



American Legion Auxiliary

Department

Operations

Guide

Chapter 1:

Corporate, Legal, & Governance

Structure

CHAPTER 1

AMERICAN LEGION AUXILIARY (ALA) CORPORATE, LEGAL AND GOVERNANCE STRUCTURE

Executive Summary

Chapter one provides an overview of the nonprofit structure of the American Legion Auxiliary (ALA), the core requirements applicable to all nonprofits, and important information regarding the American Legion Auxiliary's unique structure. This chapter explains the relationship between the entities collectively known as The American Legion Family, and the impact that the American Legion Auxiliary's relationship with The American Legion has on ALA governance and operations. This chapter also describes relationships between units, intermediate bodies, subsidiaries, departments, and the national organization. This chapter also discusses the value of incorporation, corporate law and the rules that pertain to the subsidiaries, the use of the ALA emblem /trademarks, and how the ALA must remain non-political while engaging in our important advocacy and Americanism activities.

Throughout this ALA Department Operations Guide, the information is written with reference to "departments." Unless noted otherwise, the information in this guide regarding governance, management, and operations also pertains to units, to subsidiaries, and to intermediate bodies such as districts, counties, and councils.

Section 1 Departments and Units Nonprofit Corporate Structure

Explanation of "nonprofit"; importance of following the Constitution and Bylaws; definition of subordinate and subsidiary organizations

Section 2 Roles of Nonprofit Leadership

Nonprofit leadership structure, relationships and positions

Section 3 Legal Obligations and Responsibilities of Board Members

Board member responsibilities

Section 4 Relationship between ALA and TAL

ALA-TAL relationship and the ALA's independence

Section 5 ALA Governance Structure

Governance chart of national organization

Section 6 Departments and Units and the National Organization

National, Department, Unit, Intermediate Bodies – Relationships

Section 7 Incorporation

Process and benefits of incorporation

Section 8 Comparing ALA Incorporated Entities to Unincorporated Entities

Importance of limited liability protections, risk of being unincorporated

Section 9 American Legion Auxiliary (ALA) Trademark and Emblem Usage

Brand Identity, Emblem Use, Trademark Protection

Section 10 Quorums

Definition and suggestions for defining quorum

Section 11 Non-Partisan Nature of the American Legion Auxiliary

Section 12 Frequently Asked Questions (FAQs)

Section 1

Departments and Units Nonprofit Corporate Structure

The American Legion Auxiliary (ALA) is a nonprofit organization classified by the Internal Revenue Service (IRS) as a 501 (c)(19) Veterans Service Organization (VSO) because our purpose as an organization is to serve veterans, servicemembers and their families.

All departments are incorporated as nonprofit corporations (also known as not-for-profit corporations, both mean the same thing). Also, most units; most intermediate bodies, known as districts/counties/councils; and all subsidiary corporations are incorporated as nonprofit corporations.

The fact that ALA entities are nonprofit corporations does not prohibit a department from raising money or generating investment returns, it simply means that money generated through dues, fund development, and investments must be used to fund our mission delivery which includes operating costs, programs, scholarships, and mission service. The distinction between being incorporated as a nonprofit versus a for-profit corporation is that the funds generated by nonprofits must be dedicated to its incorporated purpose which must be a purpose that benefits the public good. Income generated by a for-profit corporation can be used as profits for individuals – the corporation’s employees, corporate officers, and shareholders. Income generated by a not-for-profit (nonprofit) corporation must be used for its “public good” purpose – the reason the organization exists – which is the organization’s mission, its programs and services, along with its operations that support its mission.

The Purpose and Necessity of a Constitution, Bylaws, and Standing Rules

Note: Throughout this ALA Department Operations Guide, the information is written with reference to “departments.” Unless noted otherwise, the information in this guide regarding governance, management, and operations also pertains to units, to subsidiaries, and to intermediate bodies such as districts, counties, and councils.

To be properly organized, departments and units must have appropriate governing documents (legally referred to as “entity documents”). In the ALA, the key governing documents are its Articles of Incorporation – its Constitution; its Bylaws – its fundamental structure and fundamental rules; and its Standing Rules – its process and detailed rules that “stand” for all to follow, yet can be amended as frequently as needed to keep the organization functioning well.

A department’s Constitution and Bylaws should closely resemble and cannot be in conflict with those of the national organization. Departments and units determine how their Constitution and Bylaws will be written and adopted, including key provisions of its governance structure including offices, number of officers, terms, composition of the governing board, minimum required number of meetings, who can call meetings and how, how many/what percent of board members constitutes a quorum, roles and responsibilities, etc. However, nothing in a department’s or unit’s Constitution and Bylaws can conflict with or oppose anything in the ALA National Constitution and Bylaws. A department’s, unit’s, or intermediate body’s Constitution & Bylaws should align with the mission and general overall structure and function of the national organization.

Complying with your governing documents – your Constitution and Bylaws, Standing Rules – is critical. Constitution and Bylaws represent the fundamental governing documents applicable to all the members of your department. Having acceptable bylaws was a precondition for your department having been chartered by the national organization. When your department (and

units) was granted its charter, it was understood that the department agreed to follow its bylaws as a chartered entity.

Any decision that does not follow the provisions set forth in the Constitution and Bylaws is unconstitutional and therefore invalid. Decisions made by the department that do not follow its Constitution and Bylaws could be ruled invalid if challenged in a court of law. A department's decisions and actions that are contrary to its Constitution and Bylaws can have serious consequences. A pattern of decisions and actions contrary to a department's Constitution and Bylaws, or serious violations of its Constitution and Bylaws can be grounds for a lawsuit and/or suspension or revocation of the department's charter.

Core Elements of the Constitution and of the Bylaws

Constitution includes:	Bylaws describe and detail:
Name and location (city/state) of organization	Board members and officers
Purpose, mission statement	Nomination/election procedures
Stipulations, duties and restrictions of membership	Amendment process
Statement of binding authority (that the organization will be bound by its contracts)	Succession procedure in case of death, illness, or resignation of member elected/appointed to a position.
Process for disbanding group and procedure for ownership of assets in such case	Frequency and general-level procedures for annual and board meetings
Offices	Quorum requirements
Amendment authority	Committees, including number of members, term lengths, liaison members, ex-officio members and voting powers of members (i.e., who can and cannot vote)
	Key activities and programs of the organization

Governing Documents **Constitution, Bylaws, Standing Rules, and Policies and Procedures**

All organizations are organized and conduct their business and mission service according to the organization's governing documents. Governing documents, simply stated, are those documents that govern the organization. The ALA's "Articles of Incorporation" are preserved as its ALA Constitution. The Constitution is supported by ALA Bylaws, which are supported by ALA Standing Rules, which are supported by policies – the most detailed level of the organization's governing documents. Each type-governing document is explained as follows.

Constitution:

The Constitution is the organization's Articles of Incorporation. The Department Constitution is the foundational document of the corporation. It is a legal document that states the fundamental reason the organization was incorporated and is core structure. The organization's Constitution is the first document you file with your state when incorporating; it is the founding document of your organization. The Constitution is the core purpose and structure of the organization and should rarely be amended.

Bylaws:

Bylaws describe how your organization governs itself. Bylaws are also a legal document. Bylaws are fundamental rules on governance and should not be frequently amended. It is recommended that bylaws only be amended every five (5) to ten (10) years.

Both the Constitution and Bylaws would have been filed with your state's primary legal office when the organization was incorporated, generally a state's Secretary of State or State's Attorney. State laws vary regarding reporting and filing requirements for nonprofits, so it is critical that you know and follow your state and local jurisdictions' legal requirements. Some states require that corporations (both for-profit and nonprofit) notify the state when its Articles of Incorporation (for the ALA, its Constitution) are amended. Some states require annual reports of various kinds.

Standing Rules:

Standing Rules are more "process-focused" and more specific and administrative than bylaws. Standing Rules provide details about provisions in the bylaws. In addition to the Constitution and Bylaws, Standing Rules are also important and must be followed, but they have the flexibility to be amended more frequently as needed to maintain the effectiveness of the organization.

Example 1): Your Constitution states that the organization may establish committees for the purpose of effective governance and advancing the mission; your Bylaws would then state that there shall be the following standing administrative committees (such as Audit – stating its purpose, Finance – stating its purpose, and Membership – stating its purpose), appointed by the organization's president and confirmed by the department governing board (e.g. DEC or department board), the composition of which shall be as provided in the Standing Rules. Then your Standing Rules would specify the make-up of the Audit committee (number of members) and the terms of the committee members, and address staggered terms for multi-year term members. Neither of these latter details should be in the bylaws because they are too detailed and administrative in nature.

Example 2): Your Bylaws might state that the governing body shall meet at least semi-annually or at the call of the chair with proper notice or at the call of three (3) members ..., as provided in the Standing Rules. Your Standing Rules could then state that the department governing body (Department Executive Committee or department board) shall meet quarterly (or monthly – as a Standing Rule your department would have the flexibility to change this as needed) and describe in more detail how a special meeting may be called.

In this example, the Bylaws require the governing body to meet a minimum of twice a year – a minimum standard that should not change over a decade. Your Standing Rule, however, requires the board to meet more frequently, because that is "currently" more conducive to conducting the organization's business more effectively.

Note: If there is ever a conflict between your governing documents, the Constitution supersedes bylaws, and bylaws supersede standing rules, so it is important that your governing body and/or bylaws committee review the governing documents periodically to ensure that the Constitution,

Bylaws, and Standing Rules are compatible and do not conflict with each other or with the National Constitution, Bylaws, and Standing Rules.

As noted previously, departments, intermediate bodies, subsidiaries, and units may not establish provisions in their Constitution, Bylaws, and Standing rules that conflict with the ALA National Constitution, Bylaws, and Standing rules.

Policies and Procedures:

Policies are rules that relate to management and administration functions rather than governance issues. Policies include setting out how your department will manage money and protect itself against fraud. For example, a policy requiring that all checks over \$100 have two signatures is a great example of a financial control policy. Another example is having a conflict of interest policy which includes having all board members review the conflict of interest policy every year and sign a statement that they will abide by the policy.

Most policies have accompanying procedures that specify in detail how the policy is to be implemented. Procedures are not policies; they are instructions for implementing the policy, and therefore are not in and of themselves governing documents.

Policies help the department operate properly. With proper policies in place, members know the expectation for financial practices, risk aversion, program operations, and member conduct. Proper policies allow the energy of members to be better focused on achieving the mission instead of bickering about how something was or needs to be done.

What It Means to Be a Subordinate Organization

A subordinate organization is an entity of a larger organization. In the American Legion Auxiliary, the national organization is the main organization because it has the authority over the use of the name and trademarks of the organization. All departments and units are autonomous, but they are also subordinates of the national organization by virtue of being permitted to use the name and trademarks of the national organization.

A department, as a subordinate and autonomous organization, has a structure, purposes, and activities similar to the national organization, including similar Constitution and Bylaws as mentioned earlier. The national organization exercises general guidance, but does not have the responsibility for day-to-day control. All departments and units are responsible for their own programs, operations, and decisions.

If there is ever a conflict between the Constitution & Bylaws of the national organization and those of a department or unit, the National Constitution & Bylaws supersede since the Constitution & Bylaws of the subordinate organizations, even though autonomous, cannot oppose or conflict with those of the central organization.

The national organization must exercise limited control over certain specific areas regarding trademark usage. The national organization does not dictate how departments and units run their operations or affairs.

While departments and units are subordinate yet autonomous to the national organization, units are subordinate yet autonomous parts of the departments. Departments, therefore, generally advise and support units, and the national organization assists departments in supporting their units.

One benefit of being an autonomous and subordinate part of the national organization is that the IRS has ruled subordinate groups (in the ALA, the departments, units, intermediate bodies) to the national organization (the ALA national organization) are eligible to receive tax-exemption from federal taxes through their affiliation with the national organization. The American Legion Auxiliary national organization has an IRS Group Exemption Number. Departments, along with units, intermediate bodies, and subsidiaries that do not have their own tax exempt status as evidenced by their own IRS Letter of Determination, benefit from the National ALA Group Exemption and are tax-exempt as part of the national group exemption number. The national group exemption spares ALA entities “in the group” from having to invest considerable time and expense to acquire their own federal tax-exemption.

The Structure of the American Legion Auxiliary: National Organization, Department, Intermediate Bodies, Subsidiaries, Units

The American Legion Auxiliary is comprised of some 9,000 separate legal entities bound together by a common mission, each permitted to use the trademarked names, emblem, logos, and marks which are owned by The American Legion and entrusted to the American Legion Auxiliary to use with strict requirements for trademark protection.

The American Legion Auxiliary was founded in 1919 to support The American Legion, which Congress established as a federally chartered organization. The American Legion Auxiliary is incorporated in and headquartered in the state of Indiana.

The American Legion Auxiliary National Constitution and Bylaws (C&B/SRs) address the purpose, role, and fundamental governance responsibilities of departments, units, subsidiaries and intermediate bodies. For example, The National C&B/SRs describe that a member may appeal a unit’s determination of her eligibility to belong to the ALA to the department, and that the department is the final authority on such matters; an individual’s membership eligibility determination is not appealable to the national organization. The fundamental provision, then, is that the decision/judgment of the unit regarding a person’s eligibility to become a member of the American Legion Auxiliary – whose ALA membership criteria is universal to all members – is appealable to the department which is the final authority. Another example is that the department has the responsibility to suspend or revoke a unit’s charter. The unit may appeal the suspension or revocation to the National Executive Committee. The fundamental provision, then, is that the judgment of the department on the fundamental matter of a unit’s existence is appealable to the national governing body.

The department’s and unit’s Constitutions and Bylaws cannot conflict with the national Constitution and Bylaws. A copy of the ALA National Constitution & Bylaws and Standing Rules is included in this guide’s Appendix, and can be accessed online at www.ALAforVeterans.org. It is important that departments, units, intermediate bodies and subsidiaries read the National Constitution & Bylaws and Standing Rules to understand the governance expectations as it relates to being an organization worthy of being permitted to use the name and trademarks of the national organization and to ensure there are no conflicts in the department (et al) governing documents.

The American Legion Auxiliary has 52 chartered **departments** comprised of the 50 states, District of Columbia, and Puerto Rico. Departments are separate legal entities that operate independently with each being wholly responsible for its operations and conduct. A department is allowed to use the name and trademarks of the American Legion Auxiliary provided it operates in a manner worthy of the honor of the trademarked name, emblem, and logos. A department is chartered by

virtue of its association with a Legion department; however, the Legion department does not control the Auxiliary department and vice versa.

The American Legion Auxiliary has nearly 9,000 chartered units and department intermediate bodies – districts/counties/councils.

Units are separate legal entities at the community level that operate independently, with each being wholly responsible for its operations and conduct. A unit is allowed to use the name and trademarks of the American Legion Auxiliary provided it operates in a manner worthy of the honor of the trademarked name, emblem, and logos. A unit must be chartered by virtue of its attachment to a Legion post; however, the post does not control the unit or vice versa. Units control their operations. They do not report their management operations to the department, but they do report their membership numbers and mission outreach activities to the department.

The American Legion Auxiliary also has many units in foreign countries that are attached to Legion posts in those countries. The Auxiliary currently has foreign units in Europe, Australia, the Philippines; members in other countries may establish a unit under the same requirements as a new unit would form within the U.S.A. Foreign units report to the ALA national headquarters.

Departments have the authority to establish **intermediate bodies** for the purpose of benefiting the department to advance the mission of the organization more effectively. Intermediate bodies include districts, counties, and councils. Unlike units, intermediate bodies are created by and wholly accountable to the department. Intermediate bodies are groups of units, generally created geographically to increase interaction and synergy among those units in the respective district, county, or council.

Except for those incorporated units and intermediate bodies that have been granted their own tax exempt status by the IRS, as evidenced by an IRS Letter of Determination, departments and incorporated units and intermediate bodies are tax exempt under the National organization's federal Group Exemption granted by the IRS to the National organization. (*See chapter on finance and tax matters*)

A **subsidiary organization** is a specific corporate organization that is formed by and under the control of its parent organization. In the American Legion Auxiliary, many departments established subsidiary organizations to operate their ALA Girls State program for fundraising purposes. Departments are incorporated as 501 (c)(19) corporations, the IRS federal category for Veterans Service Organizations. Departments that established separately incorporated ALA Girls State programs did so to enable the programs to be incorporated as 501 (c)(3) organizations, a broad IRS classification of charitable organizations. The separate incorporation of ALA Girls State programs was done because many foundations and corporations will only donate to 501 (c)(3) corporations.

All separately incorporated ALA Girls State programs are subsidiaries of the department, and as such are wholly accountable to and controlled by the department.

Likewise, intermediate bodies established by the department are subordinate to the department. And intermediate bodies (districts, counties, and councils) that are separately incorporated are also subsidiaries of the department and are wholly accountable to and controlled by the department.

Because the American Legion Auxiliary is a 501(c)(19) Veterans Service Organization and because many foundations, companies and corporate donors have policies that restrict grants and other gifts to only 501(c)(3) public charities, the national organization established the American

Legion Auxiliary Foundation (ALAF) in 2007 as a subsidiary 501(c)(3) organization to serve as a fundraising mechanism for the American Legion Auxiliary.

The ALA Foundation has the authority to receive grants designated for a department's ALA Girls State program, and to in turn sub-grant the funds to the department according to the donor's (foundation, corporation, individual) intent. With the existence of the ALA Foundation, departments may wish to re-consider the need to have a separately incorporated ALA Girls State program in its state. Just as the department has the authority to establish separately incorporated subsidiaries, the department has the authority to dissolve them by action of the department governing board.

There may be instances where units have established subsidiaries. The following rules apply to the parent corporation whether that be the department or a unit. If a unit has a subsidiary, the word "department" can be replaced with "unit" in the following:

All subsidiary organizations MUST follow these five (5) rules of corporate law in keeping with required uniformity under U.S. trademark law.

1. All officers, directors, trustees, etc. **must** be named by the department, usually nominated by the department (or unit) president and confirmed by the governing board.
2. All vacancies in the subsidiary corporation **must** be filled by the department in the same manner.
3. The subsidiary corporation **must** report to the department (the parent organization) no less frequently than monthly. The reporting **must** include the subsidiary's financial reports. If the subsidiary did not meet in a particular month it must still report to the department in writing that it did not meet, and still must report the month's financial statements.
4. The department treasurer or financial officer **must** be a signatory on all accounts of the subsidiary.
5. The articles of incorporation, bylaws, and all amendments of a subsidiary organization **must** be approved by the department. If a subsidiary organization is currently operating and its articles of incorporation or bylaws have not been approved by the governing body (commonly known as the Department Executive Committee, department board, or Department Board of Directors) then the department should take action immediately to ensure that the subsidiary's governing documents are received for the department governing board's review and approval. Likewise, the department governing board must approve all officers and directors of the subsidiary, and any members serving on a subsidiary's committee(s).

If your department (or a unit) wishes to establish a subsidiary organization, you must follow all applicable laws and procedures under your state to incorporate it. You are strongly advised to contact your state authorities, such as your secretary of state's office, and consult a licensed legal professional familiar with nonprofit law in your state.

Section 2

Roles of Nonprofit Leadership

Departments and units, (whether the units are incorporated or not), are separate entities with bylaws and boards that govern them. No one member dictates how the department/unit acts; the department's or unit's bylaws describe how the entity will function, how leaders are selected, how long they will serve, how votes will be taken, and the purpose of the organization. Even for those units that are not incorporated, the American Legion Auxiliary expects entities entrusted to use the name and trademarks of the organization to constitute itself and conduct itself in a parliamentary-style governance structure where formal rules and democratic decision-making processes prescribe the character of the entity.

This structure is familiar across the business and nonprofit world, as all incorporated organizations must follow a format along these general lines. In this well-established structure, there are common titles such as "president," "board member," and "committee chairman," with particular roles and powers in the organization. Below is a list of some of the most common positions in nonprofit organizations with a corporate structure, along with a general description of their typical roles and how they operate generally in the ALA. These general descriptions apply broadly to all organizations with boards. However, departments and units have the authority to decide leadership positions (e.g., president, department executive committee, department board, treasurer, etc.) as long as these decisions do not oppose or conflict with the ALA National Constitution and Bylaws.

Governance and Leadership Roles in Nonprofit Corporations

All nonprofit corporations are comprised of officers and directors. In the American Legion Auxiliary, the directors of the corporation are the members of the entity's governing board. While the titles of many of the offices in the Auxiliary are consistent with those of most other nonprofit organizations, the roles of some of the ALA offices are unique to the ALA. The core governing positions are as follows:

Board of Directors: All corporations, including nonprofits, must have a board of directors, or "board" for short. Each ALA department, unit, and district/county is an independent entity. Separately incorporated entities must have a governing board of directors. A board is the primary decision-making body of a department, although boards often delegate certain responsibilities and decision-making powers to employees and volunteers.

In the ALA, the board is frequently called the "executive committee", such as the National Executive Committee (NEC) or Department Executive Committee (DEC). In structure, function and responsibility, these governing bodies are indeed the ALA's boards of directors and its members are corporate directors that bear fiduciary responsibility for the organization.

The board of directors is a body of elected or appointed members who jointly make up the governing body of a for-profit or nonprofit corporation. The board has specific legal, fiduciary, and ethical responsibilities to the organization. The board's roles and responsibilities are typically detailed in the organization's bylaws. The bylaws also commonly specify the number of members of the board, how they are chosen, and the minimum number of times they meet. The main role of a board is to provide oversight of an organization's activities and account for its performance.

Boards also develop organizational policies and are expected to financially support the organization and raise funds for the organization. ALA department governing boards must comply with all applicable federal and corporate laws and regulations, your state laws, and the requirements of the American Legion Auxiliary to be allowed to use the trademarked name, emblem, and logos of the ALA.

Board Member: A board member is a corporate director who shares responsibility for governing the organization along with the rest of the board members and has specific legal, fiduciary, and ethical responsibilities to the organization.

In the ALA, board members of the national governing board – the National Executive Committee (NEC) – are chosen by the departments according to the department's election or selection process as specified in the department's governing documents. The National organization's governing documents do not specify criteria or terms of the NEC members, other than there be one NEC from each department who must be a member in good standing.

President, Chief Elected Officer (CEO), Chairman of the Board: In most nonprofits, the organization's president is the chief elected officer. The ALA's chief elected officer serves as president and chairman of the corporation's board of directors

In the ALA, at the national level, the National President serves a one-year term as president of the national organization, Chairmen of the National Executive Committee, and the National President is the organization's international spokesperson to the public, its ambassador, and the public face of the organization.

At the ALA department level, the department president serves as chairman of the department's governing board, commonly known as the Department Board or Department Executive Committee, and the department president is the department's spokesperson to the public, its ambassador, and the public face of the organization.

Committees: Governing boards often have various committees that provide oversight, guidance, and/or create organizational policies in support of the board. The type and size of these committees depend on the needs of the organization. Some typical examples are governance, audit, finance, and development committees. Committee members are not corporate directors of the national organization or department unless they are also members of the national's or department's governing board.

Committee Chairman: Governing boards that form committees to provide enhanced oversight and guidance for the organization typically select a chairman for each committee. The committee chairman presides over meetings of the assembled group and conducts its business in an orderly fashion. The committee chairman is often appointed or selected, as specified in the governing documents. The ALA customarily observes the practice of a committee chairman who is not a member of the governing board to make a motion on behalf of her committee; however, because she is not board member may not vote on the motion.

Vice President: The vice president is a corporate officer that supports the president. In the corporate world, the role of the vice president often includes overseeing finances, planning and enforcing organization policies, public engagement, and preparing reports to the board or chief executive. In the ALA, the vice president often serves in the role of an ambassador or spokesperson for the department and fulfills the president's duties in her absence.

Treasurer: The treasurer is a corporate officer typically assigned the primary responsibility of overseeing the management and reporting of an organization's finances. The treasurer has significant responsibility for the proper financial and risk management of the organization, and therefore greatly affects the public's perception of and trust in the organization's management. Along with the board, the treasurer has fiduciary responsibility to the organization and its financial well-being. *(See additional guidance below regarding the title of the department treasurer).*

Secretary: The secretary of a nonprofit organization is a corporate officer who plays a critical role in fostering communication and diligence through proper management and utilization of important records, such as meeting minutes and the organization's bylaws. The secretary is the custodian of the organization's records and is responsible for organizing and announcing board meetings. In many nonprofits, board secretaries are volunteer positions.

Historically, the ALA selected the title 'Secretary' to mirror the federal government's use of the title "Secretary" to denote the head of a department of the Executive Branch of government. Today, the role of an ALA department secretary is more similar to the role of an executive director or chief operating officer in other small nonprofit organizations. *(See additional guidance below on the title of the department secretary).*

Executive Director (ED): In most nonprofits the chief executive officer or executive director is a corporate officer. Nonprofits often use the term "executive director" instead of "chief executive officer" to differentiate themselves from for-profit companies, though the roles are similar.

Note: In nonprofit organizations there can often be confusion with the titles of the positions "Chief Elected Officer" (the president) and "Chief Executive Officer" (the headquarters executive) because they both have the same acronym "CEO". Counsel General advises the president, as the chief elected officer, use the title ALA "National President" or ALA "Department President" and "Chairman of the Board" since the title "president" and "chairman of the governing body" (NEC, DEC, Department Board) are the only titles for the chief elected officer stated in the ALA Constitution at both the national and department levels. Counsel General advises against using the title "Chief Elected Officer" to avoid confusion with "Chief Executive Officer", since both have the same acronym "CEO".

In the ALA, the roles of both the national secretary and department secretary are the equivalent of that of a chief executive officer or executive director in other corporations. The national secretary is an officer of the national corporation. The department secretary is an officer of the department corporation. The ALA is unique in that the corporation's secretary of the board usually serves a dual role: both a corporate officer and executive director. In most nonprofit corporations, a chief executive officer/executive director is also a member of the board, with or without vote as determined by the nonprofit's governing documents. If the executive director is not a member of the board, she usually regularly reports to it.

Other Officers: In addition to these offices common to most nonprofits, at the national level, the American Legion Auxiliary also annually elects five National Division Vice Presidents who serve one-year terms. A National Chaplain and National Historian are also elected to one-year terms. Likewise, many departments governing documents provide for the election of historians and chaplains.

Roles and Titles of Department Secretary and Department Treasurer Unique Considerations

Risk of Department Secretary and Department Treasurer being held by the same person

While it is a common practice in the American Legion Auxiliary for the Department Secretary and Treasurer being one and the same person, the practice poses a huge liability threat to the department. The person who receipts money for the department should not be the same person who disburses money for the department, especially when one of the regular disbursements is the paycheck to herself. Unfortunately, that have been costly instances where a department secretary/treasurer has behaved unethically and illegally, easily able to steal funds from the department because of the lack of checks and balances.

While the lack of resources has made it expedient to combine these two officer positions, departments are strongly advised to have the positions held by two individuals, with the department treasurer being a volunteer with the responsibility to visit the office at least twice monthly to sign checks. If transitioning to having the two positions be separate is not immediately feasible, then the department is strongly advised to have checks and balances in place for cash/financial management including requiring more than one signature on a check. *(More information about financial management is in the chapters on management and finance.)*

Department Secretary – Additions to Title

Some department secretaries have shared that the general public does not understand that the title “Department Secretary” is the department’s top operating executive rather than simply an assistant to the department president. Some department secretaries have asked if they can change their title on stationary, business cards or electronic documents (i.e. department website) to titles such as “Executive Director”, “Chief Operating Officer,” or “Department Office Director”, depending on the size of the department, to more clearly convey to the general public the actual executive responsibilities of the position.

Because the department secretary is indeed an officer of the corporation, and because in most departments the Department Secretary “wears two hats” – that of governing officer and that of the executive director of the Department Headquarters – the title of Department Secretary should not be replaced, but may instead be augmented with a second title that best reflects the executive responsibilities of the position. When deemed appropriate as authorized by the department governing board, suggested examples of additions to the department secretary title include:

- Department Secretary/Executive Director
- Department Secretary/Chief Operating Officer
- Department Secretary/Operations Executive
- Department Secretary/Office Director

Such titles more accurately reflect the department secretary’s dual role within the American Legion Auxiliary’s governance/management structure. The use of two titles does not change a department secretary’s duties or responsibilities within the ALA, but can help make their role more clear when doing business with other organizations, businesses, the public and individuals who have no concept of the title “Department Secretary”.

Department Treasurers – Additions to Title

In most corporations, the “Treasurer” is a paid position responsible for managing the organization’s finances. In the nonprofit sector, the title “Treasurer” often refers to a volunteer board position. If the department treasurer is a separate staff position from the department secretary, it may make sense to use a title that reflects her professional business role such as “Chief Financial Officer” or “Finance Director”, titles that more closely reflect the management role of a compensated department treasurer, when and as authorized by the department board.

Section 3

Legal Obligations and Responsibilities of Board Members

As addressed in Section 2, all nonprofit corporations and all ALA departments and units have a board of directors. Although the board is the main decision-making body of a department/unit, boards often delegate certain responsibilities and decision-making powers to employees and volunteers. In the ALA, the board is frequently called the “executive committee,” such as the National Executive Committee (NEC) or Department Executive Committee (DEC), but in structure, function and responsibility, these “committees” are indeed boards of directors.

Board members are directors of the corporation and have serious legal, ethical and fiduciary responsibilities including making decisions regarding the organization’s vision, strategic direction, financial resources, fundraising, and compliance with all regulations and laws. No single member is solely responsible for any of these things alone; a board governance structure is based on a democratic system and therefore depends upon the collective decision-making of a group of people serving together. As a group of corporate governing body directors, the board is collectively responsible for acting in the best interests of the organization to further the mission. Members of the governing board are individually and collectively liable for the board’s actions.

Each board member has a responsibility to meet specific legal standards of care and action. Any board member who neglects these duties could be held personally accountable, particularly if something were to go wrong and there were a lawsuit. For departments and subsidiaries and those units and intermediate bodies that are incorporated, each board member is afforded limited liability which shields a board member from personal debts and damages only as long as she is meeting the standards of care listed below. Limited liability may not protect a board member who fails to meet these basic responsibilities or who is grossly negligent.

Board Members Must Meet the Standards of Care and Responsibility

Board members serve in a position of trust. They have been selected to lead an organization that is performing a service for the public good. In the ALA, board members are entrusted to set the strategic direction of the organization and to ensure that the organization has sufficient resources to carry out its purpose and fulfill its mission. Board members are not expected to be perfect or know everything; however, it is very important that board members fully understand their responsibilities, take them seriously, and take reasonable care and effort individually and as a group to meet their obligations. The following standards are well established principles and obligations expected of board members, particularly of nonprofit leaders generally.

If there is ever a lawsuit or dispute that questions board conduct, courts will look for board members to have met the following standards.

1. **Test of Reasonableness and Prudence:** Board members should treat the money and other resources of the department (unit, subsidiary, intermediate body) with the same degree of care and caution they would use for their own money and resources.
2. **Fiduciary Responsibility:** Fiduciary responsibility means that board members are responsible for the effective oversight of the financial resources of the department (unit, subsidiary, intermediate body). Board members are entrusted to ensure that the organization is in a healthy financial position, its funds are properly managed, and responsible decisions are made regarding spending, fundraising, and budgeting. Fulfilling fiduciary responsibility requires board members to be knowledgeable, present, and actively engaged.

Fulfilling your fiduciary responsibility as a board member includes:

Attending board and committee meetings. Being present for board and committee meetings is a key responsibility of board members. When occasional absences are unavoidable, it is a professional courtesy and best practice to let other board/committee members know in advance (or as soon as possible) when you will be absent.

Asking questions when necessary. It is a core responsibility for board members to be well-informed. Request more information if you don't understand something about the organization's finances or policies, particularly if you are in the position of making a decision regarding a matter before the board.

Read financial statements in a timely manner. It is a key board member responsibility to read and understand financial statements. If you don't know how to read a financial statement, seek assistance from professionals or knowledgeable board members, volunteers, or employees.

Review and adopt a budget every year. Be prepared for budget meetings by having reviewed past and current budgets, and prepared to raise any pertinent questions you may have.

Fulfill your financial oversight function as a board member. If your department (unit, subsidiary, intermediate body) delegates the management of the organization's finances to employees and/or volunteers, the board should act in an oversight capacity. Review financial policies and risks at appropriate intervals (such as yearly or every few years), be sure that appropriate policies are in place to address financial risks, and communicate with volunteers and employees about these issues. If your department's or unit's board members perform financial management tasks, be sure that appropriate checks and balances exist such as always having two people count cash and check bank statements.

Engage in fundraising. Board members have a responsibility to ensure the financial health of the organization and should be the leaders in personally donating and raising funds necessary to achieve the mission. Board members should be active in planning and executing fundraising activities to include making contributions and asking others to do so as well. Board members need to be familiar with the legal requirements and restrictions on fundraising in their states. Charitable gaming, charitable games of chance are specifically regulated in most states. It is a violation of federal postal regulations to use the US Mail for charitable gaming (e.g. raffles, bingo, and drawings).

3. **Duty of Care:** The duty of care is every officer's and every board member's moral and legal obligation to ensure the well being of the organization. The duty of care stands for the principle that directors and officers of a corporation, when making all decisions in their capacities as corporate fiduciaries, must act with the same level of care and good faith that would be exercised by an ordinarily prudent person in similar circumstances.

Activities associated with fulfilling a duty of care include:

Attending board and committee meetings on a regular basis, listening to other board members and speaking up when you can make a contribution.

Preparing in advance for board meetings, including reviewing the agenda, minutes from the last meeting, financial statements, and all other pertinent board meeting materials.

Exercising independent judgment when voting. Every board member has an obligation to be informed about a matter requiring a vote and to vote her conscious. Board members should only vote for something she personally believes is right; and should never be pressured to vote for something against her better judgment.

Ensuring compliance with all laws and regulations. Board members have the collective responsibility to ensure the organization is compliant with applicable laws and regulations. The board may delegate certain responsibilities to employees and/or committees. For example, the board may delegate the completion and/or review or filing of the IRS Form 990 to an audit or finance committee.

Ensuring employees and key volunteers are performing acceptably. It is strongly encouraged that board members seek a cooperative and collaborative relationship with volunteers and employees. Respect, good communication, and teamwork should characterize the relationship. The board's responsibility is to address any serious concerns about the organization's key volunteer leaders and the office's executive director appropriately and timely. It is not the board's role to oversee employees; that is the legal responsibility of the executive director.

4. **Duty of Loyalty:** The duty of loyalty requires board members to make decisions that put the best interests of the organization first, above any personal, family or professional interests. Loyalty means avoiding conflicts and adhering to the organization's conflict of interest policy by identifying and disclosing any potential conflict(s) of interest that you may have and then proceeding in a proper manner. *(Also see chapters on finance and risk management).* For example, if you or a family member has a product or service the department or unit is considering, you would recuse yourself from the debate and decision, and leave the meeting when the matter is considered and have the record (minutes) reflect that you left the meeting since you or your family could personally gain from the purchase or decision. Or, if a family member is competing for an ALA scholarship, you should not serve on the selection committee because your interests in helping your family member and your interest in serving the best interests of the ALA would be in conflict. Failure to disclose a conflict of interest and appropriately recuse yourself renders you liable and exposes the organization to harm.

Some of the activities associated with fulfilling the duty of loyalty include:

Adhering to your unit/department's conflict of interest policy. This must include an annual disclosure of any known conflicts of interest, as well as an annual signature by all board members and leaders that they understand and will abide by the policy. The IRS requires a disclosure, which must be kept as part of the tax records.

Promptly disclosing any conflicts of interest that come up that could impact your ability to serve as a board member or other leadership position such as committee chair.

Avoiding the use of your authority as a board member or other leader for personal gain. If a board member uses her position in a way to obtain personal benefit, such as personally profiting from a department purchase, the IRS could levy fines on both the department and the board member. Furthermore, such behavior can result in the IRS revoking tax-exempt status. Such behavior can also result in personal criminal prosecution.

Maintain the confidentiality of information about the organization. Know what information is confidential and how and when it is appropriate to share non-confidential information.

5. **Duty of Obedience:** The duty of obedience requires board members to act with the highest standards of integrity and faithfulness, abide by the ALA's governing documents, achieve the mission, and ensure that their organization complies with all laws and regulations.

Some of the activities associated with fulfilling the duty of obedience include:

Ensuring compliance with all federal and state regulations that impact your unit/department, including IRS form 990 reporting requirements.

Examining and understanding all the documents that govern your unit/department, including Constitution and Bylaws, and following them faithfully.

Utilizing the time and resources of your department and its members for purposes that are in line with the ALA's mission and governing documents. Activities outside the scope of the ALA mission conflict with the duty of obedience.

**Suggestions for Promoting Board Member Engagement,
Awareness and Diligence**

While these legal obligations and responsibilities may seem overwhelming, thousands of individuals who sit on nonprofit boards in the United States are held to these same standards each year. Being a board member does not require perfection or an advanced degree. Rather, meeting these standards requires that each board member makes a good-faith effort to understand, follow and execute her legal, ethical and fiduciary responsibilities and obligations. Learning, developing skills, and working together is all part of the board governance process.

In addition, there are certain practices that your department (subsidiary, unit, or intermediate body) can adopt to support the board to better meet their responsibilities.

- a) **Educate the Board:** Include education and training as a part of board service and activities. The board can set aside specific times during meetings to have educational presentations about different topics and then discuss how the information applies to the organization. Attending workshops or seminars helps board members to increase their knowledge and the costs associated with such training are legitimate nonprofit expenses. Providing a board orientation for new members is important to help them become knowledgeable about their duties.
- b) **Set Expectations of Board Members:** Expectations of board members are most effectively communicated in writing. Ethical, legal, fiduciary, financial support, and other performance-related expectations should be clearly stated and reviewed with board members at regular intervals. Ideally, expectations should be presented to prospective board members before they are elected/selected for board service so they understand the commitment and accountability for board membership. Board members should be informed about their obligations under the law, and the president/chairman of the board should discuss with board members her goals and expectations for the board as a whole and individually.

Board Minutes

A corporation should maintain written minutes of the actions of its governing body. The department's governing board (Department Executive Committee or department board) should maintain written copies of minutes of its meetings. If the board goes into executive session, a confidential set of written minutes should also be prepared and circulated solely to the board members who met in executive session. Those minutes are not posted or otherwise circulated.

The board's minutes-taker should prepare written minutes to circulate for approval at the next meeting. The minutes should include a Summary of Motions as an appendix to the minutes. Then, at the end of a 12-month period (calendar year or fiscal year or administrative year), the organization can compile the annual summary of motions that passed. An external auditor or accountant doing an external financial review will require a summary of motions adopted in the past year. The Summary of Motions is the synopsis of actions the governing board took in a given period of time. They should be available for external review upon request. The national organization's board, the NEC, confirms the members of an annual three-member "Minutes Approval Committee" comprised of three NEC members whose job is to review the minutes of each NEC meeting as drafted and make any corrections before the minutes are presented for adoption at the next meeting.

Preparing written minutes for department conventions and conferences is necessary when a department conducts substantive business at its conventions and conferences. If, at a convention, your department acts on a substantive resolution or motion that impacts the governance or direction of the organization, then minutes of those actions (proceedings) should be retained in writing. The minutes of the business conducted must be prepared and made available to members (the organization's stakeholders) upon request. Such substantive motions include elections, bylaws changes, or adoption of policies and strategic directions. Since a convention is comprised of attendees and not board members, the department president should ensure that someone(s) is assigned the responsibility for preparing the written minutes as warranted by the business conducted.

If you have recordings of the meetings, you need to create a written summary of the business portions. You need not prepare a written verbatim transcription of all that took place, but it is beneficial to have in certain situations. The organization should have a summary of the proceedings. For example, you need not record all the information about workshops, informative sessions, speakers and courtesy resolutions. The minutes should state what the convention covered, and include a summary of the motions adopted and business transacted.

Executive Session

Sometimes, matters of a sensitive nature must be addressed by the board. State laws allow for the governing body to go into an executive session or closed meeting, which means everything said or done during the session is confidential. If anyone within the organization breaks that confidentiality they can be disciplined internally and possibly face legal action. To go into executive session, a member must make a motion that needs a second with the ability to debate, and it takes a majority vote to adopt. If the members vote to go into executive session, all non-members must leave the room until the board votes to end executive session unless the board specifically asks some non-members, such as an attorney, to stay. Minutes should state that the members voted to go into executive session and the general reason for doing so (e.g. to discuss a compensation of the executive or a sensitive matter involving an officer of board member).

Generally, executive sessions should be used for discussion and not decision making, though the limits of what is allowable vary by state law. Generally, if the board wishes to act on what is discussed in the executive session, the members should vote to end the executive session and then vote on the outcome of the discussion record its regular session. The actual discussions held during closed session should remain confidential and not made part of the board minutes. Executive sessions should be used sparingly; holding frequent executive sessions may give the impression of undue corporate secrecy. Executive sessions should be reserved for discussions on such matters as litigation, executive compensation, disciplinary actions, or medical issues of a

leader impacting performance. For example, if a department secretary wishes to inform the board she has an ongoing medical issue that she does not wish to reveal on a public record, she can ask the board to go into executive session so she can make her announcement confidentially. Federal and state privacy laws and Health Insurance Portability and Accountability Act (HIPAA) further mandate such matters be handled in confidential, closed meetings.

Board Members and Convention Delegates – Very Different Roles

There is a distinct difference between the actions of strategic direction provided by a department convention and the actions of governance provided by a governing board (e.g. DEC). The key difference is that stakeholders (e.g. convention delegates) are not liable for the organization and its actions. The officers and members of the governing board are the organization's corporate officers and bear the responsibility and liability for the organization and its actions.

The organization's financial matters and budgets are acted on by the governing board (e.g. NEC or DEC) and should **never** be acted on by a convention body. The convention body has no responsibility or accountability for a convention's actions/decisions. Only the corporate officers and directors – the officers (department president, department secretary & department treasurer) and governing board (Department Executive Committee or department board) – carry out the actions encompassed in a budget and bear responsibility and liability for the organization.

The proceedings of a convention or conference are just that, a summary of the proceedings; therefore, they are not voted on because the actions (proceedings) were conducted by delegates at a gathering of stakeholders and not by the organization's governing body.

A convention is a gathering of stakeholders. They have a stake in the general direction and structure of the organization, but bear no responsibility for executing the direction or serving in the leadership roles within the structure. A convention body of delegates can change the core governance structure (i.e., amend bylaws) but bears no responsibility for the actual governance of the organization. The governing board determines the strategic direction and acts on plans, budgets, and funding to enact the strategic direction. For example, when enacting a change to the bylaws – the core purpose and structure of the organization – the stakeholders (convention delegates) are saying "this is what we want the purpose and overall organizational structure to look like." The governing body enacts "how the organization will be funded and what the detailed structure and policies will be." The purpose and structure should be lasting.

Section 4

Relationship between American Legion Auxiliary and The American Legion

The relationship between the American Legion Auxiliary (ALA) and The American Legion (TAL) is one of close support and collaboration. The American Legion authorized and supervised the creation of the ALA in the early 1920s, then allowed it to become incorporated under the laws of the State of Indiana as its own separate nonprofit in 1932. The ALA's mission to promote Americanism, support veterans and their families, promote a strong national security, and to support The American Legion were founding requirements of the ALA by The American Legion when the ALA was founded. The founding purpose has continued to define our identity and purpose ever since. Our ALA Mission Statement includes the statement that the ALA's mission is to support The American Legion. For certain matters, the ALA must be deferential to the judgments and decisions of The American Legion. For example, our ALA National Constitution and Bylaws can never conflict with those of the Legion, and the ALA must support the legislative agenda of The American Legion.

However, as a separate 501(c)(19) corporation, the ALA governs itself independently from The Legion and elects its own leaders, generates and manages its own money, employs its own staff and charters its own ALA departments and units. The ALA is linked to, but independent from, The American Legion and, in a legal sense, is not subordinate to it the way ALA units are subordinate to departments and departments are subordinate to the national organization. The ALA has the authority – and the duty – to pursue programs and service uniquely suited to take advantage of our members’ energies, talents, and insights in order to better serve, honor, and support veterans, servicemembers and their families. At all times and in all places, the relationship between the ALA and TAL should be one of mutual support, respect, and teamwork.

	American Legion Auxiliary	The American Legion
Federal Charter	The American Legion, not Congress, authorized the creation of a women’s Auxiliary to The American Legion in 1919. The Legion supported the creation of and recognized departments, beginning in 1921 with Minnesota. The American Legion Auxiliary was Incorporated under the laws of the State of Indiana in 1932.	Chartered by the Congress of the United States in 1919.
Recognition of National organization as tax-exempt by the IRS	Recognized by the IRS as a nonprofit and tax-exempt 501(c)(19) veterans <i>auxiliary</i> organization with subordinate departments and units across the country. The ALA cannot exist without The American Legion, the Veterans Service Organization to which it is an auxiliary.	Recognized by the IRS as a nonprofit and tax-exempt 501(c)(19) veterans organization with subordinate posts and departments across the country. The American Legion Auxiliary is the 501(c)(19) <i>auxiliary</i> of The American Legion.
Group Exemption	Issued a group exemption number by the IRS by which departments, units, and intermediate bodies, through their affiliation with the ALA national organization, may also be granted federal tax-exempt status.	Issued a group exemption number by the IRS, by which posts and departments, through their affiliation with TAL national organization, may also be granted federal tax-exempt status.
Trademark Ownership and Rights	The American Legion owns the trademark rights to the name “American Legion Auxiliary”, “Girls State”, “Girls Nation”, and all related emblems and insignia. The ALA has been granted the rights to use the ALA, GS and GN trademarks and ALA emblem. ALANHQ has been given the responsibility of protecting the ALA trademarks and emblem and therefore the power to authorize or deny privileges for their use.	Owns trademark rights for The American Legion, related programs, like Boys State, and related emblems and insignia. Owns trademark rights for American Legion Auxiliary and the Sons of the American Legion and its related emblems and trademarks.

	American Legion Auxiliary	The American Legion
Interaction of ALA Departments and Units with Legion Departments and Posts	<p>ALA departments and units, (except for “widow units” (described elsewhere), are tied to, but operate independently from Legion departments and posts. Departments and units can only exist where there is a corresponding Legion post and department; for example, each new unit must have a post to which it is tied.</p> <p>ALA departments and units should collaborate and work closely with Legion departments and posts, but Auxiliary departments and units are independent of Legion departments’ and posts’ governance. ALA departments and units have their own boards, generate and manage their own funds, have their own Constitution and Bylaws and hold their own meetings. ALA departments and units are free to pursue their own priorities and programming, as long as it is consistent with their ALA governing documents.</p>	<p>Legion departments and posts exist independently from their corresponding ALA departments and units. ALA departments and units must be linked to Legion departments and posts, but are otherwise independent, autonomous entities.</p> <p>ALA members normally are not counted as guests at Legion posts and normally may use the facilities without being counted as a non-member or bona fide guests for tax purposes.</p> <p>ALA members, however, are NOT members of the Legion and vice versa unless they are dual members.</p> <p>ALA members have no authority over the operations or governance of any Legion department or post and vice versa. Ideally ALA departments and units cooperate closely with Legion departments and posts, but this is up to ALA and Legion members at those levels. Both Legion and ALA members have missions that overlap and call for collaboration.</p>
Internal Legal Authority	Defers to The American Legion’s National Judge Advocate who serves as Counsel General to the ALA for advice, guidance, direction, and representation on legal matters.	Has a Judge Advocate to advise its leaders on legal matters and who also serves as Counsel General for the American Legion Auxiliary.
Membership Certification	The post adjutant or his designee verifies membership eligibility.	Post officers verify eligibility. It is recommended that each unit and post maintain copies of the documents that verify the eligibility of members. Since those documents contain personal information, they must be maintained in a secured place (e.g. a safe or locked filing cabinet).

Section 5

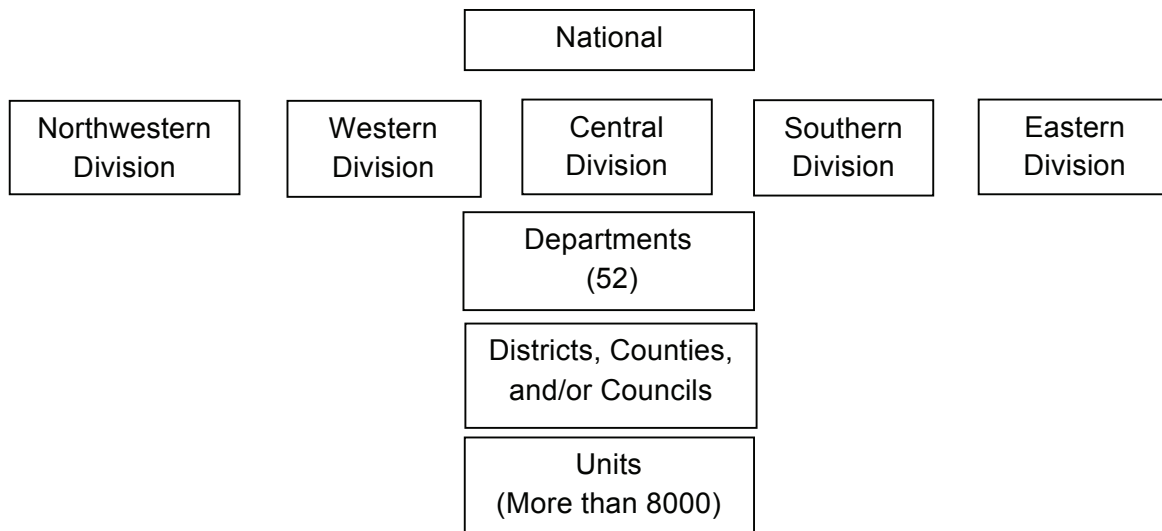
American Legion Auxiliary Governance Structure

American Legion Auxiliary International Organizational Structure

The American Legion Auxiliary is a grassroots membership organization of females – grandmothers, mothers, sisters, daughters, and granddaughters – who are directly related to a U.S. veteran who served our country during a time of war or declared conflict.

The American Legion Auxiliary was established in November 1919 by the American Legion to support the mission of The American Legion, which owns the name and all trademarks of the Auxiliary.

The American Legion Auxiliary serves our mission in the United States and around the world.



The organization is comprised of more than 8,000 separate legal entities operating independently throughout the world to collectively support one national organization and mission.

National –The American Legion Auxiliary national organization has its national headquarters in Indianapolis, Indiana. National Headquarters is entrusted to protect and control the Auxiliary’s name, emblem and trademarks, and the organization’s brand. The national organization also enables its affiliated corporations at the levels listed above to operate with the benefit of being exempt from federal income taxes as part of the national organization’s IRS group tax exemption.

Divisions – there are 5 divisions comprised of departments within 5 broad geographic regional areas of the US.

Departments – there are 52 departments: one in each state and one in Puerto Rico.

Districts/Counties/Councils – Departments have the authority to establish intermediate bodies, i.e. groups of units that work together in a geographic area known as a district, county, or council. Many ALA departments have districts that mirror the geographic areas

of their state's Congressional districts. Some departments with large districts also have groupings of units within the districts known as counties or councils.

Units in the US & US Territories – there are more than 8000 units in the United States, foreign countries, and US Territories. A unit can be established when 10 members come together. These are the grassroots entities where members join the ALA, promote patriotism in their communities, and do the mission outreach work of the American Legion Auxiliary that serves our veterans, US military, and their families.

Members join the American Legion Auxiliary at the community level. Members are required to pay membership dues that support their membership in all levels of the organization. Every member belongs to a unit, a department, and the national organization. If the department's structure includes department intermediate bodies known as districts, counties, and /or councils, the member also belongs to the department's intermediate bodies as well.

Every American Legion Auxiliary unit is established and attached to an American Legion post, the Legion's community-level entity. Unit members often refer to belonging to their "post" or "post home." The American Legion post is the official home to the "Legion Family" of Legionnaires, Sons of The American Legion, and Auxiliary members.

Everyone belongs to every level and their dues support each level of the organization – unit, department and national. Each level independently establishes dues amounts; a member must pay dues that total the collective amount for all the levels.

There are two categories of membership – adult members, those over the age of 18, are referred to as "Senior members" in the ALA National Constitution and Bylaws, and those under the age of 18, are referred to as "Junior members"; Junior members may join the organization at birth.

Each level of the American Legion Auxiliary has a similar governance structure comprised of officers and a board, known at the national level as the National Executive Committee (NEC), and in most departments as the Department Executive Committee (DEC) or the Department Board. The rules for serving in an office vary from unit to unit and state to state.

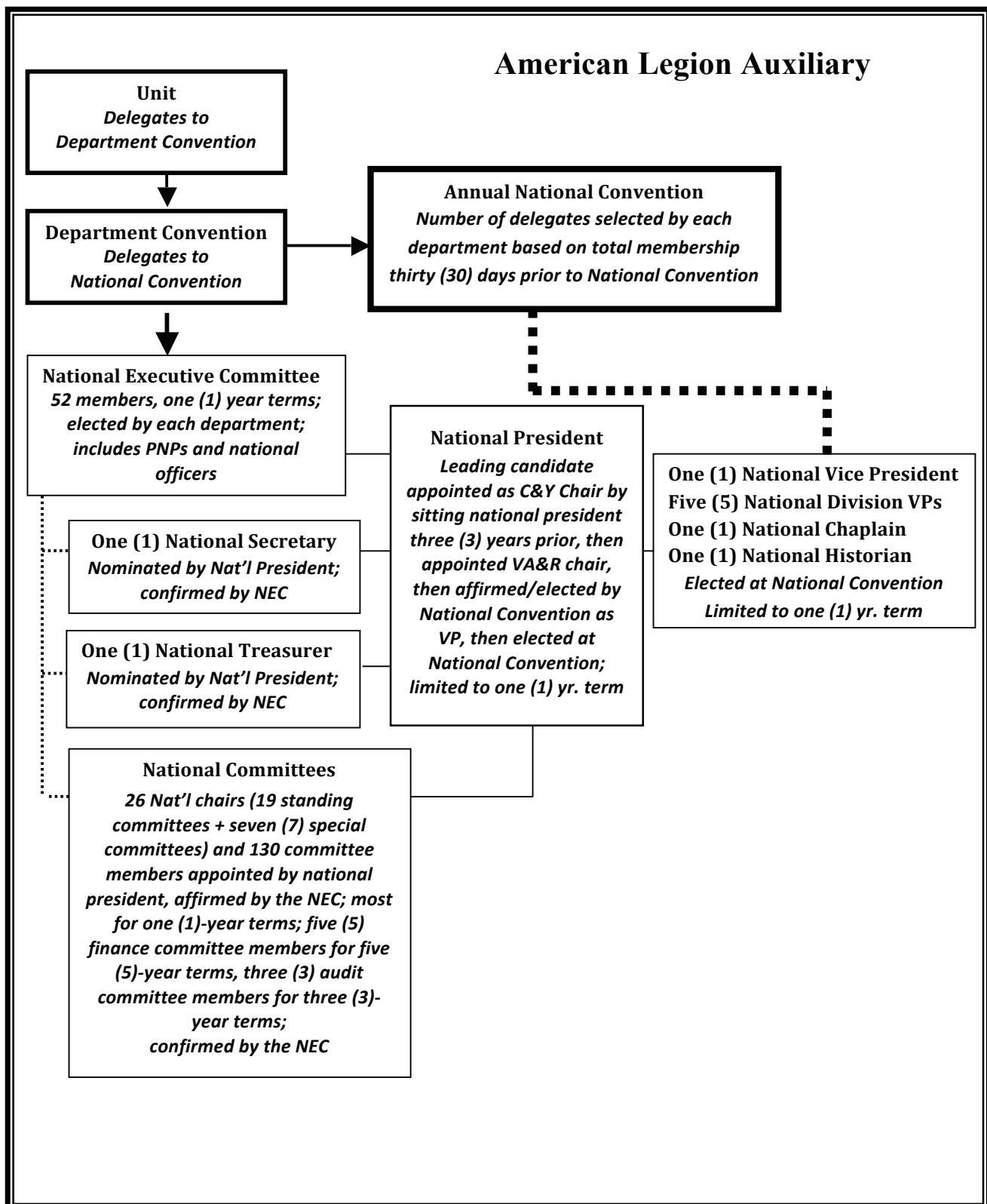
Explanation of the National Governance Structure

The national governance structure chart shows how the democratic grassroots of ALA units is used to elect representatives at the department and national levels. The American Legion Auxiliary is a mission-driven member organization, meaning we come together for the purpose of serving, honoring and supporting veterans, servicemembers and their families. The power to shape and organize the achievement of this mission is held by our members. The ALA's organizational and governance structure was created by our members and exists to support and organize our members to deliver our very worthy mission.

Governance Charts Are Tools for Organization and Common Understanding

The national governance structure chart is a tool that helps explain the configuration and lines of representation in the ALA, and is helpful for understanding relationships in our large and sometimes complex organization. The *Red Book*, updated each year, is the companion to the chart, as it contains the names and contact information of national leaders who fill the roles mentioned on the chart. It is suggested that your department and unit consider creating a governance structure chart and a leadership roster (similar to the *Red Book*).

Since the IRS carefully looks at the governance documents and information describing relationships among an organization's leaders, these items could be essential if your department or unit were to be audited by the IRS.



Units and Departments and the Rights of Members Within the National Governance Structure

The organizational structure chart aptly depicts that the strength of the organization ultimately rests with the community or “grassroots” level – our members who make up this great organization. Because the ALA is so large, however, we have a representative form of governance, not a direct democracy. It is up to departments and units to determine how delegates to the department convention and national convention, and members of the national executive committee (the national organization’s board of directors) will be chosen. Units have the authority to decide for themselves how their own leaders will be chosen. For district/county and department conventions, the department has the ultimate say in how these will be conducted, how many representatives will attend and vote, and other like matters. This information should be contained in department bylaws and, for those districts that are their own separate legal entities, their bylaws should also have the procedures for their own conventions and elections. We are a democratic organization and operate within a parliamentary framework; all elections and rules of representation should reflect this.

Departments, intermediate bodies, subsidiaries, and units may not establish provisions in their constitutions, bylaws, and standing rules that conflict with the ALA National Constitution, Bylaws, and Standing Rules. The ALA national governing documents place no limitation on the rights of members, including the right to aspire to hold office and become a candidate for office in the organization. The only national criteria that apply to members seeking office in the ALA are those regarding membership in general; officers of the ALA should be members in good standing. Departments, intermediate bodies, subsidiaries, and units are advised against placing conditions in their governing documents that infringe on members’ rights to seek elective office in the organization.

Secretary and Treasurer Within the Leadership Structure

The national governance structure chart includes the National Secretary and National Treasurer due to their dual roles in governance and management. As national officers who report to the board of directors, they serve as members of the national executive committee (the national board of directors), having voice but no vote. As management, the National Secretary serves as Executive Director of the national organization and the National Treasurer serves as Deputy Executive Director.

Other staff members of the national organization do not appear on the governance chart because they are not part of governance and are supervised by the National Secretary and National Treasurer. As officers, the National Secretary and National Treasurer are accountable to the National Executive Committee and, as members of the national governing board (NEC), carry out the duties of care and fiduciary stewardship in the best interests of the ALA membership. The National President has the authority to nominate the National Secretary and National Treasurer each year, and the National Executive Committee must confirm the nomination annually.

Should your department have officers that also fill top management positions, such should be noted on your governance chart. Other management/office staff and volunteers who do not have governance roles should not be listed on the governance chart. It is strongly recommended that the department governing board clearly outline the relationship between the board and top management, including the relationship between the department secretary and department treasurer, and approve position descriptions describing major responsibilities and board expectations. The board has no role in the management or job assignments of all other staff; that is the corporate responsibility of management, i.e., the department secretary.

Section 6

Departments and Units and the National Organization

The ALA is a complex organization, with a long and proud history, many levels of organization, numerous committees, thousands of units, hundreds of thousands of members. All levels of the organization operate with an equally complex landscape of laws and regulations that have grown more demanding with time and many of which vary by state. While it is important to understand the particulars – especially if you are a unit or department leader – it is also important not to lose sight of the big picture. We are the largest women's patriotic service organization in the world, made up of more than 8,000 separate entities, unified by a common mission – to honor and support veterans, servicemembers and their families, pride in our American values and heritage, and a spirit of service.

Though we are thousands of separate entities, we also join together in a spirit of cooperation, collaboration, and mutual support.

Understanding What Binds Us Together and What Separates Us as Individual Entities

As a 501(c)(19) organization, the American Legion Auxiliary is a veterans *auxiliary*, forever linked to The American Legion, our founding veterans organization. Organizationally, the national organization is the central organization, with autonomous/subordinate departments and units; units are autonomous/subordinates to departments. Although subordinate to the national organization, each department and unit is a separate legal entity. The subordinate status of departments and units means that they comply with the corporate law and the trademark requirements of the national organization, but they are not individually governed or managed by the national organization. Departments and units are their own organizations with their own boards, elections, money, and programs, and solely liable for their own actions.

The information below describes those areas in which departments and units are autonomous as individual and separate entities, and those areas where there is a responsibility to or reliance on the national organization.

Areas in Which Departments and Units Have Autonomy:

Constitution & Bylaws: Departments and units have their own governing documents; however, a department's constitution, bylaws, and standing rules cannot conflict with the national constitution, bylaws, and standing rules. A unit's constitution, bylaws and standing rules cannot conflict with the constitution, bylaws and standing rules of the department or national organization.

Boards: Departments and units govern themselves, elect their own board members, and decide rules and procedures for elections and governance.

Assets: Departments and units raise and manage their own funds and assets. However, in the case of charter revocation or cancellation, after any outstanding debts are paid a unit's assets revert to the ownership of the department and a department's assets would go to the national organization. If the national ALA goes out of existence, all ALA national assets go to The American Legion national organization.

Liability: Department and unit board members are responsible for governing and meeting legal standards of care. Departments and units have the freedom to make their own decisions regarding governance and operations and are liable for their own actions.

Separate Entities: Departments and units are separate individual legal entities accountable for their own governance, responsible for their own management, and liable for their own actions.

Determination of Individual Membership Eligibility: Units determine who they accept as members based on the organization's membership eligibility guidelines. The American Legion Auxiliary does not discriminate on the basis of race, creed, color, age, or national origin.

Programs and Activities: Departments and units determine the events and programs in which they want to participate and how they will be conducted. The national organization provides information and resource materials on the national website and in national publications, but units and departments are in charge of their own activities.

Areas of Commonality, Dependence on or Supervision from the National Organization:

Mission: Every entity within the American Legion Auxiliary – every department, subsidiary, unit, and intermediate body, is bound to the same mission, values, and purpose: to serve, honor and support our veterans, servicemembers and their families.

Bylaws: Departments and units approve their own Constitution and Bylaws, but the governing documents of a department or unit cannot conflict with those of the National organization; they do not have to be identical, but they cannot conflict with the national governing documents

Assets: Department funds belong to the department and unit funds belong to the unit. However, in the case of charter revocation or cancellation, after any outstanding debts are paid, a unit's assets revert to the department and a department's assets revert to the national organization.

Chartered Entities: Departments are their own separate entities, but each was chartered by the National organization. Units are granted charters from the National organization, but only with the approval of departments. To benefit from the National organization's IRS Group Exemption, intermediate bodies must be chartered by the National organization with the approval of the department.

Membership eligibility: Departments and units must follow the National organization's membership eligibility guidelines. Only females who meet the eligibility requirements may be accepted by units as members.

Group Exemption: All departments and units are eligible for federal tax-exemption through the National organization's IRS Group Exemption Number unless they have subsequently lost tax-exemption due to lack of filing a Form 990 for three years in a row and/or have been independently granted a federal tax-exemption from the IRS.

Trademark: Departments and units must respect trademark laws and abide by the national organization's rules for use of the ALA name, emblem, and trademarks.

Intermediate Bodies: Districts/Counties/Councils

Intermediate bodies between departments and units, often known as districts, counties, or councils, are established by departments and are subsidiaries of the department and wholly accountable to the department. Departments can determine whether they wish to establish intermediate bodies, how they will be organized and constructed, what authority the intermediate bodies will have, and whether they will be constructed similar to internal committees or as separately incorporated subsidiaries of the department. If departments choose to have

districts/counties function as committees, they may not need to be incorporated, and if not, would not have their own tax identification (ID) numbers nor be separate from the department. Regardless, districts/counties/councils report to the department governing board.

If departments choose to create districts/counties as separately incorporated entities, they will have their own charters, bylaws, boards, tax ID number, and requirement to file a Form 990. Separately incorporated intermediate bodies are subsidiaries of the department and wholly accountable to the department. If districts/counties/councils are separate legal entities and handling their own funds, their leaders should be bonded. It is up to the departments to determine if districts/counties must be bonded and who pays for the bond.

Section 7

The Process and Benefits of Incorporation

Incorporation is the process of a business or nonprofit group becoming a corporation. A corporation is a legal, non-living entity – a business or nonprofit organization – that has rights and powers similar to those of people, such as the power to buy, sell and own property, engage in business transactions, and to sue and be sued. When a unit or department becomes incorporated, it does so under the laws of the state where it is located because state and local corporations are defined and regulated by state, not federal, laws. Each state has the authority to establish its own laws regarding corporations; therefore, corporate laws can vary to a degree from state to state. However, all fifty states require corporations to have articles of incorporation, bylaws, and a board of directors, and throughout the country subsidiary corporations must follow the same basic rules as entities accountable to the parent corporation.

Benefits of Incorporation

The most important benefit of incorporation is limited liability, which protects members and employees of corporations from lawsuits against the corporation or a particular member or employee of that corporation. If an incorporated organization or one of its members or employees takes an action that results in a lawsuit, the members and employees of the corporation are generally protected from being sued themselves for damages, unless the person is the primary reason the lawsuit was filed. Organizations are commonly sued when they owe a debt that they cannot or do not pay, one of its members or employees acts in a negligent way that harms someone or something, or the corporation or one of its members or employees does something improper or illegal. In most cases, innocent members and employees of an incorporated organization cannot be personally sued to cover debts and damages of the corporation.

Organizations that are not incorporated (unincorporated entities), might not have the protective benefits of limited liability. If your unit is not incorporated and one of its members incurs a debt or causes damages in her capacity as a unit member, every member of your unit could be held personally responsible. This is true even for members of the unit who had nothing to do with the action generating the lawsuit. There may be other state laws that protect members of **un**incorporated units, but this varies by state and may not provide as much protection as the limited liability for corporations.

Other benefits of incorporation include the increased confidence that donors, government agencies, and members of the public typically have in the capability of incorporated organizations to achieve their mission and therefore may be more willing to donate. In addition, many foundations and government agencies will only give grants to organizations that are incorporated.

Limits of Legal Protection Provided by Incorporation

Although being incorporated affords some protection for members and employees from lawsuits, it does not protect the unit or department from being sued. It is important to remember that departments and units are responsible for their actions and operations, a primary reason why board members should take their legal, ethical and fiduciary responsibilities seriously. In the event that a unit or department acts negligently, owes a debt it cannot pay, or by some other action triggers a lawsuit, the national organization is not liable. In addition, improper, illegal, or unwise actions by a department or unit can result in the loss of its charter.

Costs of Incorporation

The costs to incorporate are generally surprisingly reasonable. Every ALA department is already incorporated. Units or intermediate bodies wishing to incorporate must obtain and complete the proper forms from their state government, including filing articles of incorporation, paying fees (generally these are relatively nominal), and usually filing paperwork with the state government on a yearly basis to remain incorporated. You can lose corporate status if you fail to file necessary state reports and forms after becoming incorporated. Corporate laws and regulations vary by state, so check with your state government for the exact requirements that apply in your state.

Incorporation and Tax-exemption

Incorporation is not the same as tax-exemption. Incorporation describes an organization that is a legal corporate entity. Tax-exemption is a privilege granted by both the federal government (through the IRS) and state governments because each has its own authority to tax individuals and organizations. Tax-exemption is granted to nonprofit organizations that exist to do mission-driven work that benefits the public good – the public at large or a specific group, like veterans.

Is There an Alternative for a Unit That Does Not Want to Incorporate?

There is no alternative to incorporation that affords any protection from liability to the Unit. An organization is either incorporated, or it is not. While there is no requirement for ALA entities to incorporate, the national organization strongly recommends that units and intermediate bodies handling funds do so to protect members from lawsuits. Unfortunately, even individuals and organizations who are responsible and well-intentioned may find themselves being sued. Without the limited liability protection that incorporation affords, all the members of a unit could be put at risk by the actions of one member.

Insurance: Both incorporated and non-incorporated units should purchase as much insurance as needed, based on the recommendation of an attorney or insurance advisor knowledgeable in insurance matters so that you have enough to cover any judgments based on the history of judgments in your state. It is critical to have director's and officer's liability insurance, fidelity insurance, and as much liability insurance as necessary. Please consult an insurance representative for details.

My Unit Has Decided to Incorporate. What Do We Do Now?

Steps to Take in General	EXAMPLE: Steps to Take in Indiana
1. Contact your department headquarters to see if it has assisted other units in becoming incorporated, and/or has helpful information.	1. Contact the Indiana Auxiliary Department Headquarters to see if it can help or has any information to provide.
2. Contact authorities in your state's government for information and obtain the necessary paperwork. States vary, but likely sources of assistance include the secretary of state, attorney general, and/or department of revenue.	2. The State of Indiana requires that organizations desiring to incorporate to: <ul style="list-style-type: none"> A. File articles of incorporation with the Secretary of State; filing fee is \$30 B. File form NP-20A with the Department of Revenue to obtain a tax ID number and exemption from state sales tax. No charge Forms can be downloaded from their websites or contact them by phone to request paper copies. Employees in these offices should be able to answer questions.
3. Consider consulting a licensed legal professional with experience in nonprofit law in your state. You may be able to obtain these services for free on a <i>pro bono</i> basis, or pool your funds with other units to share the cost of professional legal advice. An online search typing in the words: "incorporating nonprofit in ____ (enter the name of your state)" may provide helpful information.	3. You can find lawyers in the public directories; be sure to ask if they specialize or at least have experience with nonprofit law in your state. You can also do a web search for lawyers in your state; www.martindale.com is one example of a website that can help you locate lawyers in your state experienced in particular types of law.
4. Read the directions and complete the required paperwork thoroughly. Pay the necessary fees.	4. In Indiana, the only thing an organization has to do to become incorporated is complete two (2) forms and pay \$30 (step 2). The forms are relatively short and easy to complete.
5. Once you become incorporated, most states will require you to file additional paperwork every year to stay incorporated; otherwise, you may lose your incorporation and other privileges, such as state tax-exemption. Know these requirements and be sure your department/unit files any upkeep paperwork on time.	5. In Indiana, the following forms are required each year: <ul style="list-style-type: none"> A. "Business Entity Report" must be filed with the Secretary of State, cost: \$10 in the mail or \$6 for online submission. B. NP-20 must be filed with the State of Indiana Department of Revenue. There is no fee, but a department/unit that fails to file this form annually will lose state sales tax-exemption.

Section 8

Comparing ALA Incorporated Entities to Unincorporated Entities

	Incorporated Entities: Units, Districts (possibly) and Departments	Unincorporated Associations (UAs): <u>Not Recommended</u> for any ALA entity.
Liability	<p>Generally, members are not responsible for debts or damages incurred by the incorporated unit/department or any of its members. While an incorporated unit/department may be sued to recover debts and damages, if they were incurred through legal action and with proper board oversight in accordance with bylaws, members generally cannot be held liable to pay these debts and damages.</p> <p>Example: A corporation is sued by naming the corporation as the defendant. The corporation officers and governing board (DEC) may also be named because as fiduciary officers they have a high duty to the corporation and must avoid perceived conflicts of interest and bear liability of the corporation.</p>	<p>Members of UAs may be held personally liable—meaning their personal funds may be seized—to pay for debts or damages incurred by the unit or any of its members acting in a capacity as a member of the unit. State laws MAY or MAY NOT provide certain protections to members of unincorporated entities, such as good Samaritan laws and certain levels of limited liability. Check your state laws. An unincorporated association is sued by naming every member as a defendant.</p>
Governance	<p>Corporate law requires corporations to have bylaws, follow generally accepted parliamentary procedure, and have a board of directors. The national organization also requires all chartered units, regardless of incorporation, to have and faithfully follow Constitution and Bylaws similar to its own. Disregarding Constitution and Bylaws can be grounds for charter revocation and possible legal action.</p>	<p>Though not incorporated, chartered units that are UAs are required to have and faithfully follow Constitution and Bylaws similar to those of the national organization. Disregarding Constitution and Bylaws can be grounds for charter revocation.</p>

Comparing Incorporated Entities to Unincorporated Entities in the ALA ...continued

	Incorporated Entities: Units, Districts (possibly) and Departments	Unincorporated Associations (UAs): <u>Not Recommended</u> for any ALA entity.
<u>Separate Legal Entity?</u>	Incorporated units/departments are separate legal entities from their members. Incorporated units/departments have the power as legal entities to independently own, buy and sell property, sue and be sued, and have bank accounts. If an incorporated unit, district, or department is sued, the members of that group generally are NOT liable for debts and damages.	State laws vary, but typically, UAs are not separate legal entities from their members like corporations. Typically they cannot own, buy or sell property, sue or be sued, or have a bank account. Usually members of UAs do not have the protection of limited liability. Additional protections for members of UAs may be available but may require additional paperwork. In terms of the ALA, each chartered unit/department <u>IS</u> a separate, autonomous legal organization, an independent, but subordinate, entity, regardless of incorporation.
<u>Tax-Exempt Status</u>	All chartered groups are eligible for exemption from federal taxes under the national organization's group exemption number, regardless of incorporation. Maintaining federal tax-exemption is conditional on filing some version of the IRS Form 990 annually (e.g. 990-990N, 990T). State tax laws vary. Many states grant exemption from state taxes to nonprofits that are also exempt from federal taxes. Check your state laws.	All chartered groups are eligible for exemption from federal taxes under the national organization's group exemption number, regardless of incorporation. Maintaining federal tax-exemption is conditional on filing some version of the IRS Form 990 annually (e.g. 990, 990N, 990T). State tax laws vary. Many states grant exemption from state taxes to those nonprofits that are also exempt from federal taxes. Check your state laws.
<u>Why Choose</u>	Significant assets, members are active in the community, actively engaging in planning or holding events, conducting significant business, all have the potential to generate debts and damages—even if unintended—and therefore incorporation is strongly recommended for the protection of members and employees. All departments are strongly encouraged to incorporate, regardless of other factors.	Though being a UA may require less paperwork, UA status is not recommended. The paperwork required for incorporation is generally not overly demanding and the danger of personal liability of members in the case of a lawsuit is too great of a risk to take. The national organization strongly recommends that all separate legal entities in the ALA – units, districts/counties where they are separate entities, and departments -- incorporate.

Section 9

American Legion Auxiliary (ALA) Trademark and Emblem Usage

The trademarks “American Legion Auxiliary,” “ALA Girls State,” and “ALA Girls Nation,” plus any variations of these names (e.g. “the Auxiliary”) and the ALA emblem are all owned by The American Legion, but licensed to the American Legion Auxiliary for its sole and exclusive use. As part of the condition for the privilege of using these trademarks, the American Legion National Headquarters (ALANHQ) has been charged with monitoring their use and resisting unauthorized use. By law, owners who do not actively protect and control the use of their trademarks can lose the right to use their trademarks if they fall into common usage. This has happened to several other brands before, like Kleenex. Because of common use, people use the word “Kleenex” as a noun to refer to any tissue and it is hard for Kleenex to distinguish their brand of tissues from other companies. We certainly don’t want our ALA brand to be used as a common term for any women’s organization. We have a proud history, wonderful mission and quality programs and events. We want our brand name to stand out as unique, which is why we have rules to protect our brand.

The Value of the ALA Brand

Beyond the trademark law concern, emblems and trademarks are really the symbolic representations of a brand. The trademark is not just the name of an organization; it stands for all the values, good works, and reputation of all ALA members collectively and individually. When people see or hear the ALA name, they think of the personal experiences they have had with our members and the stories they have heard about us. This makes the trademark powerful and precious.

Protecting the ALA Brand

Because our brand name represents our mission, our people, our values and our good works, and because the ALA uses these trademarks with the permission of The American Legion, the ALA must protect and control the use of ALA trademarks according to the guidelines below. Unauthorized use of any of the trademarks or emblem in a worst-case scenario could result in the revocation of your charter or even legal action.

Remember, we want you to use the ALA trademarks properly and proudly! Please wear and display your ALA merchandise. Tell other people that you are a member, what we do and who we are – tell the ALA story. Just be sure to conform faithfully to the following trademark and emblem usage rules.

Trademark and Emblem Usage Rules

1. Follow the rules for displaying and reproducing the ALA emblem and trademarks described in the Emblem Usage Guide, which can be found on the national website ALAforVeterans.org.
2. These usage rules focus on the American Legion Auxiliary trademarks and emblems, but equally apply to trademarks and emblems of The American Legion, the Sons of The American Legion and The American Legion Riders. The only difference is that requests for permission to use of the Legion, Sons, or Riders trademarks and emblems should be sent by your department secretary to The American Legion national organization. Refer to the emblem usage statement located on the website.

3. Any reference to a specific Legion post or department, Sons squadron or detachment, or Riders chapter in any published material (such as a promotional flyer, press release, etc.) should have the national organization's permission to use the appropriate emblem.
4. Several uses and reproductions of ALA trademarks/emblem require a hard copy letter of permission signed by the national secretary. It is against the law for an individual or company to reproduce or create any manufactured items containing an ALA trademark/emblem without a signed letter of permission from the national secretary, including:
 - Any article of clothing
 - Mugs, plates, or any item of dishware
 - Jewelry
 - Printed/manufactured posters, banners, and signs
 - Any new graphic or logotype that includes the ALA emblem or trademarks, such as an ALA Girls State design
 - Unit or department website designed or maintained by a non-member third party (such as someone paid to design a website for the unit/department).
5. ALA trademarks/emblem may be used without the written permission of the National secretary in routine, ordinary and official unit/department correspondence and publications where there is no alteration to the official emblem and all trademark rules are followed. Such materials must be either authored or approved by unit/department leadership (including department secretary) and include:
 - Unit/department publications (e.g. pamphlets, handbooks)
Notices and flyers
 - Press releases
 - Place cards
 - Letterhead for unit/department written correspondence
 - Business cards
 - Unit/department emails (or emails of unit/department leaders or employees)
 - Electronic newsletters.
6. Use of ALA trademarks/emblem on unit/department websites and social media sites (like a Face Book group page) *where ALA members or employees maintain the site* may receive permission through an email from the national secretary in place of a printed permission letter.
7. For those flyers, letters, emails or press releases produced by the ALA at any level and which include American Legion Auxiliary trademark(s) and other organizations emblems, such as in those cases when your unit/department is co-sponsoring an event, no permission letter is required from the national secretary. You may need permission to use the other organizations emblem, **IF**:
 - The event promotes and is consistent with ALA mission and values, AND
 - Unit/department leadership have seen and approved the materials.

For those flyers, letters, emails or press releases produced by another vendor which include ALA name ALA trademarks, and/or emblem, written permission is required from the national secretary.
8. Products purchased from National Emblem Sales do not require a letter of permission from the national secretary, as these items are already manufactured with official approval of TAL. All

other third party vendors must first obtain permission from the national secretary for production or manufacture of items containing ALA trademarks or emblem.

9. Products carrying the ALA trademarks and emblem should be American-made if possible. Given today's complex economy where different parts of manufactured items are made in different places and where obtaining 100% American-made can be impossible or unreasonable, the national organization seeks to purchase American-made merchandise where at all possible and its units, districts/counties, and departments are encouraged to do so also.
10. Directions for submitting requests for a permission letter:
 - Please send your request for permission to your department secretary. Requests sent directly to the national organization from members will be returned.
 - Include the following information:
 - Description of item and how many will be produced;
 - Producer/manufacturer name and contact information including phone;
 - Intended use for the item (e.g. sale at a department convention).
 - Any requests approved by the department must then be sent to and approved by the national secretary.
 - If approved, a letter authorizing usage of trademarks will be sent directly from national headquarters to the producer/manufacturer.
 - Copies of permission letter will be sent to department headquarters and the member making the request, if she requests one.
11. Specific directions for department secretaries when submitting requests for permission to use ALA trademarks/emblem:
 - Remember to communicate your approval when you forward the request to the national secretary.
 - Please note the request in the subject line with a format like this: "Emblem Use Request—Dept. of ____."
 - Please copy the national secretary's assistant on all permission request correspondence.
 - A list of vendors in your department using the ALA emblem must be sent to the national secretary each year. At the start of your fiscal year, please email an updated list of all producers your department is using/has recently used.
 - Any time you want to use a new vendor not already on the list, please email an updated vendor list including the new vendor's name and contact.
12. Any new productions require a new letter of permission, even if the production has been approved before. For example, if you have a vendor make 100 T-shirts that sell out and then want to make 100 more, you will need a separate letter of permission for both orders, even if the T-shirts are made by the same vendor.
13. Individual use of ALA trademarks and emblem by members is restricted to the possession and use of clothing, jewelry and other items bearing the ALA trademark and emblems that were produced either by National Emblem Sales or another manufacturer approved by the national secretary.
14. In those cases where a permission letter is required for use, whether or not the items will be sold does not matter and whether or not the producer will be paid or is a volunteer does not

matter. Permission must be sought for the uses described above even if no money changes hands.

15. “American Legion Auxiliary” or “ALA” must precede all uses of “Girls State” or “Girls Nation.” That is, any item bearing the name of either of these programs should read “American Legion Auxiliary Girls Nation,” for example, or “American Legion Auxiliary Magnolia Girls State.” The ALA name should always precede these programs in writing.
16. The availability of ALA trademarks and emblem in electronic format, such as on the national organization’s website or in electronic correspondence you may see or receive, does not constitute permission to reproduce them, such as by using a “copy and paste” function. For any electronic publishing of material, please follow the above usage guidelines.
17. For emblem use on grave markers, please see the ALA Emblem Usage Guide for details.
18. For questions about proper usage or submitting request letters, please consult your department secretary who will pass them on to the national secretary if she is unable to provide an answer.

Section 10

Quorums

What Is a Quorum?

A quorum is the minimum number of members of a board or committee required to be present at a meeting in order to conduct business. What constitutes a quorum can be defined in an organization’s governing documents as either a percentage or a specific minimum number of members that must be present to take action on behalf of the board or committee.

What if Our Governing Documents Do Not Define What Constitutes a Quorum?

The number or percentage that constitutes a quorum for your department or unit should be specified in your governing documents. If your bylaws or standing rules are silent on what constitutes a quorum, then the department/unit may create a standing rule to define a quorum.

What Is the Best Number or Percentage of People to Make Up a Quorum?

Robert’s Rules of Order Newly Revised defines what a quorum is, but purposefully does not provide a specific number or percentage because the minimum number or percentage needed can vary based on what is practical for an organization. An organization’s membership or governing body must determine what constitutes a quorum for that organization, board, or committee. Many groups, particularly legislative bodies, define quorums as a majority plus one, but that may not be practical for your department or unit. Whatever quorum the governing body establishes should reflect the level of attendance that you can reasonably expect during most meetings.

For example, if a majority of members is unlikely to attend a board or committee meeting based upon past attendance, then defining a quorum as a lower percentage, e.g. 33% or 25%, is acceptable. It is also acceptable to establish the criteria for a quorum as a certain minimum number of members that must be present, or a percentage of the members of the executive or governing board, or a majority of the top officer positions.

Section 11

Non-Partisan Nature of the American Legion Auxiliary

Article II, Section 2 of the National Constitution states that the “Auxiliary shall be absolutely non-political and shall not be used for the dissemination of partisan principles nor for any promotion of the candidacy of any person seeking public office or preferment.” This means that ALA members, in their role as members, should not support or endorse in any way a candidate for political office. This does not mean that an ALA member cannot participate in the political process, but she cannot do so while identifying herself as a member of the ALA, while wearing ALA merchandise, or while at an ALA event. ALA members may participate in political and campaign activities in their own time as individuals. The ALA as an organization should in no way be associated with endorsing, supporting, opposing, or otherwise commenting on any particular candidate.

That being said, there are some very legitimate activities in the political and civic process in which ALA members, units, and departments are encouraged to engage, as long as they are non-partisan and do not support, oppose, or otherwise comment on a particular candidate. These kinds of activities fall under our mandate to advocate for veterans and their families, promote Americanism, and foster good citizenship and patriotism.

Examples of Political, Civic and Americanism Activities That Are Acceptable and Encouraged:

1. **Hosting a voter registration drive, such as at a high school, town hall, or senior center:** Voting is a right and privilege for which our veterans have sacrificed much to protect. Educating Americans about voting and encouraging them to register is consistent with our mission. Comments regarding particular candidates or parties and discrimination toward citizens who declare allegiance to a certain party are not.
2. **Celebrating patriotism, teaching flag etiquette, educating about American history and civics:** All of this is acceptable and encouraged, as long as there are no partisan remarks or actions relating to a particular candidate. Historical statements of facts, such as “President Lincoln was a member of the Republican Party” are completely acceptable.
3. **Hosting a debate or speech for candidates running for office:** Helping members of The Legion family or general public learn more about candidates for a particular race is an important part of voter education and engagement but must be carefully executed. If candidates are hosted to speak regarding their views, each candidate should be given a fair and equal opportunity to speak. If a debate, all candidates should be invited to attend, asked the same or similar questions given their backgrounds, experiences, and policy positions, and be given the same amount of time to answer questions. If candidates are invited to speak alone before ALA members, all candidates for that office must be given this opportunity on the same basis and with the same advanced notice in order to be fair and unbiased. Remember, the ALA cannot support, favor, oppose, or otherwise comment or take a stance on the candidacy of any person or party.
4. **Inviting an elected official to speak at your meeting or convention:** If the elected official is not currently running for office and the subject of their speech does not focus on why they should be re-elected or is partisan in nature, it is perfectly fine to invite elected officials to speak before your members at a convention, meeting, event for veterans, or other occasion.
5. **Advocating for veterans:** Issue advocacy is different than partisan campaigning. Issue advocacy is raising your voice to support a particular law or idea, not a candidate or party.

The ALA is committed to supporting the legislative positions of The American Legion, which can be found on their website or by contacting the Legion's department headquarters in your state. You are encouraged to call your elected leaders, write a letter to the editor, pass a unit/department resolution, or to speak up in public to voice your support of Legion legislative positions. If you disagree with a position the Legion takes, of course you may voice your opinion to the contrary as a private citizen but not as a representative of the ALA. In such case it is recommended that you do not wear ALA clothing or jewelry so you are not mistakenly identified as an ALA spokesperson.

Unusual Situations

Running for One Office While Holding Another, Staff as Delegates

Prospective officers for departments and units should first remember the hierarchy of the organization. The national organization of the ALA is the central organization with the units and departments being autonomous and subordinate to the national organization. The National organization invokes certain requirements to protect the name and trademarks of the organization, but does not exercise day-to-day control. Units and departments, as subordinate, autonomous groups, are responsible for their own programs, operations and decisions.

With that said, an individual that currently holds a department or unit office and wishes to run for another office must, in most cases, resign one office before she can run for the second office. A huge conflict of interest exists if an individual attempts to run for an office that would result in the individual reporting to ones' self.

Example 1: A department historian recording the history of the current ALA administrative year reports on the activities of the president and vice president. If she runs for department president against the vice president, she compromises her ability to perform her current duty to impartially record the history that centers around the very person she is running against. A conflict is created that is best resolved by resigning as historian.

Example 2: If a department historian runs for a national office, no conflict exists because the offices have two different origins.

Example 3: ALA employees may not be delegates or run for any office at any level since these employees serve the entire organization. To run for office as an employee constitutes a classic conflict of interest because employees are part of the management of the organization that implements the rules and budget adopted by the governance of the organization. That violates the core governmental principle of separation of powers – executive vs governance.

A department's governance bylaws or rules should not require that a department secretary who serves as the department's compensated administrative executive seek that position by competitive election. For example, the national secretary and national treasurer are employees of the national organization **and** are officers of the corporation. Their positions as officers of the corporation are confirmed by the National Executive Committee, but they do not **run** for their officer positions.

Before attempting to run for a second office while holding a current elected office, individuals are advised to double check the reporting hierarchy and, if in doubt, contact the department secretary who can refer the question to the national secretary if necessary.

Nonpartisan Behavior

The ALA was established as an Auxiliary to The American Legion, a Congressionally Chartered organization, in 1919. As part of the American Legion's charter, they are inherently required to be neutral in the area of politics; therefore, so too is the ALA. While our many programs and civic and patriotic activities may lead us toward one personal opinion or another regarding a particular issue or candidate, we must never lend support to any candidate while representing the ALA. To do so not only jeopardizes the tax-exempt status of the ALA but also of the American Legion.

For example, during a political campaign, an ALA member/unit, who believes Candidate A can advance the organization's programs, invites Candidate A to speak at the next unit meeting. This can only be done if all candidates running for the position are also invited to speak at the same time and in the same manner to share their viewpoints. To only invite one political candidate running for an office shows favoritism and is in direct conflict with the American Legion's Congressional Charter. To invite one candidate with sufficient advanced time to properly schedule her talk while not giving the other candidates the same opportunity also shows favoritism. All candidates should receive the same advanced notice to properly schedule her/his invited attendance. If attending a political event rally, or parade, an ALA member should **NOT** wear her pin, cap or other regalia that identifies her as a representative of the American Legion Auxiliary.

Note: American Legion members are to remove their caps, pins, and other regalia that identify them as representative of The American Legion. Remember, the public and media have a tendency to assume that members wearing Legion and Auxiliary regalia are doing so as official representatives of the organization even if the individuals clearly state that they are not attending in an official capacity.

Members are advised to separate their personal political ideas/agendas from the ALA unit/department. For instance, if a member is working at the polls for a political candidate, that member is advised not to wear their ALA/Legion cap, pin or other such recognizable emblems so that no one can conclude that the ALA/Legion is actually supporting that particular candidate. Members, units and departments are expected to remain nonpartisan in all situations while representing the ALA/Legion.

If attending a political rally or parade, the ALA member should NOT wear her pin, cap or other regalia that identifies her as a representative of the Auxiliary.

FREQUENTLY ASKED QUESTIONS (FAQs)

FAQ 1: The Need for a Unit to Incorporate

Should we seek incorporation at the state level or are we protected by the federal exemption status that the ALA has as 'national' organization? We were discussing this because the question of legal liability was brought up and we would like to know if we are protected as a unit.

RESPONSE: The American Legion Auxiliary's Counsel General, the National Judge Advocate, advises units that handle money be incorporated in order to mitigate potential risk exposure of the unit's members.

Incorporation provides legal protection for an organization by limiting the liability of the individual members of the organization. The American Legion Auxiliary's Counsel General strongly recommends incorporation. It should be noted that the act of incorporating as a not-for-profit corporation does not automatically confer tax-exempt status. A not-for-profit corporation may exist and operate according to the purpose of its articles of incorporation without being tax exempt. Also, if a not-for-profit corporation loses its tax-exempt status, it may still otherwise continue its operations; however, it must pay appropriate federal, state and local taxes, and donations it receives are not tax-deductible to the donor.

Information referenced in the Appendix can assist your unit in understanding its obligations for a) Operating as a tax exempt not-for-profit corporation permitted to use the name and trademarks of the American Legion Auxiliary, and b) Filing an annual IRS Form 990 American Legion Auxiliary (ALA) departments and units are separate entities that operate independently as affiliates of the ALA national organization.

All ALA entities – units, departments and districts/counties/councils – are permitted by the national organization to use the name and trademarks of the American Legion Auxiliary and must comply with the national legal requirements for use of same. As independently operating not-for-profit corporations, departments and units must duly report to their respective state governments and to the federal government via the IRS Form 990. Departments, districts/counties/councils and units that have maintained their exempt status by complying with IRS requirements and that are in good standing are tax-exempt under the ALA National Organization Group Exemption Number (GEN).

Therefore, by virtue of the American Legion Auxiliary National Organization Group Exemption, ALA Departments and Units that have not had their tax exempt status revoked by the IRS or that have not obtained a separate tax exempt number via a Letter of Determination from the IRS fall within the Group and are tax exempt under Section 501 (c) (19) of the Internal Revenue Service Code.

The purpose of the IRS federal group exemption is to exempt the American Legion Auxiliary National Organization and those falling under the ALA's National Group Exemption (GEN 0964) from federal income tax. The Auxiliary at all levels is otherwise subject to other federal taxes such as payroll taxes and tax on unrelated business income. Units, departments, and departments and districts/counties/councils may also be subject to certain state and local taxes, including hotel, hospitality, service, and sales taxes. All states are different; be sure to consult with a tax adviser knowledgeable about your state's not-for-profit tax requirements to determine if not-for-profit organizations in your state are afforded any state tax exemptions.

The federal TIN/EIN does NOT indicate tax-exempt status. An organization can be incorporated as a not-for-profit and have the required TIN/EIN but still NOT be tax exempt. The IRS's discretion to grant not-for-profit exemption from paying federal income taxes is an entirely separate federal filing and determination process. For units, departments and

districts/counties/councils, the ALA National Organization Group Exemption provides tax-exempt status unless the IRS has specifically revoked a Unit's or D/C/C's exempt status.

Both the federal TIN and the federal EIN are unique 9-digit identification numbers. If units, departments, or departments and districts/counties/councils have or will have employees, an EIN is required; otherwise, a TIN is sufficient. While units, departments, and departments and districts/counties/councils are strongly advised to incorporate, the units, departments, and departments and districts/counties/councils should apply for and obtain a TIN/EIN whether or not incorporated. Each TIN/EIN is on file with the IRS and should be used on all tax returns and correspondence, and should be retained permanently for ready reference.

Please see related documents in the appendix for additional guidance.

FAQ 2: Districts/Counties/Councils

Has there been a change in how the ALA National organization accounts for the ALA Districts/Counties/Councils (D/C/C)?

RESPONSE: Yes, the American Legion Auxiliary National Constitution & Bylaws AMENDMENT adopted 8/28/2012 amended the National Bylaws, Article 1, Organization, Sections 3 and 4 to grant discretionary authority to departments to create intermediate bodies between the units and department (commonly known as districts/counties/councils).

Section 4. Departments shall have authority to create intermediate bodies between the Units and Department to act as a liaison between such organizations and for the purpose of promoting the programs of the American Legion Auxiliary.

*Note: Revisit your ALA Department Constitution and Bylaws regarding the department's recognition of districts, counties, councils. Make sure the department's bylaws grant the department governing body the authority to establish ALA D/C/Cs.

FAQ 3: I don't completely understand what subsidiaries to the department are. I have been told that our Girls State program IF it is incorporated – and IF a district is chartered, they also become subsidiaries. Are there any other occasions when a department would have a subsidiary?

RESPONSE: Subsidiaries are incorporated entities created by a department. Subsidiaries are permitted to use the name, emblem, and/or trademarks of the ALA provided they comply with the five (5) rules of a subsidiary as explained previously. Examples of a department subsidiary organization include districts, counties, councils; ALA Girls State programs; ALA fundraising arms such as ALA thrift stores, ALA income-generating enterprises, and ALA foundations.

FAQ 4: Our ALA District/County/Council (D/C/C) has an EIN. Does that mean our ALA D/C/C is incorporated?

RESPONSE: No, obtaining a Tax Identification Number/Employer Identification Number (TIN/EIN) does not incorporate, nor legalize your ALA District/County/Council to conduct business as a separate entity with the related benefits and protections of incorporation. The state in which your department exists is where you would initiate the incorporation of your ALA District/County/Council to legalize the organizational structure. Visit your state government website for guidance, as each state varies regarding nonprofit incorporation and registration.

FAQ 5: What does incorporated mean?

RESPONSE: An incorporated organization has filed the required federal, state and local government paperwork to create and register the organization as a separate legal entity for conducting business and is recognized by the federal, state and local government.

FAQ 6: How do we become incorporated?

RESPONSE: The proper steps to lawfully organize your ALA District/County/Council vary from state to state as to the incorporation and registration process. The first step is to determine your state requirements. *Seek professional advice regarding the lawful establishment of your organization's structure. "Incorporation" is a term for classification purposes. The answers to these FAQs do not constitute professional advice by the ALA National Organization. See Section 7 for details*

FAQ 7: Is the national Girls Nation incorporated?

RESPONSE: American Legion Auxiliary Girls Nation is not a separately incorporated entity. ALA Girls Nation is a program of the national organization, operated by the National organization, and therefore wholly accountable to the national organization as a program. There is no need for ALA Girls Nation to be separately incorporated. The ALA Girls Nation program is nationally trademarked by The American Legion who owns the names and all trademarks of American Legion Auxiliary Girls State. The program functions as a national committee comprised of nine (9) committee members serving one-year terms, whose chairman serves as the director of ALA Girls Nation.

With the establishment of the American Legion Auxiliary Foundation, there is no longer a need for any department's ALA Girls State program to be separately incorporated. Funders limited to donating only to a 501(c)(3) corporation and who wish to award grants or donate funds to a department's ALA Girls State program may donate the funds or award the grant to the American Legion Auxiliary Foundation – a 501(c)(3) corporation – and the Foundation will in turn sub-grant the funds to the department in keeping with the donor's intent. The national ALA Foundation eliminates the need for departments to assume the burden of managing a separate subsidiary whose reason for existence can solely be to raise funds for the program, since a department's ALA Girls State program is wholly accountable to the department, whether separately incorporated or not.

A separately incorporated ALA Girls State program must comply with the five (5) rules of a subsidiary as provided in the *National Standing Rules, Section VIII, Department Subsidiary Corporations*.

FAQ 8: Do all of the other Girls State programs fall under the blanket of the incorporation for National?

RESPONSE: A department's ALA Girls State program that is not separately incorporated is a program of the department and operated by the department. An ALA Girls State program that is not incorporated therefore is tax-exempt the same as the department which falls under the National ALA's IRS Group Exemption Number (GEN).

As stated above, a separately incorporated ALA Girls State program is a subsidiary of the department and is wholly accountable to the department. An ALA Girls State program does not need to be incorporated; indeed, with the advent of new IRS regulations and corporate trademark protection, Counsel General does not advise a department's ALA Girls State program be separately incorporated.

A department does have the authority and the discretion to create – or not create – subsidiary organizations. They are wholly accountable to the department. The department's governing body may establish in its bylaws or rules any other designations, requirements, or restrictions on a subsidiary organization. The department must establish its rules (bylaws, standing rules, and/or policies) by action of its governing board or department convention, in keeping with the

department's own governing documents (Constitution, bylaws, standing rules). Keep in mind, that American Legion Auxiliary Girls State is a trademarked program and must operate within the federal rules established by patent and trademark laws.

For further information on ALA Girls State, please refer to the *ALA Girls State Program and Operations Guide (May 2012)*, which states “some ALA Girls State programs are incorporated as a separate legal entity from their Auxiliary department, and other ALA Girls State programs are run by the Auxiliary department. Regardless of whether an ALA Girls State program is separately incorporated or not, the ALA Girls State program is subordinate to and accountable to the department, and the relationship between the ALA Girls State program and the Auxiliary department should be clearly defined. A separately incorporated ALA Girl State program is a subsidiary of and subordinate to the Auxiliary department. While a separately incorporated ALA Girls State program may have a separate board of directors and Articles of Incorporation, the Auxiliary department must maintain certain controls over the ALA Girls State program in order to preserve the American Legion Auxiliary's trademarks and comply with corporate law.”

“Each program's operations fall under the purview and oversight of the department and the department's governing body. The department executive committee or governing board must approve or confirm the department's ALA Girls State board and/or directors, its budget and financial reports and statements, and ensure that the program has appropriate policies in place that avert risk and exposure to liability. Every ALA Girls State program should inform the department about major dates and events connected with its ALA Girls State program.”

“While some ALA Girls State programs operate within their departments as separate 501(c)19 or 501(c)3 corporations, these programs are still trademarked extensions of the American Legion Auxiliary organization and of the department which is the authorized entity within the organization. As such, “American Legion Auxiliary Girls State” is a trademarked program and must operate within the ... federal rules established by patent and trademark laws.”

FAQ 9: What does “TIN / EIN” mean?

RESPONSE: The TIN / EIN is the numeric identifier assigned by IRS and used for reporting business activities at both the federal and state levels. TIN stands for tax identification number. EIN stands for employer identification number. They essentially are the same thing.

FAQ 10: Are districts/parishes, etc. in a state required to be chartered? I know that our 8 districts have their own EIN numbers for their bank accounts.

RESPONSE: The American Legion Auxiliary National Bylaws Article I, Organization, Section 4 grants departments the “*authority to create and charter intermediate bodies between the units and department...*”. Counsel General recommends all intermediate bodies be incorporated to protect the officers of the intermediate body. Intermediate bodies must be chartered to be eligible to use the national Auxiliary's IRS Group Exemption for federal taxes.

For further information on chartering intermediate bodies, please see the attached Tax, Bond, Districts/Counties/Councils information that is provided to every department at the annual Department Leadership National Conference.

Other than an ALA unit, any organization that uses the name and emblem of the ALA and which is incorporated in the same state as the department (or DC or Puerto Rico) is a subsidiary organization to the department, whether incorporated as a for-profit or not-for-profit organization. A department's subsidiary organizations may include districts, counties, councils; ALA Girls State programs; ALA fundraising arms such as ALA thrift stores, ALA income-generating enterprises,

and ALA foundations. All subsidiaries are accountable to and subordinate to the department and must follow the rules as provided in the ALA National C&B.

An intermediate body – i.e. a district/county/council/parish etc. – can be incorporated as a 501(c)19. There are many ALA subsidiary organizations, including a few districts, counties, councils etc., that incorporated as 501(c)(3) corporations for the purpose of raising funds, since many foundations and corporations restrict donations to only 501(c)(3) corporations.

Please note that an incorporated intermediate body is indeed a subsidiary corporation to the department and is therefore fully accountable to the department and must comply with the five rules of a subsidiary as provided in the National Standing Rules, Section VIII, Department Subsidiary Corporations.

FAQ 11: How does an ALA D/C/C apply for an ALA charter?

RESPONSE: A separate application and instructions for ALA districts/counties/councils has been published by the ALA national organization and made available to each ALA department or via the ALA national website (www.ALAforVeterans.org). Submission of your application for an ALA D/C/C charter initiates the process by the ALA Department. The ALA department submits the application to ALA National Headquarters, Membership Division, for processing.

In the interest of time and convenience, the ALA National Headquarters will not impose a processing fee for the ALA D/C/C charter applications in Fiscal Year 2013 & Fiscal Year 2014.

FAQ 12: When does an ALA D/C/C need to submit its Charter Application?

RESPONSE: The ALA National Organization requires all NEW charter applications be completed by April 30th of each year for the listing and inclusion of ALA chartered organizations in the June 30th annual report submitted to the IRS for the ALA National Group Exemption.

Please note that the process is ongoing and the ALA National organization will submit a Group Exemption inclusion letter after each charter application is processed and an ALA National Charter has been issued.

FAQ 13: Why does our ALA D/C/C need to be concerned about trademark protections?

RESPONSE: The American Legion (TAL) owns the name, emblem and trademarks of the American Legion Auxiliary (ALA). The ALA is required to authorize and control the use of the ALA's name, emblem and trademark. Permission for affiliated chartered organizations to use the name and marks of the ALA must be granted by the national secretary in keeping with corporate law and federal regulations.

FAQ 14: I have been asked by an Auxiliary unit if the American Legion of their post has the authority to prevent an Auxiliary member from attending the Auxiliary meeting. The American Legion Constitution and Bylaws indicate that The American Legion will not interfere with the Auxiliary.

RESPONSE: You are correct that according to the national bylaws of both The American Legion and the ALA, the two organizations are separate and neither has authority over the other. A Legion post does not have the authority to determine who may attend an ALA meeting. A post's private social club, as a separate business enterprise, may control who is allowed to patronize the social club, but the post has no authority over who may attend an ALA meeting that is not held on Legion property.

FAQ 15: One of our Units would like to know what their liability is to the post when it comes to funds. The Unit has \$30,000 in CDs that is money they have saved from fund raisers for scholarships, poppies, Girls State and other designated programs. The post is having financial difficulties and wants them to give them this money. Some of their members think it would be okay to do this and others think they would be defrauding the people that had gotten the money for the above programs. The members of the post are telling them they are to support all the post activities no matter what and need the money to save the post (the bar has drained the Legion funds) and they are demanding this money. They have asked for the official opinion from the National Judge Advocate and asked me to contact him for them. Can you please forward this or advise me as to whether you feel this would be fraud or not and what their responsibility is when it comes to this kind of project. They really want to know if it would be "fraud" to give up this money. I told them they were under no obligation to give up their savings to the post, but I did not know it could be considered defrauding the public for taking this money for one thing and spending it on another. Please advise.

RESPONSE: This is addressed in the ALA National C&B and SRs. Units and posts are separate entities. Neither has authority or control over the other.

Via a prearranged agreement between both parties, a unit may agree to pay a post for specific stated purposes such as meeting expenses or use of space, but otherwise a post has no authority to demand money from a unit. An ALA department/unit is not responsible for a Legion department/post's debts and has no liability for same and vice versa.

Donations received by any nonprofit are to be used in keeping with the donor's intent and may not be used for any other purpose. If donors contributed to the ALA at any level for a specified purpose, such as scholarships or a service program, the ALA entity cannot use that money for any other purpose.

If an ALA unit is not going to use the collected funds for the purpose for which they were collected, the unit must return the funds to the donors or may only use them for a like purpose (e.g., another scholarship or a similar service project). It is fraudulent for any ALA entity – national, department, intermediate bodies, subsidiaries, units, et al – to use funds that were collected for a specific charitable mission purpose for any other purpose.

FAQ 16: We have in our County Standing Rules that in order to advance to County Vice President, you must have served as a Unit President. The other day I was at a meeting where it was stated this is against National. I know it would be wrong to have it in the C&B, but I thought the S/R could have this. Please give me an answer.

RESPONSE: Departments, intermediate bodies, subsidiaries, and units may not establish provisions in their constitutions, bylaws, and standing rules that conflict with the ALA National Constitution, Bylaws, and Standing Rules. The ALA national governing documents place no limitation on the rights of members, including the right to aspire to hold office and become a candidate for office in the organization. The only national criteria that apply to members seeking office in the ALA are those regarding membership in general; officers of the ALA should be members in good standing. Departments, intermediate bodies, subsidiaries, and units are advised against placing conditions in their governing documents that infringe on members' rights to seek elective office in the organization.

FAQ 17: In our department C&B it states that the Judge Advocate serves as our Counsel General. He told us he is not going to do it. He doesn't have the time and does not care what our C & B says. What would you suggest? We figure we have to hire a lawyer.

RESPONSE: Your department Constitution & Bylaws cannot conflict with those of the national organization, nor can they conflict with the Legion's. You need to determine what your Legion department C&B states. If their governing documents are silent on their department judge advocate serving as counsel to the Auxiliary, then you have no grounds or standing by which you can protest your Legion department Judge Advocate's decision. Your department has an unenforceable provision. That does not make it an invalid provision – just an unenforceable one. Lawyers can refuse clients – it happens all the time.

The practical effect of this provision in your bylaws stating that the department judge advocate shall serve as the Auxiliary's department counsel is that this is the ALA department's mandatory first choice. If your mandatory first choice does not accept, then the department governing body has a fiduciary responsibility to ensure that the department has the necessary services of legal counsel, whether that is executed by engaging an attorney on a retainer fee basis or selecting legal counsel as needed.

FAQ 18: If a district president is not fulfilling her responsibilities and is sending out letters to members about her unhappiness in the department Auxiliary can she be removed? But not expelled from the Auxiliary. Would it be the same as removing a unit member?

RESPONSE: As provided in the ALA National Bylaws and Standing Rules, departments have the discretion to establish intermediate bodies for the purpose of assisting the department to advance its programs. Districts are subordinate to the department. A district/county/council exists at the discretion of the department, as authorized by the department, is administratively subject to the department, and is totally under the department's jurisdiction.

If a district officer is not fulfilling her responsibility, the department governing board (for most departments that is the DEC) has the authority to discipline or remove an officer who is not fulfilling her responsibility provided that due process is followed as described in the ALA national Standing Rules. Please consult the ALA National C&B and Standing Rules for further guidance as your department considers its options.

Trademark and Emblem Usage: FAQs

All requests for the use of trademarks and emblems, other than the use of the ALA emblem as a standalone image without any other detail, must include a picture or image of the design.

FAQ 19: Without my prior knowledge, some of my department's members have purchased T-shirts with the ALA emblem and trademark and are selling them for a unit fundraiser. I don't know where they purchased the merchandise, but have been told it was from National Emblem Sales. Is this a violation of ALA trademark usage rules and what do I do as a department leader?

RESPONSE: If the manufacturer is not National Emblem Sales, the production of any merchandise containing the ALA emblem requires a letter of permission from the national secretary. Any fundraising event needs to have the approval of the executive committee (board) of the unit/department that is running the event and must comply with all state and local laws. Sale of ALA merchandise should be carried out in accordance with unit/department policies and procedures including conflict of interest policies and utilize proper cash controls (such as two people counting all cash collected from sales). If any doubt or questions arise, the department should seek advice from the department and/or national secretary.

FAQ 20: Department Juniors want to buy T-shirts with the ALA trademark and logo, tie dye them, and then sell them as a fundraiser for buddy kits for the children of soldiers who are deploying in our department. Is a permission letter required from the National Secretary?

RESPONSE: If you use a private vendor to manufacture the shirts, you need to secure a permission letter. Also, because the Juniors plan to alter the shirts—that is, they want to tie dye them which can alter the appearance of the ALA emblem and trademark, a letter of permission from the national secretary is required. Remember, any fundraiser sponsored by your department (or a group thereof, in this case, the Juniors) must be approved by your department's board and fundraisers must follow relevant state and local laws and best practices, including financial controls and conflict of interest policy.

FAQ 21: The department ALA Girls State Committee wants to design a new logo for the GS program this year which includes the ALA emblem and trademark as well as the state flag and American flag. This logo will be used in our promotional materials and other items like T-shirts for the participants. What does my department need to do to properly comply with all trademark regulations?

RESPONSE: Any alterations to the ALA emblem or trademark, even if they follow the proper rules such as providing space around the emblem, require a letter of permission from the national secretary. Members of your Girls State Committee should submit a request for approval to the department secretary. If the department secretary approves, she should forward the request to the national secretary for her approval. In order for the national secretary to approve the Girls State design, a permission request must be submitted that includes a clear list of all uses of the logo, including for merchandise, publications, place cards, banners, etc. For materials that are to be produced by a manufacturer, the permission request must have all the necessary information including the vendor name and item description, number, and use. There are a large number of very technical rules, which can apply. A convenient form for requesting the National Secretary's approval to use the emblem can be found on the national website, ALAforVeterans.org

FAQ 22: A unit in my department wants to issue a press release for a stand down they are holding in conjunction with the Legion post, Sons squadron, and Riders chapter. Do we need to get a permission letter to issue the press release?

RESPONSE: What a great example of Legion family unity and collaboration to serve veterans! It is also great that the unit is engaging the press and telling The Legion Family story. For use of ALA trademark/emblem in an official unit press release, no permission letter from the national secretary is required. Because you are referencing the Legion post, Sons squadron, and Riders chapter in the press release, however, you should definitely have them approve a copy before sending it out. While the national organization does not require you to get department approval for such use, it would be a courtesy to provide your department headquarters with advance notice and a copy of the press release for its records.

FAQ 23: The department convention is coming up and we're going to have a parade again this year. As is the tradition in my department, each district is creating a banner to march behind, which will of course include the ALA emblem, along with other designs created by district leaders to represent the district's character. Similar banners are created every year. Do we need to get a permission letter?

RESPONSE: This use of ALA trademark and emblem, while creative, exciting, and permissible absolutely does require a permission letter from the National Secretary each year because of

potential alterations to the emblem and trademark (including the space directly around them) and the public display of the banners. In addition, if the banners are manufactured by a third party vendor (not by ALA members themselves), that production process will also require a permission letter. Each district should submit a permission request to the department secretary describing the designs they intend to make (including a picture or drawing is ideal) for approval by the department secretary. If the department secretary approves, she must forward the request to the national secretary for approval. We recommend you gather all these requests and plan to submit them on an annual basis.

FAQ 24: Our department president fashions a pin for sale as a fundraiser every year and to give away as a memento to her board and committee members as a thank you for their service. We use the same manufacturer every year. Do we need a permission letter before we begin production?

RESPONSE: Yes, the manufacture of any product by a third party vendor requires permission, first by the department secretary, then by the national secretary. Send a description or picture of the design with the permission request, along with the number of pins to be produced and the vendor information.

The American Legion Auxiliary Department Operations Guide, published April 25, 2014.

UPDATE HISTORY:

#	Date	Author(s)	Description (Substantive or Proofing)
01	07/21/2014	NHQ Communications	Proofing: Cover added, footers edited Proofing: Chapter 14 added to TOC

