



LEGAL RESOURCE MANUAL FOR DIVISIONS & LOCAL SECTIONS

of the

AMERICAN CHEMICAL SOCIETY

First Edition (September 1, 2017)

PLEASE READ: *Although this Legal Resource Manual is provided with the hope of assisting you in better identifying, evaluating, and acting to mitigate or eliminate potential legal risk, the ACS Office of Secretary & General Counsel is not engaged in rendering legal or other professional services to you. The services of a competent professional legal adviser, duly licensed to practice law within your state of incorporation or operation, should always be sought. For more information or questions about this manual, please contact Ken Polk, Esquire at k.polk@acs.org or 800-227-5558 x 6003.*

Introduction

The Office of Secretary & General Counsel performs work for the American Chemical Society (ACS), its officers, and Governance members (Board of Directors, Council, etc.). These are our clients.

Over the years, this office has also provided general informal legal information to divisions and local sections on occasions. This manual is a compilation of the informal legal information provided over the years and several new guidelines for managing the legal risks associated with operating an ACS division or local section.

The law is complex and changing every day. Also, it often differs from state to state. This manual cannot cover every topic or situation. Our hope is that it becomes a valuable resource to guide you in managing the legal risks of operating your division or local section. It cannot substitute for the advice and counsel of your local attorney who would be more familiar with the facts and circumstances involved with your issues, as well as any applicable state laws. In such cases, please be sure to consult your local attorney for specific legal advice and expert assistance.

Sincerely,

A handwritten signature in black ink that reads 'Flint Lewis' in a cursive script.

Flint H. Lewis
Secretary & General Counsel

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CHAPTER 1 - ORGANIZATIONAL STRUCTURE OF THE ACS

The American Chemical Society (ACS) was founded in 1876. ACS is designated as a tax-exempt, not-for-profit corporation under Section 501(c)(3) of the Internal Revenue Code. ACS's National Charter was approved by the U.S. Congress on August 25, 1937, for the purposes of encouraging the advancement of chemistry; promoting research in chemical science and industry; increasing and diffusing chemical knowledge; and promoting scientific interests and inquiry through its meetings, reports, papers, and publications. The Society has nearly 157,000 members.

The ACS operates through its National Charter (i.e., Act of Incorporation), Constitution, Bylaws, Regulations, and, occasionally, policies officially adopted by the ACS Board of Directors. ACS Bulletin 5 is the official repository of the Society's key operating documents. Here is a link to the official text of these documents: [ACS Bulletin 5](#) (Revised May 1, 2017). As changes may occur over time, it is advisable to periodically consult with the latest version of ACS Bulletin 5 for the most up-to-date text available.

Articles 13 and 12 of the ACS Constitution describe the origins of a division's and local section's creation, operation, and management, respectively. These articles also describe their respective authorities to collect dues, receive a dues allocation from the Society, and accept donations or bequests. Each division and local section must prepare an annual report describing its operations, as provided within the ACS Bylaws.

Bylaws VIII and VII to Articles 13 and 12 of the ACS Constitution describe the actual operation of the divisions and local sections in greater detail, respectively. Each new division and/or local section operates consistent with bylaws prepared by the Society's Council until revised or amended. Acting for Council, the ACS Committee on Constitution and Bylaws (C&B) must approve of any such revisions or amendments prior to their becoming effective.

ACS's vision is "to improve people's lives through the transforming power of chemistry". Our mission is "to advance the broader chemistry enterprise and its practitioners for the benefit of Earth and its people". These objectives are, in turn, supported by ACS's current goals: to provide authoritative and comprehensive chemistry-related information, advance member careers, improve chemistry education and communicate chemistry's value to the public and policymakers. ACS's goals may change over time.

Divisions are represented in the Society through Council. Twenty percent (20%) of Council is appointed through division elections. Divisions are also represented through the Council Committee on Divisional Activities (DAC), which has responsibility for oversight and coordination of activities of divisions of the Society. The committee also recommends policies to Council and the Board of Directors that enhance the effectiveness of the divisions.

Local sections are represented in the Society through Council. Eighty percent (80%) of Council is appointed through local section elections. Local sections are also represented through the Committee on Local Section Activities (LSAC), a standing committee of the Council. LSAC has approximately 20 full committee members and several associate members. LSAC's role as defined in its mission statement is to: "work with local sections to enhance their success, to promote the well-being of their members, to foster the spirit of volunteerism, and to carry out the mission of the American Chemical Society at the professional and community levels." More particularly, LSAC provides support with the process and design of annual reports, assists with data mining, enhances the professional development of new leaders, and recognizes local section member achievements, e.g., the ChemLuminary Awards.

TIP - A fuller description of LSAC's operations can be found within ACS Bylaw III.

TIP - A fuller description of DAC's operations can be found within ACS Bylaw III.

CHAPTER 2 - ORGANIZATIONAL STRUCTURES

A. Incorporation & Other Organizational Structures

Incorporation is the act of an individual(s) (commonly referred to as "founder(s)") to seek formal legal recognition of a new and separate entity through which to conduct business or other affairs. There is no U.S. Constitutional right to incorporate. Thus, there is no mechanism to incorporate under federal law. Instead, incorporation is generally recognized as a privilege granted through one of the 50 states. Each state has its own procedure to incorporate under its sovereign jurisdiction.

There are specific benefits to incorporating, such as perpetual existence, limited liability for the entity's founders and shareholders (if a for-profit corporation), ease in asset transfer, and centralized management. Incorporation is accomplished when the

founder(s) complies with state filing formalities and subsequently operates the entity in a manner consistent with that state's statutes and regulations. State laws relative to incorporation and operating a corporate entity can vary considerably; so the choice of incorporating under the laws of one state versus another typically depends upon multiple considerations such as tax treatment, compliance requirements, and ease of governance. The primary benefit of incorporating is to bestow upon the company's owners a shield from personal liability for the acts and/or omissions of those operating the company. For this reason, a corporation may be the preferred choice for organizing a division or local section over other potential forms of operation.

Partnerships – general or limited liability - are another form of operating structure. They differ considerably in benefits and liability protection from incorporation. Partnerships require partners to share in the profits and liabilities of the entity, according to some agreed-upon division of responsibilities (limited liability partnerships can offer some shield from liability to certain classes of partner; but not to the general partner charged with managing the partnership). Often, partnership responsibilities are divided equally among the numbers of partners, but this is not always the case. A partnership is not well suited for division or local section operation; however, since the partners may likely retain personal liability for their acts in conducting the partnership's business; providing substantially less protection from liability for owners than the statutory liability shield provided by incorporation.

B. Corporate Formalities

Each state has procedures for forming a corporation. These procedures generally require filing articles of incorporation with that state, paying designated filing fees, advertising the new corporation's formation, and requiring an initial meeting of the founder(s) before formal recognition of the corporation's existence can be recognized by that state's Secretary of State. Procedures for incorporating can vary considerably between states, but the process is generally not difficult, costly or time-consuming. Before incorporating, a division or local section should confer with a licensed attorney to determine which state of incorporation provides the requisite benefits and limited liabilities being sought by the incorporators. In some instances, the state within which the local section physically exists is chosen. About twenty (20) local sections, regional organizations, and divisions are incorporated in the District of Columbia, where ACS's Washington headquarters is located. There is no requirement to incorporate in the District of Columbia, however.

A corporation cannot act on its own. It acts through the actions or omissions of its management, namely its officers, directors, employees, agents, and designees. These representatives have varied authorities, objectives, and responsibilities that, in most cases, act as a check and balance on each other.

C. Officers

Generally, officers administer the day-to-day operations of the business. And, directors oversee the organization's affairs from a policy perspective and protect the interests of the shareholders or members as in ACS's case.

For incorporation, most states require two officers and at least one director. Some states, such as Delaware, allow one person to act in all capacities. Since requirements for incorporation can vary widely from state to state, an attorney licensed within the state of intended incorporation should be contacted for advice and counsel. If a division or local section is incorporating in the District of Columbia, the Secretary & General Counsel's Office can provide direct assistance with the requisite forms for incorporating a domestic nonprofit entity. The office cannot, however, act in any capacity as an initial officer, director, or registered agent for accepting legal documents. Neither can the Office of Secretary & General Counsel provide for the payment of any requisite filing fees.

Officers are generally responsible for carrying out the affairs of the corporation so long as they are consistent with its articles of incorporation and bylaws (bylaws are rules for operation that change over time). Acts of a corporation's officers not authorized by these guiding documents may be considered beyond the scope of authority, eliminating the limited liability shield intended to protect these officers and converting their actions instead into acts creating personal responsibility. Acts beyond the scope of the officer's authority may be deemed "*ultra vires*", and such acts can be voided by the company's or organization's board of directors. *Ultra vires* acts expose the officers to personal liability and can have the practical and legal effect of nullifying insurance coverage.

TIP – Strict adherence to a division's or local section's bylaws, as well as ACS Bylaws, works to mitigate this potential risk for personal liability.

As for the Society, ACS's Board of Directors may prescribe other duties for the Society's officers. The Society's officers consist of a President, a President-Elect, an Immediate Past-President, an Executive Director & CEO, a Secretary, a Treasurer, and a Board of Directors Chair. The Executive Director & CEO is responsible for all day-to-day operations.

D. Directors

A corporation acts through its officers, directors, employees, agents and designees. Generally, the Board of Directors is responsible for overseeing the acts of officers and providing strategic direction in the management of the corporation's affairs. Individuals appointed to the Board as directors have an important legal responsibility to make every effort to participate at Board meetings. Directors act as company agents, standing in the place-and-stead of the shareholders, or members in ACS's case, to oversee the management of the organization's day-to-day affairs.

The ACS Board of Directors is the legal representative body of the Society and establishes its strategic and administrative policies. Routinely, the Board approves of bylaw and regulation changes. The Board's Chair is also an officer of the Society.

More information about the composition, duties, and responsibilities of the ACS Board of Directors can be found in Article VIII of the ACS Constitution as contained within ACS Bulletin 5.

Unique to ACS, the ACS Board of Directors established the Governing Board for Publishing in 1996 and delegated to it the general responsibility and authority for the operations and performance of Chemical Abstracts Service (CAS) and the ACS Publications (Pubs) Division, except for the appointment of editors and choice of editorial content of journals and magazines. The Governing Board was established to provide additional management advice and expertise to the leaders of these divisions because of the fast-moving nature of the business climates within which CAS and Pubs participate.

E. Councilors

Advisory councils are not uncommon to non-profit organizations. They are typically a collection of individuals with unique knowledge and skillsets, complementing Board member knowledge and skills with the objective of more effectively governing the organization. Some advisory councils provide subject matter guidance to a nonprofit with a scientific or medical mission. They bring experience, capabilities, and expertise to the Executive Director and Board on specific matters.

Councils do not typically have formal authority to govern the organization, unless the bylaws provide otherwise. Advisory groups can be standing (ongoing) or ad hoc (one-time) in nature. ACS's Council is an ongoing body that is largely advisory, although ACS Bylaws give the Council direct authority in certain matters, such as those relating to membership and elections.

ACS's Councilors are established within ACS Bylaw III of the ACS Constitution's Article VII. ACS is organized as a bicameral organization with Council acting as its advisory body. Twenty percent (20%) of Councilors are elected by divisions and eighty percent (80%) elected by local sections. Alternate Councilors from divisions and local sections can be appointed and are selected by vote of their respective memberships.

Among other duties, Council acts as an advisory board in matters pertaining to the Society's general management. The ACS Board of Directors reports to the Council at each Council meeting on the general state of the Society and on other administrative actions taken between Council meetings.

F. Committees

A committee is a body of one or more persons appointed or elected by an assembly or society to consider, investigate, or act relative to certain matters or subjects. Committees can serve useful and timely functions in serving a Board or Advisory Council. It is not unusual for committees to be formed to fact-find and make recommendations relative to a particular issue. Generally, committees are impaneled through the authority of the Board of Directors. But this is not always the case. Committees can be divided into two distinct classes: standing or special. Standing committees are appointed for a definite period, whereas special committees are appointed for a particular purpose.

The Society has committees that report to the Board and Council. For example, there are several standing committees created by the Board of Directors and Council. The Council can establish standing committees under Section 3 of the ACS Constitution's Article VII. The ACS Board of Directors and Council (through the Board Chair and ACS President) can appoint Joint Board-Council Committees. And the Council can create other types of committees to address issues within its jurisdiction.

Council has an executive committee called the Council Policy Committee, a Committee on Nominations and Elections, and a Committee on Committees. Members of these committees are elected annually with the President and President-Elect serving as members *ex officio*. The establishment and appointment process is defined in Article VII, Section 3 of the ACS Constitution. Council must hold at least two meetings annually, which coincide with the ACS' spring and fall national meetings.

The ACS Board of Directors has an Executive Committee, consisting of the then-acting Board Chair, Executive Director, and Secretary. Additional information about Board committees can be found in Article VIII, Section 4 of the ACS Constitution.

G. Elections

Background - As with any bicameral organization, elections of officers, directors, and councilors or advisory board members are essential to the representation of constituents and management of operations. Elections are best accomplished when the process is transparent and information about elected-office candidates is relevant, accurate, useful, and provided in a timely fashion.

Divisions are responsible for providing twenty (20%) percent of all elected Councilors (ACS Constitution, Article VII, Section 1). And local sections are responsible for providing the balance or eighty (80%) percent of all elected Councilors (ACS Constitution, Article VII, Section 1). Elections are by a ballot distributed to all of the division or local section's members according to ACS's Bylaws. In all other respects, division or local section bylaws provide for election procedures for the officers and Executive Committees for their respective organizations.

A division shall elect its own officers, Councilors, and Alternate Councilors. All selections for office and changes in office shall be certified promptly by the Secretary of the Division to the Executive Director of the Society. (ACS Constitution Article XIII, Section 2b).

A local section shall elect its own officers. Local section bylaws can be very specific about the manner and timing of elections. All selections and changes in office shall be certified promptly by the Secretary of the Local Section to the Executive Director of the Society (ACS Constitution Article XII, Section 5b).

TIP – Please read the applicable provisions of your bylaws relative to elections. Complying with applicable election procedure matters is essential to proper election. Actions by division or local section officers who have not been properly and duly elected could be null and void.

A division's bylaws typically set forth the process for electing its officers, Councilors, and Alternate Councilors by a ballot of those members eligible to vote. The candidate receiving the greatest number of votes for each office is elected.

Like a division, a local section's bylaws typically provide for electing its officers, Councilors, and Alternate Councilors by a ballot of those members eligible to vote. The candidate receiving the greatest number of votes for each office is elected.

TIP – Tie votes among candidates are typically broken by vote of the local section’s Executive Committee with the candidate receiving the greatest number of votes declared elected.

TIP – Elected officers of the local section should serve for a term of one year beginning on January 1 or until their successors are elected. Except for the Chair and Chair-Elect, the incumbent of any position is eligible for reelection. A local section may wish to elect Secretary and Treasurers in alternate years.

Election Process – A division or local section’s Nomination Committee should report to its membership a list of its nominations for each office to be filled. This ordinarily occurs each September. The actual election timing may vary somewhat between divisions and local sections. Within a month, members should have an opportunity to nominate additional candidates for office. This opportunity can be in writing or offered during a meeting.

TIP – Nominations during a meeting or provided in writing should be seconded by another member.

TIP – Extending the nominations period beyond mid-October raises the risk that election results will not be reported to the Executive Director by December 1.

Generally, division and local section bylaws provide for nomination procedures. Nominations – whether offered by the Nominations Committee or by a member duly seconded – can be considered valid.

TIP – Check your division or local section bylaws to ensure compliance with procedures, as yours may differ from recommended practices contained within the model bylaws of the Society’s Committee on Constitution and Bylaws.

TIP – Before a division or local section proceeds to a vote, all nominated candidates should have expressed their acceptance of the nomination and willingness to serve, if elected. Best practice here would be to secure their affirmations and confirmations in writing.

Ballots containing the candidates for each office and Councilor/Alternate Councilor should be provided to each division or local section member by November 1. Balloting can be accomplished via electronic or paper means.

TIP – Any balloting should allow for a member to write in an additional candidate. A paper ballot should be sent to any member not having access to electronic balloting.

Ballots should be tabulated and validated by mid-November and in a manner that provides as much transparency as possible. The election's results relative to officers, Councilor, and Alternate Councilor should be tabulated by the Nominating Committee. And the results should be announced by the Chair via customary division or local section communication protocols. When appropriate, the candidate for each position receiving the greatest number of votes should be declared elected. As to Councilor and Alternate Councilor positions, the Executive Committee should consider electing the candidate receiving the greatest number of votes and the candidate receiving the next greatest number, respectively.

TIP – Your bylaws may differ from the model bylaws of the Society's Committee on Constitution and Bylaws. The model bylaw position is based on ensuring fairness and transparency.

TIP – In the event of a tie vote for any position, the Executive Committee should vote by ballot between the candidates who share the tie vote, with the candidate receiving the greater number of votes elected.

Election results should be announced by the Section Chair – or by a designee if necessary – as soon as possible after the election and in a manner that exhibits the greatest transparency. Publishing the results in the division's or local section's newsletter or website would serve as good examples for transparency.

TIP – Remember to report certified election results to the Society's Executive Director by December 1 through the Office of Secretary & General Counsel.

TIP – It is the Society's policy that balloting be fair and elections open to all eligible members. Safeguards should be in place to protect against fraudulent voting and to allow for the timely reporting and archiving of election results.

Succession – Division or local section officers should hold office terms for no more than one (1) year, or until their successors are elected. Upon completion of the Chair's term of office, the Chair-Elect shall succeed to the office of Chair. The Chair shall succeed to the position of Immediate Past-Chair. Councilor(s) and Alternate Councilor(s) should be elected for a term of three years beginning each January 1.

Vacancies – In the event of a vacancy in the Chair, the Chair-Elect should assume the added duties of the Chair. If a vacancy occurs in the office of Secretary or Treasurer, the Chair can make an interim appointment. Appointments to these offices should expire at the end of their respective elected terms. A vacancy in the office of Councilor or Alternate Councilor should be filled by the Executive Committee from among the members by interim appointment for the period up to the next annual election, at which time the section shall elect a member to complete the unexpired term, if any, for those offices.

TIP – An interim appointee to a vacated office should not automatically succeed to that office. To avoid conflicts, Chair, Chair-Elect, Secretary and Treasurer Office appointments should be through election by the members.

Election Disputes – Unresolved disputes concerning division or local section officer elections should be referred to the ACS Secretary for investigation and resolution by the Council Committee on Nominations and Elections. This Committee has the authority to set aside disputed election results, if appropriate, and require a new election.

Recall of Elected Officials – Elected division or local section officers (but not Councilors and Alternate Councilors) may be recalled for neglect of duties or conduct injurious to the Society. Procedures are not yet in place to recall Councilors and Alternate Councilors.

A signed petition describing the specific allegations and reasonably related substantiating evidence begins the process of recalling an officer. The petition should be signed by at least five (5) local section members and submitted to the Chair. If the Chair is the officer in question, the petition should be submitted to the Chair-Elect.

The Chair or Chair-Elect, as the case maybe, should investigate the allegations and ensure that the substantiating evidence is relevant, important, and supportive of the charges. The Chair or Chair-Elect, as the case maybe, may assign the officer's duties to another qualified member until the issue is resolved.

TIP – Every effort should be made by the Chair, or Chair-Elect as the case maybe, to resolve the issue through mediation with recall of the petition as a final disposition. Another option is to present the evidence and seek the officer's resignation.

TIP – The officer in question should have every opportunity to respond to the petition's allegations. Notification to the officer in question should be accomplished by certified letter, which should be sent to the last known address

on the official Society membership roll with thirty (30) days for responding provided.

In the absence of successful mediation, the Chair, or Chair-Elect as the case may be, should notify the Executive Committee and call a special meeting within thirty (30) days. The Executive Committee shall promptly seek resolution of the petition by dismissing it as ill-founded, finding it supported by the evidence and concluding that recall is warranted, or seeking an alternative resolution. The Chair, or Chair-Elect as the case maybe, shall inform the petitioners of the Executive Committee's decision.

TIP – If the officer in question cannot be contacted after reasonable effort, the Executive Committee can remove the officer in question with a two-thirds (2/3) vote – either electronically or through paper ballot to those members requesting such a form - of the remaining division or local section members.

H. Fiduciaries

Elected division or local section officers must conduct their affairs consistent with the duties expected of fiduciaries to larger organizations. For example, fiduciaries to such organizations owe several important duties, namely a duty of care, loyalty, and obedience to the Society and local section membership.

TIP – These duties can include, but are not limited to:

Duty of Care: Be familiar with the organization's finances and activities and regularly participate in governance by attending meetings and discussions relative to decisions

Duty of Loyalty: Act in or refrain from acting against the best interests of the organization at all times, disclosing potential conflicts of interest, and refraining from diverting local section opportunities for your own personal gain

Duty of Obedience: Requires that you carry out the organization's mission and refrain from engaging in unauthorized activities that divert resources to activities unrelated to the mission or for your own personal gain

I. Dissolution

Upon the division's or local section's dissolution, any assets should be transferred to the Society or an organization that is dedicated to the perpetuation of the Society's Objects.

TIP – Any such recipient organization should be selected by the division or local section for its exempt status under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

CHAPTER 3 - MEMBERSHIP ISSUES

Membership in the Society is an annual contract that anticipates an exchange of value between two parties. In exchange for the payment of annual dues associated with a particular membership type to ACS, ACS pledges to deliver value to the applicant in the form of subscriptions to ACS journals, a free subscription to the weekly *Chemical & Engineering News* (C&EN) magazine, and other products and services. A complete list of membership benefits can be found at [ACS Membership Benefits](#). It's important to remember that membership is automatically renewed and annual dues are recurring, unless a member's resignation is received by the Executive Director in a time prior to the expiration of the 12-month membership period.

Membership to ACS also includes the applicant's opportunity to join a division provided payment of the established division's annual dues is received. Applicants are assigned to a local section roster, unless the Executive Director is petitioned otherwise.

A. Membership Lists

Lists containing the names and related personal information of ACS members assigned to a division or local section are the property of ACS. Dissemination of any such information is prohibited without ACS's prior, express written consent. In every instance, the use of membership lists or a member's specific information must have a reasonable business purpose for ACS and its division or local section. All personal use of such information is strictly prohibited.

E-Rosters are lists of ACS's division and local section members compiled in an easy-to-use electronic format in three ways, i.e., the Divisional or Local Section Roster, Activity

Reports, and Demographic Report. They are updated monthly and division or local section officers are notified monthly.

TIP – It is always the safest practice to secure a member's prior, express written consent before using their information for any purpose other than ACS business. If such a use is necessary, there should be a clear and compelling reason for doing so, e.g., emergency notification purposes.

B. Property – Tangible, Personal

Divisions and local sections can own tangible personal property. Tangible personal property can be bank account balances, office furniture, equipment, supplies, etc. Ownership of these items is best evidenced by funds from divisional or local section bank accounts or reimbursement from divisional or local section bank accounts to individuals with receipts from purchase.

TIP – Always require proper receipts from individuals before reimbursement.

TIP – Maintain a list of all property owned by the division or local section, including a description of the property, when it was acquired, and purchased value.

C. Property – Intangible

Divisions or local sections can also own intangible, personal property such as patents, registered trademarks or service marks, insignias, logos, slogans, or goodwill. A division or local section can own patent rights as the assignee of an inventor who either sold or donated the rights to the local section, but this is exceedingly rare.

TIP – The decision to acquire or accept donated patent rights should be considered very carefully as significant and annual U.S. Patent & Trademark Office and other patent governing body maintenance fees are required to preserve rights. These fees are essential to maintaining utility patents.

D. Real Property

Divisions or local sections can own or lease real property (meeting rooms, land, buildings, etc.). Ownership primarily differs from leasing real property in the right of the owner to dispose of the property. Conversely, leasing real property allows the tenant to possess, together with other incidences of ownership such as the right to make modifications, but generally does not permit transfer of ownership. Divisions or local

sections commonly lease meeting rooms or convention facilities to hold functions, such as fundraising events, symposia, and elections. Generally, owning real property carries greater risk than leasing, such as expenses for maintenance, insurance, liability, fire, theft, and taxation.

TIP – Whether owning or leasing real property, it is good practice to purchase appropriate levels of insurance coverage to guard against liabilities arising from visitor and casualty events, e.g., fire, theft, and weather-related damage.

TIP – General liability coverage which protects ACS, divisions, and local sections against liability claims arising from negligent acts by ACS, or its agents, that result in bodily injury or property damage, e.g., arising out of events, is provided by ACS. This coverage is not, however, insurance against the negligent acts or omissions of event sponsors.

E. Fundraising

Articles XIII and XII of the ACS Constitution recognize the need for divisions and local sections to assess dues and raise funds, respectively. Except for activities proscribed by law, there is no restriction on the nature of the fundraising activity. State laws, however, may limit fundraising activities and generally require those seeking to raise funds to register their intentions with state authorities having oversight of such activities prior to holding the event. Funds must be spent, however, toward local purposes that advance the Society's Objects. A division's or local section's governance is responsible for managing and controlling the use of such funds.

Divisions or local sections may accept donations or bequests (gifts made via wills, trusts, etc.), so long as these are spent or invested in the best interest of the division or local section.

TIP – When soliciting donations, please keep in mind that certain documentation is needed to satisfy applicable federal, state, and local tax laws.

TIP – Those donating gifts, prizes, awards, or cash must receive acknowledgment of their donation, a good faith estimate of the gift's donative value, and a confirmation of the local section's organization as a federally recognized nonprofit organization (sometimes referred to as 501(c)(3) entities). When acknowledging a gift, please remember that the donor will disclose their participation within personal tax filings with federal, state, and local taxing authorities during the year of donation.

TIP – If you intend to approach potential individual or corporate donors about general or specific support, it would be very beneficial to first coordinate your plans with ACS’s Development Office.

TIP – When fundraising for a specific purpose, please be sure that funds are spent on that purpose. Funds allocated otherwise may subject administrators to civil and criminal laws relative to misappropriation and fraud.

TIP – Fundraising from individuals residing in states other than the state within which the funds will be expended generally requires registration within the state benefiting from the activity. Fundraising from organizations external to the state benefiting from the activity may require registration. Fundraising in de minimis amounts generally does not require registration. Each state’s rules are different and should be evaluated prior to engaging in fundraising activities.

TIP – Noncash donations generally have their value established by the donor.

Divisions or local sections may hold silent auctions. In some states (e.g., California), silent auctions are considered sales of goods and not games of chance. Thus, holding a silent auction holds a donative and sales aspect at the same time. Silent auctions generate sales, and all revenue is reportable within the division or local section’s IRS Form 990. There may be exceptions. In some states, silent auctions are sales subject to the withholding and payment of sales related taxes.

From a tax perspective, purchasers of silent auction items can potentially claim a charitable deduction for the excess of the purchase price over the item’s fair market value (FMV). IRS Publication 561 speaks to establishing FMV for donated items. Generally, two good gauges for establishing the FMV for donative purposes are the (a) cost to acquire or (b) selling price close to the event. If either of these FMV gauges is available, then the value of the donation can be determined.

F. Meetings

Divisions and local sections are required to hold at least one (1) meeting per year to conduct governance business. This requirement is found within the chartered bylaws for divisions and local sections, as well as in the bylaw templates recommended for use by Council for amendments. Divisions and local sections may hold special meetings to conduct governance business upon the written request by a majority of the Executive Committee or 15 members of the section.

If the division or local section is incorporated, then meetings of shareholders and the Board of Directors are likely required by the state of incorporation at least once per year.

TIP – Check the law of state of incorporation for required meetings to maintain corporate status. Typically, annual meeting requirements are prescribed within applicable state incorporation codes.

The nature and timing of division or local section meetings are entirely up to the Chair. They can be monthly, quarterly, over dinner, or whatever kind of discussions you'd like to have.

TIP – Seek advice from the ACS Secretary & General Counsel's Office if you are unsure of this requirement for your division or local section.

In most jurisdictions, meetings may be held by electronic means. This mode of communication is not without the possibility of restriction. In general, states that allow meetings via electronic means require that participants must be able to: (a) read or hear the proceedings substantially concurrently with their occurrence, (b) vote on matters submitted, (c) pose questions, and (d) make comments.

TIP – States vary on this point, so be sure that your state or bylaws allow for participation in meetings without participants being present in person.

The most recent edition of *Robert's Rules of Order Newly Revised* should be used as parliamentary authority during meetings for all matters not covered by bylaw or within ACS documents.

TIP – Failure to hold an annual shareholder meeting and have the requisite number of Board of Directors meetings can result in the eventual loss of corporate existence under most applicable state laws. State laws of incorporation almost always require some annual meeting of shareholders and the company's Board of Directors to maintain a separate legal existence. Some exceptions, of course, may apply.

TIP – Meetings are the most effective and productive when adequate notice and appropriate materials are provided well in advance of the meeting. Check to ensure that these requirements – typically described within division or local section bylaws – are satisfied.

G. Dues

Divisions and local sections receive a pro rata share of ACS dues each year for operations. The amount of dues available is dependent upon the membership size and other factors. Divisions and local sections can solicit additional funds for operations from dues over and above those provided by ACS.

Local section members may be assessed voluntary dues in an amount set by the Executive Committee. The Executive Committee may waive or discount dues for students and others as provided in the ACS Bylaws.

Society affiliates may be assessed annual dues as set by the Executive Committee. These dues shall be established in accordance with ACS's Constitution and Bylaws.

Divisions may assess members dues in an amount set by the Executive Committee. The Executive Committee shall have the option to waive or discount dues for students or others as provided in ACS's Bylaws.

H. Alliances & Partnerships

Divisions and local sections can collaborate with other divisions, sections or external partners, domestic and international, on any matter of a lawful nature that advances the Society's mission and Objects. For example, either may enter into strategic alliances to generate opportunities for the creation and exchange of scientific information, partner to advocate where chemistry can provide solutions to challenges, and further the positive image of chemistry.

TIP – Consider the reasons, costs, time involved, and impact on reputation that partnering with a non-ACS unit may have before entering into any such arrangement.

TIP – Seek legal counsel for the preparation and/or review of formal agreements. Use formal agreements when the risks/damages of executing badly may be substantial.

TIP – The best agreements result from good faith, due diligence efforts by both parties to align their efforts toward a mutually beneficial objective that is achievable within a defined term.

TIP – More information on international alliances can be found on ACS's website.

TIP – Cosponsorship of local section and division meetings is encouraged by the Society. There are well-defined processes for accomplishing this as established by the Secretary’s office. See: [ACS Cosponsorship Guidelines](#).

I. Good Standing with ACS

To be in good standing with ACS, a division or local section must operate under its chartered bylaws prepared by the Society’s Council until such time as it desires to revise or amend them. Changes to the Council’s charter bylaws must remain consistent with the Society’s Charter, Constitution, and Bylaws then in effect. Any Division or local section may be dissolved by the Council for good and sufficient reasons.

Each division or local section must have a Chair, a Vice-Chair and/or Chair-Elect, a Secretary, and a Treasurer (the offices of Secretary and Treasurer may be combined).

Funds allotted to a division or local section shall only be used for purposes incident to fulfilling the Society’s Objects as specified in Article II of the ACS Constitution.

By February 15 of each year, each division or local section must submit an annual report, including an itemized statement of receipts, expenditures, and investment of its funds for the preceding calendar year, to DAC or LSAC through the Society’s Executive Director & CEO’s office. That successful and complete submission triggers the release of the annual allotment that comes to the division or local section. Annual reports are submitted via a comprehensive web interface called FORMS. FORMS are available year-round and are accessed through your ACS login and password. A financial and administration form is required, including a local section budget.

Many divisions and local sections are incorporated (see Chapter 2.B.) Any division’s local section’s articles of incorporation must first be approved by the Society’s Committee on Constitution and Bylaws for consistency with the Society’s Charter, Constitution and Bylaws.

J. Code of Conduct

The Federal Charter of the Society (1937) lists one of its objectives as "the improvement of the qualifications and usefulness of chemists through high standards of professional ethics, education and attainments..." "The Chemist’s Creed" was first approved by the ACS Council in 1965 and confirmed a chemical professional’s obligations to the public, to colleagues, to the environment, and to science. The ACS now has "The

Chemical Professional’s Code of Conduct”, as approved by the ACS Council in August of 2016.

ACS maintains a helpful collection of resources for “Ethical and Professional Guidelines” through its career portal.

The ACS Board of Directors has adopted a Volunteer/National Meeting Attendee Conduct Policy. It can be found in its entirety within ACS Bulletin 5 on page 55.

TIP – Consider formally adopting The ACS Volunteer/National Meeting Attendee Conduct Policy. It can serve as a specific standard of conduct against which to measure the actions of your volunteers and members against. This is especially helpful should you need to investigate complaints regarding conduct at local section or division meetings or events.

CHAPTER 4 - OPERATIONS

A. Membership

ACS, division, and local section members alike shall be those individuals who are interested in the Society’s Objects and who have been elected only after meeting the requirements provided in ACS’s Bylaws. Requirements for local section member and student member status can be found within Section 3 of ACS Bylaw I to the ACS Constitution’s Article IV. Those having a common interest in a particular field of interest upon authorization of the Council may organize a group to be known as a Division of the Society. Requirements for division membership status can be found within Section 1 of the ACS Constitution’s Article XIII.

Term – A member’s term is an inclusive 12-month period, beginning on the date the member is added to the active membership rolls.

Territory – A local section’s territory is assigned by the Society. Thus, members are assigned to a local section unless directed otherwise by the Executive Director & CEO upon petition of the member seeking reassignment. A division has no such territorial limitation, and may accept members from anywhere.

Loss of Status – A member may be dropped from membership for nonpayment of dues (arrears of dues for one year) or misconduct that tends to injure the Society’s

reputation or be destructive to the Society's Objects. No member can be dropped without first having an opportunity to be heard as provided in the bylaws. The Society's Executive Director & CEO will provide at least two (2) weeks' notice to the member delinquent in dues prior to removing their name from active membership.

Reinstatement – Any member resigning or having lost their membership through nonpayment of dues may be reinstated to member status by requesting reinstatement from the Council Committee on Membership Affairs and paying the current dues.

Expulsion – Requirements for expelling a member can be found within Section 5 of Society Bylaw I.

Affiliates & Associates – Requirements for becoming an affiliate or associate member of a division or local section can be found within Section 1 of Society Bylaw II.

TIP – No affiliate or associate member of a division or local section shall be able to vote for or hold an elective position of the division or local section, vote on articles of incorporation and bylaws for the local section, or serve as a member of its Executive Committee or equivalent policy-making body.

Charter Forfeiture – Any division or local section chartered under ACS Constitution Articles XIII and XII, respectively, which fails to maintain a membership may automatically be forfeiting its charter.

Ownership of Membership Information – The Society owns all information provided by members relating to their ACS membership. This information can only be used for Society purposes. No other use is permitted. The copying, printing, or publication of any list in whole or in part of the names and addresses of registrants at any major Society meeting is likewise prohibited. The ACS Executive Director & CEO can grant exceptions to this Society policy.

Rosters – Division and local section member information is contained within e-Rosters that are downloadable by officers. E-Rosters are updated monthly and generally contain information such as name, address, phone, e-mail, field of study, divisional membership, and activity reports. Access to e-Rosters is limited to current division or local section officers and requires approval from the chair.

Division and local sections can order "Election Only" lists from ACS. These are used for ballot mailing. Candidates for office have a right to use the membership list of those members eligible to vote for that office (see Bylaw V, Section 13 for more information).

TIP – Order an “Election Only” list from ACS as not every person whose name appears on the e-Roster is eligible to vote because some persons have not paid their dues, or they are Divisional or Student Affiliates, etc. And some names not on the monthly e-Roster may yet be eligible to vote because certain members have requested that their names be removed from promotional mailings.

TIP – Contact DAC or LSAC for more information or to request access to your division or local section roster, respectively.

TIP – It is always good practice to treat membership information confidentially. It is also good practice to obtain the Society’s guidance and/or a member’s prior written permission, if appropriate, in advance of the use of membership information.

B. Meetings

Annual/General – There are no ACS Constitution or Bylaw requirements or recommendations regarding meetings of divisions or local sections, except that each should hold at least one (1) annual meeting to conduct governance business. The Executive Committee of a division or local section can designate the times and places of regular meetings as it sees fit for proper section operation. A meeting’s order of business can be changed or suspended by a majority vote of the members in attendance. However, this requirement may be modified by the Executive Committee.

TIP – DAC and LSAC have suggestions to improve the quality of divisional and local section meetings at [ACS Technical Division Resources](#) and [ACS Local Section Resources, respectively](#).

Special – A division or local section can hold a special meeting to conduct specific governance business. This can ordinarily result through a written request of the Executive Committee’s majority or written request of some number of members of the section. The number of members can be established by division or local section bylaw.

TIP – The request should be made of the Secretary prior to the date requested for the meeting. Typically, ten (10) days is a safe term for distributing the request and notice of meeting. The request and notice of meeting should also state the exact nature of the business to be transacted. No other business should take place at such meetings.

Regional, Scientific, or Technical Meetings – A division or local section can hold or participate in meetings involving the exchange of scientific information or networking of scientists. When investigating, planning, conducting or participating in regional, scientific, or technical meetings, a division or local section should consider the ACS Board of Directors-approved *Statement on Freedom to Meet Without Limitation* (June 1, 2017).

This *Statement* has relevance to jurisdictions not believed to be respectful of or accommodating to diversity. Among other ACS Board of Directors' observations, the *Statement* provides that:

- 1) Diversity and inclusion are core values of the ACS, and the Society's diverse membership is its most important asset;
- 2) ACS supports the freedom of its members -- regardless of race, gender, age, religion, ethnicity, nationality, sexual orientation, gender expression, gender identity, disabilities, educational background or economic standing -- to participate in scientific and technical meetings and communicate their science, without suffering any abridgment of their rights and dignity;
- 3) Scientific and technical meetings are critical information exchange and dialogue among researchers, and during these meetings leading scientists from around the world, ACS members and nonmembers alike, gather to present their research and engage in meaningful interactions;
- 4) ACS will oppose any legislation or other government actions that would in any way abridge those rights; and
- 5) ACS is committed to supporting its members' rights to attend meetings without sacrificing their human rights.

TIP – Accordingly, ACS reserves the right, working with its relevant governance units, to take appropriate actions, which may include relocating meetings from jurisdictions that have enacted discriminatory legislation or regulation, even if moving these meetings might result in financial impact to ACS.

TIP – Any questions or concerns relative to jurisdictions potentially affecting members whom this ACS Board of Directors-approved *Statement* seeks to protect should be directed to Kenneth J. Polk, Esquire, ACS Innovation Counsel via e-mail at k.polk@acs.org or phone at 202-872-6003.

The Chair – The division or local section Chair presides over meetings of its members to conduct governance business and appoint, with the approval of the Executive Committee, all committee chairs and committee members. The Chair presides over meetings of the Executive Committee. The Chair is required to execute the decisions and recommendations of the Executive Committee and carry out the duties required by the ACS Constitution and Bylaws.

Executive Committee Meetings - The Executive Committee designates the times and places of the section’s meetings. The Executive Committee shall set the order of business for meetings of the division or local section to conduct governance business. Provided approval has been granted by the Executive Committee, their meetings and those of the division or local section members may be held by electronic means, provided that the communications technology permits those in attendance to read or hear the proceedings substantially concurrently with their real-time occurrence. Electronic participation can include matters pertaining to voting.

Executive Committee Notice & Quorum - The Executive Committee shall meet upon due notice either pursuant to the Chair’s call or upon request of a member majority. A quorum for an Executive Committee meeting exists when a majority of the voting members are present. Without a quorum, Executive Committee meetings should be adjourned to another specific date.

C. Records Maintenance & Participation

The ACS Constitution and Bylaws require that division or local section Secretaries record and report on officer appointments and member certifications to ACS. This, together with other meeting activities, underpins the ACS’ Committee on Constitution & Bylaws suggestion in their *Model Bylaws for Divisions* and *Model Bylaws for Local Sections* template that the Secretary be responsible for recording the minutes of the meetings and of the Executive Committee. Thus, the Secretary is should maintain a list of members and affiliates, send notices to members and affiliates, submit reports to the division or local section at its annual meeting, and carry out the duties required by the ACS Constitution and Bylaws and elsewhere in the local section’s bylaws.

TIP – The Chair may also record and report on meetings under his or her responsibility to carry out the Chair’s duties as required by the ACS Constitution and Bylaws.

TIP – The Secretary can preside over division or local section meetings in the absence of both the Chair and Chair-Elect.

D. Meeting Procedures

Member Notice & Quorum – Division and local section members and affiliates should receive notice of all meetings. At least ten (10) calendar days of notice prior to the meeting should be afforded. Ideally, a quorum of members from the membership roster should be present for the transaction of governance business at any division or local section meeting. A quorum for the transaction of division or local section governance business should consist of 15 members. In the absence of a quorum, no governance business should be conducted.

Debate – *Robert's Rules of Order Newly Revised* is a good reference to use during all division and local section meetings to imbue the meeting with widely recognized and respected guidelines for parliamentary authority for discussion of all matters not covered in the division's or local section's bylaws or Society's governing documents.

E. Finance Matters

Chief Financial Officer – The Treasurer has responsibility over the division's or local section's funds. The Treasurer is responsible for filing all finance related documents with the Society and governmental entities requiring such disclosures. The Treasurer is responsible for maintaining and reporting to the Chair, Executive Committee, and members on budget matters. The division's or local section's Treasurer is responsible for procuring and maintaining any and all insurance relative to insurable risks associated with local section operations not provided by ACS.

TIP – Please see the Handbook for ACS Local Section Treasurers for greater detail on the role of the Treasurer in the operation of a local section.

TIP – Please see [ACS Technical Division Resources](#) for more information about the operation of a division.

TIP – ACS provides Comprehensive Business Insurance coverage for its divisions and local sections to guard against liability claims arising from negligent acts by ACS, or its agents, that result in bodily injury or property damage, e.g., arising out of events. A Certificate of Insurance can be requested of the ACS Treasurer's Office at least 30 days prior to the event.

Dues – The Executive Committee should establish the voluntary dues for members of the division or local section. This Committee should also establish a mechanism for waiving or discounting dues for student members or others provided within the Society’s bylaws for waived or discounted dues. See Society Bylaw VII and VIII to the ACS Constitution’s Article XVI relative to these mechanisms for divisions and local sections, respectively. Division and local section affiliates may be assessed annual dues by the Executive Committee.

TIP – Dues establishment should be consistent with the process established by the ACS Constitution and Bylaws, or as established by the division’s or local section’s bylaws that are not in conflict with the Society’s requirements.

Executive Committee Oversight – All expenditures or investments shall be made by the division or local section Treasurer upon authorization by the Executive Committee.

Audit – An audit of the division’s or local section’s books as prepared and maintained by its Treasurer, and of any other transactions regarding the division’s or local section’s funds, should be conducted by an Audit Committee of two or more disinterested members or individuals. The audit report should be submitted to the Executive Committee by the end of January.

TIP – Members of the Audit Committee should be first appointed by a division or local section officer having no conflicts of interest with the appointments and no authority to disburse funds.

F. Annual Reports to ACS

ACS Bylaw VIII and Bylaw VII of the ACS Constitution require an annual report from each division and local section, respectively. This report should contain an itemized statement of receipts, expenditures and investments relative to its funds for the period January 1 to December 31 of the preceding year. It should be submitted to DAC and LSAC through the Society’s Executive Director for divisions and local sections, respectively. Each year, DAC and LSAC prepare a summary of division or local section annual reports and submit them to the Council Policy Committee.

*TIP – The annual report should be provided before **February 15** of each year.*

G. Government Notices/Orders/Communications/Subpoenas

CAVEAT – Divisions or local sections should immediately confer with the ACS General Counsel upon receipt of any government-entity-issued (federal, state, or local government body, agency or instrumentality) notices, e.g., the Internal Revenue Service, or subpoena (typically, a *subpoena duces tecum*, i.e., with all documents). These notices or subpoenas have significant legal ramifications and should be addressed by division or local section officers and their respective Executive Committees with appropriate legal counsel advice.

TIP – Delay in complying with document requests required by these notices, orders, or subpoenas ordinarily carries with it the real threat of significant fines and penalties.

TIP – Refer any and all such requests immediately to the ACS Office of the Secretary & General Counsel in Washington, D.C. for further guidance. Often, the date for complying with these demands can be delayed by mutual agreement.

H. Insurance

Comprehensive Business Insurance (CBI) Policy – The Society maintains this policy. It includes general liability coverage which protects the ACS, divisions, and local sections against liability claims arising from negligent acts by ACS, or its agents, that result in bodily injury or property damage, e.g. arising out of events. This coverage is not an accident policy. It will not pay anyone who is injured regardless of how the injury was caused or who is at fault. It pays ONLY when the Society, or someone acting on its behalf, is negligent and the damage stems from that negligence.

TIP – *If a Certificate of Insurance is required as part of a local section or division event, it should be requested of the ACS Treasurer's Office at least 30 days prior to the event.*

TIP – *Any accident should be reported immediately to the ACS Treasurer's Office by calling 202-452-2125. A written report will need to be filed.*

TIP – *Independent contractors and service agents should provide their own Certificates of Insurance, including comprehensive general liability.*

Errors & Omissions – This insurance product protects division and local section decision makers – Chairs, Executive Committee Members, and the Treasurer – from

claims for financial loss. Such claims could arise from members seeking restitution from these decision makers for losses stemming from decisions that diminish investment values, result in financial loss liabilities, or arise from other acts of purported malfeasance, such as theft or deceit.

TIP – Consult with the Washington headquarters’ Office of the Treasurer about securing this and other types of insurance coverage. It will be necessary to provide Treasurer Office personnel with additional information about operations to enable them to make an informed opinion about the nature and extent of risk.

CHAPTER 5 - FINANCIALS

A. ACS Constitution & Bylaws Considerations

The Society makes an annual apportionment of funds to divisions and local sections as provided in ACS’s Bylaws (ACS Constitution Article 16, Section 2). Dues in support of their efforts shall be distributed in accordance with procedures developed by DAC and LSAC and approved by Council.

The allotment from the Society during its financial year to the division or local section depends upon its respective membership count. The payment of the allotment to a division or local section may be conditioned on the fulfillment of reporting requirements, established under ACS’s Bylaws. The distribution shall also be contingent upon receipt of the annual report prior to a forfeiture date as specified by DAC and LSAC and shall include a base allotment, an allotment tied to total membership, and distributions based on other factors such as Society initiatives, strategic planning and Board directives.

Funds allotted to a division or local section can only be used for local purposes incident to the fulfillment of the Society’s Objects as specified in Article II of the ACS Constitution.

B. Treasurer’s Responsibilities

Overall – The local section or division’s Treasurer has the responsibility for funds requested from the Society’s Executive Director. In taking possession of funds, this officer is required to keep accurate records of all receipts and disbursements, dues collected,

and disbursements approved by the Executive Committee. The Treasurer reports on the local section's or division's account of all transactions and its financial condition to the Executive Committee at times established by the committee. The Treasurer also submits such reports as may be required by the ACS Constitution and Bylaws.

Receiving Funds – The Treasurer makes an annual request of funds to which it is entitled under the ACS's Bylaws of the Society's Executive Director & CEO (ACS Bylaw VII, Section 9). The Treasurer is then responsible for taking possession of the funds delivered by the Executive Director & CEO. The Treasurer shall have charge of the funds of the section afterwards.

TIP – The Treasurer should ensure that these funds are expended only for local purposes incident to fulfilling the Society's Objects. Divisions may direct their funds toward additional Objects as established by their Executive Committees.

Accounting for Funds – As with any financial undertaking – whether project or entity related – the Treasurer should keep an accurate, timely, and proper record of all receipts and disbursements, dues received, and other financial commitments approved by the appropriate authority of the local section or division.

The division's or local section's Treasurer must submit to DAC and LSAC via the Society's Executive Director & CEO's office an itemized statement of receipts and disbursements for that local section during the period of January through December 31 by no later than February 15 of the ensuing year, respectively.

TIP – It is good practice for a local section or division Treasurer to maintain a book of accounts or ledger – simple entries documenting local section dues, receipts, payments, expenses, investments, costs, etc. It is good practice to manage and reconcile bank accounts periodically and maintain meticulous records of longer-term commitments such as investments and loans outstanding.

TIP – Proper record keeping is generally accomplished using generally accepted accounting principles (GAAP). GAAP is a standard framework of guidelines for financial accounting that is widely accepted and is preferred in accounting circles for its uniformity in treatment of financial entries.

Audits – As with any financial undertaking – whether project or entity – a division's or local section's financial health should be investigated or audited by a disinterested party, preferably a section member not serving in any official capacity initially, and by an auditing firm in the event discrepancies of a significant nature are revealed. This audit

should be conducted soon after the expiration of the predecessor Treasurer's term and a full report made to the division's or local section's Executive Committee, accordingly.

Records Retention – Financial records are important for numerous reasons. Some relate to budgeting, others relate to organizational health and still others relate to tax requirements. Tax requirements seem to drive record retention practices across many industries and business sectors. The Internal Revenue Service (IRS) advises that you should maintain records that support an item of income, deduction, or credit shown on the organization's tax return until the IRS's period of limitations for that tax return expires.

There is a defined period of time during which a division or local section can amend a tax return to claim a credit or refund, or during which the IRS can assess additional tax. This period of limitations is generally three (3) years for tax-related matters and four (4) years for employment-related matters.

TIP – The above periods of limitations do not necessarily prevent the IRS from challenging the returns after the period's expiration. Frequently, the concept of fraud is asserted by the IRS which suspends the period of limitations from running until the alleged fraudulent event is uncovered.

TIP - Keep copies of your filed tax returns. They help in preparing future tax returns and making computations if you file an amended return. They are also helpful for budgeting future expenditures and revenues.

C. Tax-Related Matters

ACS is a federally chartered, charitable, nonprofit scientific and educational organization exempt from payment of federal income taxes under Internal Revenue Code Section 501(c)(3). Most recently, the IRS granted ACS tax-exempt status via a determination letter, which is proof of ACS's tax-exempt status back in 2003. Periodically, and depending upon business activities, the IRS will reissue the determination letter.

Divisions and local sections are considered affiliated with ACS and, thus, included as charitable, nonprofit, scientific and educational organizations under ACS's group exemption. This group exemption letter is granted to ACS by the IRS. As such, any division or local section included within the group exemption letter is exempt from paying federal income taxes.

TIP – Obtain a copy of the ACS's group exemption letter for your division's or local section's records.

TIP – ACS’s group exemption number is 0945. This is the number that you need to periodically enter on some IRS forms requiring a group exemption number.

ACS annually updates the IRS with a list of affiliated organizations to be included within the group exemption letter. All divisions and local sections must annually reelect and authorize ACS to include them.

TIP – This reelection can be done by answering the specific question and giving your response on your ACS annual report submission.

Although the tax-exempt status is extended to the affiliated organizations from the granting of the ACS group exemption letter, the ACS and its affiliated organizations must maintain their own individual/separate tax-exempt status.

TIP – Your division or local section must be organized and operated exclusively for one or more exempt purposes.

ACS only retains general supervision over its divisions and local sections. It does not have operational and financial control over any division or local section. Divisions and local sections must maintain a separate legal entity – operating autonomous from the ACS. This requires each to have its own unique federal identification number.

TIP – The federal identification number must always appear on all federal and state correspondence and returns. Please contact the ACS Tax Office for your local section’s federal tax identification number.

TIP – Divisions and local sections must never use ACS’s federal identification number. That number should never appear on any division or local section filing with any federal, state, or local taxing or regulatory entity. Divisions and local sections must use their OWN separate federal identification number.

Additionally, all divisions and local sections must satisfy any and all requirements related to public support tests to remain a nonprofit foundation organization and remain included in the ACS group exemption.

D. Benefits/Loss of Nonprofit; 501(c)(3) Status

Benefits – There are some important benefits to maintaining a tax-exempt 501(c)(3) organization status. The primary benefit is avoiding the payment of federal income taxes on income from activities related to the local section’s exempt purpose. Secondly, the division or local section is exempt from paying federal unemployment taxes. There is

generally a state income, sales, employment, and property tax exemption as well, but this is state dependent and states vary from one another. Fundraising is easier as contributions are typically tax deductible as charitable donations to the donor on the donor's federal income tax return. Finally, 501(c)(3) organizations can obtain tax-exempt financing.

Loss – A division's or local section's officers and Executive Committee must ensure that the organization's tax-exempt status remains in force. Tax-exempt status can be lost by failing to meeting filing requirements with the IRS.

TIP – Divisions and local sections must maintain their own tax-exempt status and file information or income tax-related returns annually. This is required, even though the division and local section are granted exemption under the ACS group exemption. IRS Form 1023-EZ should be used to have your division or local section's tax-exempt status reinstated.

Next, the organization's income cannot benefit an insider – officer, director, or key employee. Divisions or local sections should not engage in lobbying (i.e., substantial legislative activity) or attempt to influence national, state or local level legislative initiatives. They should refrain from intervening in any political campaign activities that support or oppose a candidate for elective federal, state, or local public office. And, divisions or local sections need to ensure that their primary activities support their exempt purpose.

E. Required Tax Filings

Even though 501(c)(3) organizations are generally exempt from federal income tax, there is an information-reporting obligation to the IRS. This information filing is necessary to ensure that a division or local section continues to be recognized as tax-exempt. There are at least three (3) forms of information filings. The 990 series is designed to accomplish this disclosure:

FORM 990 – Return of Organization Exempt from Income Tax

FORM 990-EZ – Short form of FORM 990

FORM 990-N – e-Postcard

FORM 990-T – Income tax return for unrelated business income (UBI)

FORM 1099 – Miscellaneous income for nonemployee activities

TIP – ACS's Tax Office provides more information about these forms and other tax-related matters during its ***Local Section, Division, and Region Treasurers Workshop***, conducted at each spring and fall ACS national meeting annually.

CHAPTER 6 - ACTIVITIES

A. Fundraising

Articles XIII and XII of the ACS Constitution recognize the need for divisions and local sections to assess dues and raise funds, respectively. Except for activities proscribed by law, there is no restriction on the nature of the fundraising activity. Funds must be spent, however, toward local purposes that advance the Society's Objects. A division's or local section's governance is responsible for managing and controlling the use of such funds.

Divisions may raise or collect funds toward the fulfillment of additional Objects established by their Executive Committees. Divisions may expend or invest, such expenditures or investments made by their respective Treasurer upon authorization of their Executive Committee.

Local sections may accept donations or bequests (gifts made via wills, trusts, etc.), so long as these are spent or invested in the best interest of the local section.

TIP – When soliciting donations, please keep in mind that certain documentation is needed to satisfy applicable federal, state, and local tax laws.

TIP – Those donating gifts, prizes, awards, or cash must receive acknowledgement of their donation, a good faith estimate of the gift's value, and confirmation of the local section's organization as a federally recognized non-profit organization (sometimes referred to as 501(c)(3) entities).

TIP – When acknowledging a gift, please remember that the donor will disclose their participation within personal tax filings with federal, state, and local taxing authorities during the year of donation.

B. Grants, Awards, Scholarships, & Fellowships

Grants & Awards – The Society makes and administers awards recognizing accomplishment within or service to a chemical science or a science closely related to

chemistry. Each proposal for a new Society award shall be initially presented to and reviewed by the ACS Board of Directors. The Society's Board of Directors delegates to the Committee on Professional and Member Relations the authority to promulgate rules and regulations for each award. This subcommittee also works primarily on the many ChemLuminary awards that are presented by DAC or LSAC and self-nominated through the annual reports FORMS process.

The Society provides grants to support local section programs that advance the public's understanding of chemistry. Some are as follows:

Local Section Science Café Mini-Grant – Grants of up to \$500 are available to assist local sections in hosting a Science Café in their community.

Local Section Bridging-the-Gap Mini-Grant – This mini-grant provides funding of up to \$500 for ACS local sections to identify and implement technology solutions to increase new member involvement in local section activities.

Local Section Sustainability Programming Grant – Grants of up to \$500 are available on a rolling basis to enable sustainability programming within local sections.

Local Section Innovative Project Grant – The Local Section Innovative Project Grant (IPG) encourages local sections to conceive and implement innovative projects.

Local Section Virtual Event Participation Grant – Grants of up to \$1,500 are available on a one-time basis for local sections to facilitate member participation in virtual events.

Student Chapter Grant – Active ACS student chapters are eligible to receive grants to support various activities, projects, and events.

Scholarships & Fellowships – The Society sponsors scholarship programs for qualified applicants who want to enter the fields of chemistry, biochemistry, chemical engineering, chemical technology, and teaching. The aim of these programs is to encourage diversity among applicants and build awareness of the value and rewards associated with careers in science and technology. Some of these scholarship programs are:

ACS Scholars Program – Renewable scholarships for underrepresented minority students who want to enter fields in the chemical sciences. Scholars are selected on the basis of academic standing, financial need, career objective, leadership skills, and involvement in school activities and community service.

Project SEED – Scholarships to assist former SEED participants in their transition from high school to college. Students are eligible to receive up to \$5,000.

ACS-Hach Second-Career Teacher Scholarships – Awarded to working chemists with an interest in pursuing a teaching career at the secondary or postsecondary level.

TIP – Please check [ACS Funding & Awards](#) for a more complete list.

The ACS also offers two public policy fellowships. The ACS Congressional Fellowship is a one-year opportunity; two ACS members per year are placed on Capitol Hill as part of the larger, American Association for the Advancement of Science-administered program. The ACS Science Policy Fellowship is a one-year opportunity that is renewable for a second year. One Science Policy Fellow position at a time is available at ACS's Hach headquarters in Washington, D.C. The same application is used for both fellowships. Applicants are asked to identify if they are applying for one or both programs.

TIP – Fellowships start in September; however, the Congressional Fellowship start date may be delayed until January at the Fellow's request.

TIP – Scholarships and fellowships are tax-free to recipients, provided they comply with Internal Revenue Code Section 117. That section requires there to be pursuit of a degree. Funds are used to offset related expenses; funds are not used to pay for services rendered whether being currently rendered or having been rendered in the past.

TIP – Scholarship or fellowship aid to a non-degree candidate is income to the recipient and reportable by the local section pursuant to a 1099 MISC form.

C. Social Events

Divisions and/or local sections holding social events should be aware of legal issues arising out of such events.

If alcohol is being served, no one under the legal age for consuming alcoholic beverages within that state may be served alcohol. Those serving alcoholic beverages on behalf of the division or local section must be alerted to the common practice of seeking identification before serving alcohol to anyone if their age is a concern. The best practice utilized by restaurants and drinking establishments is to ask for bona fide identification from anyone thought to be under 30 years of age.

Serving a visibly intoxicated person potentially exposes the local section or division to liability under state laws known as dram shop acts. Those holding the event and serving the intoxicated person are typically responsible for the acts of that person, which could include, but are not be limited to, vehicular accidents.

Event sponsors should make every effort to provide for a collegial, inclusive, positive, and respectful environment for volunteers, attendees, vendors and others in attendance. This means that steps must be taken to help ensure that any inappropriate actions based on race, gender, age, religion, ethnicity, nationality, sexual orientation, gender expression, gender identity, marital status, political affiliation, presence of disabilities, or educational background are avoided.

Divisions or local sections holding or participating in athletically oriented social events should take appropriate steps to investigate legal liability to participants and their property. At a minimum, participants should be required to pre-sign an *Event Waiver and Release of Liability* for themselves individually or as the guardian of participating children under the age of 21. And, the property owner's insurance coverage declaration page should be obtained to ascertain the extent of the owner's responsibility for injuries or damages to property occurring on their property due to the negligence or malfeasance.

TIP – Event Waiver and Release of Liability agreements can be obtained from Kenneth J. Polk, Esquire, ACS Innovation Counsel via email at k.polk@acs.org or by phone by calling 202-872-6003.

D. Contracts

Divisions or local sections can enter into contracts like any other entity, whether incorporated or not. A binding contract generally results when there is an offer,

acceptance, and the transfer between the parties of something of value. Generally, contracts are the principal manner of purchasing goods and services. They can have a myriad of purposes or desired outcomes but can never involve an illegal act or accomplish a purpose that is against public policy. Public policy is embodied in statutes, regulations, and formal actions of a legislative, regulatory, or administrative body of the federal, state, or local government.

If a division or local section is incorporated, its officer needs to sign contracts in a representative capacity at all times, and not in an individual capacity, unless the officer intends to undertake the contract's performance personally.

Contracts generally require specific terms and conditions to be enforceable as well. The parties to the contract must have authority to enter into the contract. There should be a defined term of time within which the parties should perform their obligations. A valid contract specifies the "quid pro quo" – what is being transferred to the other or what will not be done, as the case may be. Contracts generally specify what is expected of each party and the consequences for failing to perform. A contract can also arise without being in writing if the parties simply begin and complete their performance, although most states require some form of writing when the contract's value exceeds a certain dollar value.

There are a few contracts worth mentioning that present special risks to a division or local section:

Consulting Agreements – These contracts are prevalent when securing the services of experts with knowledge on a subject matter in question. They should be in writing as they are of a personal service nature, and should be accompanied by a statement of work that outlines the efforts and desired outcomes to avoid misunderstandings. Consulting agreements are used regularly in both the for-profit and nonprofit realms.

TIP – As these types of agreements are used frequently, it would be best practice to have a form agreement ready for use. Please email Kenneth J. Polk, Esquire at k.polk@acs.org for a copy of the form that ACS uses at its Washington, D.C., headquarters.

Employment Contracts – Contracts of employment delineate the terms of services to be rendered as an employee. As these are likely to create increased responsibilities under the laws of many states, they should be utilized sparingly and only in extreme cases, e.g., to retain key employees. Most states consider employment arrangements as "at will", i.e.,

an employment relationship allowing the employer to end a relationship without regard to cause or external circumstances.

Intellectual Property Assignment Agreements – Sometimes, employees discover new ideas or know-how, or create works of authorship, while working for the division or local section. Generally, employees agree to assign to their employer all rights and title to inventions, original works of authorship, know-how, trademarks, etc., conceived of or reduced to practice, while acting in their employment capacity.

Insurance Agreements – These contracts provide the division or local section with financial and legal protection against events causing damage to people, real property, and personal property.

Leases – These should be in writing, and often are required by state law to be in writing. Leases should be referred to local counsel for advice as these agreements typically involve considerably more issues and potential legal consequences than most agreements, including but not limited to default, possession recovery, subordination, and damage to the premises.

Memorandum of Understanding – Not really contracts at all, MOUs are merely agreements to agree on certain principles and actions to be taken or to refrain from taking. MOUs are usually not legally binding but can be made binding. MOUs are ideal for expressing the nature and extent of more informal partnerships or expressing the desired outcomes of talks between the signatories. If performance is important to the parties involved, consider using a contract instead.

E. Volunteer/National Meeting Attendee Conduct Policy

The Society's Board of Directors adopted on December 6, 2013, a code of conduct for volunteers and national meeting attendees. In addition to advancing the Society's mission and vision, the guidelines suggest that all volunteers and national meeting attendees contribute to a collegial, inclusive, positive, and respectful environment for their fellow volunteers and attendees, as well as for other stakeholders, including national meeting vendors and ACS staff.

Volunteers and national meeting attendees must avoid taking any inappropriate actions based on race, gender, age, religion, ethnicity, nationality, sexual orientation, gender expression, gender identity, marital status, political affiliation, presence of disabilities, or educational background. They should show consistent respect to

colleagues, regardless of the level of their formal education and whether they are from industry, government or academia, or other scientific and engineering disciplines.

F. Lobbying

All 501(c)(3) organizations are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for any elective office. Political campaign intervention includes any and all activities that favor or oppose one or more candidates for public office.

ACS is permitted to engage in a limited amount of lobbying, but not political, activity, primarily in the advancement of science, technology, engineering, and mathematics (STEM) policies and initiatives.

TIP – Inappropriate excessive lobbying activity can result in the revocation of tax-exempt status and/or the imposition of certain excise taxes.

TIP – Inappropriate lobbying activity includes efforts with or without regard for the inclusion of financial consideration, e.g., job creation or selection.

TIP – Before engaging in activities that may be interpreted as political or partisan, please check immediately with the ACS Office of the Secretary & General Counsel in Washington, D.C. for further guidance.

CHAPTER 7 - COMMUNICATIONS

A. E-mail Use

Divisions or local sections should not sell or market member e-mail addresses or personal information. Messages to members should protect their privacy, and not reveal the email addresses, identities, or personal information of any other recipients. Any broadcast e-mail sent by a division or local section should be advanced with permission from the member involved and allow recipients an opportunity to opt out of any such future communications.

ACS will honor the wishes of its members with respect to receipt of e-mail (although candidates for ACS office have a right to contact all voting members per ACS's Bylaws).

Options should be clearly presented, so that members can make informed choices about their stated intent.

TIP – The best practice for email use by divisions or local sections should require the express, written consent of the intended recipient that grants permission to receive your marketing communication. Otherwise, you risk spam filtering and, possibly, blacklisting of communications from you.

TIP – E-mail communications are increasingly viewed by recipients as bothersome. Good judgment should be exercised at all times relative to sending information and eliciting responses.

B. Social Media Policies & Practices

Social media can be a powerful tool for communicating with members and the public. Social networking continues to rise in popularity. At the same time, it can create legal risks that may be unintended. A first start at avoiding or mitigating legal risks begins with creating a social media policy that seeks to achieve the division's or local section's objectives. The second step is enforcing this policy and ensuring compliance. Failure to do so risks creating legal liabilities that might include unwanted litigation, undue reputational harm, inappropriate security breaches, and unintended confidential disclosures.

There are a number of ways that the use of social media can create legal risk. The following are but a few:

Division or Local Section Employees – Social media may be used to defame, harass or otherwise damage members, other employees, or other associations. Blog postings are an example of how liability can be created for a division or local section if defamatory content appears as a result of an employee's actions. If division or local section officers know or should have known that an employee is engaging in such activities, they may be deemed vicariously liable if they do not take action. Generally, vicarious liability results when an employee commits an act that harms another in the course of their employment, e.g., a FedEx driver causes an accident while delivering a package to a customer.

TIP – Policies should specifically instruct employees to refrain from using social media networks to make defamatory or inflammatory remarks about others.

Privacy Considerations – Members have certain expectations that their membership information is private and that divisions or local sections will only use such information

for the local section purpose. Uses other than legitimate division or local section purposes can be considered an invasion of the member's Fourth Amendment right to privacy.

TIP – Policies should specifically prohibit the use of personal information for any purpose other than local section business. Moreover, it is prudent to secure advanced, written permission from the person whose personal information will be used to avoid any appearance of violating their right to privacy. It is most important to be specific about the use of that information when seeking consent and to use the information consistent with that consent.

Damage to Reputation (Libel & Slander) – The rise in use of social networks, content aggregation sites, and blogging has substantially increased the risk of defamatory content reaching a broad audience. The informality of blogging, for example, seems to be inordinately contributing to an illusion that speaking one's mind without consequences is somehow legal when the internet is used as the method of publishing the statement. Nothing could be further from the truth, regrettably. Generally speaking, social media users who intentionally broadcast remarks – whether oral (slander) or written (libel) – about another person or organization that disparage their product, service, or impugn another's character creates a legal risk of liability for monetary damages relating to that statement. Although the truth is always a theoretical defense, social media users are well advised to refrain from considering their utterances immune from traditional legal recourse for libel and slander.

TIP – Policies should specify that divisions or local sections have no responsibility for the defamatory or inappropriate remarks of their officers or administrator, as being outside the scope of their authority, and should at least attempt to seek indemnification and/or legal expenses for defense from the person making such remarks.

Confidential Disclosures – Social media is changing the ground rules for managing confidential information. Although unlikely, it is possible that local section social media use may inadvertently disclose a trade secret or other confidential matter via the internet. The potential for confidential information to appear is real.

The reality is that the law has not yet advanced with technological developments and offers little guidance on ownership or treatment of confidential or sensitive information on social media sites. This provides additional support for the need to address disclosures – intended or otherwise – with a comprehensive social media policy guide.

TIP – Although confidential disclosures are unlikely, a division’s or local section’s social media policy should specifically relate a policy against including its or the confidential information of others within any communication, and it should seek indemnification from any such disclosures for liabilities arising from unauthorized use of social media avenues.

Copyright & Trademark Use – Unauthorized use of trademarks or copyrighted works owned by others can present legal liability concerns for divisions and local sections. The issue is often ownership. Division and local section officers or employees should always confirm that permission to post on social media avenues has been received from the copyright or trademark owner. It’s important to remember that the Digital Millennium Copyright Act (DMCA) creates a safe harbor for online service providers, protecting them from liability for infringing material, as long as they adhere to and qualify for certain prescribed safe harbor guidelines and promptly block access to allegedly infringing material. This safe harbor protection is also available should they remove infringing material from their systems, provided they receive a notification claiming infringement from a copyright holder or their agent. These protections don’t extend to local sections, however, as local sections are not online service providers.

TIP – A division’s or local section’s social media policy should specifically require express, written permission from authors or trademark owners prior to posting their materials.

TIP – A division’s or local section’s use of content may not necessarily qualify for widely known and accepted exceptions for fair use.

C. ACS Logo Usage & Brand Guidelines

Branding provided by ACS is intended for the use of ACS local sections, technical divisions, student affiliates, regional meeting planners, and anyone else, member or non-member, who has rightful reason to promote ACS programs, products, or services.

The ACS logo is a registered trademark of the Society, and its use is under the control of the ACS. Because of its trademarked status, maintaining the integrity of the logo is critical to the Society. Tampering with or misusing the logo could result in the ACS loss of this logo as a trademark. Board Regulation VII, 2, “Use of SOCIETY Name and Insignia” is the official statement of this subject. Please note that any request for use of the ACS name and insignia by any non-ACS organization must be referred to the Board of Directors, the only body with authority to grant such permission.

The Society encourages divisions and local sections to use these assets and, thus, has prepared a special website at [ACS Branding Guidelines](#) to outline the proper use of logos and branding within webpages, letters, presentations, and the like.

TIP – ACS logo and branding guidelines change from time to time. Be sure that you are following the latest, updated version of these rules.

D. Website

Websites are becoming increasingly important to providing information to constituents. In fact, ACS acknowledges this benefit by providing local sections with a free service to create their own websites through webs.com. Creating a division or local section website, however, can create opportunities for unintended legal risk.

Website content needs to be closely monitored and managed. Risks of disclosing confidential information, infringing upon copyrights or trademarks, providing a forum for making scandalous or spurious remarks about another, or uploading otherwise inappropriate materials are not uncommon, particularly with user-generated content. To avoid these and other unintended legal consequences associated with disclosures through a website requires careful and responsible management by a designated officer or agent to ensure that content retains its ACS business purpose at all times.

TIP – A division or local section should have a website policy and user agreement in place prior to going “live”. As risks associated with website activity involve both state and federal legal issues, it would be advisable to confer with local counsel of the division’s or local section’s choice.

CHAPTER 8 - CONCLUSION

The work of ACS and the valuable contributions of its division and local section members cannot be overstated. The Society’s Objects and mission remain intact even after so many years have transpired. The Society’s dedicated volunteers persevere in their work, despite being in the midst of ever-changing, rapidly evolving information, collaboration, and oversight environments.

ACS hopes that this manual will provide you with starting points for how to interface with ACS, each other, government authorities, and the business community in ways that

maintain and enhance the Society's worldwide reputation for professionalism, ethics, and good will.

Use this manual as a starting point for asking the right questions. Use this manual to navigate toward a simple solution, whenever possible, or find the right person(s) with greater legal expertise when the legal challenge is more involved. Use this manual to generally acquaint yourself with the law and how it affects the Society's operations. Use this manual to know when to seek counsel immediately. If used in one or more of these ways, we will have succeeded in helping you – our valued ACS member and volunteer.

And remember, the Office of Secretary & General Counsel staff is ready to assist you.

CHAPTER 9 - CONTACT INFORMATION

A. Office of the Secretary & General Counsel:

- a. FLINT H. LEWIS, Esquire, ACS Secretary & General Counsel

American Chemical Society
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- b. KENNETH J. POLK, Esquire, Innovation Counsel

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B. Office of the Treasurer:

- a. BRIAN A. BERNSTEIN, ACS Treasurer & Chief Financial Officer

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- b. ROSALEE M. LEWIS, Tax Manager

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C. ACS Website Resources:

- a. Membership & Networking: [ACS Membership & Networks](#)
b. Local Sections: [ACS Local Section Resources](#)
c. Divisions: [ACS Technical Division Resources](#)

D. ACS Constitution, Bylaws, & Regulations ([ACS Bulletin 5](#))
