

Proposed Amendment to WBASNY By-Laws (March, 14, 2012)

Article XXVII

INDEMNIFICATION

The Association may, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that she was an Officer or Director of the Association, against any judgments, fines, amounts paid in settlement and the expenses, including counsel fees and disbursements, incurred in connection with any such claim, action, proceeding or payment, except where such claim is based upon, in whole or in part, such Officer's or Director's willful misconduct or fraud.

Section 1.

To the extent that a "non-profit executive liability insurance policy" (hereinafter "Executive Liability Policy") covering the Association and its non-profit subsidiaries and/or affiliates is in force, the Association *shall*, to the fullest extent permitted by law and subject to the limits, limitations and exclusions of such policy, defend and indemnify any person who is named, or threatened to be named, as a party to any action or proceeding by reason of the fact that such person is or was an "Association Executive" (as defined in Section 3 of this Article), against any judgments, fines, amounts paid in settlement and related expenses, including counsel fees and disbursements reasonably incurred by, on behalf of, or imposed upon such person; provided however that no such indemnification shall be provided for any such person with respect to any matter (a) if such person has failed to cooperate in the defense of the matter, including providing testimony and documentation as requested; and/or (b) as to which such person shall have been finally adjudicated (i) to have acted outside the scope of her/his authority as an Association Executive and/or (ii) to have committed an intentional tort or crime, to have gained a financial profit or other advantage to which they were not entitled, or otherwise not to have acted in good faith in the reasonable belief that such action was in the best interests of the Association and/or its subsidiaries or affiliates; and further provided that any compromise or settlement payment shall be approved by a majority vote of the Board of Directors. Association Executives who are named in a proceeding and/or have been threatened to be named, shall not be prohibited from participating in the Board vote on whether to approve a settlement or compromise, but there must be a quorum of directors who are not parties to the proceeding at any meeting when such votes are held.

Section 2.

To the extent that an Executive Liability Policy is *not* in force or does not cover the claim, the Association *may* vote to defend and indemnify any person who is named, or threatened to be named, as a party to any action or proceeding by reason of the fact that such person is or was an Association Executive (as defined in Section 3 of this Article), against any judgments, fines, amounts paid in settlement and related expenses, including counsel fees and disbursements reasonably incurred by, on behalf of, or imposed upon such person; provided however that no such indemnification shall be provided for any such person with respect to any matter (a) if such person has failed to cooperate in the defense of the matter, including providing testimony and documentation as requested; and/or (b) as to which such person shall have been finally adjudicated (i) to have acted outside the scope of her/his authority as an Association Executive and/or (ii) to have committed an intentional tort or crime, to have gained a financial profit or other advantage to which they were not entitled, or otherwise not to have acted in good faith in the reasonable belief that such action was in the best interests of the Association and/or its subsidiaries or affiliates; and further provided that any compromise or settlement payment shall be approved by a majority vote of the Board of Directors. Association Executives who are named in a proceeding and/or have been threatened to be named, shall not be prohibited from participating in the Board vote on whether the Association will defend and indemnify them and/or whether to approve a settlement or compromise, but there must be a quorum of directors who are not parties to the proceeding at any meeting when such votes are held.

Section 3.

The Board of Directors may, in its discretion, authorize the Association to purchase and maintain an "Executive Liability Policy" to defend and indemnify the Association, its not-for-profit subsidiaries and affiliates (i.e., WBASNY Foundation, Chapters, and Chapters' Foundations), and any persons authorized to act on behalf of the Association, its subsidiaries or affiliates (i.e., officers, directors, executive board members, committee chairs, trustees, and other duly authorized persons, whether paid or unpaid, of the Association, its subsidiaries and/or affiliates; herein "Association Executive(s)"), against any judgments, fines, amounts paid in settlement and related expenses, including counsel fees and disbursements reasonably incurred by, on behalf of, or imposed upon such person based on their capacity with and/or conduct on behalf of the Association, its subsidiaries and/or affiliates, to the fullest extent permitted by law and subject to the terms, limits, limitations and exclusions of such Executive Liability Policy.

Section 4.

To the extent permitted by law and subject to the limits, limitations, exclusions and terms of any Executive Liability Policy maintained by the Association, the indemnification and advancement of expenses provided in this Article (a) shall be available with respect to events occurring prior to the adoption of this Article; (b) shall continue to exist after any rescission or restrictive amendment of this Article with respect to events occurring prior to such rescission or amendment; (c) shall apply to any Association subsidiaries or affiliates established after the adoption of this Article and to their Association Executives; (d) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding; and (e) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Association and the Indemnatee were parties to a separate written agreement. Any indemnification provided under this Article shall also inure to the benefit of the heirs, executors and administrators of persons entitled to indemnification hereunder. The right to defense and indemnification under this Article shall be in addition to and not exclusive of all other rights to which any person may be entitled.

Section 5.

No amendment or repeal of the provisions of this Article which adversely affects the right of an indemnified person under this Article shall apply to such person with respect to those acts or omissions which occurred at any time prior to such amendment or repeal, unless such amendment or repeal was voted by or was made with the written consent of such indemnified person.

Section 6.

In the event this Article or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable and the remainder of this Article shall remain fully enforceable.