

NOTE: This is the “Draft 2” version of FCALA proposed by-law changes, annotated with comparisons to the current Tri-County by-laws, with excerpts and Janet’s comments thereupon highlighted in yellow; we may want to adopt some Tri-County structure and wording. Janet’s other comments are highlighted in magenta. Allan’s first changes are highlighted in turquoise; his subsequent comments are given in red.

## **DRAFT 2: BY-LAWS OF FUNERAL CONSUMERS ALLIANCE – LOS ANGELES**

(Draft based on By-laws adopted November 2020)

### **ARTICLE I**

#### **Purpose**

##### *Nature, Purpose, Character & Limitations?*

*We probably should provide the entire legal name and designation of the corporation, and state the shortened name to be used throughout the document. How about the existence of a mailing address, and a means for changing it?*

Section 1. The purpose of this Alliance is to achieve dignity and simplicity in arrangements for death services for members and their families.

*Mention purpose of educating members and public about options, pricing and consumer rights?*

*State limitations as a 501(c)(3) corporation under IRS, and any other legal restrictions?*

Section 2. The Alliance assumes no legal or financial responsibility for the services of any funeral director, crematory or cemetery, or for the final disposition of bodily remains.

#### **Article I**

1. Yes to expanded title
2. Yes to legal name & shortened name. Probably better not to give a mailing address, since changing it could be complicated (require full membership approval). Besides, the address is not inherently part of by-laws
3. Yes to mentioning additional purposes: To educate members and the public about options, pricing, and consumer rights in death services and to negotiate with local providers of these services for discounted prices for members.
4. Section 2 seems ok. Probably not to stating limitations of 501c3 organizations, but could state that FCA-LA is such an organization, maybe after name is given (#2 above)

### **ARTICLE II**

#### **Members**

Section 1. Affiliation. Any person who approves and subscribes to the purposes and procedures of this Alliance may become a member of the Alliance upon application in writing upon a form prescribed by the Board of Directors accompanied by the membership fee to be determined by the Board of Directors; provided, however, that no membership fee shall be required of any person qualified as an indigent.

*May want to mention that the form is available on the website, or can be requested by mail.*

*This Section only notes individual and group memberships, while “family” and “joint” memberships show up in subsequent Sections. Shouldn’t all types be described here?*

The Board of Directors shall have the power to permit group memberships upon such terms and conditions as it deems to be in the best interests of the Alliance.

*Do we have any group memberships at present, and if so, how are they defined?*

Section 2. Removal. Members may be removed from the membership roll for conduct inimical to the stated purposes and objectives of the Alliance by vote of a majority of members present at any meeting of members duly called and noticed; provided that pursuant to action by the Board of Directors notice in writing, stating that such removal will be voted upon at such meeting and also stating the time and place of such meeting, shall be mailed to such member addressed to him at his address as shown in the records of the Alliance by registered mail at least ten days before such meeting. Notice in writing of the removal of any member from the membership roll shall be mailed to any person so removed within ten days after the meeting at which such removal is voted. Such notice shall state that such removed member shall be entitled to the return of the sum of \$8 (or \$3 for individual members) from his membership fee upon request in writing therefor received by the Alliance within thirty days after the date of said notice of removal. If such request be not so made within such time, said removed member shall have no further right to the return of any part of the membership fee.

*Tri-County has a much shorter, less confusing statement of “Term of Membership/Removal” (see below). It confers lifetime membership, simplifies terms of removal, and does not specify rebates nor mailings. Should we streamline our Section in a similar way?*

*“Membership, once granted, shall extend to the end of that member’s life, unless they are removed from membership for conduct contrary to the stated purposes and objectives of the Society by a majority vote of the Board of Directors.”*

*Although the only question posed about Article II, Section 2, Removal was about a dollar amount for return of dues, I wonder if that section is even necessary or desirable and could be removed.*

Section 3. Resignation. Any member may remove himself from the membership roll of the Alliance by delivering to the Alliance his written resignation. No resigned member shall be entitled to the return of any part of his membership fee.

Section 4. Rights & Privileges. Family membership entitles such members to all services performed by the Alliance. A family is defined as a married couple, their minor children and their own parents and grandparents, if living in the area served by the Alliance.

*Do we have many Family memberships, or are most individual? Is there any difference in fee for this classification? Also, "joint" memberships are mentioned in Article III, Section 5; are these the same as "family" memberships, and if so, shouldn't the same term be used throughout?*

*Do we want to note provisions for "emergency memberships" in cases of unexpected deaths?*

## Article II

### Section 1. Affiliation.

Better: ...approves of and subscribes to...

Better: ...become a member of the Alliance by completing an application form provided by the Alliance and paying the membership fee set by the Board of Directors.

"qualified as an indigent" sounds quaint and to me implies a personal trait. Better: "The membership fee may be waived for applicants unable to pay it."

1. I wouldn't bother with saying where the form is. New members don't read by-laws.
2. Good point to raise. The question of who is (qualifies) as a member may need discussion. Looking at my records from 2005, I see this statement on the membership application: "\$30 per person for lifetime membership. Minor children are covered at no charge until age 18." That is pretty clear. The membership fee has gone up since, of course. By 2010 it was \$50 and there was a \$10 per year "newsletter membership" and this statement from the president, Ruby Trow, that "we now have to institute an annual dues of \$20 to be able to continue our service to Los Angeles County residents." (from the newsletter for that year.) The application form I completed in 2005 has space for listing the applicant ("name") and "spouse," and I see that I listed my wife and paid for two memberships. By implication, it appears that there are/were no family or group memberships, only individual memberships for adults that included their minor children.
3. OR maybe changes should be made to avoid the "family" and "joint" and "group" membership terms entirely

### Section 2. Removal.

I suppose it goes without saying that members who die will be removed from the membership list--I have a "Notification (post)Card" that the Los Angeles Funeral Society included in a mailing to new members that was to be used when a member dies.

1. Three cheers for retitling Section 2 and using Tri-County's wording, but see my note below:

Note.--The Funeral Society apparently relied on voluntary contributions, including solicitations made each year before the annual meeting. Approving this would seem to preclude any mandatory annual dues, and by default rely on voluntary contributions to

cover any expenses. Is that what the membership wants? Or maybe dues are not allowed by the larger organization. Is there such a thing as “voluntary dues?” Should the membership fee be raised in anticipation of expenses not covered by voluntary contributions?

#### Section 4, Rights and privileges

1. Good questions. It would be good to clarify if there are/were family memberships and if so, whether the membership fee was higher, given the inclusion of parents and grandparents. My inclination would be to keep things simple, not include parents and grandparents (who could be signed up as members), but to include minor children. In other words, no family memberships. If family memberships are allowed, a separate membership form listing them would seem to be required, since individual forms are required when membership information is forwarded to the chosen mortuary to obtain the discount negotiated by the Alliance.

### ARTICLE III

#### Meetings of Members

Section 1. Annual Meeting. The annual meeting of the Alliance shall be held each year at a time and place to be designated by the Board of Directors.

*State that a meeting may be in-person, virtual, or combination?*

Section 2. Special Meetings. Special meetings of members may be called by the Board of Directors. Upon the filing with the Secretary of a petition signed by at least 50 members, a special meeting shall be called. The request shall state the purpose of the meeting.

*How easy is it to rustle up 50 members – would fewer suffice? Also, should we state both purpose and format of meeting (in-person or virtual)?*

*Article III, Section 2. Special Meetings. Requiring 50 members to sign a petition seems unreasonable under the present circumstances. Shouldn't the number be reduced, as was done with the number of members of the board?*

Section 3. Notices. Notice of time and place of all meetings of members shall be posted on the Alliance's website, as well as sent to all members via email or SMS text message to their electronic addresses of record, or via written letter to their postal addresses as shown in the records of the Alliance, not more than 60 days nor less than 30 days before the time specified for such meetings. Such notice shall state all items of business to be acted on at such meeting.

*Do we need to state physical location of in-person meeting, and/or digital access information?*

Section 4. Quorum. The voting members present at any meeting duly called and noticed shall constitute a quorum.

Section 5. Voting. Each member shall be entitled to only one vote; provided that when spouses hold a membership jointly, either spouse (but only one of them) may vote upon any question, resolution, or candidates. There shall be no voting by proxy.

*Why not just state there shall be only one vote per “family” membership? (Presumably, minor children, parents and grandparents have no vote, either.)*

Section 6. Conduct of Meetings. Subject to the provisions of these by-laws, any question as to procedure arising at any meeting of members shall be resolved in accordance with Robert’s Rules of Order.

#### Article III

1. Yes, to your suggested additional wording, or perhaps better, say “at a time and place and/or in a manner designated by...”
2. The existing language seems to conflate two matters: special meetings initiated by the Board and special meetings initiated by the membership. Perhaps they should be in separate paragraphs, with the second sentence/paragraph stating “Special meetings can be initiated by the membership by filing with the Secretary a petition signed by at least 20 members. The petition shall state the purpose of the meeting. Upon receipt of the petition the Board will call the special meeting.”
3. I don’t think specifying a physical location or a digital address would be a good idea.
4. Or if there were no such thing as a family membership, only members could vote. And I don’t agree that one spouse should be disenfranchised if both spouses are members. These days, spouses don’t always agree.

### ARTICLE IV

#### Directors

Section 1. Number. The corporate powers, business, and affairs of the Alliance shall be exercised, conducted, and controlled by a Board of five to nine Directors and two alternates (who will vote only in the absence of regular Directors at Board meetings). The number of Directors may be changed by the members to any number (not less than five) at any meeting the notice of which shall state that such change will be considered.

*Should we state that Board members need to be Alliance members in good standing?*

Section 2. Nominations. Prior to each annual meeting the Board of Directors shall appoint a nominating committee to prepare a slate of candidates for the directorships to be voted upon at the meeting. Additional nominations of Directors may be made by members of the Alliance. Such nominations must be in writing, either in print or by electronic message, and filed with the Secretary of the Alliance, at least 15 days prior to the annual meeting. The letter of nomination

shall bear the endorsement of the candidate. Instructions regarding procedures for nominations shall be included in each annual meeting notice.

*May nominations be made from the floor, if agreed to by the nominee?*

*Question: Here the title "Executive Secretary" had been replaced with simple "Secretary," as that is all that is listed under "Officers," below. Is this agreeable?*

Article IV, Section 2. Nominations. *Ok to change Executive Secretary to Secretary*

Section 3. Elections. At the annual meeting in 2020 the members shall elect five Directors. The four Directors receiving the highest plurality shall serve for a term of two years. The other Director shall serve for a term of one year. At the annual meeting in each even year thereafter the members shall elect three directors for a two-year term. At each annual meeting the members shall also elect Directors to fill the unexpired terms of any Directors who have resigned, died, or been removed from office. When terms of different duration are to be filled, the candidate receiving the higher plurality shall be elected for the longer term and the candidate or candidates receiving the next highest plurality shall be elected for the shorter term. Two alternates shall be elected annually for one-year terms.

*The math on this DOES NOT ADD UP! If Directors have two-year terms, and elections are only held in even years, all Directors would have to be replaced at each election. Replacing three of five on an annual basis would lead to some Directors getting bumped after only one year. Replacing two of five each year would mean some got three-year terms. Perhaps three positions (plus one alternate) should be filled in even years, and two (plus one alternate) in odd years? Can anyone come up with a more reasonable election/term rotation that can accommodate five members, plus two alternates?*

*Suggestion: First state that a Director's term shall be for three years, and note whether Directors may stand for re-election, and for how many consecutive terms. Then note the exceptions specific to the first two years of incorporation? For instance:*

*"Directors elected to the Board shall serve for a term of two years, unless they choose to resign before the end of that period. At the end of a term, a Director may stand for election to another term of two years. For the initial election in 2020 only, the members shall elect five Directors.... [describe election rotation here]."*

Article IV, Section 3. Elections. *A complete redrafting could be in order. My thoughts: retain 2-year terms for Directors, with either 2 or 3 members elected in alternate years. This should provide continuity to avoid a complete turnover in any given year. Using number of votes to decide which newly elected Directors' terms would end in 2021 is awkward and couldn't be followed in any case, unless order of volunteering were used. As a practical matter, 2 of the 5 members could be randomly chosen to start the process. Thus, two Directors' terms would end in 2021, the other three in 2022, and so on.*

Section 4. Vacancies. Any vacancy occurring in the office of Director by reason of death, resignation, or otherwise, except vacancies caused by the removal of the Board of Directors pursuant to **Section 810** of the Corporations Code of the State of California, shall be filled by an

appointee of the majority of the remaining Directors, though less than a quorum. Such Director, so appointed, shall hold office until his successor is elected at the next annual meeting of the members, or at any special meeting duly called for that purpose prior to the annual meeting.

*Tri-County does not mention a California code – do we really need to do this?*

*Question: Section 810 seems to have been replaced by several regulations that apply to different kinds of nonprofit corporations. Could someone with better legal qualifications check the items below and see which, if any, may pertain to FCALA? In addition, we might want to consider whether these by-laws are generally in compliance with current California requirements. Are other recent FCA chapter by-laws available for comparison?*

*What happens in the case of vacancies due to removal? How are removals to be carried out?*

*Article IV, Section 4, Vacancies. I don't see a problem with the text as it appears, and I lack legal expertise to suggest conformity with existing laws.*

When one or more of the Directors shall give notice of his or their resignation to the Board, effective at a future date, the Board shall have the power to fill such vacancy or vacancies to take effect when such resignation or resignations shall become effective. Each Director so appointed shall hold office during the remainder of the term of office of the resigning Director, or until his successor is appointed and qualified.

Section 5. Meetings. Immediately after the election of Directors at the annual meeting of members, the Directors shall meet for the purpose of organization, the election of Officers, and the transaction of other business. Special meetings of the Directors may be called at any time for any purpose by any Director. Notice of all meetings shall be given in writing at least three days before such meeting, **via email or SMS text message to their electronic addresses of record**, or by depositing the notice, postage prepaid, in any United States Post Office in the State of California, addressed to each Director at his address as shown in the records of the corporation.

*State that a meeting may be in-person, virtual, or combination?*

*Question: How shall we align our communication requirements with current technology? For instance, the change above, highlighted in **green**, was added to replace “by telegraph.”*

*For reference, here is a current California code excerpt, copied from:*

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CORP&division=2.&title=1.&part=3.&chapter=2.&article=1.](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CORP&division=2.&title=1.&part=3.&chapter=2.&article=1.)

*“Special meetings of the board shall be held upon four days’ notice by first-class mail or 48 hours’ notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting.”*

*My comments in the above paragraph [“I don't see a problem with the text as it appears, and I lack legal expertise to suggest conformity with existing laws.”] also apply to Article IV, Section 5. Meetings.*

Section 6. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though conducted at a meeting

duly held after regular call and notice if a quorum be present, and, if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to holding such meetings, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made part of the minutes of the meeting.

Section 7. Quorum. At all meetings of the Directors a majority of the Directors shall constitute a quorum. The concurrence of a majority of a quorum shall be necessary and sufficient for any action of the Directors. Meetings may be adjourned from time to time regardless of whether a quorum be present.

#### Article IV

1. Yes, good idea to say Board members need to be Alliance members. However, the provision for alternate Board members seems to me unrealistic and unnecessary.
2. I think that nominations from the floor should be allowed. If the nominees identified by other (prior) means should be less than the number of vacancies, the membership could still have a voice in selecting Board members.
3. One idea for dealing with this issue: In our townhome association, five board members serve two years, with two and then three members' terms expiring in alternate years. That is, in any year, either two or three members are elected or re-elected. This could work here, with an exception for the 2020 election, when, say, two members' terms would expire after one year, i.e., in 2021, and the other three members' terms would expire in 2022. Alternatively, three members elected in 2020 could serve two years, to 2022, and two members elected in 2020 could serve three years, to 2023. Length of term could be established by drawing lots or other means established by the Board. If alternate Board members are to be elected--still a strange concept for me--each could have two-year terms, with one elected each year.
4. I don't see a value in citing the California code, unless doing so saves having to enumerate a series of circumstances that the code identifies.
5. I suppose the procedure for refilling a vacancy due to removal could be the same as for vacancies due to resignations, and removal could be by majority vote of the Directors.
6. Ok to say virtual or combination virtual/in person meetings are permitted, but it doesn't seem necessary.

Is Section 6. Waiver of Notice really necessary? What circumstance would it apply to?

## ARTICLE V

### Officers

Section 1. Election. The executive officers of the corporation shall be a President, a Vice President, a Secretary, and a Treasurer. Such officers shall be elected annually by the Board of Directors and shall serve until their successors are elected and qualified. In the event of a

vacancy in any such office, the Board of Directors shall elect a successor who shall hold office for the unexpired term and until his successor is elected.

Section 2. Powers. Subject to the control of the Board of Directors, the officers shall exercise all of the power and authority normally delegated to their respective offices.

*Tri-County provides a Section covering annual audits of the books – do we need to do this?*

*Tri-County also provides guidance for production, content and archiving of minutes – do we need this?*

#### Article V

Better: In the event...until a successor is elected.

1. Audits don't seem necessary at this time, although a section might be included to authorize the Board to initiate an audit. And perhaps a Treasurer's report could be required at the annual meeting to indicate sources of income, categories and amounts of expenditures within them, and projections of future income and expenses.
2. I have looked at Tri-Counties' section on Minutes of Board Meetings, and can see value in including their section, changing "when an audit" to "if an audit." Tracing the past can be helpful, as I'm finding out by reviewing old newsletters of the Funeral Society of Los Angeles.

## ARTICLE VI

### Amendments

Section 1. The by-laws of this Alliance may be amended by the vote or written assent of a majority of the members entitled to vote or by a majority of members present at any meeting of the members, provided that a copy of the proposed amendment shall have been included with the notice of such meeting sent to all members at least 30 days before the date of such meeting as provided in Article III, Section 3 of these by-laws.

*Do we need an Article covering what to do in case of future Dissolution? Here is Tri-County's:*

#### **"Article VII – Dissolution**

*"In the event of the Society's dissolution or permanent termination of operation, any remaining net assets shall be given to the Funeral Consumers Alliance of California, or another Funeral Consumers Alliance that has non-profit, tax-exempt [e.g., 501(c)(3) or 501(c)(4)] status with the IRS."*

#### Article VI

1. A sad thought, given our present efforts at revival, but certainly worth raising. There may be regulations for dissolution of 501(c)(3) organizations which would govern

such an event. I have heard of former officers of such organizations being harassed for non-reporting after a dissolution.