

AMENDED AND RESTATED
BYLAWS
OF
AMERICAN COLLEGE OF BANKRUPTCY FOUNDATION

Updated and adopted: October 30, 2019

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 "Foundation") have been adopted and amended through October 30, 2019.

ARTICLE I
Officers; Agent; Seal

1. **Purposes of the Foundation.** The Foundation funds projects that improve the quality of bankruptcy law and practice, as well as access to justice through its financial support of bankruptcy and insolvency-related pro bono legal service programs in the United States. The Foundation raises and manages funds and evaluates grant applications. Together with the American College of Bankruptcy, the Foundation is the country's largest nongovernmental financial supporter of such programs.

2. **Offices.** The principal office of the Foundation 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 Foundation, if any, shall be in such form as the Board of Directors prescribes.

ARTICLE II
Directors

1. **Powers.** The affairs of the Foundation shall be managed by the Board of Directors. The Board of Directors shall possess, and may exercise, any and all powers granted to the Foundation 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 Foundation.

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

5. Term of Directors. Beginning in 2020, each Director shall be elected for a two-year term of the office. Directors elected before 2020 serving a first term shall be eligible to be elected for a second two (2) year term after completion of their first three (3) year term. Whenever the number of Directors is increased or decreased, new Directors (other than Senior Directors, who shall serve a single, two-year term as a Senior Director) shall be elected for one-year or two-year terms, so that ultimately the terms of not more than one-half 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 Foundation 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 Foundation 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 Foundation. Nothing herein shall preclude any Director from serving the Foundation 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 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 Vice Chair shall preside and in the absence of the Vice Chair the Secretary 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 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 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 such committees, establish such procedures to govern the committees, activities, and delegate management of the property, affairs, business, and activities of the Foundation; 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 Foundation; (3) elect, appoint, or remove any Director or officer; or (4) amend, adopt, or repeal the Article 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 Foundation, as the Chair of the Pro Bono Committee. The Board of Directors of the Foundation 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 Foundation 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. No member of the Pro Bono Committee shall vote upon the application of any organization where the member, or a Family Member, as defined in the College's Conflict of Interest Policy, of such member, is an officer or director.

3. Reports of the Pro Bono Committee. The Pro Bono Committee shall prepare a written report of the Board of Directors of the Foundation and to the Board of 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 Foundation and the Board of the ACB may request such other material 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 majority of the Directors present at a meeting of the Board of Directors at which a quorum is present.

5. Executive Committee. The Board of Directors shall establish an Executive Committee consisting of the Chair of the Board of Directors, the Vice Chair, the Treasurer, the Secretary and the Chair of the Pro Bono Committee; the General Counsel of the ACB shall serve as an *ex officio* member of the Executive Committee. The Executive Committee shall have the power to act for the Board of Directors in the event it is not reasonably possible for the Board to act in time. Such determination shall be made by the Chair.

6. 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 of 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 Foundation. 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, 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 meetings, without objecting at the beginning of the meetings 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 Foundation shall be elected from among the Directors of the Foundation by the Board of Directors of the ACB. The officers of the Foundation shall be a Chair, a Vice 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 Foundation and shall preside at meetings of the Board of Directors,, shall be a voting member of the Board of Directors, shall coordinate and supervise all activities of the Foundation, 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 Foundation and shall perform such further duties which usually pertain to the office of a chief executive officer and/or as may delegated by the Board of Directors, from time to time.

3. Vice Chair. In the absence of the Chair or in the event of the Chair's death, inability or refusal to act, the Vice Chair shall perform the duties of the Chair and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair. The Vice Chair shall perform such duties as from time to time may be assigned by the Chair, the Bylaws or the Board of Directors.

4. Secretary. The Secretary shall act as secretary of and keep the minutes of all meetings of the Board of Directors,, and shall be a voting member of the Board of Directors,. 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 Foundation, 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 Foundation. The Secretary shall perform such further duties which usually pertain to the office of Secretary and/or as may be delegated by the Board of Directors, from time to time.

5. Treasurer. The Treasurer shall be the chief financial and accounting officer of the Foundation, shall be a voting member of the Board, and shall have charge and custody of the funds and other assets of the Foundation. The Treasurer shall be responsible for the keeping of the correct and adequate records of all financial affairs of the Foundation. In addition, the Treasurer shall submit a report at each Board meeting and shall supply the Foundation's accountant with appropriate records annually at the end of the fiscal year. All bills of the Foundation 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.

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

7. Term of Office. Each officer shall serve 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.

8. Compensation of Officers. All officer shall serve without compensation.

ARTICLE VII

Financial Administration; Books and Records

1. Documents. All disbursement of monies or incurrence of debts on behalf of the Foundation may be undertaken by such officer(s) or agent(s) of the Foundation, and in such manner, as shall from time to time be determined by resolution of the Board of Directors.

2. Deposits and Accounts. All funds of the Foundation 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 Foundation 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 Foundation, checks, drafts, and other orders of the Foundation may be endorsed, assigned, and delivered on behalf of the Foundation by such officer(s) or agent(s) of the Foundation as shall be determined by the Board of Directors.

3. Corporate Book and Records. The Foundation 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 Foundation, the Conflict of Interest Policy and the Document Retention Policy of the College shall apply to the operations and activities of the Foundation.

ARTICLE VIII

Insurance and Indemnification

1. Generally. The Foundation 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, or administrative or investigative, other than an action by or upon a right of the Foundation by reason of the fact that such person is or was a Director, officer, member of a committee, employee or agent of the Foundation (hereafter "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 Foundation, 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 pleas 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 Foundation, 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 Foundation 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 Foundation 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 Foundation, except that no indemnification shall be made in respect of any claim, issue or matter as to which person shall have adjudged by a final court order to be liable for negligence or misconduct in the performance of a duty to the Foundation 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 proceedings referred to in Sections 1 and 2 of this Article VIII, or in defense of any claim, issue or matter therein, such persons 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 Foundation only as authorized in the specific case upon a determination that indemnification of the Covered Persons is proper in the circumstances because such persons 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 proceedings may (but is not required to) be paid by the Foundation 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 indemnified by the Foundation 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 amendments of these Bylaws shall reduce the extent of indemnification with respect to any person who was or is a Covered Persons as to any act or occurrence that occurred prior to such amendment.

7. Insurance. The Foundation 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 Foundation as a Director, officer, partner, trustee, employee or agent of another foreign or domestic foundation, 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 Foundation 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 Foundation 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 Foundation 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 Foundation is so notified, the Foundation will be entitled to participate therein as its own expense and/or to assume the defense thereof at its own expense, with legal counsel selected by the Foundation and reasonably acceptable to the Covered Person. After notice from the Foundation to the Covered Person of its election to assume such defense, the Foundation 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 of the Foundation 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 Foundation, (ii) the Foundation shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Foundation and the Covered Person in the conduct of the defense of such action, suit, proceeding or investigation, or (iii) the Foundation 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 expenses of the Foundation. The Foundation 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 Foundation's written consent. The Foundation 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 Foundation nor the Covered Person will unreasonably withhold or delay its consent to any proposed settlement.

ARTICLE IX

Fiscal Year

The fiscal year of the Foundation 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 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.