



## **BYLAWS OF THE THE NATIONAL RETAIL AND RESTAURANT DEFENSE ASSOCIATION**

**Final draft as of June 23, 2008**

### **SECTION I**

#### **Organization**

On the 24th day of August, 2007 the National Retail and Restaurant Defense Association (NRRDA) was created under the laws of the Commonwealth of Virginia.

A certificate will be filed with the State Corporation Commission and Chesterfield County Circuit Court, pursuant to the requirements of law.

The principal office and business address of NRRDA shall be 6201 West Howard Street, Suite 201, Niles, IL 60714, or such other place as the Board of Directors of NRRDA shall, from time to time, direct.

The fiscal year shall be the calendar year from January 1 to December 31.

### **SECTION II**

#### **2.1 Goals & Objectives**

The purpose of NRRDA is to advance and protect the interests of the retail and restaurant industry. By providing members with information, strategies and tools, NRRDA works to reduce claims and better manage risk; mount effective defense strategies against claims and litigation; and foster and encourage a cooperative relationship among the members of the Association.

#### **2.2 Definitions**

Members - A "member" is an individual having membership status in the Association in accordance with the Articles of Incorporation and these bylaws.

Board of Directors - The "Board of Directors" is the group of persons vested with the authority and responsibility to manage the affairs of the Association.

## SECTION III

### Membership

#### 3.1 Membership

The Association shall maintain a diverse membership to enhance the exchange of information. Membership shall consist of a minimum of 40% industry (retail, restaurant & insurance) members. The Association shall have four classes of regular membership:

##### Category 1 - Industry Members

- Retail & Restaurant – A Principal or employee of an entity that operates in the business of retail or restaurant, who performs a risk management, investigatory, defense or claims function or is responsible for those who perform such functions.
- Insurance – Principals or employees of companies that insure the retail and restaurant industry, and third party administrators who are involved in risk management or the investigation and/or defense of claims filed against retail and restaurant businesses or their interests.
- In-house Counsel – An attorney employed by a retail, restaurant or insurance firm as a full time employee engaged in the defense of claims filed against employer.
- Corporate Industry Membership - A corporate membership is available to industry members only. The fee is \$850 and provides membership for up to ten members. These fees are subject to change by the Board without notice or restriction.

##### Category 2 - Attorney Members

- Attorneys who are employed by businesses devoted to or principally engaged in the defense of the retail or restaurant industry.
- Attorneys who actively and principally engage in the practice of law, in the defense of the interest of retail and restaurant clients, or other clients or businesses working within those industries.

##### Category 3 - Vendor Members

- A principal or employee of an entity involved in the investigation and defense of claims filed against retail or restaurant business such as field adjustor, settlement company, expert, etc. Any such member engaged in defense activities, must adhere to the goals and objectives of the Association.

#### Category 4 - Life Membership

Life membership recognizes outstanding contributions of those industry or attorney members meeting the above minimum requirements. A Life member shall have all the rights and privileges of an industry or attorney member. Nominations for Life membership shall be made to the Awards Committee chairperson at least sixty days prior to the annual meeting. The Awards Committee shall make recommendations to the Board of Directors as to recipients of this Life membership. No more than three (3) nominations for such membership may be approved by the Board in any one year.

Individuals will be nominated by the Awards Committee and approved by a majority vote of the Board of Directors of the Association. The Association may bestow Life membership upon any qualified member who has met the following minimum requirements:

- Individual must be or have been an industry or attorney member of the Association for fifteen (15) years.
- Individual must have rendered distinctive service to the Association through participation on committees, and/or service as an officer or member of the Board of Directors for a minimum of five years.

Each member shall have one vote on each matter submitted to a vote at a meeting of the members.

No person, firm or corporation, or partnership shall be eligible for any class of membership if he/she/they/it is/are a member or associated with or becomes associated with, any corporation, firm, proprietorship, business, entity or association whose objectives, goals and/or operations are inconsistent with or adverse to the purpose, objectives and interests of NRRDA.

In order to become a member of the Association, applicants must follow the process established by the Board of Directors and the Bylaws which may include review by the Membership Committee.

### **3.2 Special Membership**

The association shall have one special membership category.

#### Associate Membership

Associate membership shall be granted at the discretion of the Board of Directors. Associate members shall be non-voting members and may not hold office. Associate members may be allowed to attend any business meeting of the Association at the discretion of the Board of Directors unless excluded by a majority vote of attendee members of such meeting and their proxies.

Associate members may include:

- A local, state or federal law enforcement officer, who is involved in, or provides special expertise or services for the investigation and/or defense of claims made to retail or restaurant businesses.
- A full-time investigator or investigations supervisor of the state bureau of insurance.
- Any individual or representative of an insurance company or government agency who is involved in, or provides special expertise or services for the investigation of insurance fraud, who is endorsed in writing by an Industry or Attorney member.

### **3.3 Application for Membership**

Individuals applying for membership, entities applying for corporate membership or individuals recommending a member for Life membership shall submit the appropriate membership application to the Membership Committee. Industry, insurance and vendor members shall apply and include payment of membership dues at the time of filing. Attorney and other members shall submit their application which shall include a recommendation for membership from one (1) current member of the Association and three (3) business references. Admission to the Association shall be approved through the Membership Committee. The Committee shall give due consideration to the applicant's experience, abilities, personal and professional standing in the community, and other qualifications it deems applicable. An applicant may be required to submit to an interview. The Membership Committee retains the right to recommend the denial of admission of an individual or corporate applicant at its sole and absolute discretion. Any applicant whose professional activities or personal background are considered adverse to the interests, goals or objectives of the Association shall not be deemed eligible for membership.

A requirement for membership in NRRDA shall be the payment of dues, fees, and/or assessments as required from time to time by the Board of Directors. The amount, frequency and calendar dates of payment of such dues, fees and/or assessments shall be determined by the Board of Directors. Membership must be renewed each year.

As of 6/2/08, the membership fees for NRRDA are:

- \$150 for industry members (retail, restaurant or insurance)
- \$850 industry corporate membership (10 members)
- \$425 for attorney members
- \$225 for vendor members
- \$225 for associate members

A corporate membership is available to industry members only. The fee is \$850 and provides membership for up to ten members of the same corporation. These fees are subject to change by the Board without notice or restriction.

In recognition of the commitment to planning, the development of membership and the initial financing to build the Association, the Charter Board firms shall be exempt from dues for the first year of NRRDA and receive a two (2) year membership benefit. Charter Board firms will receive a discounted membership fee of \$250 per year per attorney for employees in any firm office. This special membership clause can be renewed by the Board of Directors for an additional two (2) years.

### **3.4 Membership Criteria**

Any member of NRRDA, or their organization, firm, subsidiary, affiliate or related business may not represent, consult for or testify on behalf of plaintiffs in a personal injury case against a NRRDA member or an insured of a NRRDA member. If any firm or organization has even one individual who violates this provision, the entire firm or organization and all current NRRDA members from that firm or organization will have their membership revoked. If the case is dropped or resolved after NRRDA membership has been revoked, re-application to NRRDA by all those removed will be required. Attorneys in private practice who wish to join NRRDA must submit an Attorney application for membership. Only attorneys who regularly defend retail and restaurant companies or companies affiliated with these industries and whose law firm does not represent plaintiffs are eligible for membership.

NRRDA offers members educational, resource and networking opportunities to assist in sharing of knowledge and resources in the defense of the retail and restaurant industries. NRRDA members adhere to a unique policy which prohibits unwanted marketing overtures. NRRDA recognizes that membership will lead to the development of professional business relationships; we will not publish or distribute membership mailing lists or other attendee information. Members overtly marketing their business at a meeting or other function, or through group email to NRRDA members, will be subject to appropriate response by the Board of Directors and could be subject to membership denial or revocation.

### **3.5 Termination of Membership**

A member may resign at any time, but will not be entitled to receive a refund for any fees or dues paid. Resignation will become effective upon receipt by the Board of Directors and/or the NRRDA office.

Any member in good standing, who may become displaced from the industry, may remain a member for a period of 180 days without direct employment in the industry. Should that member not secure a position within the industry within that time period, he/she must relinquish membership until a time at which he/she is again employed. If the displaced member is a member of the Board of Directors, they will retain that position for the 180 days, unless during that period they are subject to reelection and are not reelected.

Membership in the Association shall terminate in 60 days if the member fails to make payment of dues or other obligations to NRRDA. Resignation shall be mandatory when

any member fails to comply with the eligibility requirements of Section 3.3 above. A member may be removed at any time, upon a vote of two-thirds of the Board of Directors then voting, for (a) violation of the Bylaws, (b) non-payment of fees or dues, (c) any other good cause.

Individuals, companies or organizations that have had their membership in NRRDA revoked may not attend NRRDA meetings unless approved by the Board of Directors. Non-members may attend NRRDA meetings if sponsored and invited by a NRRDA member in good standing, unless they have previously had their NRRDA membership revoked and/or if they participate in a field or vocation to which membership in NRRDA is excluded. Exceptions are subject to approval by the Board of Directors.

### **3.6 Annual Meeting**

The Association shall meet annually at a location and time chosen by the Board of Directors. Notice of the annual meeting shall be sent to members not less than thirty (30) days prior to such meeting.

### **3.7 Quorum**

A majority of the members of the Board of Directors shall constitute a quorum for meetings of the Board. A majority of the members of any committee shall constitute a quorum for meetings of a committee. Ten percent of the total membership in good standing shall constitute a quorum for meetings of the members.

## **SECTION IV**

### **Officers of the Board**

#### **4.1 Officers**

The officers of the Association shall be President, President-Elect, Secretary, and Treasurer all of which shall be an Industry, Insurance, Attorney or a Life member of the Association.

a. President - The President shall be the Chief Executive Officer of the Association for a two year term. It shall be the President's responsibility to manage, supervise and coordinate the activities of the Association, to preside at meetings of the Association and the Board of Directors, to create and appoint appropriate committee chairpersons for the conduct of the activities of the Association, and to appoint officers or members of the Board of Directors when vacancies arise. The President may not act as general counsel.

b. President-Elect - The President-Elect is expected to serve for a period of four years which shall consist of a two year term as President-Elect and a two year term as

President. This position will allow the incoming President the opportunity to review and understand the workings of the Association before acting as the President of the Association. In the absence of the President, the President-Elect shall be Chief Executive Officer and shall act as such.

In the event the President cannot serve or complete his/her term, the President-Elect shall assume the office of President until the next annual meeting.

c. Secretary - The primary duty of the Secretary is that of communication within the membership and the distribution of Association newsletters. The Secretary shall also keep the records and minutes of the Association, maintain a current roll of membership, and maintain possession of the Articles of Incorporation, Bylaws, and all other documents of value. It shall be the Secretary's duty to receive and acknowledge all communications addressed to the Association and its officers and any other duties designated by the President. The Secretary serves a two year term.

d. Treasurer - The primary duty of the Treasurer is that of obtaining and retaining membership in the Association. The Treasurer shall be custodian and sole depositor of Association funds. Any funds to be dispersed will be authorized by the Board of Directors. The Treasurer shall render a complete summary of all income, disbursements, and balances whenever requested by the Board of Directors and to the members at each Association meeting. The Treasurer serves a two year term.

## **4.2 Officer Appointments**

Officers of the Association will be nominated from the Board of Directors and elected though majority vote of the Board at the annual meeting. All officers shall be elected annually at the summer board meeting, for terms to begin at the conclusion of the annual meeting.

## **SECTION V**

### **Board of Directors**

#### **5.1 Board of Directors**

The Board shall have full power to manage the business necessary of the Association and carry out its purposes. Each Board member shall have one (1) vote. The Board of Directors shall have the general powers to direct, control, and supervise the affairs of the Association. The Board may delegate its powers by creating committees authorized to conduct Association business within the scope of duties the Board defines as its purpose.

The Charter Board of Directors, consisting of Attorneys who have provided support to finance the Association and engaged in the initial development of the Association, shall remain as the governing body until the first Annual Conference. The Advisory Board, consisting of Industry representatives from retail and restaurant organizations and engaged in providing guidance in the organization of the Association, shall remain in effect until the first Annual Conference.

At the first Annual Conference, a membership meeting will be held and a Board of Directors for the Association will be established. Based on the criteria for the Board (membership for three consecutive years), the first Board of Directors will consist of ten (10) members of the Charter Board and five (5) members of the Advisory Board. The Board will be presented to and voted on by the members.

The Board of Directors, elected at the first Annual Conference, shall consist of ten (10) Attorney members and five (5) Industry/Insurance members including officers. Vendors may not be elected to the Board of Directors.

NRRDA will reimburse Board members for all reasonable related travel expenses associated with attendance at Board Meetings. Board Members fees for participation at any NRRDA event are also waived. Board members will be expected to pay annual membership dues.

## **5.2 Terms of Office**

For the initial election, terms will be differentiated with five (5) Attorney directors and (3) Industry/Insurance directors being elected to serve three (3) year terms. The remaining five (5) Attorney directors and (2) Industry/Insurance directors will be elected to serve two (2) year terms. This allows for future board elections to change only half the directors each year, providing consistency to the Board of Directors.

From there forward, each member of the Board of Directors shall hold office for two (2) years from the time of their appointment.

No elected director shall serve more than three consecutive elected terms. No director may serve more than ten (10) years.

## **5.3 General Powers**

The property, affairs and business of the organization shall be under the care of and managed by the Board of Directors. The President shall be the Association's executive office to carry out the instructions of the Board.

No action of the Board shall be valid unless taken at a meeting at which a quorum is present except any action in which consent in writing is set forth for the action, signed by each director either before or after such meeting. Meetings may be by conference call or other means of electronic communication.

The President and the Board may create Committees and appoint Committee Chairpersons as they deem appropriate. This includes determination of the number of participants on the committees, their qualifications and responsibilities. Participants on planning committees must be members in good standing of NRRDA and fulfill their duties to the expectations of the Board of Directors. Any committee chair or member can be removed by the Board of Directors. The President may also create Task Forces for the purpose of addressing ad hoc issues that arise during the course of his/her term.

The Board of Directors shall appoint a General Counsel for the Association from the members of the Board. The General Counsel will review contracts for the Association and represent the Association in any legal matters outside the corporate filings.

The Board shall meet at least annually at the time of the annual membership meeting of the Association. Additional meetings of the Board may be called by the President or other Officers at any time, or shall be called at the request of any three Board members. The agenda for the Board of Directors meetings shall be as designated by the President.

#### **5.4 Elections**

The Board of Directors shall consist of fifteen (15) members, all of whom shall be elected by the members at large at the annual meeting on the following basis. Board members must be a member in good standing of the Association for a minimum of three (3) consecutive years to be considered for the Board of Directors.

No later than sixty (60) days prior to the annual meeting, the Board will advise the membership of elections, vacancies and such other information as the Board deems appropriate. All nominations shall be submitted to the Nominations Committee of the Board of Directors no later than thirty (30) days prior to the Annual Meeting. Nominees must be a member in good standing.

No later than 30 days before the annual meeting, the Board will present a list of eligible candidates for the Board of Directors. All valid nominations will be on the voting ballot.

At the annual meeting, candidates will make short presentations to the membership. An official ballot will be distributed to members for voting. Ballot results will be collected and tallied by the continuing Board of Directors and results announced immediately following the vote.

#### **5.5 Vacancies**

In the event of a vacancy occurring among the officers or the Board of Directors, through death, resignation, disqualification, disciplinary action, or any other cause the Board deems sufficient, the vacancy or vacancies shall be filled by appointment of the President. The interim Board member must be of the same membership class as the

exiting Board member. If the office of the President becomes vacant, he or she will be replaced by the President-Elect. Such newly appointed officer(s) of the Board shall hold office only until the next annual meeting and election, or for the remaining period of the unexpired term which they have assumed. If an interim director is elected to the Board, time served as an interim Board member will not be included in the Board member's term limitation.

## SECTION VI

### Special Advisors

#### 6.1 Definition

A Professional Advisor is someone who possesses a specialized skill, knowledge, and expertise in a given profession, and whose professional advice is useful to the Board of Directors to assist and/or enable it to carry out its duties on behalf of the Association. Advisors will be appointed by the Board of Directors.

#### 6.2 Type

The Association will have Corporate Counsel, an Accountant and an Auditor.

Corporate Counsel - The Corporate Counsel will be an Attorney at Law, admitted to practice in the Commonwealth of Virginia, and who is in good standing and in active membership with the Virginia State Bar. The Corporate Counsel will be an active member of the Association and agree to serve, free of charge, to the Association. The Corporate Counsel will maintain the Corporation's legal status in the State of Virginia.

Accountant - The Accountant will be a Certified Public Accountant who is in good standing and in active membership with the Society of Certified Public Accountants and a state equivalent. The Special Accountant will be an individual who practices predominantly insurance and or commercially related accounting with a specialty and/or emphasis in retail or restaurant clients. The Special Accountant will maintain audit functions of the Association's books and account and will file and/or assist the Association in the filing of necessary federal, state and local tax returns and the like.

Auditor – The Board of Directors, on a yearly basis, will engage a certified public accountant or firm to provide an audit report to the Board.

## **SECTION VII**

### **Amendment**

#### **7.1 Requirements**

These bylaws may be amended at any Board of Director's meeting by a quorum of Director members present, providing:

- The proposed amendment is disseminated and presented to the entire Board of Directors at least thirty (30) days prior to any Board of Director's meeting.
- Board members may give their proxy if absent by way of the Secretary or President of the Association.
- And the proposed amendment is presented in a form consistent with and not in conflict with the Articles of Incorporation and the Bylaws of this Association.

## **SECTION VIII**

#### **8.1 Indemnification**

The corporation shall, to the extent legally permissible, indemnify each person who may serve or who has served at any time as an officer, director, or employee of the corporation against all expenses and liabilities, including, without limitation, counsel fees, judgments, fines, excise taxes, penalties and settlement payments, reasonably incurred by or imposed upon such person in connection with any threatened, pending or completed action, suit or proceeding in which he or she may become involved by reason of his or her service in such capacity; provided that no indemnification shall be provided for any such person with respect to any matter as to which he or she shall have been finally adjudicated in any proceeding not to have acted in good faith in the reasonable belief that such action was in the best interests of the corporation; and further provided that any compromise or settlement payment shall be approved by a majority vote of a quorum of directors who are not at that time, parties to the proceeding.

The indemnification provided hereunder shall inure to the benefit of the heirs, executors and administrators of persons entitled to indemnification hereunder. The right of indemnification under this Article shall be in addition to and not exclusive of all other rights to which any person may be entitled.

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.

This Article constitutes a contract between the corporation and the indemnified officers, directors, and employees. No amendment or repeal of the provisions of this Article which adversely affects the right of an indemnified officer, director, or employee under this Article shall apply to such officer, director, or employee with respect to those acts or omissions which occurred at any time prior to such amendment or repeal.

## **8.2 Conflicts of Interest**

Whenever an officer or director has a financial or personal interest in any matter coming before the Board of Directors, the Board shall ensure that:

- The interest of such officer or director is fully disclosed to the Board of Directors.
- No interested officer or director may vote or lobby on the matter or be counted in determining the existence of a quorum at the meeting of the Board of Directors at which such matter is voted upon.
- Any transaction in which an officer or director has a financial or personal interest shall be duly approved by members of the Board of Directors not so interested or connected as being in the best interests of the organization.
- Payments to the interested officer or director shall be reasonable and shall not exceed fair market value.
- The minutes of meetings at which such votes are taken shall record such disclosure, abstention, and rationale for approval.