

## **CHAPTER 10-34 REAL ESTATE INVESTMENT TRUSTS**

### **10-34-01. Definitions.**

In this chapter, unless the content otherwise requires:

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

### **10-34-02. Real estate investment trust authorized.**

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

#### **10-34-02.1. Reservation of legislative right.**

The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A real estate investment trust formed under or governed by this chapter is subject to this reserved right.

### **10-34-03. Relationship to other laws.**

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

### **10-34-04. Compliance with title - Registered office - Registered agent. (Contingent effective date - [See note](#))**

1. A real estate investment trust may not do business in this state until it complies with this title.
2. Each real estate investment trust shall continuously maintain a registered agent as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
  - a. The name of the real estate investment trust which may not be the same or deceptively similar to the name of any other real estate investment trust registered with the secretary of state, or any corporation, limited liability company, limited partnership, limited liability partnership, or any name that is in some manner reserved with the secretary of state, that is a fictitious trade name registered as provided in chapter 45-11, or that is a trade name registered as provided in chapter 47-25 unless there is filed with the secretary of state a written consent of the holder of the similar trade name to use the name proposed by the real estate investment trust. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or any abbreviation of these words.
  - b. The state and date of its formation.
  - c. The name, address, and principal place of business of each trustee and officer.
  - d. The name of its registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
  - e. The address of the principal place of business.

- f. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process as provided in section 10-01.1-13.
4. If the secretary of state finds that an application for registration of a real estate investment trust conforms to law and all fees have been paid, the secretary of state shall:
  - a. Endorse on the application the word "filed", and the month, day, and year of the filing.
  - b. File the application in the office of the secretary of state.
5. A real estate investment trust may change its registered office, change its registered agent, or state a change in the name of its registered agent as provided in chapter 10-01.1.
6. A registered agent of a real estate investment trust may resign as provided in chapter 10-01.1.
7. If any statement in the application was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the real estate investment trust shall file promptly with the secretary of state an application for an amended application executed by an authorized person correcting the statement. If only a change of address of the principal place of business is required, an amended application need not be filed; however, the change of address of the principal place of business must be submitted in writing to the secretary of state without a filing fee.
8. The secretary of state may revoke the registration of a domestic or foreign real estate investment trust for failure to maintain a registered office or a registered agent as required by this chapter and chapter 10-01.1. Before revoking the registration, the secretary of state shall give not less than sixty days' notice by mail addressed to the last registered agent at the last registered office, or to the principal office of record of a foreign real estate investment trust of the deficiency.

**Compliance with title - Registered office - Registered agent. (Contingent effective date - See note)**

1. A real estate investment trust may not do business in this state until it complies with this title.
2. Each real estate investment trust shall continuously maintain a registered agent as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
  - a. The name of the real estate investment trust which must be distinguishable in the records of the secretary of state from the name of another real estate investment trust registered with the secretary of state, or a corporation, limited liability company, limited partnership, limited liability partnership, limited liability limited partnership, or a name that is in some manner reserved with the secretary of state, is a fictitious trade name registered as provided in chapter 45-11, is a trade name registered as provided in chapter 47-25, or is a trademark or service mark registered as provided in chapter 47-22, unless a written consent of the holder of the indistinguishable trade name to use the name proposed by the real estate investment trust is filed with the secretary of state. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or an abbreviation of these words. The secretary of state shall determine whether a name is distinguishable in the secretary of state's records and may adopt rules reasonable or necessary for making these determinations.
  - b. The state and date of its formation.
  - c. The name, address, and principal place of business of each trustee and officer.
  - d. The name of its registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
  - e. The address of the principal place of business.

- f. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process as provided in section 10-01.1-13.
4. If the secretary of state finds that an application for registration of a real estate investment trust conforms to law and all fees have been paid, the secretary of state shall:
  - a. Endorse on the application the word "filed", and the month, day, and year of the filing.
  - b. File the application in the office of the secretary of state.
5. A real estate investment trust may change its registered office, change its registered agent, or state a change in the name of its registered agent as provided in chapter 10-01.1.
6. A registered agent of a real estate investment trust may resign as provided in chapter 10-01.1.
7. If any statement in the application was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the real estate investment trust shall file promptly with the secretary of state an application for an amended application executed by an authorized person correcting the statement. If only a change of address of the principal place of business is required, an amended application need not be filed; however, the change of address of the principal place of business must be submitted in writing to the secretary of state without a filing fee.
8. The secretary of state may revoke the registration of a domestic or foreign real estate investment trust for failure to maintain a registered office or a registered agent as required by this chapter and chapter 10-01.1. Before revoking the registration, the secretary of state shall give not less than sixty days' notice by mail addressed to the last registered agent at the last registered office, or to the principal office of record of a foreign real estate investment trust of the deficiency.

#### **10-34-05. Renewal of registration.**

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

#### **10-34-06. Service of process on real estate investment trust and nonresident trustees.**

Any process, notice, or demand required or permitted by law to be served on the real estate investment trust or trustee may be served on the real estate investment trust and any nonresident trustee as provided in section 10-01.1-13.

#### **10-34-07. Powers.**

A real estate investment trust has the power to:

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

**10-34-08. Restrictions on investments and use - Ownership of farmland prohibited.**

1. A real estate trust shall hold at least seventy-five percent of the value of its assets in real estate assets, government securities, cash, and cash items, including receivables.
2. A real estate investment trust, whether domestic or foreign, may not own, use, or apply land within this state for farming or ranching as defined in section 10-06.1-01. A violation of this subsection is deemed a violation of chapter 10-06.1. A real estate investment trust is subject to chapter 10-06.1.

**10-34-09. Fees.**

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

1. Filing a registration of a real estate investment trust, one hundred ten dollars.
2. Filing any amendment changing the registered agent or registered office, the fee provided in section 10-01.1-03.
3. Filing a renewal or amendment of registration of a real estate investment trust, forty dollars.
4. Issuing a certificate of good standing, fifteen dollars.
5. Furnishing a certified copy of any record, instrument, or paper relating to a real estate investment trust, the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal thereto.