

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**

Filed by the Registrant

Filed by a Party other than the Registrant

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  
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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](http://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.