

CommonWealth REIT
Form DFAN14A
March 07, 2014

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

**Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934**

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Check the appropriate box:

Preliminary Proxy Statement

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Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

COMMONWEALTH REIT

(Name of the Registrant as Specified In Its Charter)

CORVEX MANAGEMENT LP

KEITH MEISTER

RELATED FUND MANAGEMENT, LLC

RELATED REAL ESTATE RECOVERY FUND GP-A, LLC

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RELATED REAL ESTATE RECOVERY FUND GP, L.P.

RELATED REAL ESTATE RECOVERY FUND, L.P.

RRERF ACQUISITION, LLC

JEFF T. BLAU

RICHARD O TOOLE

DAVID R. JOHNSON

JAMES CORL

EDWARD GLICKMAN

PETER LINNEMAN

JIM LOZIER

KENNETH SHEA

EGI-CW HOLDINGS, L.L.C.

DAVID HELFAND

SAMUEL ZELL

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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(5) Total fee paid:

.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

The Portnoys Unsuccessfully Try To Change Maryland Law
A
Case
Study
On
The
Portnoys
True
Intentions

And
The
Pernicious
Effects Of External Management

2

Introduction

One of the most outrageous tactics the Portnoys employed to preserve their fee stream was a clandestine lobbying effort to amend a Maryland statute during the 2013 legislative session

The effort was intended to permanently eliminate the ability of shareholders to remove CommonWealth trustees without cause by a two-thirds vote and was spearheaded by Barry Portnoy, who hired lobbying firms and visited with selected legislators without any public

disclosure to Commonwealth shareholders

We believe this is a quintessential example of the fundamental conflict of interest plaguing CWH:

Why was an external service provider who holds virtually no shares in CWH actively lobbying the government to short-circuit the Company's 28-year charter and strip the only right shareholders have to hold this Board accountable?

Why has there been no disclosure regarding the amount of shareholder funds spent by CWH to eliminate a key right of its own shareholders?

Why has there been no disclosure regarding who authorized RMR to undertake these actions and which lobbying firms have been retained?

Equally appalling was the manner in which the Portnoys attempted to change the law: by grossly mischaracterizing their proposal as a mere clarification of

existing
Maryland
law
and
quietly
inserting the proposal at the 11
hour of the legislative session

Why did the Portnoys attempt to railroad their proposal through the Assembly at the last minute rather than process it through the Assembly's standard, open legislative process?

Had we not been fortunate enough to hear from an assembly staffer on the day prior to the last minute hearing, shareholders would have never been able to present their case regarding the clarification
th

3
Commonwealth s
Charter
Always
Allowed
Removal
Of
Trustees
Without

Cause

Since
Commonwealth's
IPO
in
1986,
its
charter
has
unambiguously
stated
that
trustees
of
the
Company
can
be
removed
by
shareholders
without
cause
with
the
affirmative
vote
of
holders
of
2/3
of
the
outstanding
shares

This
fact
had
been
consistently
reflected
in
Commonwealth's
public
filings
with
the
Securities

and
Exchange
Commission
for
almost
three
decades
(1)
Prospectus
Supplement
filed
by
Commonwealth
REIT,
dated
February
27,
2013
(See
Appendix
A)
(2)
S-3
Registration
Statement
filed
by
Commonwealth
REIT
(HRPT
Properties
Trust
at
that
time)
on
April
7,
2004
(See
Appendix
B)

4

On
April
4,
2013,
it
first
came

to
our
attention
that
Barry
Portnoy
and
RMR
had
hired
a
lobbying
firm in Annapolis, and had secretly been lobbying selected members of the Maryland General
Assembly
to
introduce
a
last
minute
change
to
a
pending
Senate
Bill
to
amend
various
provisions
of
the
Maryland
corporate
code

The proposed amendment, if approved, would have enabled Barry Portnoy and his beholden
Trustees
to
unilaterally
remove
the
without
cause
removal
provision
from
the
charter,
eliminating
the

right
of
Commonwealth shareholders to remove the Board with an affirmative
2/3
vote

Effectively,
the
Portnoys
were
attempting
to
rewrite
the
charter
to
finally
cement
their
control
over
Commonwealth
for
good

Barry
Portnoy,
with
the
assistance
of
Commonwealth's conflicted Maryland counsel, grossly
mischaracterized
the
amendment
as
a
clarification
of
existing
law

Appendix
C
contains
a
copy
of
the
letter

submitted
by
RMR
itself
to
the
Maryland
Senate
Judicial
Proceedings
Committee
If
a
critical
shareholder
right
could
be
unilaterally
wiped
from
the
charter
by
the
Board,
why
was
this
highly material governance risk never disclosed in
SEC filings?
The
Portnoys
Legislative
Clarification

5

A
hearing
was
held
by
the
Senate

Judicial
Proceedings
Committee
on
the
Portnoy
amendment
on
April
5,
2013,
one
day
after
we
first
learned
of
RMR's
lobbying
efforts
The
Portnoys
Legislative
Clarification

6
Maryland
Senators
Saw
Through
The
Portnoys
Clarification

At
the
hearing
a
number
of
Senators
recognized
the
RMR-sponsored
amendment
for
what
it
was:
a
substantive
change
in
Maryland
law,
not
a
clarification
(1)
Judicial
Proceedings
Committee
of
the
Senate
of
the
Maryland
General
Assembly
on
April
5,
2013
Senator
Christopher
B.
Shank:
We
do
clean-up
bills
all
the

time.
We've
had
several
bills
dealing
with,
you
know,
dotting
some
T's
and

or
dotting
some
I's
and
crossing
some
T's,
it
happens
all
the
time.
But
I
keep
hearing
clarification
from
the
proponents
here.
This
bill
originally
passed
in
1999.
It's
now
2013.
It
seems
to
me
if

you
clarify
something,
you
do
it,
oh,
hey,
we
forgot
about
this,
we
probably
ought
to
do
it
a
year
later.
What
we re
really
talking
about
here
is
it
goes
beyond
clarification,
it
is
addressing
what
is
a
contemporary
situation
and
possibly
circumventing
a
court s
jurisdiction
on
it.
And
if

we
need
to
do
that,
and
I m
open
to
that
idea,
that
we
need
to
do
it,
but
I
think
this
goes
well
beyond
a
clarification
(1)
Chairman
Brian
E.
Frosh:
...
Well,
I
mean
the
reasons
we
are
having
a
hearing
is
because
we
know
it
is
a
substantive

change
in
the
law
and
we
want
to
get
the
two
different
sides
on
that...
(1)
Senator
Jamin
B.
(Jamie)
Raskin:
...I
mean
I
certainly
agree
it
is
a
substantive
change
they
are
looking
for
without
it
necessarily
being
a
complete
reversal.
(1)

7
The
Portnoy
Amendment
Was
Not
Approved

Shareholder

Rights
Are
Preserved
The
Maryland
Senate
Judicial
Proceedings
Committee
did
not
approve
the
Portnoy
amendment
and
the
Maryland
corporate
statute
was
not
amended

8
Despite Their Defeat In The Senate, The Portnoys Weren't
Done Distorting The Truth

Despite
their
legislative
defeat,

on
April
12,
2013,
Commonwealth
opted-in
anyway
to
Section
3-803
of
the
Maryland
Unsolicited
Takeovers
Act

the
same
statute
that
they
had just failed to clarify

In
Commonwealth's
view,
opting-in
eliminated
the
right
of
Commonwealth
shareholders to remove the Trustees without cause

But
if
this
were
true,
why
did
Commonwealth
lobby
the
legislature
to
clarify
the
law and why did this attempt fail?

The Portnoys

newly found interpretation of Section 3-803 was in our view preposterous

especially in light of decades of public disclosure by Commonwealth (which nowhere discussed Section 3-803) and the fact that the Portnoys

clarifying
amendment had just
been defeated at the legislative level

In
fact,
in
its
November
2013
ruling,
the
Arbitration
Panel
agreed
with
us:

According to CWH's Declaration of Trust, the Trustees can be removed at any
time
with
or
without
cause
by
two-thirds
of
the
shareholders.

The
Panel
concludes that CWH's election to opt into Section
3-803 of MUTA does not alter
the CWH shareholders
explicit ability under the Declaration of Trust to remove
Trustees without cause.

9
Inescapable
Conclusions
Regarding
The
Portnoys
True
Intentions
The Portnoys

intentions
are
revealed
in
their
actions,
not
in
their
promises
or
what
is
written
in
their
governing
documents

In
attempting
to
change
the
law
in
order
to
short-circuit
the
Company's
charter
and
avoid
subjecting
themselves
to
accountability,
the
Portnoys
have
demonstrated
they
are
not
the
typical
self-interested
market
participant

The
Portnoys
extraordinary
undertaking
in
Maryland
provides
perhaps
the
clearest
evidence
possible
of
both
their
true
intentions
as
well
as
the
pernicious effects
of
the
conflicted
external
management
structure
at
CWH

No
party
whose
interests
were
truly
aligned
with
that
of
shareholders
would
have
sponsored
secret
legislation
to
eviscerate

shareholder
rights

If
the
Portnoys
could

so
brazenly
break

a
promise
written

in
the
Company's charter

for
28
years,

how
easy
will

it
be
to

break
promises
made

a
mere
3

months ago?

Nothing stops the Portnoys and RMR from sponsoring a new legislative
clarification
in 2015

Appendices
Appendix
A:
CWH
Prospectus
Supplement,
Dated
February
27,

2013
Appendix
B:
CWH
S-3
Registration
Statement,
Dated
April
7,
2004
Appendix
C:
Letter
From
RMR
To
Maryland
Senate
Judicial
Proceedings
Committee
10

11
Appendix
A:
CWH
Prospectus
Supplement
Dated
February
27,

2013

12
Appendix
B:
CWH
S-3
Registration
Statement
Dated
April

7,
2004

13
Appendix
C:
Letter
From
RMR
To
Maryland
Senate

Judicial
Proceedings
Committee

14
Appendix
C:
Letter
From
RMR
To
Maryland
Senate

Judicial
Proceedings
Committee

15
Appendix
C:
Letter
From
RMR
To
Maryland
Senate

Judicial
Proceedings
Committee

Additional
Information
Regarding
The
Corvex/Related
Solicitation
16
Corvex
Management

LP
and
Related
Fund
Management,
LLC
have
filed
a
definitive
solicitation
statement
with
the
Securities
and
Exchange
Commission
(the
SEC)
to
(1)
solicit
consents
to
remove
the
entire
board
of
trustees
of
Commonwealth
REIT
(the
Removal
Proposal),
and
(2)
elect
a
slate
of
new
trustees
at
a
special
meeting
of

shareholders
that
must
be
promptly
called
in
the
event
that
the
Removal
Proposal
is
successful.
Investors
and
security
holders
are
urged
to
read
the
definitive
solicitation
statement
and
other
relevant
documents
because
they
contain
important
information
regarding
the
solicitation.
The
definitive
solicitation
statement
and
all
other
relevant
documents
are
available,

free
of
charge,
on
the
SEC's
website
at
www.sec.gov.
The
following
persons
are
participants
in
connection
with
the
solicitation
of
Commonwealth
REIT
shareholders:
Corvex
Management
LP,
Keith
Meister,
Related
Fund
Management,
LLC,
Related
Real
Estate
Recovery
Fund
GP-A,
LLC,
Related
Real
Estate
Recovery
Fund
GP,
L.P.,
Related
Real
Estate
Recovery

Fund,
L.P.,
RRERF
Acquisition,
LLC,
Jeff
T.
Blau,
Richard
O Toole,
David
R.
Johnson,
James
Corl,
Edward
Glickman,
Peter
Linneman,
Jim
Lozier,
Kenneth
Shea,
EGI-CW
Holdings,
L.L.C.,
David
Helfand
and
Samuel
Zell.
Information
regarding
the
participants
in
the
solicitation
and
a
description
of
their
direct
and
indirect
interests,
by
security
holdings

or
otherwise,
to
the
extent
applicable,
is
available
in
the
definitive
solicitation
statement
filed
with
the
SEC
on
January
28,
2014
and
Supplement
No.
1
thereto
filed
on
February
13,
2014.