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# LEGAL RESOURCE MANUAL FOR DIVISIONS & LOCAL SECTIONS

of the

## AMERICAN CHEMICAL SOCIETY

Third Edition (February 1, 2023)

**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 the 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 email: [ACSLegal@acs.org](mailto:ACSLegal@acs.org).*

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### Introduction

The Office of the Secretary & General Counsel (“OSGC”) 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.

Much has changed since the Second Edition. The law has become more complex and is changing rapidly, especially in areas involving diversity, harassment, privacy, and security. This manual cannot cover every topic or situation. Our hope remains that it is a valuable resource for you in managing the legal risks of operating your Division or Local Section. It cannot, however, 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. Please consult your local attorney for specific legal advice.

Sincerely,

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This manual and its contents are the property of the American Chemical Society.

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**TABLE OF CONTENTS**

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<b>CHAPTER 1 - ORGANIZATIONAL STRUCTURE OF THE ACS .....</b>	<b>1</b>
A. Board of Directors and Officers.....	1
B. Local Sections, Divisions, and Regional Boards (“Components”) .....	1
C. Councilors .....	2
D. Committees .....	3
E. ACS Elections.....	3
F. Fiduciary Duties .....	6
<b>CHAPTER 2 - LEGAL OPERATING STRUCTURES .....</b>	<b>6</b>
A. Unincorporated Components and the ACS Group Exemption .....	6
B. Incorporation Considerations for ACS Components.....	7
C. Officer and Director Roles in a Corporation.....	8
D. Partnerships and LLC Operating Structures .....	8
E. Dissolution of a Component Entity .....	9
<b>CHAPTER 3 - MEMBERSHIP ISSUES .....</b>	<b>9</b>
A. Membership Lists .....	9
B. Property – Tangible, Personal .....	10
C. Real Property.....	10
D. Donations & Bequests.....	11
E. Meetings .....	12
F. Dues.....	13
G. Alliances & Partnerships.....	13
H. Good Standing with ACS.....	15
I. Code of Conduct.....	16
<b>CHAPTER 4 - OPERATIONS.....</b>	<b>16</b>
A. Membership.....	16
B. Meetings.....	17
C. Records Maintenance & Retention .....	19
D. Meeting Procedures.....	20
E. Finance Matters.....	20
F. Annual Reports to ACS.....	21
G. Government Notices/Orders/Communications/Subpoenas.....	21
H. Insurance .....	21
<b>CHAPTER 5 - FINANCIALS .....</b>	<b>22</b>
A. ACSGovDocs Considerations .....	22
B. Treasurer’s Responsibilities.....	22
C. Tax-Related Matters .....	24

---

D.	Benefits/Loss of Nonprofit; 501(c)(3) Status.....	25
E.	Required Tax Filings.....	26
<b>CHAPTER 6 - ACTIVITIES .....</b>		<b>27</b>
A.	Fundraising.....	27
B.	Grants, Awards, Scholarships, & Fellowships.....	28
C.	Social Events.....	29
D.	Donations to Other Organizations.....	30
E.	Lending to Other Organizations.....	30
F.	Contracts.....	31
G.	Professionalism.....	32
H.	Lobbying.....	34
<b>CHAPTER 7 – DATA PROTECTION, SECURITY &amp; MORE.....</b>		<b>34</b>
A.	Data Privacy – Personal/Sensitive Information .....	34
B.	Information Security .....	36
C.	Cookie Usage.....	38
D.	Marketing.....	39
E.	CAN-SPAM .....	40
F.	COPPA.....	40
G.	Data Breach Notification.....	41
<b>CHAPTER 8 - COMMUNICATIONS .....</b>		<b>41</b>
A.	E-mail Use.....	41
B.	E-Mail & Phishing Scams, Malware, & Ransomware.....	42
C.	Social Media Policies & Practices.....	43
D.	ACS Logo Usage & Brand Guidelines.....	45
E.	Website.....	45
<b>CHAPTER 9 - CONCLUSION .....</b>		<b>46</b>
<b>CHAPTER 10 - CONTACT INFORMATION .....</b>		<b>46</b>
<b>APPENDIX OF FORMS.....</b>		<b>48</b>
A.	SOCIAL EVENT WAIVER AND RELEASE OF LIABILITY.....	48
B.	ATHLETIC EVENT WAIVER AND RELEASE OF LIABILITY .....	49
C.	SPEAKER CONSENT FORM .....	50
D.	GUIDANCE ON HOLDING A HARASSMENT-FREE MEETING .....	51
E.	LEGAL GUIDANCE FOR PLANNERS OF ACS-SUPPORTED EVENTS.....	54
F.	ACKNOWLEDGEMENT OF RISKS IN-PERSON LOCAL SECTION ACTIVITY(IES) .....	56
G.	CERTIFICATE OF INSURANCE.....	58
H.	REFERENCE LINKS.....	59

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## CHAPTER 1 - ORGANIZATIONAL STRUCTURE OF THE ACS

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The American Chemical Society (“ACS” or “Society”) 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’ 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. ACS has more than 150,000 members in 140+ countries. The full text of the ACS vision, mission, core values, and strategic plan is available on the public website at <https://www.acs.org/content/acs/en/about/strategicplan.html>.

ACS operates through its National Charter, Constitution, Bylaws, Standing Rules, Schedule of Membership, Regulations, and, occasionally, policies officially adopted by the Board of Directors.

The ACS Governing Documents (“[ACSGovDocs](http://www.acs.org/govdocs)”) consist of the Charter, Constitution, Bylaws, Standing Rules, Schedule of Membership, and Regulations of ACS (<http://www.acs.org/govdocs>). The online version of the [ACSGovDocs](http://www.acs.org/govdocs) is the authoritative version because it is updated throughout the year as needed.

### A. Board of Directors and Officers

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 meets quarterly “and at such other meetings as may be necessary or duly called.” The Board may prescribe duties for the Society’s Officers.

ACS Officers are generally responsible for carrying out the affairs of the Society consistent with the [ACSGovDocs](http://www.acs.org/govdocs) and fiduciary obligations. The Society’s officers consist of the President, a President-Elect, an Immediate Past-President, a Chief Executive Officer, a Secretary, a Treasurer, and a Board of Directors Chair. The Chief Executive Officer is responsible for all day-to-day operations of the Society.

*TIP – More information about the composition, duties, and responsibilities of the Board of Directors can be found in the [ACSGovDocs](http://www.acs.org/govdocs).*

### B. Local Sections, Divisions, and Regional Boards (“Components”)

ACS uses the term “Components” to collectively refer to Divisions, Local Sections, and Regional Boards. A component is a subsidiary of ACS and is represented at Council by Councilors of Divisions and Local Sections.

A Local Section’s territory is assigned by the Society. Each member of the Society is automatically assigned to a Local Section. In contrast, 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. Membership in a Division is optional and the Division may accept members from any jurisdiction. Standing Rule VII of the [ACSGovDocs](http://www.acs.org/govdocs) describes the functions, respective authorities, and responsibilities of Divisions and Local Sections, such as collecting dues, accepting donations or bequests. Additionally, each Division and Local

Section is required to prepare an annual report to submit to ACS and must operate consistent with their bylaws (bylaws are rules for operation). If the Division or Local Section wishes to revise or amend its bylaws, the Society Committee on Constitution and Bylaws (“C&B”), acting on behalf of Council, must approve of any such revisions or amendments prior to their becoming effective.

Both Divisions and Local Sections are represented in the Society through Council. Twenty percent (20%) of Council is appointed through Division elections. Divisions are also represented through the Society 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.

Eighty percent (80%) of Council is appointed through Local Section elections. Local Sections are also represented through the Society Committee on Local Section Activities (“LSAC”). LSAC’s role as defined in its mission statement is to: “partner with members at the Local Section level to promote member participation, Local Section vibrancy, and ACS mission fulfillment.” 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.

ACS also has Regional Boards that are responsible for ensuring the continuance, professionalism, and effectiveness of scientific meetings hosted by Local Sections located within a Region. Each Regional Board has direct oversight of the Regional Meeting, serves as the institutional memory for the Region, and is the repository of information, activities, practices, and accounts from previous Regional Meetings that can be accessed by a Local Section to enhance the quality and effectiveness of its programming. Each Regional Board must maintain good standing as a nonprofit 501(c)(3) corporate organization and file the necessary reports and pay the fees to maintain such standing.

### **C. Councilors**

Advisory councils are not uncommon to nonprofit 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 Chief Executive Officer 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. Council is an ongoing body that is largely advisory, although [ACSGovDocs](#) give the Council direct authority in certain matters, such as those relating to membership and elections.

ACS Councilors are established within the [ACSGovDocs](#) and authorized to perform its executive duties under Standing Rule II. 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 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.

#### **D. 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.

ACS 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 Standing Rule II. The 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, Committee on Committees, and Committee on Nominations and Elections. Members of these committees are elected annually with the ACS President and President-Elect serving as members ex officio. The establishment and appointment process is defined in the Standing Rules of the [ACSGovDocs](#). Council must hold at least two meetings annually, which coincide with the ACS spring and fall national meetings.

The Board of Directors has an Executive Committee, consisting of the then-acting Board Chair, Chief Executive Officer, and Secretary. Additional information about Board committees can be found in the [ACSGovDocs](#).

#### **E. ACS 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.

A Local Section and 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 Local Section or Division to the Chief Executive Officer of the Society.

*TIP – Please read the applicable provisions of your bylaws relative to elections. Complying with applicable election procedure matters is essential to proper election.*



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*Actions by Division or Local Section officers who have not been properly and duly elected could be null and void.*

A Local Section and Division's bylaws typically set forth the process for nominating and electing its officers, Councilors, and Alternate Councilors by a ballot of those members eligible to vote. Elections are by a ballot distributed to all of the Division or Local Section's members according to the [ACSGovDocs](#).

*TIP – Elected officers should serve for a term of one or two years beginning on January 1 or until their duly elected successors take office. Except for the Chair and Chair-Elect, the incumbent of any position is eligible for reelection. A Local Section and Division may wish to elect its Secretary and Treasurer 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. 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 Chief Executive Officer by December 1.*

Nominations – whether offered by the Nomination Committee or by a member duly seconded – can be considered valid. 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.

*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 C&B.*

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. 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, Councilors, and Alternate Councilors should be tabulated by the Nomination Committee. Election 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.

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.

Again, election results should be announced by the Chair of the Local Section or Division – 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 Chief Executive Officer by December 1 through OSGC at [secretary@acs.org](mailto:secretary@acs.org).*

*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 two (2) years, 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 may be filled by a special election; by appointment by the Executive Committee until the next annual election; or as described in the Standing Rules and the Local Section or Division’s bylaws.

*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 Society 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. 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 or Division 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 may be, should investigate the allegations and ensure that the substantiating evidence is relevant, important, and supportive of the charges. The Chair may assign the officer’s duties to another qualified member until the issue is resolved.

Every effort should be made to resolve the issue through alternative resolution with petition recall as a final disposition. Another option is to present the evidence and seek the officer’s resignation. The officer in question should have an opportunity to respond to the petition’s allegations. Notification 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 provided to make a written response.

In the absence of a successful alternative resolution, the Chair should notify the Executive Committee and call a special meeting within thirty (30) days. The Executive Committee shall promptly continue the recall process or dismiss the petition as ill-founded or find an alternative solution to the problem. The Chair shall inform the petitioners of the Executive Committee's decision.

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.

## **F. Fiduciary Duties**

Like the Board and Officers of ACS, elected Division or Local Section officers must conduct their affairs consistent with the duties expected of fiduciaries to an organization. For example, fiduciaries have a duty of care, loyalty, and obedience to the Society and its membership.

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 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.

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## **CHAPTER 2 - LEGAL OPERATING STRUCTURES**

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### **A. Unincorporated Components and the ACS Group Exemption**

Typically, a Local Section or Division is formed as an unincorporated nonprofit association that is officially affiliated with the ACS. This operating structure allows the Internal Revenue Service ("IRS") to recognize Local Sections and Divisions as tax-exempt under the ACS group exemption without the need of Local Section or Division to file separately for tax exemption. For many organizations, especially the smaller Local Sections or Divisions, this unincorporated status is sufficient and avoids imposing unnecessary administrative burdens on volunteer members.

However, there are other legal structures that ACS Components can implement, including incorporation as well as General / Limited Liability Partnerships and Limited Liability Companies ("LLCs"). These operating structures typically have additional expenses and

administrative requirements, including registering as an official entity with state authorities. As such, unincorporated Local Sections and Divisions should carefully consider the advantages and disadvantages of changing their operating structure. The information below is provided to assist Components who have incorporated or are considering incorporation or some other legal structure. Questions may be sent to the ACS Legal of OSGC at [ACSLegal@acs.org](mailto:ACSLegal@acs.org).

*TIP – Local Sections and Divisions are required to obtain prior approval by the Society’s attorneys and C&B of their proposed articles of incorporation and bylaws before effecting an incorporation (source: [ACSGovDocs](#)).*

## **B. Incorporation Considerations for ACS Components**

Incorporation is the act of formally organizing and establishing legal recognition of a new and separate entity through which to conduct business or other affairs. There is no mechanism to incorporate under federal law. Instead, incorporation is generally recognized as a privilege granted through one of the 50 states and the District of Columbia. Each state has its own procedure to incorporate under its sovereign jurisdiction. Once established, 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 (see more information on pages [8](#) and [22](#)). These representatives have varied authorities, objectives, and responsibilities that, in most cases, act as a check and balance on each other.

There are specific benefits to incorporating for nonprofits, such as perpetual existence, limited liability protection for the directors, officers, and members from the group’s activities and debts, solicitation of tax-deductible contributions, federal and state tax exemptions, ease in asset transfer, discounted postage rates, access to public and private grants, and centralized management. Applying for incorporation and operating a corporate entity can vary considerably by state; 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.

Each state has its own procedures for forming a corporation. These procedures generally require the following:

- filing articles of incorporation with Secretary of State or other designated state government office,
- paying designated filing fees,
- advertising the new corporation’s formation, and
- requiring an initial meeting of the members before formal recognition of the corporation’s existence can be recognized by that state’s Secretary.

Procedures for incorporating can vary considerably between states, but the process is generally not difficult, costly or time-consuming.

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. Finally, the Local Section or Division is required to obtain pre-approval by

the Society's attorneys and the C&B before incorporating.

Currently, there are approximately twenty-five (25) Local Sections, Regions, and Divisions incorporated in the District of Columbia. There is no requirement to incorporate in DC, however, Regions and Divisions that do not have a principal office typically choose to do so since the Society is headquartered in DC. If a Division or Local Section is incorporating in the District of Columbia, the OSGC 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.

### **C. Officer and Director Roles in a Corporation**

A corporation acts through its officers, directors, employees, agents and designees. Most states require incorporated entities to have 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.

Generally, officers administer the day-to-day operations of the business while directors oversee the organization's affairs from a policy perspective and protect the interests of the shareholders or members as in ACS' case. For instance, the Society's Chief Executive Officer is responsible for all day-to-day operations. In contrast, the ACS Board of Directors meets quarterly "and at such other meetings as may be necessary or duly called."

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. 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 the requirements specified within the [ACSGovDocs](#) works to mitigate this potential risk for personal liability.*

Generally, directors are responsible for overseeing the acts of officers and providing strategic direction in the management of the corporation's affairs. Individuals appointed 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 members, to oversee the management of the organization's day-to-day affairs.

### **D. Partnerships and LLC Operating Structures**

General or Limited Partnerships and Limited Liability Partnerships 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. Often, partnership responsibilities are divided equally among the numbers of partners, but this is not always the case. However, a partnership is not well suited for Division or Local Section operation, since the partners may likely retain personal liability for their acts in conducting the partnership's business. There is substantially less protection

from liability for owners than the statutory liability shield provided by incorporation.

Limited Liability Companies (“LLCs”) are another type of operating structure. Again, they differ from incorporation as most states do not recognize nonprofit LLCs and tax-exempt status is not guaranteed. Currently, there are only four states (Kentucky, Minnesota, North Dakota, and Tennessee) that allow nonprofit LLCs. The IRS has very specific rules for a nonprofit LLC to obtain federal tax-exempt status, such as being taxed as a corporation, permanently dedicating its income and assets to IRS-approved tax-exemption purposes, and its member(s) must be a 501(c)(3) tax-exempt organization. Due to the complex rules for nonprofit LLCs, it is typically recommended that Local Sections and Divisions apply for incorporation should they decide to change their unincorporated entity status.

#### **E. Dissolution of a Component Entity**

Upon the Division’s or Local Section’s dissolution, any assets shall be conveyed to the Society or an organization that is dedicated to the perpetuation of the Society’s Purposes. 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 1986, as amended or under such successor provision of the Code as may be in effect at the time of the Local Section or Division’s dissolution.

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### **CHAPTER 3 - MEMBERSHIP ISSUES**

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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 is important to remember that paid membership is automatically renewed and dues must be remitted annually. If a member has opted to pay by credit card, the automatic renewal will be charged to the credit card, unless the member’s resignation is received in a time prior to the expiration of the 12-month membership period.

All applicants are assigned to a Local Section roster, unless the Chief Executive Officer is petitioned otherwise. Membership to ACS also includes the applicant’s opportunity to join a Division as long as payment of the established Division’s annual dues is received.

#### **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’ 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.. Local Sections and Divisions should exercise care with such information so that it does not land in the wrong hands to be used for illegal or improper purposes.

*TIP* – Report all suspected scams to the ACS Secretary at [secretary@acs.org](mailto:secretary@acs.org).

E-Rosters are lists of ACS' 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 – Divisions and Local Sections should not sell, market, or reveal email addresses, personal information, or identities of individuals listed in the e-rosters. Any broadcast email sent by a Division or Local Section should be with the prior permission of the member involved. Recipients of these emails should be provided an opportunity to opt-out of any future such communications.*

## **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 within a reasonable period before reimbursement is provided.*

*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, annual fees are required to preserve rights with the U.S. Patent & Trademark Office and other patent governing bodies. These fees are essential to maintaining utility patents.*

## **C. 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.*

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*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.

#### D. Donations & Bequests

The [ACSGovDocs](#) recognize the need for Divisions and Local Sections to assess dues and raise funds, respectively. Except for activities proscribed by law, there is no ACS restriction on the nature of the fundraising activity. Fundraising can include, but is not limited to, charitable sales promotions; conducting raffles (if permitted by state); mobile giving campaigns; contracting with professional fundraisers or fundraising consultants; bequest campaigns; or formal grant requests.

However, state laws may limit fundraising activities. States may also generally require those seeking to raise funds, as well as paid professional “fundraising counsel” or consultants, to register their intentions with state authorities having oversight of such activities prior to holding the event. Additionally, many states require nonprofits sharing revenues with other organizations from sales activities to file with the state to disclose commercial co-venture fundraising activities. Funds must be spent, however, toward local purposes that advance the Society’s Purposes. A Division’s or Local Section’s governance is responsible for managing and controlling the use of such funds.

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.

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.

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. Use of these funds for any other purpose may subject administrators to civil and criminal laws relative to misappropriation and fraud.

*TIP* – When soliciting donations, please keep in mind that certain documentation is



*needed to satisfy applicable federal, state, and local tax laws. Local Sections and Divisions are encouraged to coordinate its plans with the ACS Development Office at [development@acs.org](mailto:development@acs.org).*

Those donating gifts, prizes, awards, or cash must receive acknowledgment of their donation, a good faith estimate of the gift's donative value, and confirmation the Local Section or Division is 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. Noncash donations generally have their value established by the donor.

As fundraising laws change, it is best to seek advice and counsel from your local attorney for the latest version of law and its application to your Division's or Local Section's existing and planned activities.

## **E. 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 charter bylaws for Divisions and Local Sections, as well as in the model 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 a set number of members of the Division or Local Section, as provided in its bylaws.

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

The nature and timing of Division or Local Section meetings are entirely up to the Chair or the Executive Committee. 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 read or hear the proceedings substantially concurrently with their occurrence and for voting members to vote on matters as needed.

*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. Seek advice from OSGC if you are unsure of this requirement for your Division or Local Section.*

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 the bylaws or within the [ACSGovDocs](#).

ACS seeks to foster a positive and safe environment for meetings so that all participants can be free of harassment, including sexual harassment, and characterized by courtesy and

respect. The ACS recommends that the *Guidance on Holding a Harassment-Free Meeting* be adopted by Divisions, Local Sections, and others that are organizing and operating ACS-affiliated events (“non-national meeting”) to ensure harassment-free environments. This guidance can be found in [Appendix D](#).

*TIP – ACS has made Diversity, Inclusion, Equity, and Respect a core value of the Society. Divisions and Local Sections are strongly encouraged to adopt this guidance as an important part of planning their meetings to further advance this important Society-wide core value.*

## F. Dues

Divisions and Local Sections receive a pro rata share of general Society revenues each year for operations. The allocation amount is dependent upon the membership size and other factors. Divisions and Local Sections can solicit additional funds for operations from general Society revenues over and above those provided by ACS.

Local Section and Division members may be assessed voluntary dues in an amount set by its respective Executive Committee. The Executive Committee may waive or discount dues for students and emeritus members as provided in the [ACSGovDocs](#).

Society Affiliates may be assessed annual dues as set by the Executive Committee. Local Section and Division Affiliates may be assessed annual dues in an amount set by its respective Executive Committee, but not less than two dollars (\$2.00) per annum. These dues shall be established in accordance with the [ACSGovDocs](#).

## G. Alliances & Partnerships

Divisions and Local Sections can collaborate with other Divisions, Local Sections, or external partners, domestic and international, on any matter of a lawful nature that advances the Society’s mission and Purposes. 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.

The success of any partnership or strategic alliance is dependent on many factors. Among the more important ones to consider are strategic and cultural fit, complementarity of contributions, assignment of duties, and financial participation by and among those participating, just to name a few.

A strategic alliance is a form of partnership with singularity of desired outcome being pursued, although it differs in that it allows the parties undertaking the project to fully retain their independence. However, this limited entanglement of organizations does not alleviate the importance of selecting the potential collaborator crucial to the success of the undertaking itself. Negotiating an agreement of cooperation is the ultimate objective and a natural outcome of a diligent and logical process for investigating, evaluating, and selecting the potential collaborator or partner.

Broadly speaking, the selection and evaluation processes for forming a strategic alliance or partnership is meaningfully facilitated by engaging in the following, simplified six (6) activities:

1. Define the Alliance or Partner Opportunity:

What are the opportunities and prerequisites for each collaborator or partner under consideration based on mission or business culture, strategy, technological competence, mission or business focus, finances, anticipated contributions and other requirements essential to achieving the desired outcome(s)?

2. Identify the Prospective Collaborator or Partner:

Who are the single or multiple prospective collaborators or partners that substantially fit the defined alliance or partnership opportunities and meet or exceed the requirements essential to achieving the desired outcome(s)?

3. Make and Develop the Contacts:

Who are the decision makers and key support personnel of the prospective collaborators or partners to contact, discuss and conclude a contract for achieving the desired outcome(s)?

4. Conduct Due Diligence:

What is essential to evaluate for achieving the desired outcome(s) of the proposed strategic alliance or partnership? What is the process for evaluating the prospective collaborator or partner? A comprehensive checklist is helpful for answering these questions and is generally available at: [Model Joint Venture Agreement Checklist](#). This checklist is just one example, and not all checklist provisions will be applicable. The circumstances involved with each deal will dictate what line of inquiry and documentation is needed to assess the prospective collaborator or partner's capability to collaboratively achieve the desired outcome(s).

5. Agree on a Term Sheet:

What has been mutually agreed upon? Prior to engaging in the drafting and discussions surrounding a strategic alliance or partnership agreement, the parties should reduce the main provisions of any intended agreement to a simplified, business terms-only writing. This is precisely the purpose of a term sheet. A properly drafted term sheet, whether binding or non-binding, is a roadmap for legal counsel to draft agreement provisions and, more importantly, avoid unproductive discourse on the final agreement's provisions. A term sheet is strongly advisable whether or not a strategic alliance or partnership is actually concluded.

6. Draft, Execute and Monitor the Performance of an Agreement:

What is the bargain that has been agreed-upon? With the advice and counsel of a licensed attorney within the jurisdiction of one or both of the parties, a final agreement can be drafted from the term sheet and a closing held to secure the necessary signatures to enable enforceability. Naturally, this concludes the documentation that evidences the newly minted strategic alliance or partnership. This is not the end of the process, however. The parties' respective performance should always be monitored and measured against the final agreement to ensure that the bargain struck between the parties is confirmed by the achievement of

the desired outcome(s).

*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. 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.*

More information on international alliances can be found on ACS' website. Co-sponsorship 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 Co-sponsorship Guidelines](#) for further information.

## H. Good Standing with ACS

To be in good standing with ACS, a Division or Local Section must operate under its charter bylaws approved by the Society's Council until such time as it desires to revise or amend them. Changes to the charter bylaws must remain consistent with the [ACSGovDocs](#). Any Division or Local Section may be dissolved by the Council for good and sufficient reasons.

Each Division or Local Section must have officers, which typically consist of a Chair, a Vice-Chair and/or Chair-Elect, a Secretary, and a Treasurer. It is the responsibility of each Division and Local Section to determine the eligibility of candidates for elective positions as required in the [ACSGovDocs](#) and its bylaws.

Funds allotted to a Division or Local Section shall only be used for fulfilling the Society's Purposes as specified in the [ACSGovDocs](#). 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 ACS Office of the CEO. 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 [Community Connection](#). Community Connection is available year-round and is accessed through your ACS login and password. A financial and administration form is required, including a Local Section budget.

Each Local Section and Division must fully comply with timely filing of federal and state taxes, as well as adhere to ongoing compliance obligations so that ACS and their tax-exempt status are not jeopardized. The due date for federal tax returns must be filed by the 15<sup>th</sup> of the fifth month after the end of the organization's accounting period. For organizations following a calendar year, the filing due date will be May 15. All Local Sections and Divisions must submit a copy of its annual federal tax return, along with proof of filing to the ACS Tax Office at [tax@acs.org](mailto:tax@acs.org).

Any Division's or Local Section's proposed articles of incorporation and amendments to its bylaws must first be submitted to and approved by C&B for consistency with the [ACSGovDocs](#).

## I. 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 approved by 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 Council in August 2019.

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

The Board of Directors has adopted a "Volunteer/National Meeting Attendee Conduct Policy." It can be found in its entirety on the last page of the [ACSGovDocs](#).

*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.*

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## CHAPTER 4 - OPERATIONS

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### A. Membership

ACS, Division, and Local Section members alike shall be those individuals who are interested in the Society's Purposes and who have been elected only after meeting the requirements provided in the [ACSGovDocs](#). Requirements for MEMBER and STUDENT MEMBER status can be found within Standing Rule I. 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 Divisions can be found within the Standing Rules.

**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 Chief Executive Officer 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 or be destructive to the Society's Purposes. No member can be dropped without first having an opportunity to be heard as provided in the [ACSGovDocs](#). The Society's Chief Executive Officer 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 Committee on Membership Affairs and paying the current dues.

**Expulsion** – Requirements for expelling a member can be found within Standing Rule I, Section 7.

**Affiliates & Associates** – Requirements for becoming an affiliate or corporation associate of the Society can be found within Standing Rule I, Section 9.

*TIP – No affiliate of a Division or Local Section shall be able to hold an elective position, vote on articles of incorporation and bylaws, serve as a voting member of its Executive Committee or equivalent policymaking body, or vote for Councilors or Alternate Councilors.*

**Charter Forfeiture** – Any Local Section, which fails to maintain a membership shall automatically forfeit its charter as noted in the [ACSGovDocs](#).

**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 is likewise prohibited.

**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 Regulation VI, Section 7 for more information).

*TIP – The “Election Only” list provided by ACS is the most definitive list of individuals eligible to vote (not every person whose name appears on the e-Roster is eligible to vote and some names are not listed on the e-Roster if the individual has requested 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 e-Roster, respectively.*

## B. Meetings

**Annual/General** – The [ACSGovDocs](#) does not have any requirements or recommendations regarding meetings of Divisions or Local Sections, other than 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 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 Meetings** – 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 the Division or Local Section bylaws. The request should be made to 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 co-hosting a regional, scientific, or technical meeting with other Divisions, Local Sections, Regions, etc., Divisions and Local Sections are strongly encouraged to enter into a Memorandum of Understanding (“MOU”) for the planning, organizing, and conducting of said meeting. A MOU describes the roles, responsibilities, and accountabilities of the parties involved. The ACS Department of Meetings and Expositions Services (“DMES”) provides staff services for professional execution of meetings, which includes training sessions for members charged with organizing a meeting, contract negotiation, serving as a facilitator amongst involved parties, marketing, registration, etc.

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.

**Diversity, Inclusion & Respect** – A core value of the ACS, Divisions, Local Sections and others that are organizing and operating ACS-affiliated events to ensure harassment-free environments. This guidance can again be found in [Appendix D](#).

**Legal Guidance for Event Planners** – ACS has accumulated considerable experience in resolving contract matters from terminations of in-person meetings caused by the COVID-19 pandemic. ACS has prepared a Legal Guidance for Planners of ACS-Supported Events to assist Divisions, Local Sections and others planning ACS-supported events in dealing with such matters. This document can be found in [Appendix E](#).

**Acknowledgement of Risks In-Person Local Section Activity(ies)** – The global pandemic known at COVID-19 has changed the risks for individuals intent on attending meetings in-person. ACS recognizes each individual’s right to make decisions relative to their safety, but Local Section leaders must nevertheless be mindful of the risks that attending in-person may result in a super-spreader event. Local Section leaders can consider utilizing the Acknowledgement of Risks In-Person Local Section Activity(ies) form to document participants’ consent of the risks for in-person events. This document can be found in [Appendix F](#).

**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 [ACSGovDocs](#).

**Executive Committee Meetings** - The Executive Committee designates the times and places of the Division or Local Section's meetings. The Executive Committee shall set the order of business for meetings of the Division or Local Section to conduct governance business. Upon approval of the Executive Committee, meetings of the Division or Local Section 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 and allow for voting members to vote as needed.

**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 & Retention

The [ACSGovDocs](#) require the Secretary of the Division or Local Section to record and report on officer appointments and member certifications to ACS. The model bylaws template created by C&B also provides that the Secretary be responsible for recording the minutes of the meetings and of the Executive Committee. Thus, the Secretary 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 [ACSGovDocs](#) and elsewhere in the Division or Local Section's bylaws.

*TIP – Contact LSAC at [olsa@acs.org](mailto:olsa@acs.org) or DAC at [division@acs.org](mailto:division@acs.org) for assistance with setting up distribution lists, how to send notifications to members, and submitting reports.*

*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 [ACSGovDocs](#).*

Records that are created during Division or Local Section operations are necessary or useful for only a limited period of time, after which they become obsolete, outdated, or irrelevant. Records are documents that contain any type of ACS information stored in an electronic medium or paper. They also include modern electronic and digital documents, such as emails, calendars, photographs, videos, and other data. Document retention is an important matter requiring careful attention. Adopting or having a document retention policy could be useful in accessing and distributing information in a timely manner. The following "tips" may assist you in establishing or updating your document retention policy.

*TIP – Retain only those documents that are necessary or useful for Division or Local Section operations. Except as provided below, consider a policy to retain working files and other documents that are by nature necessary or useful for operations for no longer than three (3) years.*

*TIP – Governance and historic documents should be retained permanently.*

*TIP – Documents pertaining to contracts, procurement or sales should be retained for no longer than seven (7) years after agreement termination.*

*TIP* – Documents pertaining to finances, tax, and accounting should be retained permanently, except account statements, records of deposit, cancelled checks, interim financial statements and tax returns do not need be kept for longer than seven (7) years.

#### 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 a set number of members required by applicable state law and specified in its bylaws. 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 [ACSGovDocs](#).

#### 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 Division or Local Section operations not provided by ACS.

*TIP* – Please see the [Local Section Administration](#) for greater details 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, [treasurer@acs.org](mailto:treasurer@acs.org) 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 provided within the [ACSGovDocs](#) for waived or discounted dues. Division and Local Section affiliates are assessed annual dues of not less than two dollars (\$2.00) by the Executive Committee. Dues establishment should be consistent with the process established by the [ACSGovDocs](#), 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. Generally, an audit should be conducted:

- 1) if the Division or Local Section expends more than \$750,000 of federal grant dollars each year (state requirements may vary based upon state grant expenditures);
- 2) prior to filing or re-registering for fundraising (typically each year) within a state;
- 3) to accompany tax filings when expenditures at least reach \$200K (many states require audits when expenditures exceed \$500K); or
- 4) every 5 years or when a new Treasurer is elected.

The audit report should be submitted to the Executive Committee by the end of January or fiscal year.

*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

[ACSGovDocs](#) 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 Chief Executive Officer 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

**IMPORTANT** – 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 IRS, 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. Refer any and all such requests immediately to OSGC at [ACSLegal@acs.org](mailto:ACSLegal@acs.org) 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. 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. See [Appendix G](#).

*TIP – Any accident should be reported immediately to the Treasurer's Office by email [businessinsurance@acs.org](mailto:businessinsurance@acs.org) or calling 1-800-277-5558, extension 6037. A written report must be prepared and 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 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.*

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## CHAPTER 5 - FINANCIALS

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### A. ACSGovDocs Considerations

The Society makes an annual apportionment of funds to Divisions and Local Sections as provided in the [ACSGovDocs](#). 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 in the [ACSGovDocs](#). 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 Purposes 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 Chief Executive Officer. 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 [ACSGovDocs](#).

**Receiving Funds** – A Local Section or Division Treasurer makes an annual request of funds to which it is entitled per the [ACSGovDocs](#). The Treasurer is then responsible for taking possession of the funds delivered by the Chief Executive Officer. The Treasurer shall have charge of the funds of the section afterwards. The Treasurer should ensure that these funds are expended only for local purposes incident to fulfilling the Society's Purposes. Divisions may direct their funds toward additional Purposes as established by their Executive Committees.

*TIP – A Local Section or Division should ensure there are at least two signatories, usually the Chair and the Treasurer and/or Secretary, to its respective bank account(s) for accessibility and convenience. It is recommended that Local Sections and Divisions add a designated ACS employee as a signatory to its bank account to minimize risks and to prepare for unforeseen circumstances.*

**Accounting for Funds** – As with any financial undertaking – whether project, entity or regional meeting-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 Division or Local Section.

The Division's or Local Section's Treasurer must submit to DAC and LSAC via the Society's Chief Executive Officer'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.

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 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' 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 for at least seven (7) years. 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.*

*TIP - Keep copies of contracts, proposals, invoices, purchase orders, sales files, and the like for a period of seven (7) years after termination of the contract. Contract matters can bear directly on information required by IRS 990s and this supporting documentation should be retained as it relates to confirming income, expenses, deductions, and tax amounts paid.*

### **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).

Divisions and Local Sections are considered affiliated with ACS and, thus, included as charitable, nonprofit, scientific and educational organizations under ACS' 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 also exempt from paying federal income taxes. The group exemption number is different than an EIN. All Local Sections and Divisions must use their own EIN when filing tax returns or sending correspondence to the IRS.

*TIP – Obtain a copy of the ACS' group exemption letter for your Division's or Local Section's records. Kindly request it through the ACS Tax Office at [tax@acs.org](mailto:tax@acs.org).*

*TIP – ACS' 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. 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 at [tax@acs.org](mailto:tax@acs.org) for your Local Section’s federal tax identification number.*

***TIP** – Divisions and Local Sections must never use ACS’ 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 meet filing requirements with the IRS. Penalties may be imposed by the IRS for late filings.

*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.*

*TIP – Loss of tax-exempt status or revocation is automatic if Form 990 series returns or notices are not filed for three (3) consecutive years. Should this happen, Divisions or Local Sections can seek reinstatement of the tax-exempt status by filing IRS Form 1023-EZ. Reinstatement is complicated, time-consuming, expensive, and document intensive. Reinstatement can require the use of external legal counsel and the involvement of more than one Division or Local Section officer. Divisions and Local Sections are strongly advised to stay compliant with the three (3) year rule.*

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*TIP* – More information about automatic revocation and reinstatement can be found at [IRS Automatic Revocation - Reinstatement](#).

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 MISC* – Miscellaneous income for nonemployee activities

*FORM 1099 NEC* – Nonemployee compensation

*FORM 1096* – Annual summary and transmittal of U.S. Information Returns

The *Form 990* series of returns (*Form 990*, *990-EZ*, and *990-N*) are mandatory for organizations exempt under 501(c)(3). The type of form used is based the organization's gross receipts and total assets. Gross receipts consist of but is not limited to contributions; program service revenue; special events, membership dues and assessments, including ACS allotments; dividends and interest-securities; and investment income.

The simplest filing is the *Form 990-N*, an electronic postcard filing for organizations with gross receipts normally equal to or less than \$50,000. Organizations with gross receipts greater than \$50,000 but less than \$200,000, and total assets of less than \$500,000 must file either a *Form 990* or *Form 990-EZ*. For organizations with gross receipts equal to or greater than \$200,000, or total assets equal to or greater than \$500,000, must file the *Form 990*. Both *Form 990* and *990-EZ* must include the following schedules:

- *Schedule A* - Public Charity Status and Public Support,
- *Schedule B* - Schedule of Contributors (required if the organization received \$5,000 or more in money or property from any **one** contributor), and
- *Schedule O* - Supplemental Information to *Form 990* or *990-EZ*

Additional schedules may be required depending on the organization's responses. Certain tax-exempt organizations may also be required to file other information returns, such as the *Form 990-T* to report unrelated business income ("UBI"). UBI is income generated by commercially equivalent activity, such as goods or services provided in a commercial or business-like manner.

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*TIP* – Treasurers should ensure the organization’s correct legal name and address is provided on the return. The legal name can be found in the organization’s bylaws. Local Section and Division bylaws are available online at [www.acs.org/govdocs](http://www.acs.org/govdocs) or upon request to C&B at [bylaws@acs.org](mailto:bylaws@acs.org).

*TIP* – ACS’ Tax Office provides more information about these forms and other tax-related matters during its **Local Section, Division, and Region Treasurers Workshop**, conducted periodically at one of the ACS national meetings on demand or via webinar. Questions may be sent to [tax@acs.org](mailto:tax@acs.org).

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## CHAPTER 6 - ACTIVITIES

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### A. Fundraising

The [ACSGovDocs](http://www.acs.org/govdocs) 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, as well as paid professional “fundraising counsel” or consultants, to register their intentions with state authorities having oversight of such activities prior to holding the event.

Additionally, many states require nonprofits sharing revenues with other organizations from sales activities to file with the state to disclose commercial co-venture fundraising activities. Funds must be spent, however, toward local purposes that advance the Society’s Purposes. A Division’s or Local Section’s governance is responsible for managing and controlling the use of such funds. As fundraising laws change, it is best to seek advice and counsel from your local attorney for the latest version of law and its application to your Division’s or Local Section’s existing and planned activities. Questions on fundraising activities may be addressed to [ACSLegal@acs.org](mailto:ACSLegal@acs.org).

Divisions may raise or collect funds toward the fulfillment of additional Purposes 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. See pages [11](#), [24](#), [25](#), and [26](#) for further information.

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

*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 nonprofit organization (sometimes referred to as 501(c)(3) entities).

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*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 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 committee also works primarily on the many ChemLuminary awards that are presented by DAC or LSAC and self-nominated through the annual reports ACS [Community Connection](#) 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 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.

***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.

ACS-Hach Post-Baccalaureate Teacher Scholarships – Awarded to working chemists with an interest pursuing a teaching career at the secondary and 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' 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. 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 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 – Athletic and Social Event Waiver and Release of Liability agreements can be requested via email at [ACSLegal@acs.org](mailto:ACSLegal@acs.org).*

To ensure the safety and security of children under the age of 18, Divisions and Local Sections holding or participating in any type of social, educational, athletic, or other



programs or events involving minors should implement a volunteer screening policy that may among other criteria, include a questionnaire, background checks, and consent to abide by the *ACS Volunteer Policy*. Questions regarding such policy may be addressed to [ACSLegal@acs.org](mailto:ACSLegal@acs.org).

*TIP – Certain state laws require background checks on volunteers engaging with children. Check your state and local laws or consult with local counsel for compliance.*

#### **D. Donations to Other Organizations**

Divisions or Local Sections can give another 501(c)(3) organization a donation so long as it advances the Divisions or Local Section's tax-exempt Purposes. Donations and bequests from individuals are covered in Chapter 3, [Donations & Bequests](#). To ensure that this is the case, the donor Division or Local Section must avoid:

- 1) any conflict of interest, apparent or real,
- 2) violating any donor restrictions,
- 3) misuse or misappropriation of the donated charitable resources by the recipient nonprofit,
- 4) any concern that the donated funds will, in any way, imperil the donor Division's or Local Section's financial health,
- 5) failing to disclose the donation within its *Form 990*, and
- 6) failing to document the Division's or Local Section's decision in its minutes.

*TIP – ACS policy generally discourages contributions to health, welfare, civic organizations that do not directly help advance the Society's Purposes, or at least science, technology, engineering and mathematics.*

#### **E. Lending to Other Organizations**

There are occasions when a Region, Division, or Local Section may consider lending funds to another organization, e.g., a Region lending funds to a host Local Section organizer of a Regional Meeting. In such cases, the loan should be documented through either a formal agreement or simply a letter of understanding.

Generally, documenting a loan – whether by letter or instrument – requires that certain legal elements of a lending transaction exist for enforceability. Generally, a writing is needed when the loan exceeds \$500. This is generally required by most statutes through laws that limit the enforceability of verbal agreements when a writing is not available (e.g. Section 28:2-201, Code of the District of Columbia - Statute of Frauds). To evidence a loan, a writing must include specific terms to define the legal obligations of each party. This writing must provide, at a minimum, for the legal names of the parties involved, the value exchanged, terms requiring repayment, a specific interest rate or range, loan security, and any collateral offered in the event of default.

In most instances, loans between sister organizations – a Local Section and Regional Meeting organizer – can be accomplished through a letter. But this writing should also contain the basics described above.

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*TIP* – Loan amounts that jeopardize the solvency of a Division or Local Section are inadvisable. If a loan amount far exceeds \$500, a loan agreement and promissory note might be advisable. In this instance, seek the advice and counsel of a local attorney. If the debtor becomes insolvent and seeks bankruptcy protection, a loan without proper security or priority in payment may become worthless.

## F. 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. Unincorporated Local Sections and Divisions should consult with legal counsel before entering into any contract.

*TIP* –For assistance with:

- Contract negotiations **related to meetings**, contact DMES.
- An ACS national meeting, email [nationalmeetings@acs.org](mailto:nationalmeetings@acs.org).
- A Regional meeting, email [regionalmeetings@acs.org](mailto:regionalmeetings@acs.org).
- Expositions, email [expo@acs.org](mailto:expo@acs.org).
- For all other meeting related inquiries, email [acsmeetingsstaffsupport@acs.org](mailto:acsmeetingsstaffsupport@acs.org).

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, e.g., \$500 in the District of Columbia.

There are a few contracts worth mentioning that present special risks to a Division or Local Section:

**Hotel Contracts** – These contracts are entered to secure space and services typically for regional, Divisional, Local Section, or joint meetings. As a result of COVID-19, many meetings had to be cancelled and incurred penalties. See [Appendix E](#) for ACS legal guidance and suggested relevant clauses for hotel contracts.

**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.

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*TIP* – As these types of agreements are used frequently, it would be best practice to have a form agreement ready for use. Please email [ACSLegal@acs.org](mailto:ACSLegal@acs.org) to request a copy of the form that ACS uses.

**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.

There are certain court-recognized exceptions that vary the “at will” presumption. Broadly, employers cannot justify a termination when the employee refuses to commit an illegal act as requested by the employer, reports a violation of law (“whistleblowing”), or is exercising a statutory right such as filing a claim for worker’s compensation.

There are certain federal and state statutes that prohibit employers from basing employment decisions on an employee’s race, color, religion, sex, national origin, age, disability, or veteran status. And, some states protect employees from discrimination based on sexual orientation or gender-identity.

**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.

*TIP* – Insurance contracts containing both an obligation to indemnify the insured and defend against covered lawsuits are preferred and are included within most general comprehensive liability policies. Be sure to check for these obligations prior to purchasing insurance products.

**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 (“MOU”)** – 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.

## G. Professionalism

The Society supports its members engaging in thoughtful and spirited discussions about

important scientific and societal matters during Division and Local Section gatherings. These exchanges often yield beneficial results when conducted within collegial environments that respect everyone concerned, regardless of their level of formal education and whether they are from industry, government or academia, or other scientific and engineering disciplines.

As chemical professionals, we should strive to treat colleagues with respect, encourage them, learn with them, share ideas honestly, and give credit for their contributions. At all times, chemical professionals should carefully avoid any bias based on race, gender, age, religion, ethnicity, nationality, sexual orientation, gender expression, gender identity, and presence of disabilities, educational background, or other personal attributes.

As chemical professionals, we also pride ourselves in our professionalism and civility. Behaviors such as intimidation, incivility, bullying, unfair discrimination, harassment, drug and alcohol abuse, property damage and other forms of disruptive behavior during Division or Local Section gatherings are not in keeping with the spirit of our profession. Abstaining from such behaviors is, in many instances, required by law.

Federal, state, and local laws generally protect individuals from harassment, i.e., an unwelcome verbal, visual or physical conduct of another that creates an intimidating, offensive, or hostile reaction in the other. Harassing behavior can be verbal, graphic, or involve physical conduct by a person that denigrates or shows hostility or aversion towards another.

Sexual harassment can include all of the above actions, as well as other unwelcome conduct, such as unwelcome or unsolicited sexual advances, requests for sexual favors, conversations regarding sexual activities and other verbal or physical conduct of a sexual nature. Thus, all forms of unwelcome sexual conduct, whether verbal or physical, including sexual advances, demands for sexual favors, or other verbal or physical conduct of a sexual nature are strictly prohibited. Behaviors that may constitute prohibited sexual harassment may include, but is not limited to sexual propositions, innuendos, suggestive comments, sexually oriented jokes or teasing, obscene or vulgar gestures, posters, or comments, derogatory posters, pictures and drawings, unwelcome physical contact, sexually-explicit e-mails, texts or voicemails, conduct or comments consistently targeted at only one gender, even if the content is not sexual, teasing or other conduct directed toward a person because of the person's gender.

Harassment is unacceptable and unprofessional behavior irrespective of the setting and the relative positions of the individuals involved. When harassment becomes unlawful is difficult to determine. Thus, it is best to be courteous, respectful and professional at all times during Division or Local Section sponsored meetings, gatherings, or events. Unprofessional behavior is not limited to face-to-face encounters. It can also result from written, electronic, and telecommunication communications.

Non-serious, inappropriate behavior should be addressed informally by those who are either parties or witnesses to the behavior. If and when appropriate, please ask the person engaging in the behavior to stop. Division or Local Section officers may be in the best position to remind participants about professional behavior and/or thwart an escalation of the harassing behavior. Serious incidences of harassing behavior should be brought to the attention of your Division or Local Section Chair.

*TIP: If you witness or experience harassment at an ACS annual meeting or other event, inform OSGC as soon as possible at [secretary@acs.org](mailto:secretary@acs.org). You may be asked to provide details of the incident or incidents, names of individuals involved and names of any witnesses. It may be necessary to document your observations in writing. Complaints may be made on a confidential or anonymous basis, but please note that a sufficient amount of detail is needed to proceed or act on a concern.*

## H. 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. 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.*

**IMPORTANT – Before engaging in activities that may be interpreted as political or partisan, please check immediately with OSGC at [secretary@acs.org](mailto:secretary@acs.org) for further guidance.**

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## CHAPTER 7 – DATA PROTECTION, SECURITY & MORE

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Privacy, information security, and breach notification are rapidly emerging as ever-increasing threats of potential loss to organizations. Cybersecurity attacks are increasing in size, sophistication and cost nearly every day. Privacy protection failures seem to be in the news each day with consumers believing more now than ever that their personal data is being processed irresponsibly. And, more and more attacks are coming through reliable supply chains, requiring organizations to be more circumspect about everyday technology suppliers and their data protection efforts. This chapter was added with the hopes of providing a better understanding of how organizations can thwart these threats.

ACS is a global organization that operates from within the United States. This situation requires data protection, security and privacy strategies and practices to align with numerous international, national, state, and local laws and regulations. For competitive reasons as well, ACS chooses to make every effort to be good stewards of personal information.

### A. Data Privacy – Personal/Sensitive Information

There is no single data protection legislation in the United States. Instead, many federal and state laws exist to protect the personal data of U.S. residents.

Personal identifiable information (“PII”) identifies a living person. It can include name,

address, telephone number, email address, and various other forms of information including electronic forms like IP address. Sensitive information (“SI”) includes Social Security number, race, sex, gender, medical records, political affiliation and more. PII can be de-identified and not subject to privacy laws when the data is anonymized, portions are pseudo-anonymized, and/or it is aggregated.

Perhaps the most notable federal agency to protect personal information is the Federal Trade Commission (“FTC”) which broadly regulates privacy through its enforcement powers against unfair or deceptive trade practices. Through various rulings, the FTC considers deceptive practices to include an organization’s failure to comply with its published privacy promises (e.g., a privacy statement) or failure to provide adequate security for the protection of personal information.

The federal government has also acted to protect certain types of information or particular individuals. Here are just a few examples of the more prominent laws regulating privacy information:

- Motor Vehicle Operators - Driver’s Privacy Protection Act (“DPPA”)
- Financial –Gramm Leach Bliley Act (“GLBA”) and Fair Credit Reporting Act (“FCRA”)
- Children - Children’s Online Privacy Protection Act (“COPPA”)
- Health – Health Insurance Portability and Accountability Act (“HIPAA”)
- Email – Controlling the Assault of Non-Solicited Pornography And Marketing Act (“CAN-SPAM”)
- Student Records – Family Educational Rights and Privacy Act (“FERPA”)
- Residential Home Calls – Telephone Consumer Protection Act (“TCPA”)

Unlawful surveillance also continues to be a major concern with federal (Fourth Amendment to the US Constitution and the Electronic Communications Privacy Act) and state laws that criminalize recording communications without obtaining advanced consent from one or all of the parties, depending upon the law involved.

California is the avant-garde for protection of consumer privacy in the United States through its relatively recent enactment and implementation of the California Consumer Privacy Act (“CCPA”). The CCPA creates new privacy rights in California consumers, including the right to: a) be informed on how an organization collects information about them, b) delete that information, c) opt-out from the sale of their personal information to third parties, and d) be free from discrimination for exercising CCPA rights. Organizations must provide California consumers with notices that explain their privacy practices and rights to opt-out. Other states have also passed data privacy and protection laws, but none are as sweeping as the CCPA. As of January 1 2023, the only state data privacy law that applies to nonprofit organizations is the Colorado Privacy Act.

The European Economic Area vis-à-vis the European Union (“EU”) regulates privacy through the General Data Protection Regulations (“GDPR”) and the Privacy and Electronic Communications Regulations (“PECR”). The GDPR regulates the processing (collection, use, retention, disclosure, and destruction), i.e., virtually anything you do with personal



information, of PII, i.e., any information that is capable of being used to identify a living person. Separately, PECCR creates specific rights that protect individuals relative to electronic communications that involve marketing calls, emails, texts, faxes, security around such communications, and the management of tracking technologies such as cookies.

Many, if not most, international, federal and state privacy laws and regulations find their origins in the principles espoused within the 1980 Organization for Economic Co-operation and Development Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Information (“OECD Guidelines”) and/or the FTC’s Fair Information Practice Principles (“FIPPs”). Generally, these can be distilled to 5 common practices:

1. Give notice to data providers of who and what PII will be collected, how it will be used, stored, and disposed of, and how their data will be secured,
2. Give data providers the right to decide how their PII will be used (customarily providing an opt-in checkbox),
3. Give data providers the ability to access and alter their data, including recognizing their individual rights under the GDPR, CCPA, and other laws and regulations,
4. Ensure that data is secure and accurate, disposing of stale information or converting the data into an anonymized form, and
5. Provide data providers with a mechanism to seek enforcement or redress from the data controller, so as to enable complaint intake, investigation, and enforcement.

*TIP – Privacy programs that follow these core practices are more likely than not to be in substantial compliance with many of the more preeminent international, federal, and state laws and regulations pertaining to privacy.*

## **B. Information Security**

This subject is complex, and a short discussion may only lead to more questions. Nevertheless, information security is a trending subject requiring more and more effort each day from network administrators, technology providers, vendors, and individuals to thwart internal and external system attacks and safeguard the confidentiality, integrity and access to information. These attacks can come from physical access through the appropriation or improper use of user credentials, technical vulnerabilities that are either unknown or have not been adequately patched, or failures by network administrators to control access to systems.

Under various international, federal, and most state laws, including CCPA, pertaining to privacy, organizations are required to implement reasonable physical, technical, and administrative measures to safeguard the information that they are processing. Some of these measures can consist of requiring sophisticated user permissions, activity log audits for suspicious activity, anti-virus scanning, IP address access control, vulnerability scanning and ongoing patching/configuration management. Whenever and wherever possible, systems should use dedicated firewalls, virtual private networks (“VPNs”), encryption technology for communications and Secure Sockets Layer (“SSL”) technology for all logins. These are but a few measures network administrators can take, but an exhaustive list is not reasonably feasible within the context of this document.

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*TIP – Security measures should be taken that safeguard against unauthorized access to, alteration, disclosure, or destruction of data and systems. This includes protection against accidental loss or destruction.*

While the Society maintains a sophisticated network consisting of one or more of the aforementioned security measures, a network is only as strong as its weakest link. Thus, the security of home networks for Division and Local Section members and their respective desktop and mobile computing devices which feed into the Society's systems require constant monitoring and updating for the latest in security protections. Here are some suggestions to improve your home security systems and devices:

#### Router or Wireless Access Point Administration

- Consider buying a router, it's usually cheaper than renting from the ISP and will have features like intrusion detection and malware protection
- Change the administrator password by making it long and complex
- Change the name of your router, no address or name information
- Turn off administration from the Internet and from your wireless network
- Turn off unneeded services

#### Wireless Networks

- Use secure encryption, WPA2 with AES
- Make the wireless key reasonably complex
- Set up a guest network, if possible

#### Home computers

- Set the administrator account to a complex password
- Use separate accounts for separate users
- Backup your files regularly
- Consider secure offsite storage for important papers and administrator passphrases, keys, access codes, etc.
- Make sure you have a modern anti-malware program
- Enable your system firewall with minimum privileges
- Turn off unneeded services

#### Day to Day use of your computer

- Don't use an administrator account for your day to day activities
- Consider using a password manager for saving passwords, don't use your browser
- Separate work/school systems from day-to-day surfing
- Use multifactor authentication for sites with personal information. (Health, financial, social media, etc.)

- Be wary of putting information on social media, including vacation plans, details about minor children, or pictures of large stacks of cash in your home
- Consider using a bootable USB system for sensitive transactions

*TIP – The security of your home system has bearing on the Society’s network, particularly as it relates to committee work with personally identifiable information, sensitive documents, and confidential information.*

### C. Cookie Usage

Cookies are electronic placeholders that are typically placed on a user’s device by online service providers through the software on the user’s device. Cookies are stored to allow for remembering shopping baskets, supporting log-in requirements of a website, analyzing traffic to a website or tracking the user’s behavior while browsing a website. Cookies can expire at the end of a user’s session (“Session”) or remain on the user’s device until removed (“Persistent”). Cookies, themselves, are not personal data. However, cookie identifiers may become personal data if they can identify an individual and become subject to the GDPR.

The PECR and ePrivacy Directive of the EU and the United Kingdom (“UK”) remain the prominent international laws relative to the use of email, phone, fax, text, or cookies for electronic communication purposes and the collection of user consents around privacy. There is no counterpart to PECR in the United States, except for COPPA’s restrictions as they relate to tracking children under 13 and their activities on a website or through electronic services.

PECR does not refer to cookies by name, but Regulation 6 provides:

- 1) a person shall not store or gain access to information stored, in the terminal equipment of a subscriber or user unless the requirements of paragraph 2) are met.
- 2) The requirements are that the subscriber or user of that terminal equipment-
  - a) is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information; and
  - b) has given his or her consent.

That said, it is best to alert subscribers or users what cookies will be set, explain what the cookies will do, and obtain consent to store cookies on their devices. This is commonly achieved through cookie banners that allow you to: a) agree to the use of cookies, b) refer the subscriber or user to a cookie policy, and, in many cases, c) manage the cookies that can be placed on the terminal equipment.

Although the United States does not have a cookie law, there are federal laws and some state laws that govern cookie usage, such as COPPA and the CCPA. Divisions and Local Sections maintaining website properties should consider the creation of a cookie banner, policy, and management mechanism.

*TIP – ePrivacy Regulation (“EPR”) expands on the e-Privacy Directive (“EPD”) regulation of cookies promising to address browser fingerprinting, create more robust protections for metadata, and approach the regulation of social media methods of communication, e.g., WhatsApp.*

*TIP – Within any cookie policy, provide clear instructions for subscribers or users on how to disable or delete cookies on each of the 5 (five) major web browsers as an additional safeguard to protecting against cookie misuse and abuse.*

*TIP – “Clear and comprehensive information” has been interpreted by the UK’s Information Commissioner’s Office as information that discloses the cookies you intend to use and the purposes for which you intend to use them.*

## **D. Marketing**

Marketing is now more targeted than ever before. According to Advertising Age, 90% of advertising executives consider demographic information and consumer data as important to a targeted, personalized experience and the avoidance of time and money wasted on sending prospects messages that won’t be converted. Nevertheless, marketers are required to be transparent and fair about their information collecting practices. The FTC and EU (UK via the ICO) regulate these practices in very different ways.

Under either regulatory scheme, transparency is required of marketers to declare how customer data is being collected and how it is being used. Aside from the mechanism of communicating through cookie banners and policies (more about tracking), transparency is commonly achieved through clear and unambiguous privacy policies or statements describing an organization’s data processing activities. ACS’ privacy policy is located at [ACS Privacy Policy](#).

In the U.S., there is no single regulator of data protection. Regulations are typically created and enforced by federal, industry (e.g., PCI-DSS) and state authorities. The FTC and the State of California persist as the leading authorities in regulating marketing activities. Globally, the GDPR remains the leading authority regulating marketing activities.

The FTC primarily regulates consumer and children’s privacy through its authority to protect consumers from unfair trade or deceptive practices. The FTC has ruled that “deceptive practices” include an organization’s failure to comply with its published privacy promises and/or its failure to provide adequate security for personal information. Additionally, the FTC regulates the use of deceptive advertising or marketing methods.

The CCPA takes the same approach as the FTC, except consumers are granted individual rights similar to the GDPR’s rights to demand transparency and decline to allow personal data to be shared with brokers. The CCPA provide stiff fines for failing to be transparent in the collection and transfer of personal information, as well as failing to maintain reasonable security measures to safeguard their data under private rights of action.

The EU’s GDPR is widely considered the world’s leading framework for protecting personal information. Many international laws are based on the GDPR’s framework, e.g., Brazil’s General Data Protection Law (2018), Australia’s Privacy Amendment to its Privacy Act, Japan’s Act on Protection of Personal Information, South Korea’s Personal Information Protection Act, etc. Broadly, the GDPR directly regulates marketing activities in three important ways – data permission, data access, and data focus.

**Consent** - Relative to data permissions, the GDPR prescribes ways to manage consents from people who receive invitations from organizations to send promotional materials to them. Consents are commonly secured through email opt-ins. Consent must be acquired

from the individual in a “freely given, specific, informed, and unambiguous way.” Opt-ins must be a deliberate choice. Pre-checked opt-in boxes are not consent, although there are some specific exceptions. These requirements are generally embodied within the GDPR’s requirement “Right to Be Informed.”

*TIP – Member consent for the processing (collection, use, retention, disclosure, and destruction) of personally identifiable information by ACS is lawful based on express consent per the membership agreement and the [ACS Privacy Policy](#).*

**Data Access** - the GDPR confers upon data providers the “Right to Erasure,” the “Right of Access” and the “Right to Correction.” Marketers must provide a mechanism to comply with these requests, whether orally provided or in written form. These rights are intended to provide the data provider with a method to gain control over how their data is collected and used, including the ability to access it and remove it. An unsubscribe link or allowing the user to manage their email preferences are the two most common ways to comply.

**Data Focus** – marketers are required to collect as little data from a person as is absolutely needed. If knowing what a person’s favorite sports team is not relevant, then a marketer should not ask. GDPR requires marketers to justify the data subject information being collected and the manner of processing that data. Data that is “nice to have” should not be collected unless it is directly related and/or connected to an identified purpose. Information should not be obtained unnecessarily or without a stated purpose.

*TIP – Compliance with the GDPR does not necessarily ensure compliance with the CCPA and/or the FTC’s guidelines. The same can be said for compliance with the CCPA – it does not ensure compliance with either the GDPR or FTC’s guidelines. If in doubt about data collection activities, obtain legal guidance.*

## E. CAN-SPAM

Commonly referred to as America’s anti-spam law, the CAN-SPAM requires brands to include an “unsubscribe” link, honor opt-out requests, identify their mailing address, refrain from false and misleading sender names, subject lines, or email copy, and clearly identify the email as advertising. No permissions are required of the recipient before the sender remits the mass commercial email.

*TIP – CAN-SPAM supersedes all state law; thus, states cannot enact a stronger anti-spam law.*

*TIP – CAN-SPAM does not affect non-promotional post-purchase emails.*

Divisions and Local Sections should be particularly aware of honoring opt-out requests that arrive via unsubscribe links.

## F. COPPA

Divisions and Local Sections should be particularly wary of collecting personal information from children under 13 years of age. COPPA gives parents of such children greater control over what information their children can access over the internet. In a nutshell, COPPA requires parent permission prior to collecting such information. In particular, collectors of personal information from children under the age of 13 must provide a direct and online notice to parents with verifiable parental consent prior to collecting or

process such information.

*TIP* – There are very important rules about what should be included in the privacy notice to parents. More can be found from the FTC at: [Complying with COPPA - Frequently Asked Questions](#).

## G. Data Breach Notification

Divisions or Local Sections should be aware that all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands have laws requiring private or governmental entities to notify individuals of security breaches relative to PII that is in their possession or control.

Each state differs in their requirements for compliance. The areas of difference can vary widely, ranging from the questions of who must comply to what compliance exemptions are available, e.g., encryption. Nearly all states require some form of notice of breach to the data provider and state's attorney general.

In any breach notification about the unauthorized access to or acquisition of unencrypted personal information, basic information is required, such as:

- 1) What Happened
- 2) What Information Was Involved
- 3) What We Are Doing
- 4) What You Can Do
- 5) More Information

Upon discovery of a breach incident (suspected loss of data), contact your local attorney for specific legal advice about your state's requirements. Many states require short notification periods (15-60 days) for alerting law enforcement, individuals, and the media through breach notification notices. Significant fines can be levied against organizations for failing to follow breach notification laws and regulations.

*TIP* – Best practices for addressing breach notification events in advance consist of having an Incident Response Plan, a draft template Breach Notification Form, a communications plan, and a list of potential recipients (states attorney generals, local media, and individuals) for the Breach Notification Form.

*TIP* – It is best to immediately confer with an attorney licensed in your state once a Division or Local Section becomes aware of a breach event or incident.

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## CHAPTER 8 - COMMUNICATIONS

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### 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 express 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 the [ACSGovDocs](#)). Options should be clearly presented in plain language, clearly and conspicuously displayed, 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.*

*TIP – Refreshing consent can be achieved periodically (at least once every 2 years) via an e-mail communication seeking the recipient’s views on whether they would like to be further contacted and being devoid of any offer for purchase or sale. These are commonly referred to as “repermissioning campaigns” and, while tedious, are generally fruitful in removing names from email lists that are stale or unlikely to lead to a sale or purchase conversion.*

## **B. E-Mail & Phishing Scams, Malware, & Ransomware**

Confirming the legitimacy and trustworthiness of e-mail, telephone, and chat box communications is becoming a daily challenge with the Internet’s ever-increasing use and sophistication. Scamming is the use of these communication modes to indiscriminately target individuals or companies with disguised and illegitimate requests for money, personally identifiable information, or sensitive business information. Scamming is not new, but it is becoming more difficult to eradicate.

*TIP – Do not open attachments or click on links in emails or social media messages received from strangers – just press DELETE.*

Phishing is a form of scamming that implores people to divulge sensitive information. Phishing is ordinarily accomplished through e-mail to your inbox, often disguised as an opportunity that requires your immediate attention. This form of scamming is often associated with e-mails requesting the recipient to click on a “link” for more information or to collect some benefit. Once clicked, the scammer gains access to your account and/or your profile for their nefarious use. More sophisticated phishing schemes ask you to confirm your personal information as it pertains to an otherwise legitimate purpose. Too often, these scams are successful in obtaining account numbers, PINs, or even Social Security numbers. This can lead to identity theft and loss of your privacy, finances, credit, and reputation.

*TIP – Be wary of emails seemingly sent from friends, family, or colleagues using a suspicious email address to request money for an “emergency.”*

Malware scammers send emails and social media messages at random containing links that purport to provide news, information about an event or simply something 'interesting'. Clicking on the link often takes you to a fake website with logos and branding suggesting legitimacy. Installing software from the fake website, such as a “codec” to enable video viewing, infects your computer with the malware. Malware can also be installed through

website pop-ups or ‘free’ file downloads. Malware allows scammers to steal your personal details and commit fraudulent activities, e.g., unauthorized credit card purchases or the use of your identity to open accounts such as banking, telephone or energy services.

*TIP – Be wary of free downloads and website access. Harmful programs may have been installed without your knowledge and permission.*

Ransomware is on the rise. It is a type of malware that blocks or limits access to your computer or files. Demands from the scammer for ransom to unlock your computer often follow shortly thereafter. Sometimes, scammers will pretend to be authorities claiming that an illegal activity was committed and a fine must be paid. Most times, the scammer will simply demand payment for a ‘key’ to unlock your computer. There is no guarantee that your computer will be unlocked if you pay the ransom.

*TIP – The FTC provides consumers with latest information and practical tips about scamming at: [FTC Scam-Alerts](#).*

### C. 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. Additionally, some third-party websites gather and store data on how users interact with the website services, including the amount of time, frequency, and duration of activities. It is important to consider the impact of these policies when the Local Section or Division is choosing a platform for communication.

*TIP – Policies should specifically prohibit the use of personal information for any*

*purpose other than Local Section or Division 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 or Division 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 or Divisions, however, as Local Sections and Divisions are not online service providers.

**Copyright & Permissions** – The majority of published works are protected by copyright, unless an exception applies. Exceptions include US Government works and public domain works (works where copyright term has expired). It is necessary to obtain permission to use copyrighted works and applies to any medium of communication, e.g., print, web, etc. Unauthorized use of copyrighted works is classified as copyright infringement under US copyright law. Any use of copyrighted works must include a copyright credit line or attribution to the original source. Use of photographs generally include two types of permissions: (1) a license from photographer, and (2) model release from individuals appearing in photos.

*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.*

#### **D. 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 Society's loss of this logo as a trademark. Board Regulation VII, Section 3, "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.*

#### **E. Website**

Websites are becoming increasingly important to providing information to constituents. 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.*

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## CHAPTER 9 - CONCLUSION

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The work of ACS and the valuable contributions of its Division and Local Section members cannot be overstated. The Society’s Purposes and mission remain intact even after so many years have transpired and the changes to the [ACSGovDocs](#). The Society’s dedicated volunteers persevere in their work, despite being in the midst of ever-changing, rapidly evolving health, 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, OSGC staff is ready to assist you.

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## CHAPTER 10 - CONTACT INFORMATION

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Office of the Secretary & General Counsel, [secretary@acs.org](mailto:secretary@acs.org):

- FLINT H. LEWIS, Esquire, ACS Secretary & General Counsel  
Email: [F.Lewis@acs.org](mailto:F.Lewis@acs.org)  
Phone: 202-872-4600
- ACS Legal: [ACSLegal@acs.org](mailto:ACSLegal@acs.org)
- ACS Copyright & Trademarks: [copyright@acs.org](mailto:copyright@acs.org) & [trademarks@acs.org](mailto:trademarks@acs.org)

Office of the Treasurer:

- Email: [treasurer@acs.org](mailto:treasurer@acs.org)  
Phone: 202-872-4600
- ACS Tax Office: [tax@acs.org](mailto:tax@acs.org)

**ACS Membership Services:**Email: [services@acs.org](mailto:services@acs.org)

Phone: 1-800-333-9511

➤ **Component Services, [olsa@acs.org](mailto:olsa@acs.org):**

- MARK O'BRIEN

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Phone: 202-776-8212

➤ **Divisional Activities, [division@acs.org](mailto:division@acs.org):**

- KEVIN McCUE

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**ACS Department of Meetings and Exposition Services:**Email: [acsmeetingsstaffsupport@acs.org](mailto:acsmeetingsstaffsupport@acs.org)[nationalmeetings@acs.org](mailto:nationalmeetings@acs.org)[regionalmeetings@acs.org](mailto:regionalmeetings@acs.org)[expo@acs.org](mailto:expo@acs.org)**ACS Website Resources:**

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

**ACS Constitution, Bylaws, Standing Rules, Schedule of Membership & Regulations (ACSGovDocs):** [bylaws@acs.org](mailto:bylaws@acs.org)



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**APPENDIX OF FORMS**(CAVEAT – USE AND APPLICABLE LAW MAY VARY FROM STATE TO STATE)

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**A. SOCIAL EVENT WAIVER AND RELEASE OF LIABILITY****[Insert Division or Local Section] of ACS for [Insert Event Title]  
[Insert Date]**

I acknowledge and agree to assume the risks associated with voluntarily participating in this event, including but not limited to those associated with alcohol consumption, motor vehicle operation, inappropriate or offensive behavior, and potentially dangerous activities. I take full responsibility for my actions as they may affect my own personal safety and welfare and the safety and welfare of others.

I understand that I will be participating in a group activity. I therefore agree to conduct myself in a manner that does not endanger other participants or result in adverse publicity, notoriety, or public disrepute, contempt, scandal and/or ridicule to myself, other participants, or the **[Insert Division or Local Section of the ACS]**.

I acknowledge and agree that this Social Event Waiver and Release of Liability Form will be used by the event holders, sponsors, and organizers of the activity from any and all liability, and that it will govern my actions and responsibilities while participating in this group activity.

In consideration of my application and permitting me to participate in this activity, I hereby take action for myself, my executors, administrators, heirs, next of kin, successors, and assigns as follows:

- (A) I WAIVE, RELEASE, AND DISCHARGE the **[Insert Division or Local Section of ACS]**, its directors, officers, employees, volunteers, representatives, and agents, as well as the event's holders, sponsors and their volunteers, from any and all liability, including but not limited to, liability arising from their negligence or fault, for my death, disability, personal injury, property damage, property theft, or actions of any kind which may hereafter occur to me including my traveling to, during, and from this activity.
- (B) INDEMNIFY, HOLD HARMLESS, AND PROMISE NOT TO SUE the entities or persons mentioned in this paragraph from any and all liabilities or claims made as a result of participation in this activity, whether caused by the negligence of release or otherwise.

I acknowledge that **[Insert Division or Local Section of ACS]** and their directors, officers, volunteers, representatives, and agents are NOT responsible for the errors, omissions, acts, or failures to act of any party or entity conducting a specific activity on their behalf.

I HAVE READ THIS AGREEMENT, FULLY UNDERSTAND ITS TERMS AND HAVE SIGNED IT FREELY WITHOUT ANY INDUCEMENT OR ASSURANCE OF ANYONE AND INTEND IT TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF LIABILITY TO THE GREATEST EXTENT OF THE LAW AND AGREE THAT IF ANY PORTION OF THIS AGREEMENT IS HELD TO BE INVALID, THE BALANCE, NOTWITHSTANDING, SHALL CONTINUE IN FULL FORCE AND EFFECT. I HEREBY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT.

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Participant's Signature

Date

Participant's Name  
(Please print legibly.)

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Parent/Guardian Signature

Date

(If under 18 years old, Parent or Guardian must also sign.)

## B. ATHLETIC EVENT WAIVER AND RELEASE OF LIABILITY

**[Insert Division or Local Section] of ACS for [Insert Event Title]  
[Insert Date]**

The undersigned assumes all risk of participating in all the activities associated with this event, including but not limited to any risks that may arise from negligence or carelessness on the part of the persons or entities being released, from dangerous or defective equipment or property owned, maintained, or controlled by them, or because of their possible liability without fault.

I certify that I am physically fit, have sufficiently prepared or trained for participation in this activity, and have not been advised to not participate by a qualified medical professional. I certify that there are no health-related reasons or problems which preclude my participation in this activity.

I acknowledge that this Athletic Event Waiver and Release of Liability Form will be used by the event holders, sponsors, and organizers in which I may participate, and that it will govern my actions and responsibilities.

In consideration of my application and permitting me to participate in this activity, I hereby take action for myself, my executors, administrators, heirs, next of kin, successors, and assigns as follows:

- (A) I WAIVE, RELEASE, AND DISCHARGE the **[Insert Division or Local Section]** of ACS, its directors, officers, employees, volunteers, representatives, and agents, as well as the event's holders, sponsors and their volunteers, from any and all liability, including but not limited to, liability arising from the negligence or fault of the entities or persons released, for my death, disability, personal injury, property damage, property theft, or actions of any kind which may hereafter occur to me including my traveling to and from this activity.
- (B) INDEMNIFY, HOLD HARMLESS, AND PROMISE NOT TO SUE the entities or persons mentioned in this paragraph from any and all liabilities or claims made as a result of participation in this activity, whether caused by the negligence of release or otherwise.

I acknowledge that **[Insert Division or Local Section]** of ACS and their directors, officers, volunteers, representatives, and agents are NOT responsible for the errors, omissions, acts, or failures to act of any party or entity conducting a specific activity on their behalf.

I acknowledge that this activity may involve a test of a person's physical and mental limits and carries with it the potential for death, serious injury, and property loss. The risks include, but are not limited to, those caused by terrain, facilities, temperature, weather, condition of participants, equipment, vehicular traffic, lack of hydration, and actions of other people including, but not limited to, participants, volunteers, monitors, and/or producers of the activity. These risks are not only inherent to participants, but are also present for volunteers.

I consent to receive medical treatment which may be advisable in the event of injury, accident, and/or illness.

I CERTIFY THAT I HAVE READ THIS DOCUMENT AND FULLY UNDERSTAND ITS CONTENTS. I KNOW THAT THIS IS A RELEASE OF LIABILITY AND A CONTRACT AND I SIGN IT OF MY OWN FREE WILL.

\_\_\_\_\_  
Participant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Participant's Name  
(Please print legibly.)

\_\_\_\_\_  
Parent/Guardian Signature

\_\_\_\_\_  
Date

(If under 18 years old, Parent or Guardian must also sign.)

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## C. SPEAKER CONSENT FORM

EVENT NAME: \_\_\_\_\_

I, \_\_\_\_\_, authorize the AMERICAN CHEMICAL SOCIETY and its agents, on behalf of the ACS DIVISION OF \_\_\_\_\_, (collectively the "SOCIETY") to make audio and video recordings by any means and in any media (the "Recordings") of my presentation, lecture or program described below (the "Presentation") and hereby grant to the SOCIETY, its affiliates and licensees an irrevocable, royalty-free, non-transferrable, non-exclusive, worldwide license to use the Recordings and Presentation, as well as my name, likeness and biographical information, in connection with the reproduction, distribution and promotion, in all formats, of the Recordings and Presentation made on the date specified below at the meeting convened by the SOCIETY. I understand that the SOCIETY: a) will credit me as the author or source of the Presentation, and b) may allow the Recordings and Presentation to be used by the Event Sponsor in efforts to advance its mission or commercial purposes.

The Recordings and Presentation are provided in connection with the following:

Event Title: \_\_\_\_\_

Event Sponsor: \_\_\_\_\_

Title of Presentation: \_\_\_\_\_

Presentation Date: \_\_\_\_\_

Location: \_\_\_\_\_

As with any public presentation at an ACS or other public meeting, I acknowledge that making the Recordings and disseminating the Presentation may constitute prior publication, potentially jeopardizing:

- 1) important intellectual property rights in your work (e.g., patent, trade secret, etc.) and/or
- 2) publication of your research through an editor or publisher of your choice.

I further acknowledge that these concerns may prevent my granting permission to the SOCIETY to make the Recordings or disseminate and promote the Presentation. But, after careful consideration and my own thorough investigation, I nevertheless knowingly, willingly and voluntarily grant those permissions to the SOCIETY regardless of the potential consequences of doing so.

I represent that I have secured the necessary written permissions to include any materials copyrighted or owned by others in advance of making the Recordings and Presentation.

The undersigned is over the age of eighteen. I have read the foregoing and fully understand its contents.

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Complete Address: \_\_\_\_\_

## D. GUIDANCE ON HOLDING A HARASSMENT-FREE MEETING

The ACS is recommending this policy be adopted by its Divisions, Local Sections, and others that are organizing and operating ACS-affiliated events (“Non-National Meeting”) to ensure harassment-free environments. This guidance should be useful in identifying and mitigating harassment, including sexual harassment, at such meetings. Here are ACS’ current recommendations:

### **In the Program/Online:**

Publish that all attendees, speakers, exhibitors, staff, vendors, volunteers, and guests are required to agree with the ACS VOLUNTEER/NATIONAL MEETING ATTENDEE CONDUCT POLICY, as modified by a Division or Local Section, at Registration. Display a copy for review and inspection.

Publish a separate additional statement as follows:

### **HARASSMENT-FREE MEETINGS**

**“The American Chemical Society seeks to foster a positive and safe environment for meetings that all participants can be free of harassment, including sexual harassment, and characterized by courtesy and respect.**

**Harassment is any unwelcome conduct that is based on, or due to, and individual’s protected characteristics, including race, national origin, age, disability, sexual orientation, etc. ACS considers sexual harassment to include, but not be limited to, any unwelcome sexual flirtations, advances, or propositions; verbal comments or physical actions of a sexual nature; sexually degrading words; sexually explicit jokes; and offensive, unwanted physical contact; physical or verbal abuse, intimidation, threats, efforts to annoy others, harassment, stalking, pushing, shoving or use of any physical force whatsoever against any person.**

**ACS takes harassment in all its forms seriously and will vigorously enforce the ACS Volunteer/National Meeting Attendee Conduct Policy or other adopted version against any actor taking inappropriate actions against others based on any protected characteristic.**

**If you have been subjected to or witnessed harassment, you are encouraged to report the incident to [Contact Person]. If you are unsure of how to report, any [Division or Local Section Officer] can help you get to the right place. If you feel that you or someone else is in immediate danger, call 911 or on-site security at once.”**

### **As Part of Registration:**

Require attendee, speaker, exhibitor, staff, vendor, volunteer, and guest agreement to abide by the ACS VOLUNTEER/NATIONAL MEETING ATTENDEE CONDUCT POLICY.

Require attendees, speakers, exhibitors, staff, vendors, volunteers, and guests to acknowledge the Harassment-Free Meeting statement above.

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<b>At Session Start:</b>	Require the moderator to READ ALOUD the <b>Harassment-Free Meeting</b> statement above.  After reading the statement, ask moderator to further announce that ACS is serious about the Harassment-Free Meetings and takes enforcement seriously.
<b>At Presentation Beginning:</b>	Require all presentations to have the <b>Harassment-Free Meeting</b> statement above on a slide at the beginning.
<b>Between Sessions:</b>	Require all breaks between sessions to show the <b>Harassment-Free Meeting</b> statement above.
<b>Within the Venue:</b>	Post signs containing the <b>Harassment-Free Meeting</b> statement above at or near heavy traffic areas and within each session room.
<b>Contact Person:</b>	Appoint someone who (ideally): <ol style="list-style-type: none"><li>1. is a good listener</li><li>2. able to calm people</li><li>3. gathers facts without traumatizing anyone involved</li><li>4. is objective and free of conflicts</li><li>5. can make the target feel safe</li><li>6. can directly contact on-site security and law enforcement</li></ol>
<b>How to Make a Complaint:</b>	Post signs with following message at or near heavy traffic areas and within the Program/Online materials: <p style="text-align: center;"><b>“Report Harassment</b></p> <p>If you have been subjected to or witnessed harassment, including sexual harassment, you are encouraged to report the incident to [Contact Person] as [Contact Information]. If you are unsure of how to report, any [Division or Local Section Officer] can help you get to the right place. If you feel that you or someone else is in immediate danger, call 911 or on-site security at once.</p> <p style="text-align: center;"><b>All complaints will be treated confidentially, seriously, and acted upon promptly.”</b></p>
<b>At the Time of Complaint:</b>	The Contact Person should ensure the target’s safety at once through access to a safe space, new room, more security, home travel assistance, or assistance with police reporting  The Contact Person should strive to fairly and objectively gather information from all involved for a report on potential disciplinary action  The Contact Person should call on-site security or law enforcement at once whenever the target reasonably believes their safety is at risk
<b>Complaint Review:</b>	Decide on how to evaluate complaints:

1. designate a decision-maker or small group to decide on responses to actors or groups of actors
2. adopt a process to investigate complaints fairly, discretely, and completely, including:
  - a. evaluating all reports, incident accounts, etc.
  - b. conducting additional interviews with the alleged target, actor, and/or witnesses
  - c. employing fairness principles that do not adversely affect the rights of all involved in finding facts and arriving at a decision
3. determine what, if any, mitigating or aggravating circumstances exist from the finding of facts

**Remedial Action:**

The purpose of remedial action is to ensure that harassing behavior is not repeated and victims of harassment can feel safe and welcome at the event. The purpose of remedial action is not to punish. In many situations, the decision-maker or small group may not be able to determine the facts with certainty or precision. This should not prevent them from using their best, reasonable judgment to remedy the situation.

In deciding upon remedial action for anyone violating these *Guidelines*, the decision-maker or small group should consider one or more of the following:

1. admonish the actor with a reprimand or verbal warning
2. require the actor to make a private or public apology
3. require the actor to leave the venue immediately
4. preclude the actor from serving in future volunteer roles
5. prohibit the actor from attending any and all future meetings

In addition to the considerations listed above, in deciding upon remedial action for those violating these *Guidelines*, the decision-maker or small group should give strong consideration to any potential threats to safety and the persistence and seriousness of the actor's behavior.

**Report to ACS National:**

All Divisions, Local Sections, and others organizing and operating ACS-affiliated events, should advise the then ACS General Counsel of the following:

1. the date of adoption of these *Guidelines* and the Contact Person's name and contact information within 5 business days of action
2. a briefing on any threats to a target's safety within 24 hours
3. a report on the nature, extent and timing of any remedial action within 5 business days of taking any such action



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## E. LEGAL GUIDANCE FOR PLANNERS OF ACS-SUPPORTED EVENTS

### THE IMPACT OF THE COVID-19 PANDEMIC

#### GENERALLY

##### 1. Collect Needed Materials & Identify Relevant Clauses

- Retrieve, read, and acquaint yourself with contracts with venues, hotels, restaurants, and other support vendors. Identify the signatories to those agreements and the contact person to whom notice must be sent. These may not necessarily be the one in the same person.

- Find and understand the following provisions:

1. Cancellation or Termination or Force Majeure, if separate
2. Notice - note the contact information of the person identified
3. Liquidated Damages - or language suggesting amounts due when cancellation or termination is sought without proper excuse or the application of Force Majeure
4. Dispute Resolution or Venue, Jurisdiction, and Applicable Law

##### 2. Develop a Legal Strategy

- Develop a strategy for resolving or settling the matter that considers the relationship of the parties, the prospects for future transactions, past experience with the other party, and projected budget for settling alleged claims. Here are some strategies:

1. Cancellation or Termination of the meeting
2. Reschedule the meeting to a future date
3. Hold the meeting & suffer attrition
4. Declare Force Majeure – cite a condition beyond the reasonable control of the parties which makes holding the meeting either illegal, impossible, commercially impractical, impractical and/or inadvisable (e.g., COVID-19)

- Identify and use legal counsel to assist you in strategizing and/or resolving relatively large contract obligations that warn of a substantial likelihood of litigation.

##### 3. How ACS Can Help

- ACS' core value of safety has guided our actions in responding to the challenges presented by the coronavirus. Consider ACS' stance when making event-related decisions.

- ACS' Department of Meetings & Exposition Services ("DMES") is available for Regional Meeting assistance through a DMES Meeting Management Agreement that provides for services such as negotiating for vendor meeting support services on behalf of the event planner and/or collecting revenues from registrations and exhibitors.

- ACS can advise ACS-supported event planners on issues or concerns that may result in undue financial loss, erosion in the quality or prestige of the meeting, and/or present a substantial departure from the core programming or planning for the event.

- ACS is unable to: a) decide for event planners on whether a meeting should be held, cancelled, terminated, delayed, or rescheduled, b) obligate its resources on behalf of the event planner for any meeting support services, and/or c) provide legal advice as to any one or more decisions described above.

### **PARTICULAR GUIDANCE**

1. Notice Provisions: In every contract, determine the circumstances under which notice to the other party is required to invoke cancellation or termination provisions of the agreement. This is very important to the potential for liquidated damages or cancellation fees. Be sure to document when notices must be mailed and use a contract carrier and email with confirmation of receipt as the means to deliver the notice.
2. Hotels: Provide notice as soon as possible. Review the contract for provisions that lessen or eliminate entirely the responsibility of the Division or Local Section under extraordinary circumstances, i.e., acts of Force Majeure – Act of God, War or language suggesting that a condition has arisen that is beyond the control of either party and renders holding the meeting illegal, inadvisable, or impractical. Contracts will vary considerably, but the above language is an example. If your contract contains language like the above, you may have an opportunity to avoid liability. Seek legal counsel immediately.
3. Vendors: Provide notice as soon as possible. Generally, vendors are eager to discuss resolution, especially when a deposit is involved. Considering the General Guidance No. 2, decide how you would like to best resolve their account. In many cases, vendors are typically eager to roll over deposits towards future services so as to maintain their cash flow.
4. Exhibitors/Sponsors: Provide notice as soon as possible. Generally, you have more control over cancelling and/or terminating the meeting with this group of contract parties. Decide upon whether you'd like to offer options for resolving the cancellation or termination via a roll-over to the next meeting or partial/full refund of their deposits.
5. Restaurants: Provide notice as soon as possible. Restaurants have been cooperating generally in the return of deposits, although the contract might require otherwise.

## F. ACKNOWLEDGEMENT OF RISKS IN-PERSON LOCAL SECTION ACTIVITY(IES)

Date:
In-Person Local Section Activity(ies):

Participant Name:	Date:
Address:	
Phone:	Email:

The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization. COVID-19 is known to be extremely contagious and transmittable mainly through close contact from person-to-person via respiratory droplets produced by infected persons when they cough, sneeze or talk. For your protection, federal, state, and local governments and health agencies, especially the Centers for Disease Control & Prevention, have strongly advocated and recommended that individuals:

1. wear masks in public settings (“Wear”),
2. distance themselves in both indoor and outdoor spaces (staying at least 6 ft. or about 2 arms’ lengths apart) from other people who are not from their household (“Watch”), and
3. wash their hands often with soap and water for at least 20 seconds or, if soap and water are not readily available, use a hand sanitizer with at least 60% alcohol, especially after they’ve been in a public place, or after blowing their nose, coughing, or sneezing (“Wash”).

ACS is adopting these precautions to reduce the risk of transmission of COVID-19 at this event(s) and further strongly advocates that you protect yourself by:

1. maintaining social distancing whether indoor or outdoor, staying at least 6 feet or about 2 arms’ lengths apart, from all others outside their household (“Watch”),
2. requiring that all attendees wear masks in indoor settings and outdoors when social distancing cannot be assured (“Wear”), and
3. washing your hands and frequently touched surfaces (“Wash”).

Masks protect other people in the event that the wearer is infected. Masks are not personal protective equipment intended to protect the wearer. Exit the event(s) if social distancing and mask wearing are not practiced. Hand washing with soap and water for at least 20 seconds or, if soap and water are not readily available, use of a hand sanitizer with at least 60% alcohol should be encouraged for all, especially after being in a public place, after blowing your nose, coughing or sneezing. Do not attend this event(s) if you do not feel these precautions have been taken, are sufficient or you otherwise feel unsafe.

Safety for all involved in the chemical enterprise is a core value for ACS. The ACS is committed to developing safety information solutions, supporting safety education, empowering members with safety solutions, and communicating chemical safety as a core value. You can find more information about safety, especially during demonstrations and experiments, at ACS’ Chemical & Laboratory Safety webpage ([www.acs.org/safety](http://www.acs.org/safety)).

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**ACKNOWLEDGEMENT OF RISKS  
IN-PERSON LOCAL SECTION ACTIVITY(IES)**

Page 2 of 2

In the context of COVID-19, the ACS strongly advocates and encourages participants to heed and comply with the Centers for Disease Control & Prevention’s *Wear, Watch, and Wash* protocol and ACS’ additional guidance above while engaging in Local Section activities, e.g., meetings, events, etc., whenever and wherever being held, especially when they take place within laboratory and classroom settings (“Activities”).

In light of events surrounding the COVID-19, this is an appropriate time to remind ourselves of the risks incident to participation in this Activity. Even with every reasonable precaution to keep you safe as outlined for you by the CDC and the ACS, you acknowledge your responsibility for your own personal safety and recognize that ACS cannot fully eliminate all risks of harm to your person or guarantee your safety, especially those posed by COVID-19.

By participating, you recognize that your participation in this Local Section Activity involves some danger and the possibility of harm, injury or even death. Further, you understand that the risk of being exposed to or infected by COVID-19 may result from the actions, omissions, and negligence of yourself or others.

With this in mind, I have received, read, understood and knowingly, willingly, and voluntarily accept the risks of participating in Activities by signing this Acknowledgement of Risks for an in-person event(s).

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(Participant Name – Please Print Legibly)

---

(Participant Signature)

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(Parent/Guardian Name – Please Print Legibly)

---

(Parent/Legal Guardian Signature)

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(Relationship to Participant, if less than 18 years old)

---

(Date)



## G. CERTIFICATE OF INSURANCE

### AMERICAN CHEMICAL SOCIETY REQUEST FOR CERTIFICATE OF INSURANCE

(Please **PRINT** legibly or **TYPE**)

A request form should be completed and submitted to the ACS  
Treasurer's Office at least 30 days prior to the event

NAME OF EVENT:

LOCATION:

DATE(S):

ESTIMATED NUMBER OF ATTENDEES:

EVENT SPONSOR INFORMATION:

NAME:

ACS LOCAL SECTION or DIVISION SPONSORING EVENT:

PHONE NUMBER:

EMAIL:

**CERTIFICATE HOLDER INFORMATION:** (The party requesting the Certificate of Insurance from ACS)

NAME:

STREET ADDRESS:

CITY:

STATE:

ZIP:

CONTACT NAME:

EMAIL ADDRESS:

PHONE NUMBER(S):

BUSINESS

FAX

**Did the Certificate Holder ask to be an "Additional Insured"?**

If "YES", you must provide a contract or agreement stating the  
Certificate Holder's insurance requirements.

YES

NO

**ADDITIONAL INFORMATION:** Please attach a description of the event and any lease/contractual agreements related to this event. Questions? Email [BusinessInsurance@acs.org](mailto:BusinessInsurance@acs.org).

**Submit form via email to [BusinessInsurance@acs.org](mailto:BusinessInsurance@acs.org) or it can be sent by mail to:**

American Chemical Society  
Office of the Treasurer  
Attn: Michelle Watts, Room 202  
1155 16th Street, NW  
Washington, D.C. 20036

## H. REFERENCE LINKS

IRS Automatic Revocation - Reinstatement - <https://www.irs.gov/charities-non-profits/automatic-revocation-of-exemption>

Model Joint Venture Agreement Checklist - [https://www.joebarich.com/uploads/2/3/6/8/23683720/liee joint venture checklist.pdf](https://www.joebarich.com/uploads/2/3/6/8/23683720/liee_joint_venture_checklist.pdf)

Complying with COPPA - Frequently Asked Questions - <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions>

FTC Scam-Alerts - <https://consumer.ftc.gov/scams>

Community Connection - <https://www.communityconnection.acs.org>

ACS Funding & Awards - <https://www.acs.org/content/acs/en/funding.html>

ACS Privacy Policy - <https://www.acs.org/content/acs/en/privacy.html>

ACS Branding Guidelines - <https://www.acs.org/content/acs/en/about/branding.html>

ACS Membership & Networks - <https://www.acs.org/content/acs/en/membership-and-networks.html>

Local Sections Resources - <https://www.acs.org/content/acs/en/local-sections.html>

Technical Division Resources - <https://www.acs.org/content/acs/en/technical-divisions.html>

ACS Strategic Plan - <https://www.acs.org/content/acs/en/about/strategicplan.html>

ACS Co-sponsorship Guidelines - <https://www.acs.org/content/acs/en/technical-divisions/officer-toolkit/program-chair-manual/cosponsorship-guidelines.html>