

LOUISIANA ASSOCIATION OF DEFENSE COUNSEL

BY-LAWS

Amended August 2020

ARTICLE I NAME

The name of this organization is "Louisiana Association of Defense Counsel" ("Association"). It may be abbreviated "LADC".

ARTICLE II PURPOSE

- Section 1. **Purpose.** The purpose of this Association is to bring together by association, communication and organization, lawyers who devote a substantial amount of their professional time to the handling of civil litigation and whose representation in such cases is primarily for the defense; to provide for the exchange among the members of this Association of such information, ideas, techniques of procedure and court rulings relating to the handling of litigation as are calculated to enhance the knowledge and improve the skills of defense lawyers; to elevate the standards of pre-trial and trial practice in this area and, in conjunction with similar associations in other areas, to develop, establish and secure court adoption or approval of a high-standard code of trial conduct and courtroom manners; to support and work for the improvement of the adversary system of justice in our courts; to work for the elimination of court congestion and delays in civil litigation; and in general to promote improvements in the administration of justice and to increase the quantity and quality of service and contribution which the legal profession renders to the community, state and nation.
- Section 2. **Non-Profit Operation.** The Association shall never be operated for the primary purpose of carrying on a trade or business for profit.
- Section 3. **Proscribed Activities.** At no time shall the Association knowingly engage in any activities that are unlawful under the laws of the State of Louisiana, the United States of America or of any other jurisdiction where its activities are conducted, or violate, whenever or wherever applicable to any activity of the Association, any code of professional responsibility adopted by the Supreme Court of Louisiana.
- Section 4. **Compensation.** No compensation, loan, or other payment shall be paid to any officer, director, or member of the Association except as a reasonable reimbursement or allowance for authorized expenditures incurred individually or on behalf of the Association; and no part of the assets or earnings, current or accumulated, of the Association shall be distributed to, or divided among, such persons, or inure, be used for, or accrue to or benefit any such person, except as provided elsewhere herein.

ARTICLE III

MEMBERSHIP

- Section 1. **Board Authority.** The Board of Directors of this Association (“Board”) shall be responsible for all aspects of the governance of the Association and for its management and its continuity. The Board shall be the sole decision maker of the qualifications for membership.
- Section 2. **Classes of Members.** Members may be nominated, and may maintain qualification in four (5) classes of membership in this Association:
- (a) **Attorney Members.** Attorney Members shall be admitted to the Bar of the State of Louisiana, or otherwise permitted by rule of the Louisiana Supreme Court to practice law in this state on other than a *pro hac vice* basis, devote substantial professional time to civil litigation and shall primarily represent the defense.
 - (b) **Honorary Members.** Honorary Members shall include (1) full-time judges in the State of Louisiana, (2) judges who have retired as judges and are not in active practice, (3) full time members of the faculty of a Louisiana law school, and (4) those individuals not otherwise eligible for membership who have demonstrated great interest in and support for the Association and its goals. Honorary Members shall not pay dues.
 - (c) **Emeritus Members.** Attorneys or Judges who (1) are 65 years of age or more, (2) are no longer engaged in the active practice of law, and (3) were members in good standing in the LADC in the preceding ten years before applying for emeritus status. Emeritus Members shall not pay dues.
 - (d) **Student Members.** Students enrolled at a law school in Louisiana may be Student Members. Student members shall have the rights and privileges conferred by the Board of Directors.
 - (e) **Government Members.** Attorneys employed by the Federal or a State Government may be Government Members
- Section 3. **Voting Rights.** Only Attorney and Government Members shall have voting rights or be entitled to hold office in the Association; Emeritus, Honorary, and Student Members shall be non-voting members, and are not eligible to hold office.
- Section 4. **Applications for Membership.** Applications for membership shall be first referred to Secretary-Treasurer, who shall promptly forward the applications to the Membership Committee for consideration and report. The Membership Committee shall determine the eligibility for membership of the applicant and shall report its findings and recommendations to the Secretary-Treasurer within seven days after it receives the applications from the Secretary-Treasurer. An applicant may be rejected for any valid reason. The Secretary-Treasurer, upon receipt of

the report of the Membership Committee, shall circulate the report to the Board. If no written objection is received from any member of the Board within seven days following notice, the applicant shall be deemed elected to membership. If written objection is received during that period, the application shall be presented to the Board and the Board, by majority vote, may elect or reject the applicant. If no meeting of the Board is held within thirty (30) days of receipt of written objection, or if for any reason no action is taken on the application within such thirty (30) day period, the Executive Committee shall, by majority vote, elect or reject the applicant.

Section 5. **Acceptance and Vesting of Membership.** The Secretary/Treasurer shall provide a copy of these bylaws to each applicant/nominee whom the Membership Committee, Board or Executive Committee accepts for membership. Upon the nominee's acceptance of invitation to membership and the payment of the required annual dues (where applicable), such nominee shall be vested with all the rights, privileges and prerogatives of membership in this Association. The nominee's acceptance of membership in this Association shall be deemed an acknowledgment by the nominee of his or her assent to the purposes of this Association and of his or her intended compliance with all of the provisions of these by-laws.

Section 6. **Continuation of Eligibility for Membership.** Each member shall, as a condition of his or her membership renewal, annually certify his or her continued compliance with the eligibility requirements set forth in Article III, Section 2. A member's payment of dues shall constitute a certification of the member's continued compliance with the requisites for membership in the Association, provided that the Association does not possess objective evidence of the member's change in practice, employment pursuits or associations which casts doubt upon his or her eligibility for membership in the Association.

Section 8. **Duty to Report.** Once admitted to membership, each member shall have a continuing duty to promptly report to the Secretary any change in the member's status, practice, business pursuit, or association which would affect the member's continued eligibility for membership.

ARTICLE IV DUES, FEES AND ASSESSMENTS

Section 1. **Annual Dues and Assessments.** Annual dues and assessments shall be charged only to Attorney and Government Members.

Section 2. **Timing of Dues.** The annual dues shall be fixed by the Board, and shall be payable at the time of admission to membership, and thereafter shall be due and payable on or before the first (1st) day of January. If annual dues are not paid within ninety days of the first day of January, a late fee in an amount fixed by the Board may be assessed.

Section 3. **Fiscal Year.** The fiscal year of this Association shall be July 1 to June 30.

**ARTICLE V
BOARD OF DIRECTORS**

- Section 1. **Board Districts.** For purposes of election of members to the Board, the Association shall be composed of five districts coterminous with the geographical boundaries of the appellate circuits of the state courts of Louisiana. The Board shall consist of six (6) members from District 1, five (5) members from District 2, six (6) members from Districts 3, eight (8) members from District 4, and five (5) members from District 5.
- Section 2. **At Large Members of the Board.** In addition to the thirty (30) Board members elected from the five districts, up to five (5) at-large Directors may be appointed by the President and confirmed by the Board.
- Section 3. **Terms of Office.** The term of Board members shall be three years.
- Section 4. **Officers as Members of the Board.** The President, President-Elect, Immediate Past President, Vice-Presidents, the Secretary, the Treasurer, and the representative of the Young Lawyers Committee shall be ex-officio voting members of the Board, and each said officer shall be entitled to vote with the Board of Directors at all regular and special meetings thereof, either in person or through written proxy.
- Section 5. **Ex-Officio Members.** The Louisiana representative to the DRI shall be an ex-officio non-voting member of the Board of Directors.
- Section 6. **Vacancies on the Board.** When a vacancy occurs on the Board due to resignation or otherwise, the most recently-appointed Nominating Committee shall nominate a candidate to replace the Director and complete that Director's remaining term. The nominee must represent the same district as the Director whom he or she replaces. The Secretary-Treasurer shall send to the membership by mail or email a ballot with the nominee and an option to write in a candidate. The membership shall have at least fifteen (15) days from the date of transmission of the ballot to vote.
- Section 7. **Meetings of the Board.** The Board shall meet at least three times per fiscal year. Special Meetings of the Board may be called by the President or the Executive Committee whenever the President or the Executive Committee deems the same necessary or advisable. Notice of any regular or special meeting of the Board shall be sent to the Board members not less than fourteen (14) days in advance of such meeting. Notice may be sent electronically.
- Section 8. **Quorum.** A majority of voting Board members shall constitute a quorum at any meeting of the Board. Members participating by telephone or electronic means shall count toward a quorum. A majority of the members present and voting shall be necessary for the adoption of any matter voted upon. A Director may vote by written proxy at any meeting of the Board. If there is not a quorum for a meeting of the Board, an action item may be

presented and discussed at the meeting. After the matter is presented at the meeting, it may be submitted to the Board via e-mail for a vote. Board members shall have at least seven (7) days and no longer than fifteen (15) days to vote on a matter submitted by email. At the request of twenty percent (20%) of the Board members, a matter that has been submitted for vote by e-mail shall not be voted on in that manner and shall be submitted to the Board for a vote at the next meeting at which there is a quorum.

Section 9. The following are the duties and responsibilities of Members of the LADC Board of Directors, as adopted at the LADC Board Meeting on Feb. 24, 2018: 1. Attend at least 50% of the Board meetings each year (July 1-June 30) in person. 2. Become informed about LADC issues and vote on matters brought before the Board. 3. Agree to serve on committees as requested. 4. Attend at least one LADC seminar per year. 5. Represent and serve his or her LADC district. This includes registering for and attending LADC CLE seminars in the district and assisting the LADC in promoting such seminars by encouraging others to register for and attend them. 6. Communicate with LADC members in his or her district about the LADC and work with members to help the LADC serve them. 7. Encourage district members to join LADC Practice Groups and participate in other LADC activities. 8. Assist in recruiting new members, especially in his or her own firm and district, and help staff in their efforts to generate membership renewals. 9. At each Board meeting, report on activities and needs in the district. 10. Encourage young lawyers in his or her firm to be active in the LADC Young Lawyers Section and to attend at least one CLE a year. 11. Consider attending the ski trip or annual meeting (or both) and promote those trips within his or her district.

Section 10. Movement out of district: If, during the three-year term, a Board member moves his or her practice from the district to which he or she was elected to another district of the Association, that Board member will complete his or her term as an at-large Board member. The vacancy in the district will be filled according to the bylaw on Board vacancies.

ARTICLE VI ELECTION OF DIRECTORS

Section 1. **Beginning Date of Terms of Office.** Newly elected Officers and Directors shall take office on July 1.

Section 2. **Nominations and Election:** By May 1 of each year, the Nominating Committee shall select nominees for membership on the Board. The Nominating Committee shall certify their nominees to the Secretary-Treasurer. The Secretary-Treasurer shall send a ballot of nominees for the Board via mail or e-mail to the Association's membership. Members shall have thirty (30) days in which to cast a vote for Directors. Members may vote for the nominees proposed by the Nominating Committee or others. The Secretary-Treasurer shall compile the votes and certify the result to the President no later than June 15. No Director who has served a full three-year term shall immediately succeed himself or herself as a Director,

but is eligible for election to the Board following at least one year's absence.

ARTICLE VII OFFICERS AND COMMITTEES

- Section 1. **Officers.** The officers of this Association shall be a President, a President-Elect, a First Vice-President, a Second Vice-President, a Secretary and a Treasurer. The offices of Secretary and Treasurer shall be held by the same person, unless the Board by resolution directs otherwise, and this person shall be referred to as the Secretary-Treasurer.
- Section 2. **Reimbursement.** Officers shall serve without compensation, but, by action of the Board, may be reimbursed for their actual and necessary expenses, incurred while engaged in the business of this Association. During the time that an officer serves as President-Elect and as President, the officer shall be eligible to be reimbursed for travel and other expenses related to the performance of the officer's duties in an amount to be fixed by the Board.
- Section 3. **Selection of Officers.** All Officers, except the President, shall be nominated by the Nominating Committee. The President-Elect shall be elevated to President, unless the Board determines otherwise by a two-thirds vote. The nominees for all offices typically will be selected by elevation of the person in the rank below the preceding year. The Nominating Committee shall certify its Officer nominations to the Secretary-Treasurer at the same time that it certifies its nominations for Directors. The Secretary-Treasurer shall mail or e-mail the Officer nominations to the Board, who shall have 30 days to vote. A two-thirds vote of the Board shall be required to elect Officers, other than Secretary-Treasurer, other than by elevation from the rank below in the preceding year. In case of a vacancy in any office by resignation or otherwise, the most recently-appointed Nominating Committee shall nominate a candidate to replace the Officer. The nominee must represent the same district as the Officer whom he or she replaces. The Secretary-Treasurer shall send to the Board by mail or email a ballot with the nominee and an option to write in a candidate. The Board shall have at least fifteen (15) days from the date of transmission of the ballot to vote.
- The office of Secretary-Treasurer rotates among the five LADC districts. Every other year, the Secretary-Treasurer nominee must be from District 4 or 5 (even-numbered years). The nominee for Secretary-Treasurer will be from the same district (Districts 4 and 5 are considered together) as the Immediate Past President who is rotating off the Executive Committee.
- Section 4. **Duties of Officers.** The duties of the Officers shall be as follows:

President. The President shall preside at all meetings of the Membership and of the Board. The President shall be the chief executive officer of this Association and shall exercise such executive and appointive powers as the articles of incorporation, these by-laws, parliamentary usage and custom dictate or as may be authorized by the Board. The President shall appoint all special and permanent committees. The President shall be an ex-officio member of all committees.

President-Elect. The President-Elect shall perform such duties as may be delegated to him or her by the President, the Board or these by-laws, and shall perform the duties and exercise the powers of the President, in the event the President is absent or disabled or refuses to perform the duties of that office.

First Vice-President. The First Vice President shall perform such duties as may be assigned to him or her by the President, the Board or these by-laws, and shall perform the duties and exercise the powers of the President, in the event both the President and President-Elect are absent or disabled or refuse to perform the duties of President.

Second Vice-President. The Second Vice President shall perform such duties as may be assigned to him or her by the President, the Board or these by-laws, and shall perform the duties and exercise the powers of the President, in the event the President, the President-Elect and the First Vice President are absent or disabled or refuse to perform the duties of President.

Secretary. The Secretary shall keep minutes of all the proceedings of the meetings of the Membership and of the Board, and shall maintain a record of the names and addresses of the members of this Association. The Secretary shall serve as an *ex-officio* member of all committees. He or she shall prepare and send to the members of this Association notices of any and all meetings of the Board and other such notices as may be required by these by-laws or as may be directed by the President or the Board. The Secretary shall perform all duties ordinarily required of, or customarily performed by, a corporate Secretary, and such other duties as the President, the Board or these by-laws may direct.

Treasurer. The Treasurer shall collect and receive all fees, dues and assessments from the members, and all monies due and payable from any source. He or she shall make disbursement of any monies and funds in his or her possession or control only in accordance with orders of the Board. The Treasurer shall make and preserve proper books of accounts and keep an accurate account of the finances of this Association, including a detailed record of all receipts and disbursements. At the request of the President or the Board, the Treasurer shall surrender his or her books of account for examination by the President or the Board or for auditing by an auditor selected by the Board.

Section 5. **Executive Director.** The Board of Directors shall appoint no greater than two (2) Executive Director(s) for service at the same time, fix their compensation, and direct the performance of their duties. The Board may

direct that the Executive Director(s) perform any of the duties of any officer of the Association except those of the President. The Board may create additional positions of employment as it deems them necessary for the effective administration and functioning of the organization.

Section 6. **Committees:** There shall be eight permanent committees, designated as the Executive Committee, Membership Committee, Nominating Committee, the Finance/Investment and Budget Committee, the Trial Academy Committee, the Young Lawyers' Committee, the Research and Policy Committee, and the Amicus Brief Committee. The President shall have the authority to appoint an *Ad Hoc* Committee(s), as provided herein.

Executive Committee. Executive Committee. The President shall serve as Chairman of the Executive Committee, which shall be composed of the Officers, the immediate past President, and the representative of the Young Lawyers Committee. The Executive Committee is authorized to exercise all powers granted to the Board between meetings of the Board, except the power to remove an Officer or member of the Board and the power to amend the by-laws. The representative of the Young Lawyers Committee shall be nominated by the Young Lawyers Committee in consultation with the President and the Executive Director and elected by vote of the Board. The term of the representative of the Young Lawyers Committee on the Executive Committee shall be two years.

Membership Committee. The Membership Committee shall be composed of five members appointed by the President, one from each district. The Second Vice President shall serve as Chairman, and shall represent his or her district on the Committee. The Membership Committee shall receive applications for membership and shall make the inquiry and recommendations as provided in Article III, Section 4. The Membership Committee also shall actively recruit members and welcome new members.

Nominating Committee. The Nominating Committee shall consist of five members appointed by the President, one from each Board district. The President-Elect shall be one of the five members of and Chairman of the Nominating Committee and a representative of his or her District. The Executive Director shall be an *ex-officio*, non-voting member of the Nominating Committee. The Committee shall endeavor to ensure that nominations reasonably represent geographic regions within each district.

Finance, Investment and Budget Committee. The Finance, Investment and Budget Committee shall be composed of three officers: The First Vice President, who shall serve as Chairman, the Second Vice-President, the Secretary-Treasurer, and such other members of the Board as may be appointed by the President. The Committee shall determine which funds of this Association are not needed for the immediate operation of the Association, and shall cause such funds to be invested consistent with policies adopted by the Board. The Committee shall report on the status of the Association's investments and finances at each Board meeting and when otherwise directed by the President or the Board. The Committee, in conjunction with the Executive Director, shall develop an annual budget,

which shall be effective when approved by the Board. The Committee shall meet at twice a year. The Committee may meet in person or telephonically or by electronic means.

Young Lawyers' Committee. The Young Lawyers' Committee shall consist of not fewer than seven (7) and not more than twenty (20) members of the Association, representing all districts, appointed by the President. The Young Lawyers' Committee aspires to include members representing various levels of legal experience, with a goal of having at least two (2) members who have been in practice for three (3) or fewer years. Each member's term on the Young Lawyers' Committee shall be for a period of three years. There shall be no limit on the number of terms a member may serve, provided the member remains a young lawyer as defined by this section. Young lawyer shall mean an attorney member who is 39 or younger or in practice for six (6) or fewer years. Members are appointed so that their term begins in July and coincides with the LADC Board of Directors. Each member's term shall continue until the earlier to occur of: (a) resignation; (b) removal by a majority vote of the Young Lawyers' Committee, provided such removal is approved by the Board; or (c) three (3) years after his appointment to the committee. If a vacancy occurs, the newly appointed member's term will be deemed to have begun at the same time as the original member's term. The Young Lawyers' Committee shall select a Chair, subject to the approval of the LADC President. The Chair's term shall be two years and will begin in July. The Chair shall be responsible for running the Committee and will serve as the young lawyer representative to the Executive Committee.

Research and Policy Committee. The Research and Policy Committee shall consist of not fewer than six (6) and not more than twelve (12) members appointed by the President with advice and consent of the Executive Committee. The initial term of the Committee members shall be two (2) years. For the initial appointments, the President shall appoint no more than six (6) members so that additional appointments may be made a year later, achieving staggered terms. The President shall appoint the Chair. The purposes and functions of the Committee are to identify issues of importance to the membership of the Association, to research those issues, to educate the membership on those issues through various means, and to provide or arrange for advocacy on behalf of the Association when and where appropriate. The Committee shall conduct at least two meetings per year, in person or by telephone or electronic means, which may be held in conjunction with a Board meeting or seminar.

Amicus Brief Committee.

The Amicus Brief Committee shall consist of three persons: The President-Elect, the First Vice President, and a member of the board of Directors appointed by the President. The Executive Director shall be an ex-officio member of the committee. The President-Elect shall serve as Chair of the committee.

The Committee shall evaluate all requests for amicus curiae briefs on behalf of the Association and shall promptly make its recommendation to the President; show shall determine whether the Association should participate as amicus curiae. In making its recommendation and determination, the Committee and the President shall consider whether the case: (1) involves a procedural issue important to the fair and efficient determination of civil actions which s of significant interest to LADC members: or (2) presents for decision an important issue of substantive law which is of significant interest to LADC members. Notwithstanding the foregoing, the Committee and the President shall evaluate, to the extent practicable, whether the position or argument sought to be adopted b the LADC enjoys the support of the membership at large and would not likely lead to a substantial conflict of interest between one or more clients of LADC's members.

Absent special circumstances, the filing of amicus curiae briefs will be limited to cases pending before the Louisiana Supreme Court. The Association will not file amicus curiae briefs in support of petitions for writ of certiorari.

Requests for consideration of amicus curiae briefs shall be submitted in writing to the committee, explaining the nature of the case, the legal issue involved, and a statement of why the LADC should be interested in appearing as amicus curiae. A request for consideration of filing amicus curiae brief shall be made no later than 21 days before the deadline for filing amicus curiae briefs pursuant to the Rule VII, Section 12 of the Rules of the Louisiana Supreme Court.

The Committee and the President enjoy full discretion whether to approve or decline any request for the filing of an amicus curiae brief. Any decision to approve a request of the filing of amicus curiae brief should be limited to special circumstances justifying such filing, and therefore approval is expected to be relatively rare. The LADC shall remain independent of the parties to the appeal, including the person or entity requesting amicus curiae participation. The Committee shall consider materials submitted by a person requesting an amicus filing, determine whether an amicus brief by LADC would provide analysis not addressed in Supreme Court brief(s) filed by the party seeking an amicus filing, consult with anyone the Committee thinks appropriate, deliberate, and reach a decision to recommend to the President approval or rejection of the request. After deliberating and reaching a decision regarding an amicus request, the Committee Chair shall provide a report to the President detailing the Committee's process,

considerations and recommendation. Any dissenting views shall be reflected in the report. A Committee decision to recommend the filing of an amicus curiae brief to the President must be unanimous. If the request is recommended by the Committee and approved by the President, the Committee will select an attorney responsible for drafting and filing the brief. A flat fee for the services of counsel selected to draft the amicus curiae brief must be agreed upon by the President and the Chair of the LADC Finance, Investment and Budget Committee. The cost of printing and filing the brief shall be borne by the Association. The Amicus Brief Committee will review and approve the proposed brief before it is filed to ensure that it is of high quality. Any amicus curiae brief filed shall show as counsel of the Association the author of the brief, the President of the Association, and the Chair of the Amicus Brief Committee.

Practice Groups. There shall be Practice Groups as approved by the Board to promote education and development in particular areas of law. LADC Members may join Practice Groups by self-enrolling. The President shall appoint the Chair of each Practice Group, and the Chair shall serve a term of two years. No Chair shall serve two consecutive terms except in extraordinary circumstances.

Ad Hoc Committees. The President may appoint such special or *ad hoc* Committees as he or she deems necessary or as directed by the Board. The duties of such Committees shall be as designated by the President (or the Board, where the Committee is established by the Board) and their existence may be terminated by the President (or the Board, if established by the Board.)

Membership on any special or *ad hoc* Committee shall be continued until a successor is appointed by the President.

ARTICLE VIII AMENDMENT OF BY-LAWS

These By-Laws may be amended at any meeting of the Board following notice as provided in Article VI, Section 3 and upon an affirmative vote as provided in Article VI, Section 4.

ARTICLE IX NOTICE TO MEMBERS

Any notice to the membership required by the Articles of Incorporation or these By-Laws may, at the option of the President, be given by inclusion in any issue of the Association's Newsletter or other publication, or by e-mail through the last e-mail address provided by the member to the Secretary, provided such notice is given within any applicable time limit.

**ARTICLE X
SUSPENSION AND EXPULSION**

Section 1. **Suspension.** The Board may suspend any member by majority vote. A member suspended shall be automatically reinstated at the expiration of the period of his or her suspension.

Section 2. **Expulsion.** The Board may terminate membership of any member by a two-thirds (2/3) vote. A member terminated may petition for readmission at any time under the provisions of Article III, Section 4 herein above.

Section 3. **Grounds for Suspension or Termination.** A member may be suspended or terminated by the Board at any duly convened and constituted meeting of the Board, or by written ballot of the Board, on any of the following grounds:

- (a) substantial failure to comply with the By-Laws, adopted policies, rules or regulations of the Association;
- (b) substantial failure to support and implement the purposes and objective of the Association;
- (c) commission of a serious unlawful act, crime or felony;
- (d) any serious breach of applicable standards of professional conduct;
or
- (e) loss of member class eligibility.

Non-payment of dues for a period of three (3) months after such dues shall have become due and payable shall result in automatic suspension from membership, which suspension does not require an affirmative vote of the Board; such suspension shall continue indefinitely until such member is either terminated by vote of the Board, or said member makes payment of all unpaid dues and any penalties for late payment of such dues, and satisfactorily re-certifies his or her eligibility for membership as provided in Article III, Sections 2 and 4.

Section 4. **Termination Procedure.** The Executive Committee may recommend to the Board that membership be terminated for any of the reasons set forth in Section 3. If the Board approves, membership shall be terminated, effective upon the Board's approval. The member whose membership is terminated shall be advised by the Secretary-Treasurer of the termination and the reasons therefor. A member opposing termination may do so by providing the Secretary-Treasurer, within ten (10) days after the mailing of the notice of termination to the member's last address on the Association mailing list, with reasons (including supporting documents) why he or she believes membership should not be terminated. The Board at its discretion may thereafter determine whether termination should be reconsidered. The Board's determination with respect to the adequacy of grounds for termination shall be binding and conclusive. A member

whose membership is terminated shall not be entitled to any refund of dues.

**ARTICLE XI
INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND
AGENTS**

- Section 1. **Indemnification of Directors and Officers: Claims Brought by Third Parties.** The Association shall, to the fullest extent authorized or permitted by applicable law, as the same presently exists or may hereafter be amended, indemnify a Director or Officer (the "Indemnatee") who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the Association, by reason of the fact that he or she is or was a Director, Officer, employee or agent of the Association, or is or was serving at the request of the Association as a Director, Officer, employee, or agent against expenses, including attorneys' fees, judgment, penalties, fines and amounts paid in settlement actually and reasonably incurred by the Indemnatee in connection with the action, suit, or proceedings, if the Indemnatee acted in good faith and in a manner the Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, if the Indemnatee had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, does not, of itself, create a presumption that the Indemnatee did not act in good faith and in a manner which the Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe that the conduct was unlawful.
- Section 2. **Actions Brought by the Indemnatee.** The Association shall not indemnify an Indemnatee in connection with any action, suit, proceeding or claim (or part thereof) brought or made by such Indemnatee; unless such action, suit, proceeding or claim (or part thereof) (i) was authorized by the Board, or (ii) was brought or made to enforce this article and such Indemnatee has been successful in such action, suit, proceeding or claim (or part thereof).
- Section 3. **Approval of Indemnification.** Indemnification under Sections 1 or 2 of this Article, unless ordered by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Indemnatee is proper in the circumstances because the Indemnatee has met the applicable standard of conduct set forth in Sections 1 and 2 of this Article. This determination shall be made promptly in any one of the following ways:
- (a) By a majority vote of a quorum of the Board consisting of Directors who were not parties to the action, suit, or proceeding; or

(b) If the quorum described in subdivision (a) is not obtainable, then by a majority vote of a committee of Directors who are not parties to the action. The committee shall consist of not less than two (2) disinterested Directors; or

(c) By independent legal counsel in a written opinion.

Section 4. **Advancement of Expenses.** Expenses incurred in defending a civil or criminal action, suit, or proceeding described in Sections 1 or 2 of this Article shall be paid promptly by the Association in advance of the final disposition of the action, suit or proceeding. If it is determined that the Indemnitee is not entitled to be indemnified by the Association, the Indemnitee shall immediately reimburse the Association the sum paid in full, with legal interest from the date the sum was paid to the Indemnitee.

Section 5. **Partial Indemnification.** If an Indemnitee is entitled to indemnification under Sections 1 or 2 of this Article for a portion of expenses including attorney's fees, judgment, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Association shall indemnify the Indemnitee for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the Indemnitee is entitled to be indemnified.

Section 6. **Indemnification of Employees and Agents.** Any person who is not covered by the foregoing provisions of this Article and who is or was an employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent may be indemnified if such is approved by the Board in any of the methods set forth in Section 3 of this Article.

Section 7. **Other Right of Indemnification.** The indemnification or advancement of expenses provided under Sections 1 through 6 of this Article is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Articles of Incorporation or By-laws of the Association, or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in Sections 1 through 4 of this Article continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

Section 8. **Liability Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the Association would have the power to indemnify the person against such liability under the provisions of the Act.

- Section 9. **Liability Limits for Indemnity.** The Association's obligation to indemnify any provision of this Article shall not exceed the limits of any policy of liability insurance which the Association may have in place.
- Section 10. **Severability.** Each and every paragraph, sentence, term and provision of this Article shall be considered severable in that, in the event a court finds any paragraph, sentence, term or provision to be invalid or unenforceable, the validity and enforceability, operation, or effect of the remaining paragraphs, sentences, terms, or provisions shall not be affected, and this Section shall be construed in all respects as if the invalid or unenforceable matter had been omitted.
- Section 11. **Definitions.** To the extent used in these by-laws or in any other agreement concerning indemnification or demand or request for indemnification, the following definitions will apply: "Other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and, "serving at the request of the Association" shall include any service as a director, officer, employee, or agent of the Association which imposes duties on, or involves services by, the director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Association as referred to Sections 1 and 2 of this Article."

Amended August, 2020