provided by this code or the certificate of formation or bylaws of a real estate investment trust in accordance with Section 200.260, the vote required for approval of a fundamental action by the shareholders is the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote on the fundamental action.

(c) If a class or series of shares is entitled to vote as a class or series on a fundamental action, the vote required for approval of the action by the shareholders is the affirmative vote of the holders of at least two-thirds of the outstanding shares in each class or series of shares entitled to vote on the action as a class and at least two-thirds of the outstanding shares otherwise entitled to vote on the action. Shares entitled to vote as a class

or series shall be entitled to vote only as a class or series unless otherwise entitled to vote on each matter generally or otherwise provided by the certificate of formation.

(d) Unless an amendment to the certificate of formation is undertaken by the trust managers under Section 200.103, separate voting by a class or series of shares of a real estate investment trust is required for approval of an amendment to the certificate of formation that would result in:

(1) the increase or decrease of the aggregate number of authorized shares of the class or series;

(2) the increase or decrease of the par value of the shares of the class, including changing shares with par value into shares without par value or changing shares without par value into shares with par value;

(3) effecting an exchange, reclassification, or cancellation of all or part of the shares of the class or series;

(4) effecting an exchange or creating a right of exchange of all or part of the shares of another class or series into the shares of the class or series;

(5) the change of the designations, preferences, limitations, or relative rights of the shares of the class or series;

(6) the change of the shares of the class or series, with or without par value, into the same or a different number of shares, with or without par value, of the same class or series or another class or series;

(7) the creation of a new class or series of shares with rights and preferences equal, prior, or superior to the shares of the class or series;

(8) increasing the rights and preferences of a class or series with rights and preferences equal, prior, or superior to the shares of the class or series;

(9) increasing the rights and preferences of a class or series with rights or preferences later or inferior to the shares of the class or series in such a manner that the rights or preferences will be equal, prior, or superior to the shares of the class or series;

(10) dividing the shares of the class into series and setting and determining the designation of the series and the variations in the relative rights and preferences between the shares of the series;

(11) the limitation or denial of existing preemptive rights or cumulative voting rights of the shares of the class or series; or

(12) canceling or otherwise affecting the dividends on the shares of the class or series that have accrued but have not been declared.

(e) Unless otherwise provided by the certificate of formation, if the holders of the outstanding shares of a class that is divided into series are entitled to vote as a class on a proposed amendment that would affect equally all series of the class, other than a series in which no shares are outstanding or a series that is not affected by the amendment, the holders of the separate series are not entitled to separate class votes.

(f) Unless otherwise provided by the certificate of formation, a proposed amendment to the certificate of formation that would solely effect changes in the designations, preferences, limitations, or relative rights, including voting rights, of one or more series of shares of the real estate investment trust that have been established under the authority granted to the trust managers in the certificate of formation in accordance with Section 200.103 does not require the approval of the holders of the outstanding shares of a class or series other than the affected series if, after giving effect to the amendment:

(1) the preferences, limitations, or relative rights of the affected series may be set and determined by the trust managers with respect to the establishment of a new series of shares under the authority granted to the trust managers in the certificate of formation in accordance with Section 200.103; or

(2) any new series established as a result of a reclassification of the affected series are within the preferences, limitations, and relative rights that are described by Subdivision (1).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 132, eff. September 1, 2007.

Sec. 200.262. CHANGES IN VOTE REQUIRED FOR CERTAIN MATTERS.

(a) With respect to a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the certificate of formation of a real estate investment trust may provide that the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on that matter is required for shareholder action on that matter.

(b) With respect to a matter for which the affirmative vote of the holders of a specified portion of the shares of a class or series is required by this code, the certificate of formation may provide that the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares of that class or series is required for action of the holders of shares of that class or series on that matter.

(c) If a provision of the certificate of formation provides that the affirmative vote of the holders of a specified portion that is greater than the majority of the shares entitled to vote on a matter is required for shareholder action on that matter, the provision may not be amended, directly or indirectly, without the same affirmative vote unless otherwise provided by the certificate of formation.

(d) If a provision of the certificate of formation provides that the affirmative vote of the holders of a specified portion that is greater than the majority of the shares of a class or series is required for shareholder action on a matter, the provision may not be amended, directly or indirectly, without the same affirmative vote unless otherwise provided by the certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.263. NUMBER OF VOTES PER SHARE. (a) Except as provided by the certificate of formation of a real estate investment trust or this title or Title 1, each outstanding share,

regardless of class, is entitled to one vote on each matter submitted to a vote at a shareholders' meeting.

(b) If the certificate of formation provides for more or less than one vote per share on a matter for all of the outstanding shares or for the shares of a class or series, each reference in this code or in the certificate of formation or bylaws, unless expressly stated otherwise, to a specified portion of the shares with respect to that matter refers to the portion of the votes entitled to be cast with respect to those shares under the certificate of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.264. VOTING IN PERSON OR BY PROXY. (a) A shareholder may vote in person or by proxy executed in writing by the shareholder.

(b) A telegram, telex, cablegram, or other form of electronic transmission, including telephonic transmission, by the shareholder, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder, is considered an execution in writing for purposes of this section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.265. TERM OF PROXY. A proxy is not valid after 11 months after the date the proxy is executed unless otherwise provided by the proxy.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.266. REVOCABILITY OF PROXY. (a) In this section, a "proxy coupled with an interest" includes the appointment as proxy of:

- (1) a pledgee;
- (2) a person who purchased or agreed to purchase the shares subject to the proxy;
- (3) a person who owns or holds an option to purchase

the shares subject to the proxy;

(4) a creditor of the real estate investment trust who extended the real estate investment trust credit under terms requiring the appointment;

(5) an employee of the real estate investment trust whose employment contract requires the appointment; or

(6) a party to a voting agreement created under Section 6.252.

(b) A proxy is revocable unless:

(1) the proxy form conspicuously states that the proxy is irrevocable; and

(2) the proxy is coupled with an interest.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.267. ENFORCEABILITY OF PROXY. (a) An irrevocable proxy is specifically enforceable against the holder of shares or any successor or transferee of the holder if:

(1) the proxy is noted conspicuously on the certificate representing the shares subject to the proxy; or

(2) in the case of uncertificated shares, notation of the proxy is contained in the notice sent under Section 3.205 with respect to the shares subject to the proxy.

(b) An irrevocable proxy that is otherwise enforceable is ineffective against a transferee for value without actual knowledge of the existence of the irrevocable proxy at the time of the transfer or against a subsequent transferee, regardless of whether the transfer is for value, unless:

(1) the proxy is noted conspicuously on the certificate representing the shares subject to the proxy; or

(2) in the case of uncertificated shares, notation of the proxy is contained in the notice sent under Section 3.205 with respect to the shares subject to the proxy.

(c) An irrevocable proxy shall be specifically enforceable against a person who is not a transferee for value from the time the person acquires actual knowledge of the existence of the irrevocable proxy.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.



Sec. 200.268. PROCEDURES IN BYLAWS RELATING TO PROXIES. A real estate investment trust may establish in the bylaws of the real estate investment trust procedures consistent with this code for determining the validity of proxies and determining whether shares held of record by a bank, broker, or other nominee are represented at a meeting of shareholders. The procedures may incorporate rules of and determinations made by a self-regulatory organization regulating that bank, broker, or other nominee.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER G. TRUST MANAGERS

Sec. 200.301. MANAGEMENT BY TRUST MANAGERS. The control, operation, disposition, investment, and management of the trust estate and the powers necessary or appropriate to effect any purpose for which a real estate investment trust is organized are vested in one or more trust managers.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.302. DESIGNATION OF TRUST MANAGERS. (a) The certificate of formation of a real estate investment trust must contain the name of each trust manager.

(b) A successor trust manager must be selected in accordance with the certificate of formation. The selection of a successor trust manager is considered an amendment to the certificate of formation of a real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.303. TRUST MANAGER ELIGIBILITY REQUIREMENTS. A trust manager of a real estate investment trust must be an individual. Unless the certificate of formation or bylaws of a real estate investment trust provide otherwise, a person is not required to be a resident of this state or a shareholder of the real estate investment trust to serve as a trust manager. The certificate of formation or bylaws may prescribe other qualifications for trust managers.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.304. NUMBER OF TRUST MANAGERS. (a) The certificate of formation or bylaws of the real estate investment trust shall set the number of trust managers or provide for the manner of determining the number of trust managers, except that the certificate of formation shall set the number constituting the initial trust managers.

(b) The number of trust managers may be increased or decreased by amendment to, or as provided by, the certificate of formation or bylaws. A decrease in the number of trust managers may not shorten the term of an incumbent trust manager.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.305. COMPENSATION. A trust manager or officer of a real estate investment trust is entitled to receive compensation set by or in the manner provided by the certificate of formation or bylaws of the real estate investment trust. If the certificate of formation or bylaws do not provide for compensation to trust managers and officers, the trust managers of the real estate investment trust must determine the compensation by vote at a meeting or by written consent.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.306. TERM OF TRUST MANAGER. (a) Except as provided by the certificate of formation or bylaws of a real estate investment trust, a trust manager of the real estate investment trust serves until the trust manager's successor is elected.

(b) A trust manager may succeed himself or herself in office.

(c) If a successor trust manager is not elected, the trust manager in office continues to serve as trust manager until the trust manager's successor is elected.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.307. STAGGERED TERMS OF TRUST MANAGERS. (a) A governing document of a real estate investment trust may provide

that all or some of the board of trust managers may be divided into two or three classes. Each class must include the same or a similar number of trust managers as each other class.

(b) The terms of office of trust managers constituting the first class expire on the election of successors at the first annual meeting of shareholders after the election of those trust managers. The terms of office of trust managers constituting the second class expire on the election of successors at the second annual meeting of shareholders after election of those trust managers. The terms of office of trust managers constituting the third class, if any, expire on the election of successors at the third annual meeting of shareholders after election of those trust managers.

(c) If a governing document of the real estate investment trust provides for the classification of trust managers, an annual election for trust managers as a whole is not necessary. At each annual meeting held after the classification of trust managers, an election shall be held to elect the number of trust managers equal to the number of trust managers in the class the term of which expires on the date of the meeting, and those trust managers serve until:

(1) the second succeeding annual meeting if there are two classes; or

(2) the third succeeding annual meeting if there are three classes.

(d) Unless provided by the certificate of formation or a bylaw adopted by shareholders, staggered terms for trust managers do not take effect until the next annual meeting of shareholders at which trust managers are elected. Staggered terms for trust managers may not be effected if any shareholder has the right to cumulate votes for the election of trust managers and the number of trust managers is fewer than nine trust managers.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.308. VACANCY. (a) Except as provided by Subsection (b), a vacancy occurring in the office of a trust manager of a real estate investment trust may be filled by the affirmative vote of the majority of the remaining trust managers, even if the

majority of trust managers constitutes less than a quorum of the trust managers.

(b) The certificate of formation or bylaws of the real estate investment trust may provide an alternative procedure for filling a vacancy occurring in the office of a trust manager, including filling vacancies by simple majority or super majority votes of the shareholders.

(c) The term of a trust manager elected to fill a vacancy occurring in the office of a trust manager is the unexpired term of the trust manager's predecessor in office and until the trust manager's successor is elected and has qualified.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.309. NOTICE OF MEETING. (a) Regular meetings of the trust managers of a real estate investment trust may be held with or without notice as prescribed by the real estate investment trust's bylaws.

(b) Special meetings of the trust managers shall be held with notice as prescribed by the bylaws.

(c) A notice of a board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting, unless required by the bylaws.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.310. QUORUM. A quorum of the board of trust managers of a real estate investment trust is the majority of the number of trust managers unless the certificate of formation or bylaws require a greater number.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.311. COMMITTEES OF TRUST MANAGERS. (a) If authorized by the certificate of formation or bylaws, the trust managers of a real estate investment trust, by resolution adopted by a majority of the trust managers, may designate:

(1) committees composed of one or more trust managers;

or

(2) trust managers as alternate committee members to

replace absent or disqualified committee members at a committee meeting, subject to any limitations imposed by the trust managers.

(b) To the extent provided by the resolution designating a committee or the certificate of formation or bylaws and subject to Subsection (c), the committee has the authority of the trust managers.

(c) A committee of the trust managers may not:

(1) amend the certificate of formation, except to classify or reclassify shares in accordance with Section 200.103 if authorized by the resolution designating the committee, certificate of formation, or bylaws;

(2) propose a reduction of stated capital of the real estate investment trust;

(3) approve a plan of merger or share exchange of the real estate investment trust;

(4) recommend to shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the real estate investment trust not made in the usual and regular course of its business;

(5) recommend to the shareholders a voluntary winding up and termination or a revocation of the real estate investment trust;

(6) amend, alter, or repeal the bylaws or adopt new bylaws;

(7) fill vacancies in the offices of the trust managers;

(8) fill vacancies in or designate alternate members of a committee of the trust managers;

(9) fill a vacancy to be filled because of an increase in the number of trust managers;

(10) elect or remove officers of the real estate investment trust or members or alternate members of a committee of the trust managers;

(11) set the compensation of the members or alternate members of a committee of the trust managers; or

(12) alter or repeal a resolution of the trust managers that states that it may not be amended or repealed.

(d) A committee of the trust managers may authorize a distribution or the issuance of shares if authorized by the resolution designating the committee or by the certificate of formation or bylaws.

(e) The designation of and delegation of authority to a committee of the trust managers does not relieve a trust manager of responsibility imposed by law.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.312. LIABILITY OF TRUST MANAGERS. (a) A trust manager of a real estate investment trust who votes for or assents to a distribution of assets made by the real estate investment trust to its shareholders during the liquidation of the real estate investment trust without the payment and discharge of or the making of adequate provision for the payment of all of the known debts, liabilities, and other obligations of the real estate investment trust is jointly and severally liable to the real estate investment trust for the value of the distributed assets to the extent the debts, liabilities, and other obligations are not paid and discharged.

(b) A trust manager of a real estate investment trust who votes for or assents to the making of a loan to another trust manager or officer of the real estate investment trust or to the making of a loan secured by shares of the real estate investment trust is jointly and severally liable to the real estate investment trust for the loan amount until the loan is repaid.

(c) A trust manager is not jointly and severally liable under Subsection (a) if, in determining the amount available for the distribution, the trust manager, acting in good faith and with ordinary care:

(1) relied on information, opinions, reports, or statements in accordance with Section 3.102; or

(2) considered the assets of the real estate investment trust to be valued at least at book value.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.313. STATUTE OF LIMITATIONS ON CERTAIN ACTION

AGAINST TRUST MANAGERS. An action may not be brought against a trust manager of a real estate investment trust under Section [200.312](#) after the second anniversary of the date the alleged act giving rise to the liability occurred.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.314. IMMUNITY FROM LIABILITY FOR PERFORMANCE OF DUTY. A trust manager of a real estate investment trust may not be held liable to the real estate investment trust for an act, omission, loss, damage, or expense arising from the performance of the trust manager's duties under the trust, except for liability arising from the wilful misfeasance, wilful malfeasance, or gross negligence of the trust manager.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.315. RIGHT OF CONTRIBUTION. A trust manager who is liable for a claim asserted under Section [200.312](#) is entitled to receive contribution from each of the other trust managers who are liable with respect to that claim in an amount appropriate to achieve equity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.316. OFFICERS. (a) An officer of a real estate investment trust designated by the trust managers under Section [3.103](#) may exercise all of the powers of a trust manager relating to the business and affairs of the real estate investment trust, unless action by the trust managers is specified by this code or another applicable law.

(b) A designation of or delegation of authority to an officer of a real estate investment trust described by this section does not relieve a trust manager of responsibility imposed by law.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.317. CONTRACTS OR TRANSACTIONS INVOLVING INTERESTED TRUST MANAGERS AND OFFICERS. (a) This section applies to a contract or transaction between a real estate investment trust and:

(1) one or more trust managers or officers, or one or more affiliates or associates of one or more directors or officers, of the trust; or

(2) an entity or other organization in which one or more trust managers or officers, or one or more affiliates or associates of one or more directors or officers, of the trust:

(A) is a managerial official; or

(B) has a financial interest.

(b) An otherwise valid and enforceable contract or transaction described by Subsection (a) is valid and enforceable, and is not void or voidable, notwithstanding any relationship or interest described by Subsection (a), if any one of the following conditions is satisfied:

(1) the material facts as to the relationship or interest described by Subsection (a) and as to the contract or transaction are disclosed to or known by:

(A) the trust managers or a committee of the trust managers, and the trust managers or committee of the trust managers in good faith authorize the contract or transaction by the approval of the majority of disinterested trust managers or committee members, regardless of whether the disinterested trust managers or committee members constitute a quorum; or

(B) the shareholders entitled to vote on the authorization of the contract or transaction, and the contract or transaction is specifically approved in good faith by a vote of the shareholders; or

(2) the contract or transaction is fair to the real estate investment trust when the contract or transaction is authorized, approved, or ratified by the trust managers, a committee of the trust managers, or the shareholders.

(c) Common or interested trust managers may be included in determining the presence of a quorum at a meeting of the trust managers, or a committee of the trust managers, that authorizes the contract or transaction.

(d) A person who has the relationship or interest described by Subsection (a) may:

(1) be present at or participate in and, if the person



is a trust manager or committee member, may vote at a meeting of the trust managers, or of a committee of the trust managers, that authorizes the contract or transaction; or

(2) sign, in the person's capacity as a trust manager or committee member, a unanimous written consent of the trust managers or committee members to authorize the contract or transaction.

(e) If at least one of the conditions of Subsection (b) is satisfied, neither the trust nor any of the trust's shareholders will have a cause of action against any of the persons described by Subsection (a) for breach of duty with respect to the making, authorization, or performance of the contract or transaction because the person had the relationship or interest described by Subsection (a) or took any of the actions authorized by Subsection (d).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 58, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 57, eff. September 1, 2011.

#### SUBCHAPTER H. INVESTMENTS

Sec. 200.351. INVESTMENTS. A trust manager or officer of a real estate investment trust has complete discretion with respect to the investment of the trust estate unless the investment is contrary to or inconsistent with:

(1) this chapter;

(2) a provision of the Internal Revenue Code relating to or governing real estate investment trusts; or

(3) regulations adopted under a provision of the Internal Revenue Code relating to or governing real estate investment trusts.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER I. FUNDAMENTAL BUSINESS TRANSACTIONS

Sec. 200.401. DEFINITIONS. In this subchapter:

(1) "Participating shares" means shares that entitle the holders of the shares to participate without limitation in distributions.

(2) "Sale of all or substantially all of the assets" means the sale, lease, exchange, or other disposition, other than a pledge, mortgage, deed of trust, or trust indenture unless otherwise provided by the certificate of formation, of all or substantially all of the property and assets of a domestic real estate investment trust that is not made in the usual and regular course of the trust's business without regard to whether the disposition is made with the goodwill of the business. The term does not include a transaction that results in the real estate investment trust directly or indirectly:

(A) continuing to engage in one or more businesses; or

(B) applying a portion of the consideration received in connection with the transaction to the conduct of a business that the real estate investment trust engages in after the transaction.

(3) "Shares" includes a receipt or other instrument issued by a depository representing an interest in one or more shares or fractions of shares of a domestic or foreign real estate investment trust that are deposited with the depository.

(4) "Voting shares" means shares that entitle the holders of the shares to vote unconditionally in elections of trust managers.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.402. APPROVAL OF MERGER. (a) A real estate investment trust that is a party to the merger under Chapter 10 must approve the merger by complying with this section.

(b) The trust managers of the real estate investment trust shall adopt a resolution that:

(1) approves the plan of merger; and

(2) if shareholder approval of the merger is required

by this subchapter:

(A) recommends that the plan of merger be approved by the shareholders of the real estate investment trust; or

(B) directs that the plan of merger be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the plan of merger.

(c) Except as provided by this subchapter or Chapter 10, the plan of merger shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the plan of merger to the shareholders.

(d) If the trust managers approve a plan of merger required to be approved by the shareholders of the real estate investment trust but do not adopt a resolution recommending that the plan of merger be approved by the shareholders, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the plan of merger without a recommendation.

(e) Except as provided by Chapter 10 or Sections 200.407-200.409, the shareholders of the real estate investment trust shall approve the plan of merger as provided by this subchapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.403. APPROVAL OF CONVERSION. (a) A real estate investment trust must approve a conversion under Chapter 10 by complying with this section.

(b) The trust managers of the real estate investment trust shall adopt a resolution that approves the plan of conversion and:

(1) recommends that the plan of conversion be approved by the shareholders of the real estate investment trust; or

(2) directs that the plan of conversion be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the plan of conversion.

(c) The plan of conversion shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the plan of conversion to the shareholders.

(d) If the trust managers approve a plan of conversion but do not adopt a resolution recommending that the plan of conversion be approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the plan of conversion without a recommendation.

(e) Except as provided by Sections 200.407-200.409, the shareholders of the real estate investment trust must approve the plan of conversion as provided by this subchapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.404. APPROVAL OF EXCHANGE. (a) A real estate investment trust the shares of which are to be acquired in an exchange under Chapter 10 must approve the exchange by complying with this section.

(b) The trust managers shall adopt a resolution that approves the plan of exchange and:

(1) recommends that the plan of exchange be approved by the shareholders of the real estate investment trust; or

(2) directs that the plan of exchange be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the plan of exchange.

(c) The plan of exchange shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the plan of exchange to the shareholders.

(d) If the trust managers approve a plan of exchange but do not adopt a resolution recommending that the plan of exchange be approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason

for the trust managers' determination to submit the plan of exchange to shareholders without a recommendation.

(e) Except as provided by Sections 200.407-200.409, the shareholders of the real estate investment trust shall approve the plan of exchange as provided by this subchapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.405. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL OF ASSETS. (a) Except as provided by the certificate of formation of a domestic real estate investment trust, a sale, lease, pledge, mortgage, assignment, transfer, or other conveyance of an interest in real property or other assets of the real estate investment trust does not require the approval or consent of the shareholders of the real estate investment trust unless the transaction constitutes a sale of all or substantially all of the assets of the real estate investment trust.

(b) A real estate investment trust must approve the sale of all or substantially all of its assets by complying with this section.

(c) The trust managers of the real estate investment trust shall adopt a resolution that approves the sale of all or substantially all of the assets of the real estate investment trust and:

(1) recommends that the sale of all or substantially all of the assets of the real estate investment trust be approved by the shareholders of the real estate investment trust; or

(2) directs that the sale of all or substantially all of the assets of the real estate investment trust be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the sale.

(d) The sale of all or substantially all of the assets of the real estate investment trust shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the proposed sale to the shareholders.

(e) If the trust managers approve the sale of all or

substantially all of the assets of the real estate investment trust but do not adopt a resolution recommending that the proposed sale be approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the proposed sale to shareholders without a recommendation.

(f) The shareholders of the real estate investment trust shall approve the sale of all or substantially all of the assets of the real estate investment trust as provided by this subchapter.

(g) After the approval of the sale by the shareholders, the trust managers may abandon the sale of all or substantially all of the assets of the real estate investment trust, subject to the rights of a third party under a contract relating to the assets, without further action or approval by the shareholders.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.406. GENERAL PROCEDURE FOR SUBMISSION TO SHAREHOLDERS OF FUNDAMENTAL BUSINESS TRANSACTION. (a) If a fundamental business transaction involving a real estate investment trust is required to be submitted to the shareholders of the real estate investment trust under this subchapter, the real estate investment trust shall notify each shareholder of the real estate investment trust that the fundamental business transaction is being submitted to the shareholders for approval at a meeting of shareholders as required by this subchapter, regardless of whether the shareholder is entitled to vote on the matter.

(b) If the fundamental business transaction is a merger, conversion, or interest exchange, the notice required by Subsection (a) shall contain or be accompanied by a copy or summary of the plan of merger, conversion, or interest exchange, as appropriate, and the notice required by Section [10.355](#).

(c) The notice of the meeting must:

(1) be given not later than the 21st day before the date of the meeting; and

(2) state that the purpose, or one of the purposes, of the meeting is to consider the fundamental business transaction.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.407. GENERAL VOTE REQUIREMENT FOR APPROVAL OF FUNDAMENTAL BUSINESS TRANSACTION. (a) Except as provided by this code or the certificate of formation or bylaws of a real estate investment trust in accordance with Section 200.261, the affirmative vote of the holders of at least two-thirds of the outstanding shares of the real estate investment trust entitled to vote on a fundamental business transaction is required to approve the transaction.

(b) Unless provided by the certificate of formation or Section 200.408, shares of a class or series that are not otherwise entitled to vote on matters submitted to shareholders generally will not be entitled to vote for the approval of a fundamental business transaction.

(c) Except as provided by this code, if a class or series of shares of a real estate investment trust is entitled to vote on a fundamental business transaction as a class or series, in addition to the vote required under Subsection (a), the affirmative vote of the holders of at least two-thirds of the outstanding shares in each class or series of shares entitled to vote on the fundamental business transaction as a class or series is required to approve the transaction.

(d) Unless required by the certificate of formation, approval of a merger by shareholders is not required under this code for a real estate investment trust that is a party to the plan of merger unless that real estate investment trust is also a party to the merger.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.408. CLASS VOTING REQUIREMENTS FOR CERTAIN FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Separate voting by a class or series of shares of a real estate investment trust is required for approval of a plan of merger or conversion if:

(1) the plan of merger or conversion contains a provision that would require approval by that class or series of shares under Section 200.262 if the provision was contained in a proposed amendment to the real estate investment trust's

certificate of formation; or

(2) that class or series of shares is entitled under the certificate of formation to vote as a class or series on the plan of merger or conversion.

(b) Separate voting by a class or series of shares of a real estate investment trust is required for approval of a plan of exchange if:

(1) shares of that class or series are to be exchanged under the terms of the plan of exchange; or

(2) that class or series is entitled under the certificate of formation to vote as a class or series on the plan of exchange.

(c) Separate voting by a class or series of shares of a real estate investment trust is required for approval of a sale of all or substantially all of the assets of the real estate investment trust if that class or series of shares is entitled under the certificate of formation to vote as a class or series on the sale of the real estate investment trust's assets.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.409. NO SHAREHOLDER VOTE REQUIREMENT FOR CERTAIN FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Unless required by the real estate investment trust's certificate of formation, a plan of merger is not required to be approved by the shareholders of a real estate investment trust if:

(1) the real estate investment trust is the sole surviving real estate investment trust in the merger;

(2) the certificate of formation of the real estate investment trust following the merger will not differ from the real estate investment trust's certificate of formation before the merger;

(3) immediately after the effective date of the merger, each shareholder of the real estate investment trust whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights;

(4) the sum of the voting power of the number of voting



shares outstanding immediately after the merger and the voting power of securities that may be acquired on the conversion or exercise of securities issued under the merger does not exceed by more than 20 percent the voting power of the total number of voting shares of the real estate investment trust that are outstanding immediately before the merger; and

(5) the sum of the number of participating shares that are outstanding immediately after the merger and the number of participating shares that may be acquired on the conversion or exercise of securities issued under the merger does not exceed by more than 20 percent the total number of participating shares of the real estate investment trust that are outstanding immediately before the merger.

(b) Unless required by the certificate of formation, a plan of merger effected under Section 10.005 or 10.006 does not require the approval of the shareholders of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.410. RIGHTS OF DISSENT AND APPRAISAL. A shareholder of a domestic real estate investment trust has the rights of dissent and appraisal under Subchapter H, Chapter 10, with respect to a fundamental business transaction.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER J. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Sec. 200.451. APPROVAL OF VOLUNTARY WINDING UP. A real estate investment trust must approve a voluntary winding up under Chapter 11 by the affirmative vote of the shareholders in accordance with Section 200.261.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.452. APPROVAL OF REINSTATEMENT, CANCELLATION, OR REVOCATION OF VOLUNTARY WINDING UP. A real estate investment trust may reinstate its existence under Section 11.202, revoke a voluntary decision to wind up under Section 11.151, or cancel an

event requiring winding up under Section 11.152 by the affirmative vote of the shareholders in accordance with Section 200.261.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.453. RESPONSIBILITY FOR WINDING UP. If a real estate investment trust determines or is required to wind up, the trust managers shall manage the winding up of the business or affairs of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER K. MISCELLANEOUS PROVISIONS

Sec. 200.501. EXAMINATION OF RECORDS. (a) On written demand stating a proper purpose, a shareholder of record of a real estate investment trust for at least six months immediately preceding the shareholder's demand, or a holder of record of at least five percent of all of the outstanding shares of a real estate investment trust, is entitled to examine and copy, at a reasonable time, the real estate investment trust's relevant books and records of account, minutes, and share transfer records. The examination may be conducted in person or through an agent or attorney.

(b) This section does not impair the power of a court, on the presentation of proof of proper purpose by a shareholder, to compel the production for examination by the shareholder of the books and records of account, minutes, and share transfer records of a real estate investment trust, regardless of the period during which the shareholder was a record holder and regardless of the number of shares held by the person.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.502. JOINDER OF SHAREHOLDERS NOT REQUIRED. The joinder of shareholders of a real estate investment trust is not required for any sale, lease, mortgage, or other disposition of all or part of the assets of the real estate investment trust.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 200.503. TAX LAW REQUIREMENTS. In connection with a

real estate investment trust qualifying or attempting to qualify as a real estate investment trust under the Internal Revenue Code and the regulations adopted under the Internal Revenue Code, a provision of this chapter is subject to the provisions of the Internal Revenue Code or the regulations relating to or governing real estate investment trusts adopted under those provisions if:

(1) the provision of this chapter is contrary to or inconsistent with the federal provisions or regulations;

(2) the federal provisions or regulations require a real estate investment trust to take any action required to secure or maintain its status as a real estate investment trust under the federal provisions or regulations; or

(3) the federal provisions or regulations prohibit the real estate investment trust from taking any action required to secure or maintain its status as a real estate investment trust under the federal provision or regulation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.