

## **WHO SERVES AS THE ZONING ADMINISTRATOR WHEN THE CURRENT ZONING ADMINISTRATOR'S TERM EXPIRES AND HE OR SHE IS NOT REAPPOINTED?**

The current zoning administrator, unless someone else is appointed to the position. According to Vermont law, a zoning administrator is nominated by a municipality's planning commission and appointed by its legislative body for a term of three years. 24 V.S.A. § 4448(a). At any time during this three-year term, a zoning administrator may be removed by the legislative body for cause after consultation with the planning commission. Absent removal, a zoning administrator's tenure will expire by operation of law upon the passing of the three-year anniversary of his/her appointment. If a zoning administrator's term expires and the legislative body has yet to reappoint or appoint a new zoning administrator, the person sitting as the zoning administrator could still continue to lawfully discharge the duties of this office under the de facto officer doctrine. This legal doctrine, according to the United States Supreme Court, "confers validity upon acts performed by a person acting under color of official title even though it is later discovered that the legality of that person's appointment ... to office is deficient." *Ryder v. United States*, 515 U.S. 177, 180 (1995).

The Vermont State Supreme Court has stated the purpose of the de facto officer doctrine is "to protect the public's reliance on an officer's authority and to ensure the orderly administration of government by preventing technical challenges to an officer's authority." *State v. Oren*, 160 Vt. 245 (1993). Without it, people would not be able to rely on the decisions and actions of their public officials and "fear and chaos ... would result from multiple and repetitious suits challenging every action taken by every official whose claim to office could be open to question ...." *Ryder v. United States*, 515 U.S. at 180. The doctrine, however, doesn't apply to just anyone who comes in off the street claiming the office of zoning administrator (or any other appointed office for that matter) for themselves. Rather, the doctrine finds its logic in the apparent authority of the person holding the office. For that reason, the Vermont Supreme Court has only applied the doctrine when one is "in the unobstructed possession of an office and discharging its duties in full view of the public, in such manner and under such circumstances as not to present the appearance of being an intruder or usurper." *State v. Oren*, 160 Vt. 245, 247 (1993).

Of course such questions about any appointed officer's authority to act could be avoided altogether by keeping a calendar of the anniversary of all appointed officers and either formally reappointing them when their terms expire or appointing someone new to take their place.

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