

AMENDED AND RESTATED  
BYLAWS  
OF  
AMERICAN COLLEGE OF BANKRUPTCY FOUNDATION

Updated and Adopted: March 17, 2016

# Bylaws of the American College of Bankruptcy Foundation

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**BYLAWS  
OF  
AMERICAN COLLEGE OF BANKRUPTCY FOUNDATION  
(a Virginia Nonprofit Corporation)**

These bylaws of the American College of Bankruptcy Foundation (the "Corporation") have been adopted and amended through March 17, 2016.

**ARTICLE I**

**Offices; Agent; Seal**

1. Purposes of the Corporation. The purposes of the Corporation shall be as set forth in its Articles of Incorporation, including to raise and manage funds in order to provide grants to organizations which provide assistance to groups and individuals in need of bankruptcy-related legal representation, training and/or education. The Corporation at all times shall operate in a manner so as to qualify to receive contributions which are deductible for federal income tax purposes.

2. Offices. The principal office of the Corporation and such other offices as it may establish from time to time shall be located at such place or places, either within or without the State of Virginia, as may be designated by the Board of Directors or by the officers pursuant to authority from the Board of Directors.

3. Seal. The seal of the Corporation, if any, shall be in such form as the Board of Directors prescribes.

**ARTICLE II**

**Directors**

1. Powers. The affairs of the Corporation shall be managed by the Board of Directors. The Board of Directors shall possess, and may exercise, any and all powers granted to the Corporation by law, the Articles of Incorporation, and these Bylaws.

2. Number. The Board of Directors shall consist of not less than ten (10) nor more than twenty-five (25) Directors, the exact number to be determined by the Board of Directors of the American College of Bankruptcy (the "ACB"). The number of Directors may be increased or decreased by amendment of the Bylaws provided that no such amendment may reduce the total number of Directors to less than three (3), and no reduction in the number of Directors shall have the effect of shortening the term of any Director in office at the time such amendment becomes effective. Up to five (5) Directors may be Senior Directors, who are Fellows who at the time of their election are (i) 60 years or older, and (ii) so designated as Senior Directors.

3. Qualifications. Members of the Board of Directors need not be residents of Virginia. A Director may not serve for more than two consecutive terms, provided, however, that (a) a Director elected to fill a vacancy in an existing term with less than one year remaining may serve two additional consecutive terms, and (b) the limitation on serving more than two consecutive terms set forth in this sentence does not apply to Senior Directors. A Director shall be a Fellow of the ACB and not less than five (5) members of the Board of Directors must be directors, officers or regents of the ACB at the time of their election as directors of the Corporation.

4. Election. The Board of Directors of the ACB shall elect the Directors of the Corporation at the time of the Annual Meeting of the ACB, except that a vacancy may be filled at any time.

5. Term of Directors. Directors shall be elected for a three-year term of office. Whenever the number of Directors is increased or decreased, new Directors (other than Senior Directors, who shall serve a single, three-year term as a Senior Director) shall be elected for one-year, two-year, or three-year terms, so that ultimately the terms of not more than one-third of the Directors (exclusive of Senior Directors) expire each year. Directors shall serve until their successors are duly elected and qualified, or until their death, resignation or removal.

6. Resignation. Any Director may resign at any time by giving written notice of such resignation to the Chair of the Board of Directors or the Secretary. Unless otherwise specified in such notice, the resignation shall be effective upon delivery. A Director of the Corporation shall be deemed to resign if he or she ceases to be a Fellow of the ACB.

7. Removal. Any Director may be removed from office, with or without cause, by a three-fifths majority vote of either the Board of Directors of the ACB or the Directors of the Corporation present in either case at a special meeting of the Board of Directors called for such purpose by notice stating that the purpose or one of the purposes of the meeting is the removal of such Director. Absence from two (2) consecutive meetings of the Board of Directors may be considered as cause for removal.

8. Vacancies. A vacancy in the Board of Directors, including a vacancy created by an increase in the number of Directors, shall be filled by the Board of Directors of ACB. A Director so elected shall serve for the remainder of the unexpired term.

9. Reimbursement. Members of the Board of Directors shall receive no compensation for their services, but, by resolution of the Board of Directors, may be reimbursed for reasonable and necessary expenses paid while acting on behalf of the Corporation. Nothing herein shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor as authorized by the Board of Directors.

### **ARTICLE III**

#### **Meetings of Directors**

1. Place of Meetings. The Board of Directors may hold meetings, annual, regular, or special, either within or without the State of Virginia.

2. Annual Meetings. The Board of Directors shall hold a regular annual meeting at a time and place set by the Board of Directors. Notice of such meeting shall be given to each Director at least fifteen (15) days prior to the date of the meeting.

3. Regular Meetings. Additional regular meetings of the Board of Directors may be held at such times and places as may be determined by the Board of Directors. Notice of such a meeting shall be given to each Director at least ten (10) days prior to the date of the meeting.

4. Special Meetings. Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, or two Directors, on at least ten (10) days' notice to each Director.

5. Quorum; Vote; Adjournment. The Chair of the Board of Directors shall preside at all meetings of the Board of Directors. In the absence of the Chair, the Secretary shall preside, and in the absence of the Secretary, the Treasurer shall preside. At all meetings of the Board of Directors, the presence of a majority of the Directors in office shall constitute a quorum for the transaction of business. There shall be no voting by proxy unless the Chair determines otherwise. The affirmative vote of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, unless the affirmative vote of a greater number of Directors is specifically required by law, the Articles of Incorporation, or these Bylaws. If a quorum is not present at a meeting of the Board of Directors, the Directors present may adjourn the meeting until a quorum is present.

6. Action by Consent. Any action required or permitted to be taken at a meeting of the Board of Directors or of any committee may be taken without a meeting if written consents setting forth the action taken are signed and dated by all of the members of the Board of Directors or of such committee, as the case may be. Such consents (which may be in one instrument or several instruments) shall be filed with the minutes of the proceedings of the Board of Directors or of the committee. Unless otherwise specified in such consents, the effective date of any action so taken is the date on which the last Director signs the consents. Any action so taken shall have the effect of a vote taken at a meeting of the Board of Directors. Such consents may also be provided by e-mail communication from the Director if approved by the Chair.

7. Meetings by Telephone. Meetings of the Board of Directors may be by telephone, and the members of the Board of Directors or of any committee may participate in a meeting by means of a conference telephone or similar communications equipment by which all Directors participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at such meeting.

8. Notices; Waiver of Notice. Any Notice required by these Bylaws may be given in writing in person, by mail, courier, or overnight delivery, or by facsimile or email. Any Director may waive notice of any meeting.

## ARTICLE IV

### Committees

1. Committees of the Board. The Board of Directors may, by resolution adopted by a majority of all Directors in office, establish such committees having and exercising the authority of the Board of Directors as it deems necessary or proper. Each committee must be composed of at least two (2) members of the Board of Directors and otherwise shall consist of Fellows whether or not such Fellows are members of the Board of Directors. The Board of Directors may make such provisions for appointment of the members and chairpersons of such committees, establish such procedures to govern the committees, activities, and delegate to the committees such authority as may be necessary or desirable for the efficient management of the property, affairs, business, and activities of the Corporation; provided, that the Board of Directors shall not delegate to any committee authority to (1) adopt or approve a plan of merger or consolidation; (2) authorize the voluntary dissolution of the Corporation; (3) elect, appoint, or remove any Director or officer; or (4) amend, adopt, or repeal the Articles of Incorporation or the Bylaws. Unless otherwise specified in the resolution establishing a committee, a committee's authority shall continue until terminated by the Board of Directors, and a vacancy in a committee shall occur when a member thereof ceases to be a Director.

2. Pro Bono Committee. The Board of Directors shall establish a Pro Bono Committee consisting of Fellows, including not less than six (6) members of the Board of Directors, and shall appoint one member, who shall not be an officer of the Corporation, as the Chair of the Pro Bono Committee. The Board of Directors of the Corporation shall establish the budget for the Pro Bono Committee taking into account whatever contribution it will receive from the College and whatever other factors the Board of Directors of the Corporation deems relevant. The Pro Bono Committee shall establish procedures for obtaining and reviewing applications for financial assistance from organizations involved in bankruptcy matters within and without the United States, and shall make awards of financial assistance to such organizations consistent with the budget.

3. Reports of the Pro Bono Committee. The Pro Bono Committee shall prepare a written report to the Board of Directors of the Corporation and to the Board of the ACB not less than annually setting forth the names of such recipients, the purposes of the award, and the amounts of such awards. The Board of Directors of the Corporation and the Board of the ACB may request such other materials from the Pro Bono Committee as those Boards may deem advisable.

4. Advisory Committees. Other committees not having and exercising the authority of the Board of Directors may be constituted and members thereof appointed by a resolution adopted by a majority of the Directors present at a meeting of the Board of Directors at which a quorum is present.

5. Committee Meetings. Meetings of any committee shall, to the extent not otherwise specified in resolutions of the Board of Directors, be conducted in accordance with the foregoing provisions of these Bylaws.

## ARTICLE V

### Notice

1. Form; Delivery. Whenever, under the provisions of law, the Articles of Incorporation, or the Bylaws, notice is required to be given to any Director or member, such notice may be given in writing, by mail, addressed to such Director or member at his or her post office address as it appears on the current records of the Corporation. Such notice shall be deemed to be given at the time it is deposited in the United States mail. Notice may also be communicated orally in person or by telephone; or given by telegraph, teletype, facsimile, e-mail or other form of wire or wireless communication, or private carrier.

2. Waiver. Whenever any notice is required to be given under the provisions of law, the Articles of Incorporation, or these Bylaws, a written waiver thereof, signed by the person or persons entitled to such notice and delivered to the Secretary for inclusion with the records of the meeting, whether before or after the time stated therein, shall be deemed to be the equivalent of such notice. In addition, any Director who attends a meeting of the Board of Directors, or any member of a committee who attends a committee meeting, without objecting at the beginning of the meeting or promptly upon his or her arrival to holding the meeting or transacting business at the meeting or who votes for or assents to action taken at the meeting, shall be conclusively deemed to have waived notice of such meeting.

## ARTICLE VI

### Officers

1. Number and Election of Officers. The officers of the Corporation shall be elected from among the Directors of the Corporation by the Board of Directors of the ACB. The officers of the Corporation shall be a Chair, a Secretary, a Treasurer and such other officers as are elected by the Board of Directors of the ACB.

2. Chair. The Chair shall be the chief executive officer of the Corporation and shall preside at meetings of the Board, shall be a voting member of the Board, shall coordinate and supervise all activities of the Corporation, shall be an ex officio member of all committees and, as such ex officio member, shall have the right to receive notice of and attend the meetings of such committees and to vote at such meetings, shall sign checks in the absence of the Treasurer, shall be responsible for the day-to-day operations of the Corporation, and shall perform such further duties which usually pertain to the office of a chief executive officer and/or as may be delegated by the Board from time to time.

3. Secretary. The Secretary shall act as secretary of and keep the minutes of all meetings of the Board, and shall be a voting member of the Board. The Secretary shall ascertain that all notices are duly given in accordance with law, shall have charge of the books, records and papers of the Corporation, and shall see that all reports, statements and other documents and records required by law are properly executed, kept and filed. The Secretary shall have responsibility for authenticating records of the Corporation. The



Secretary shall perform such further duties which usually pertain to the office of Secretary and/or as may be delegated by the Board from time to time.

4. Treasurer. The Treasurer shall be the chief financial and accounting officer of the Corporation, shall be a voting member of the Board, and shall have charge and custody of the funds and other assets of the Corporation. The Treasurer shall be responsible for the keeping of correct and adequate records of all financial affairs of the Corporation. In addition, the Treasurer shall submit a report at each Board meeting and shall supply the Corporation's accountant with appropriate records annually at the end of the fiscal year. All bills of the Corporation shall be presented to the Treasurer for payment upon approval by the Chair. The Treasurer shall perform such further duties which usually pertain to the office of Treasurer and/or as may be delegated by the Board from time to time.

5. Other Officers. Other officers shall perform such duties and responsibilities as are specified by the Board of Directors of the ACB.

6. Term of Office. Each officer shall serve for a period of two years and until his/her successor is duly elected and qualified or, if earlier, until his/her death, resignation or removal. An officer may succeed himself or herself in the respective office for one additional consecutive term.

7. Compensation of Officers. All officers shall serve without compensation.

## ARTICLE VII

### Financial Administration; Books and Records

1. Documents. All disbursements of monies or incurrence of debts on behalf of the Corporation may be undertaken by such officer(s) or agent(s) of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board of Directors or of any committee to which such authority has been delegated by the Board of Directors.

2. Deposits and Accounts. All funds of the Corporation not otherwise employed shall be deposited from time to time in general or special accounts in such banks, trust companies, or other depositories as the Board of Directors or any committee to which such authority has been delegated by the Board of Directors may select, or as may be selected by any officer(s) or agent(s) of the Corporation to whom such power may from time to time be delegated by the Board of Directors. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts, and other orders of the Corporation may be endorsed, assigned, and delivered on behalf of the Corporation by such officer(s) or agent(s) of the Corporation as shall be determined by the Board of Directors.

3. Corporate Books and Records. The Corporation shall keep at its principal place of business (a) the original or a duplicate record of the proceedings of the Board of Directors and Committees (b) the original or a copy of the Bylaws, including all amendments

thereof to date, certified by the Secretary, and (c) appropriate, correct, and complete books and records of account.

4. Policies and Procedures. Unless otherwise modified by the Board of Directors of the Corporation, the Conflict of Interest Policy and the Document Retention Policy of the College shall apply to the operations and activities of the Corporation.

## ARTICLE VIII

### Insurance and Indemnification

1. Generally. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or upon a right of the Corporation, by reason of the fact that such person is or was a Director, officer, member of a committee, employee or agent of the Corporation (hereinafter, "Covered Person"), against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's 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, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

2. Negligence or Misconduct. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any action by or upon a right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a Covered Person, against expenses, including attorneys' fees, actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interest of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged by a final court order to be liable for negligence or misconduct in the performance of a duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

3. Success on the Merits. To the extent that a Covered Person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections

1 and 2 of this Article VIII, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by such person in connection therewith.

4. Board of Directors Authorization. Any indemnification under Sections 1 and 2 of this Article VIII, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Covered Person is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 1 and 2 of this Article VIII. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, as the case may be.

5. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may (but is not required to) be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in Section 4 of this Article VIII upon receipt of an undertaking by or on behalf of the Covered Person to repay such amount unless it shall ultimately be determined that such person is entitled to be identified by the Corporation as authorized in this Article VIII.

6. Nonexclusive. The indemnification provided by this Article VIII shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any agreement, vote of disinterested Directors, statute, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to hold the office which caused him to be a Covered Person and shall inure to the benefit of the heirs, executors and administrators of such person. The provisions of this Article VIII shall not restrict the power of the disinterested Directors to make any indemnification permitted by law. No amendment of these Bylaws shall reduce the extent of indemnification with respect to any person who was or is a Covered Person as to any act or occurrence that occurred prior to such amendment.

7. Insurance. The Corporation shall purchase and maintain or cause to be provided and maintained insurance, in such amounts and on such terms as the Board of Directors shall determine in its sole discretion, on behalf of an individual who is or was a Covered Person, or is or was serving at the request of the Corporation as a Director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against or incurred by him or her in that capacity or arising out of his or her status as such, whether or not the Corporation would have power to indemnify him or her against such liability pursuant to applicable law, the Articles of Incorporation, or these Bylaws. The rights of the Corporation in and to the proceeds of any such insurance shall at all times be subordinate to the rights of the Directors, Officers, employees and agents insured thereby.

8. Notification. As a condition precedent to a Covered Person's right to be indemnified and defended, such Covered Person must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Covered Person for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel selected by the Corporation and reasonably acceptable to the Covered Person. After notice from the Corporation to the Covered Person of its election to assume such defense, the Corporation shall not be liable to the Covered Person for any legal or other expenses subsequently incurred by the Covered Person in connection with such action, suit, proceeding or investigation, other than as provided below. Except as otherwise expressly provided by this Article VIII, the Covered Person shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of the Covered Person unless (i) the employment of counsel by the Covered Person has been authorized by the Corporation, (ii) the Corporation shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and the Covered Person in the conduct of the defense of such action, suit, proceeding or investigation, or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for the Covered Person shall be at the expense of the Corporation. The Corporation shall not be required to indemnify the Covered Person under this Article VIII for any amounts paid in settlement of any action, suit, proceeding or investigation effected without the Corporation's written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any unindemnified monetary penalty, a non-monetary penalty or any limitation on the Covered Person without the Covered Person's written consent. Neither the Corporation nor the Covered Person will unreasonably withhold or delay its consent to any proposed settlement.

## **ARTICLE IX**

### **Fiscal Year**

The fiscal year of the Corporation shall be set by resolution of the Board of Directors.

## **ARTICLE X**

### **Amendments**

1. Bylaws. The Bylaws may be amended by the affirmative vote of two-thirds (2/3) of the votes cast by the Directors entitled to vote at a meeting of the Board of Directors at which a quorum is present. If any provisions of (i) Article II, (ii) section 3 of Article IV,

(iii) section 1 of Article VI, or (iv) Article VIII are so amended, any such amendment shall not become effective unless and until it is ratified by the Board of Directors of the ACB.

2. Articles of Incorporation. The Articles of Incorporation may be amended by the affirmative vote of at least two-thirds (2/3) of the Directors in office at a meeting of the Board of Directors, provided that any amendment that limits any right or grant of authority to the ACB set forth in the Articles of Incorporation or these Bylaws shall not become effective unless and until it is ratified by the Board of Directors of the ACB.