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Who fills a vacancy on the board of cemetery commissioners?

The cemetery commission. When there is a vacancy on the board of cemetery commissioners, that vacancy “may be filled by the remaining commissioners until the next annual meeting.” 18 V.S.A. § 5374. This is different from other elected offices, which must be filled “forthwith” by the selectboard. 24 V.S.A. § 963.

When the remaining cemetery commissioners fill such a vacancy, the person who is appointed serves until the next annual meeting. At that next annual meeting, the person who is elected serves the balance of the unexpired term so as to preserve the staggering of the elected terms of the board. This is in contrast to the general rule in 24 V.S.A. § 963, which states that selectboard appointees serve “until an election is had.”

On the other hand, the remaining members of a cemetery commission can choose not to fill a vacancy on the board as long as there is a quorum of members still serving (e.g., at least three members of a five-member board). In that instance, the vacancy would be filled by election at the next annual meeting.

While the cemetery commission is given discretion about whether to fill a vacancy, the commission must still post notice of a vacancy once it is created. “When a town officer resigns his or her office, or has been removed therefrom, or dies, or becomes insane or removes from town, such office shall become vacant. Notice of this vacancy shall be posted by the legislative body in at least two public places in the town, and in and near the town clerk’s office, within 10 days of the creation of the vacancy.” 24 V.S.A. § 961(a).

A cemetery commissioner may not also serve as town treasurer, town manager, or town auditor. Otherwise, any legally qualified voter of the town may serve as cemetery commissioner. 17 V.S.A. § 2646(14). In order to be a “legally qualified voter,” a person does not have to be a registered voter, but does need to be a resident of the town. 17 V.S.A. § 2121.

If no one is willing or able to serve as a commissioner, it is possible to shift the responsibility for the municipal cemeteries from the commission to the selectboard. This may make sense in instances where there is no one willing or able to serve on the board of cemetery commissioners. This shift is accomplished by a public vote on the subject, which takes place at a special or annual town meeting. 18 V.S.A. § 5381. When a town so votes, the office of cemetery commissioner terminates.

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