

HUNTON

Real Estate Capital Markets Report

Spring 2026

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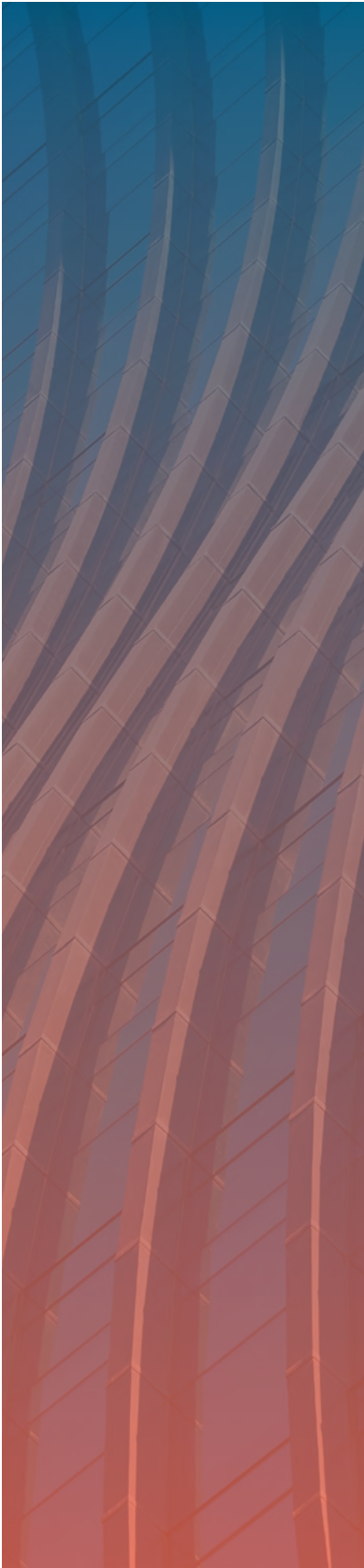
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We are excited to share with you some highlights of our Real Estate Capital Markets team from the latter part of 2025 and the first quarter of 2026. During this period, there was a noticeable uptick in activity, although that has stalled some as markets grappled with geopolitical uncertainty. That said, we observed that larger, more sophisticated transactions continued forward even if regular-way capital raises slowed. We continue to represent REITs and other real estate companies seeking to raise capital through strategic joint ventures and other fund structures, M&A transactions, and strategic investments. As discussed below, we have been busy on a number of fronts.

We recently represented Guidance Short-Term Income Trust, a Maryland REIT, in connection with its initial equity offering of common shares. The transaction marks the launch of the REIT's first capital raise to support its investment strategy of investing in a diversified portfolio of newly originated, Shariah-compliant home finance assets (Finance Assets) in the US. The complex offering, which is believed to be the first private offering of Finance Assets by a REIT, is a further example of Hunton's ability to advise on unique structures by leveraging its multidisciplinary REIT platform (See "Deal Spotlight" beginning on [page 3](#) for more information). We are engaged on two large, unique transactions that we hope will be announced in the coming months. The first is the acquisition of a private real estate company focused on commercial properties by a public REIT. The deal has a unique structure that we believe will be of interest to others in the space. The second is the internalization of a public REIT that, likewise, has unique structural considerations. We look forward to providing more information later in 2026. Finally, this time of year finds our practice busy with annual reports, proxy statements, and related governance considerations.

As our readers know, we lead on all topics of importance to REITs. In "Our Thought Leadership" column beginning on [page 5](#), we highlight an important case law development under Maryland law relevant to REITs. In that case, a Maryland state court denied a motion to dismiss claims for breach of fiduciary duty asserted by preferred stockholders against the directors of a Maryland REIT following a merger. The decision may raise questions about how to balance potentially competing interests of preferred and common stockholders in M&A transactions under Maryland law. The decision also raises broader questions as to how Maryland courts may interpret statutory amendments adopted in 2016 that were intended to limit stockholder litigation in M&A transactions. We have already fielded a number of questions related to this case in "live" deal settings, so we encourage you to review the column and reach out with questions.

We are also pleased to announce that one of our team members, Tianlu Zhang, was promoted to Counsel in February 2026 (See "Team Member Spotlight" on [page 4](#)). Tianlu centers her practice on helping REITs and other public companies navigate complex corporate securities matters, as well as general SEC reporting and compliance. She also advises clients on a wide range of capital markets transactions. We are thrilled to see Tianlu's efforts recognized.

Finally, we were happy to recently see so many of our clients, colleagues, and friends at REITwise 2026 in Hollywood, Florida. Once again, Hunton was a proud sponsor of REITwise. We appreciate the opportunity to partner with you and look forward to working with you for the remainder of 2026.

Deal Spotlight: Hunton Advises on Complex REIT Capital Raise by Guidance Short-Term Income Trust

Hunton Andrews Kurth LLP represented Guidance Short-Term Income Trust (GSTIT), a Maryland REIT, in connection with its initial equity offering through a private placement of its common shares of beneficial interest. The transaction marks the launch of the REIT's first capital raise to support its investment strategy of investing in a diversified portfolio of newly originated, Shariah-compliant home finance assets (Finance Assets) in the US. The complex offering, which is believed to be the first private offering of Finance Assets by a REIT, is a further example of Hunton's ability to advise on unique structures by leveraging its multidisciplinary REIT platform.

GSTIT is a newly formed REIT that intends to acquire substantially all of its Finance Assets from its affiliate, Guidance Residential, LLC. Guidance Residential is one of the leading firms that specializes in Shariah-compliant home financing in the US. Guidance Residential is focused on ethical home finance for the Muslim

community and has pioneered a unique "Declining Balance Co-ownership Program" to create Shariah-compliant access to financing home ownership under the guidance of seven globally renowned Shariah scholars. The resulting Finance Assets are eligible for sale to a government-sponsored enterprise, such as Freddie Mac or Fannie Mae. GSTIT invests in the Finance Assets in accordance with a Shariah-compliant structure and strategy certified by the board of Shariah scholars.

The multi-disciplinary Hunton team working on this complex transaction was led by Hunton partners **Rob Smith** and **Mayme Donohue**. Other team members included partners **Kendal Sibley** and **Leslie Okinaka** and counsel **Joshua Milgrom** for tax; partner **Amy Williams** and counsel **Erick Carlson** for 1940 Act matters; associates **Josh Van Kirck**, **Tianlu Zhang**, **Alexander Abramenko**, and **Claire Andress** for real estate capital markets; and partner **Jason Harbour** for restructuring.

Team Member Spotlight: Tianlu Zhang

We are pleased to announce that Tianlu was promoted to Counsel in February 2026. She centers her practice on helping REITs and other public companies navigate complex corporate securities matters, as well as general SEC reporting and compliance. She also advises clients on a wide range of capital markets transactions, including public offerings, private placements, and various types of debt issuances.

Prior to joining Hunton, Tianlu practiced in the US practice group of an international firm in Hong Kong. Tianlu received her BA from the University of Hong Kong and her JD from Georgetown University Law Center, *cum laude*.

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Tianlu’s command of corporate and securities laws and institutional knowledge of the REIT space creates value by identifying issues before they become problems or distractions for our clients. She utilizes her technical skills to help clients navigate challenging scenarios, with a goal to provide a solution that is both compliant and commercially desirable.

Our Thought Leadership (In Case You Missed It)

Maryland Court Allows Preferred Stockholder Claims Against REIT Directors to Proceed

by [Robert Smith](#), [Steven Haas](#), and [Johnathan Schronce](#)

We first published this article on February 3, 2026.

A Maryland state court recently denied a motion to dismiss claims for breach of fiduciary duty asserted by preferred stockholders against the directors of a Maryland real estate investment trust following a merger. The decision may raise questions about how to balance potentially competing interests of preferred and common stockholders in M&A transactions under Maryland law. The decision also raises broader questions as to how Maryland courts may interpret statutory amendments adopted in 2016 that were intended to limit stockholder litigation M&A transactions.

Background

Aquino v. Schanzer was one of multiple stockholder lawsuits arising from the merger of Cedar Property Trust, Inc. (Cedar), a publicly traded Maryland corporation and real estate investment trust.¹ At the time of the transaction, Cedar had two series of preferred stock outstanding in addition to common stock. The Articles Supplementary for both series of preferred stock provided for preferred dividends, a liquidation preference, and a conversion right upon a "Change in Control," but contained no mandatory put right for preferred stockholders.

The transaction proceeded in two phases. First, Cedar's board of directors agreed to sell a portfolio of properties to a third party for approximately \$940 million in cash. Second, the board agreed to a merger with Wheeler Real Estate Investment Trust, Inc. (Wheeler), with Cedar surviving as a wholly owned subsidiary of Wheeler. Although Cedar's common stockholders ultimately received

approximately \$29 per share in cash, Cedar's preferred stock remained outstanding and publicly listed. And although preferred stockholders continued to receive their preferred dividend, the shares' value allegedly fell by two-thirds, prompting Wheeler to launch a program to repurchase the preferred stock at a substantial discount.

The Fourth Circuit's Decision

Cedar preferred stockholders sued Cedar and its directors in the Maryland federal court asserting claims for breach of contract and breach of fiduciary duty against Cedar and its directors and tortious interference and aiding and abetting breaches of fiduciary duty against Wheeler.² The district court denied plaintiffs' motion to preliminary enjoin the transactions, and later granted defendants' motions to dismiss.



The US Court of Appeals for the Fourth Circuit affirmed. According to the Fourth Circuit, plaintiffs' breach of contract argument failed because the acquisition did not constitute a "Change of Control" as defined in the Articles Supplementary. Rather, a "Change of Control" only occurred when both Cedar and the "acquiring or surviving corporation" lacked any publicly traded common stock, which was not the case because Wheeler common stock remained publicly traded. The Fourth Circuit also affirmed the dismissal of the fiduciary duty claims. Although stating that Cedar's directors owed fiduciary duties to both common and preferred stockholders under Md. Code, Corps. & Ass'ns § 2-405.1, the court invoked longstanding Maryland and Delaware law holding that "when preferred stockholders invoke their preferential rights, officers and directors do not owe them any fiduciary duties at all, for those rights are purely contractual."³ And because the underlying contract and fiduciary duty claims failed, the tortious interference and aiding and abetting claims against Wheeler necessarily failed as well.⁴

The Aquino Ruling

Other Cedar preferred stockholders filed a separate action against Cedar's former directors in Maryland state court asserting a claim for breach of fiduciary duty. Eschewing a breach of contract claim based on the Articles Supplementary, the plaintiffs instead alleged that Cedar's board impermissibly structured the acquisition to circumvent the preferred stockholders' liquidation and conversion rights, and the board knew that the acquisition would cause the value of preferred stock to fall dramatically. According to the plaintiffs, the board was conflicted and acted in bad faith because the directors stood to benefit from the cash payout for their common stock, as well as accelerated vesting of their restricted common stock and change-in-control payments.

The circuit court denied defendants' motion to dismiss. The court heavily emphasized amendments to Maryland's Corporations & Associations article in 2016, which were intended to overturn in part the Maryland Supreme Court's decision in *Shenker v. Laureate Education, Inc.*⁵ *Shenker* held that in the context of a cash-out merger, directors of Maryland corporations owe common law fiduciary duties to stockholders, and those duties require directors to maximize stockholder value—a holding that effectively adopted Delaware's *Revlon* doctrine.⁶ In response, Maryland's General Assembly amended Section 2-405.1 of the Corporation & Associations article to clarify that the duties owed to stockholders are defined solely by statute.⁷

The *Aquino* court construed this amendment broadly, although perhaps not as the legislature intended. According to the circuit court, as a result of the amendment, "[c]ommon law or judge-made rules, whether derived from pre-October 2016 Maryland common-law based decisions, or borrowed from Delaware common law, do not supply the standards of conduct of Maryland corporate directors."⁸ The court therefore "disagree[d]" with Kim because "the Fourth Circuit relied upon Delaware common law, seeming to disregard the fact that the General Assembly made clear in 2016 that in Maryland, directorial duties are solely statutory."⁹ Rather, the plaintiffs "alleged a breach of the statutory standards of conduct"—as opposed to the preferential rights defined by contract in the Articles Supplementary—"and that they have suffered harm as a result."¹⁰ And because the complaint alleged that Cedar's directors "intentionally structured the complex series of transactions in this case... to maximize the payout to the common stockholders (including \$23.1 million to themselves)" and "to pay the

preferred stockholders nothing,” the circuit court held that the plaintiffs adequately alleged bad faith sufficient to overcome the exculpation clause in Cedar’s charter, and with it the motion to dismiss.¹¹

Takeaways

Aquino creates uncertainty over the scope of fiduciary duties owed to preferred stockholders. Both *Kim* and *Aquino* acknowledged that directors owe fiduciary duties to preferred stockholders, but likewise acknowledged a degree of uncertainty over the scope of those duties.¹² In *Kim*, the Fourth Circuit followed existing Maryland and Delaware case law distinguishing between the contractual and fiduciary duties owed to preferred stockholders, ultimately concluding that “a board does not owe fiduciary duties to preferred stockholders when considering whether or not to take corporate action that might trigger or circumvent the preferred stockholders’ contractual rights.”¹³ The *Aquino* court rejected reliance on that case law, finding that the statutory duty to act in good faith ran to preferred stockholders and formed the basis of their claims. *Aquino* therefore opens the door to fiduciary duty claims by preferred stockholders “when the rights of common and preferred stockholders are not fully aligned, and the board enters into a series of transactions that benefits only the common stockholders and harms the preferred stockholders.”¹⁴

The court’s rationale raises significant questions about how a board is to weigh the interests of competing classes of stock in a merger. Generally, preferred stockholders’ rights are contractual and set forth in the corporation’s organizational documents. In our experience, it is typical for preferred shares to remain outstanding in public company REIT mergers, and change of control redemption rights over the type at issue in this case are relatively common among Maryland REITs. Preferred stockholders can also protect themselves by seeking put rights triggered by changes of control. Cashing out preferred stockholders may result in less merger consideration for common stockholders. Moreover, there may be preferred stockholders who prefer to continue to receive dividends instead of being redeemed. Maryland courts would be well served to clarify how boards should view these situations and address the tension between two or more classes or series of stock.

Aquino opens the door to renewed stockholder litigation despite the post-Shenker statutory amendments. As the circuit court acknowledged, *Shenker* gave rise to “concern[] that the Supreme Court had misconstrued the statute and had introduced uncertainty in Maryland corporate law.”¹⁵ The amendments that Maryland’s General Assembly adopted in 2016 overturned *Shenker*, at least to the extent it recognized common-law fiduciary duties and adopted Delaware’s *Revlon* doctrine, and thus limited stockholder litigation against the directors of Maryland corporations. But by suggesting that the amendments abrogated all preexisting Maryland and Delaware case law, the *Aquino* court may have opened the door to novel theories that would have been foreclosed under that case law, including the theory of liability advanced by the preferred stockholder plaintiffs.

Aquino suggests a further break with Delaware law. Historically, Maryland courts have borrowed liberally from Delaware corporate law in the absence of controlling Maryland authority. The *Aquino* court, however, took the view “that the General Assembly in October 2016 ended reliance on Delaware common law (or pre-amendment Maryland common law) to define the duties owed by directors of a Maryland corporation or to determine when those duties do, or do not, apply.”¹⁶ Other Maryland decisions have not gone so far, and it remains to be seen whether a Maryland appellate court would do so.

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| <p>1 No. C-15-CV-25-731, MDBT 1-2026 (Jan. 2, 2026).</p> <p>2 <i>Kim v. Cedar Realty Trust</i>, Civil Action No. GLR-22-1103, 2023 WL 4896635 (D. Md. Aug. 1, 2023), <i>aff'd</i>, 116 F.4th 252 (4th Cir. 2024).</p> <p>3 <i>Kim</i>, 116 F.4th at 267 (internal citation omitted).</p> <p>4 <i>Id.</i> at 268.</p> <p>5 411 Md. 317 (2009). The Maryland Supreme Court was known as the Maryland Court of Appeals when <i>Shenker</i> was decided.</p> <p>6 See <i>Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.</i>, 506 A.2d 173 (Del. 1986).</p> <p>7 See <i>Md. Code, Corps. & Ass'ns</i> § 2-405.1(h) (“An act of a director of a corporation relating to or affecting an acquisition or a potential acquisition of control of the corporation or any other transaction or potential transaction involving the corporation may not be subject to a higher duty or greater scrutiny than is applied to any other act of a director.”); (i)(1) (“This section [i]s the sole source of duties of a director to the corporation or the stockholders of the corporation, whether or not a decision has been made to enter into an acquisition or a potential acquisition of control of the corporation or enter into any other transaction involving the corporation.”).</p> | <p>8 <i>Aquino</i>, slip op. at 3.</p> <p>9 <i>Id.</i> at 15.</p> <p>10 <i>Id.</i> at 17.</p> <p>11 <i>Id.</i> at 19.</p> <p>12 <i>Kim</i>, 116 F. 4th at 267 (“In general, directors owe fiduciary duties to both common and preferred stockholders. Yet precisely when these duties kick in is a bit more complicated.”); <i>Aquino</i>, slip op. at 13 (“Maryland case law on the rights of preferred stockholders in this scenario is sparse.”).</p> <p>13 <i>Kim</i>, 116 F.4th at 267.</p> <p>14 See <i>Aquino</i>, slip op. at 12.</p> <p>15 <i>Id.</i> at 2.</p> <p>16 <i>Id.</i> at 16.</p> |
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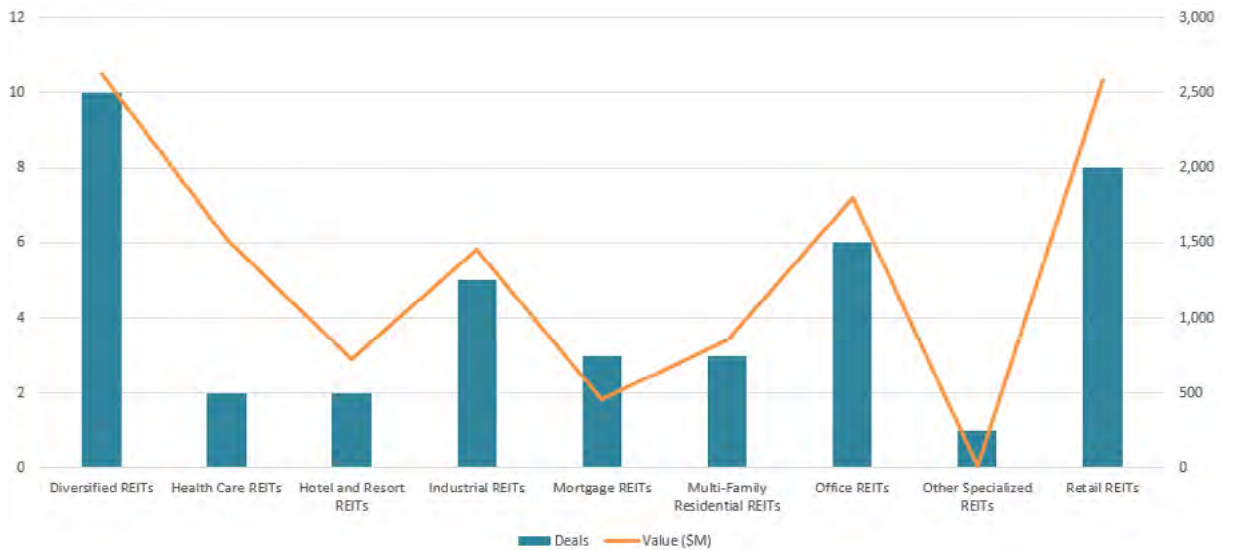


Market Data

Top Six REIT Sectors in Terms of Capital Markets Deal Volume (Q1 2026)



REIT Capital Market Transactions—Q1 2026 Deal Counts and Deal Value by Sector



Source: S&P Capital IQ Pro

Contact Us

About Us

Hunton consistently ranks as one of the most experienced law firms with respect to real estate capital markets transactions, representing issuers, underwriters, sponsors, and lenders in connection with structuring and financing publicly and privately owned real estate companies, including in particular real estate investment trusts (REITs). The firm regularly receives top-tier national rankings for its work as both issuer's and underwriters' counsel in *Chambers USA*, *Legal 500*, *Bloomberg*, and *Refinitiv*.

Hunton has extensive experience in taking real estate companies public, both as REITs and as C corporations, and in subsequent financing transactions. We have handled approximately 155 IPOs and Rule 144A equity offerings and more than 1,100 capital markets transactions involving more than 215 REITs and other real estate companies. In the course of those and other engagements, we have worked closely with the leading investment banking firms, accounting firms, and other professionals active in the real estate finance industry. As a result, our Real Estate Capital Markets practice group is particularly well-qualified to assist companies accessing the public capital markets as well as private capital sources.

