Vacancies in Elected Office

FAQs

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These FAQs provide general information about State law regarding vacancies in municipal office. Municipalities with a governance charter may have different requirements and responsibilities.

Vermont law states that an elected town office becomes "vacant" if the town officer resigns, is removed from office, dies, becomes unable to perform their duties due to a mental condition or psychiatric disability, or moves out of the town in which they serve. **24 V.S.A. § 961**(opens in a new tab). A vacancy can also be created when a town clerk, selectperson, constable, lister, or fence viewer refuses or neglects - within 30 days of election or appointment - to take their oath of office pursuant to **24 V.S.A. § 831**(opens in a new tab). However, the office will not be deemed vacant until the selectboard has warned a regular meeting for that purpose and affords the officer the opportunity to take the oath of office at the meeting. The creation of a vacancy in town government can be a time of great confusion and uncertainty for municipalities. MAC developed a list of frequently asked questions and answers to assist members with vacant elected offices.

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If you have additional questions about this resource, please contact a MAC attorney by using the Ask a Question button to submit them.

Ask a Question(opens in a new tab)

What laws govern vacancies in locally elected offices?

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Absent the existence of a municipal governance charter (the more specific provisions of which will otherwise control), the laws governing vacancies in locally elected offices can be found in Title 24, Chapter 33, Subchapter 6, Sections 961-963.

How is a vacancy in a locally elected office created?

A locally elected office becomes legally vacant when "a municipal officer resigns the officer's office, or has been removed, dies, becomes unable to perform the officer's duties due to a mental condition or psychiatric disability, or removes from town." 24 V.S.A. § 961(a). A vacancy can also be created when a town clerk, selectperson, constable, lister, or fence viewer refuses or neglects – within 30 days of election or appointment – to take their oath of office pursuant to 24 V.S.A. § 831. However, the office will not be deemed vacant until the selectboard has warned a regular meeting for that purpose and affords the town officer the opportunity to take the oath of office at the meeting. An elected office does not become vacant until such time as the circumstances creating the vacancy come to pass. ***24 V.S.A. § 961(d).***(opens in a new tab)

How is a vacancy filled?

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The law provides that when a vacancy is created, "the selectboard forthwith by appointment in writing shall fill such vacancy until an election is had." 24 V.S.A. § 963(a). The selectboard must file a record of its appointment in the office of the town clerk who must record it in the book of town records. 24 V.S.A. § 963(b). The law also provides that a town may fill a vacancy at a special town meeting. 24 V.S.A. § 962. A special town meeting may be called by the selectboard or on the application of five percent of the town's voters. 17 V.S.A. § 2643(a).

Can the voters demand "an election" to fill a vacancy?

Yes. Because the selectboard's appointee to fill a vacancy serves only "until an election is had," and the law allows a town to fill a vacancy at a special town meeting, the voters may petition the selectboard for an election regardless of whether the selectboard has filled the vacancy or not. If the selectboard receives a valid voter backed petition signed by five percent of the voters of the town, it has 60 days from the date of its receipt to warn (provide official notice of) when the meeting will be held. 17 V.S.A. § 2643. The special town meeting date must be set for a date "not less than 30 nor more than 40 days" from the date it is warned. The statutory requirements for warning and noticing a special town meeting are found in 17 V.S.A. § 2641. For additional information about warning a special town meeting, please see our Quick Guide to Warning Special Town Meetings (upper left).

Can a vacancy be filled during a state primary or federal election?

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Only if the selectboard warns a special town meeting to occur simultaneously with the primary or national election. State primary and national elections do not qualify as town meetings for purposes of filling vacancies.

When must a vacancy be filled?

The law requires that a selectboard fill a vacancy "forthwith." Unfortunately, the law does not define what exactly "forthwith" means. When interpreting statutes, courts aim to implement the intent of the Legislature and will presume that it intended the plain, ordinary meaning of words, which can be taken from the dictionary. Black's Law Dictionary, 8th Ed. defines "forthwith" as: "(1) Immediately; without delay; or (2) Directly; promptly; within a reasonable time under the circumstances."

Who is responsible for filling a vacancy?

Most vacancies are filled by the selectboard, though there are three exceptions described below:

1. The board of cemetery commissioners has the sole authority to fill a vacancy on their own board, but it is an authority they "may" not "must" exercise. This is the case even if a majority of the positions on the commission are vacant as the controlling law speaks to the "remaining

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commissioners." A person appointed to fill a vacancy on the board of cemetery commissioners serves "until the next annual meeting." 18 V.S.A. § 5374.

2. A vacancy in the office of the justice of the peace is filled by Vermont's Governor. 17 V.S.A. § 2623.
3. A vacancy in the office of the board of listers is filled by the selectboard, but Vermont law provides that when there is less than a majority of the board and the selectboard cannot find a resident willing to serve, the selectboard may appoint a professional assessor (who need not be a town resident) until the next annual town meeting. 17 V.S.A. § 2651c.
4. A vacancy in the office of the collector of delinquent taxes is filled by the selectboard, but Vermont law provides that when a collector is unable to discharge their duties because of sickness or some other reason, the selectboard may certify the disability on the warrant for the collection of delinquent taxes and appoint someone to collect and pay over such taxes. 32 V.S.A. § 4674. If the town finds itself without a collector for any other reason, the selectboard may hire a qualified person (regardless of their residency status) to collect delinquent taxes. 32 V.S.A. § 4799.
5. A vacancy on the prudential committee of a fire district is filled by the selectboard of the town in which the fire district is located, until a meeting of the fire district is held. "A vacancy in such committee may be filled at an annual meeting, or at a special meeting called for that purpose, but the selectmen of the town in which such district is located may fill a vacancy in such committee until an election by the appointment of a resident of such district..." 20 V.S.A. § 2485.

Who is responsible for filling a vacancy on the Selectboard?

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The remaining selectpersons are responsible for filling a vacancy or vacancies on the selectboard. If there are vacancies in a majority of the selectboard at the same time so that the selectboard is unable to obtain a quorum and take binding action, the vacancies must be filled at a special town meeting called for that purpose by the remaining selectperson(s). If there are no selectpersons left in office, the Secretary of State must call a special town meeting to fill the vacancies. 24 V.S.A. § 963(c).

New 4/5/24! Can a non-resident be appointed to fill a vacancy?

Maybe. Eligibility to serve in a locally elected office is ordinarily dependent upon being a legally qualified voter of the town. "At the annual meeting, a town shall choose from among its ***registered voters*** the following town officers, who shall serve until the next annual meeting and until successors are chosen, unless otherwise provided by law." 17 V.S.A. § 2646(opens in a new tab). Emphasis added. Being a registered voter of a town, in turn, is dependent upon being a resident of that town. "Any person may register to vote in the town of their residence in any election held in a political subdivision of this state in which he or she resides who, on election day: (1) is a citizen of the United States; (2) is a resident of the State of Vermont; (3) has taken the voter's oath; and (4) is 18 years of age or more." 17 V.S.A. § 2121 (opens in a new tab). Since only registered voters can hold locally elected office, only residents of the town in which the vacancies exist can ordinarily be eligible to be appointed to serve those offices. The law, however, was recently amended to permit voters at a duly warned special or annual town

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meeting to allow non-residents (though they must still be residents of the State) to be elected or appointed to all local offices, except those of Selectboard and Justice of the Peace. Those towns that have so elected may appoint non-residents to fill vacancies.

Can the selectboard appoint someone to fill a vacancy who holds an office that is deemed "incompatible" by statute?

Yes, but the person appointed will have to resign one of the incompatible offices once the appointment is made. 17 V.S.A. § 2647.

How does the selectboard choose someone to appoint to fill a vacancy?

There is no process that is specifically required by law. If the selectboard decides that it wants to appoint someone, it is up to the selectboard to decide whether to solicit or interview candidates for the vacant position. The selectboard may use the public notice of vacancy to advertise the availability of the office to interested applicants. The selectboard is free to craft the appointment process in any way it chooses, including requesting letters of interest/resumes, asking candidates to come to a board meeting to discuss their candidacy, or having no process at all.

When someone is appointed to fill a vacancy, how long do they serve?

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A person appointed by the selectboard serves "until an election is had." 24 V.S.A. § 963. This means that an appointee will remain in office until the next annual town meeting (if no special town meeting is called), at which time the voters will elect a replacement to fill the balance of the office's unexpired term, if any, or to a new term. If a special meeting is called, the person elected to the position will serve the remainder of the office's original term.

There is an exception to this general rule. When a vacancy is created in the office of trustee of public funds, the person chosen to fill the vacancy, whether by appointment or election, "shall serve only for the remainder of the unexpired term." 24 V.S.A. § 2431.

How does a town officer resign their elected office?

Although not specifically required by law, it is best practice for a resignation to be given in a written document that includes the date and time that the resignation will take effect, and that is signed by the resigning officer. This will avoid any uncertainty as to when the office will become vacant and when exactly a replacement may be selected. Using a written document will also help deal with the fact that people sometimes say things in the heat of the moment that they later regret. Confirming a verbal resignation in writing is the cleanest course of action, even if the verbal resignation was recorded in the minutes of a meeting. The words and actions of an officer taken together indicate that an officer intends to resign. A letter of resignation helps solidify that intention. A resignation letter should be addressed and presented to the

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selectboard since the selectboard has a statutory duty to post notice of the vacancy and to fill it "forthwith by appointment in writing . . . until an election is had . . .." Additionally, the town clerk, depending on the office, may have to notify the State. 24 V.S.A. §§ 961, 963.

When is a resignation effective?

A resignation is not effective until the date and time of the announced resignation has passed. An elected officer announcing that they "will resign in one month" is not bound by Vermont law to leave the office at the self-proclaimed date. On the other hand, if an elected officer announces the date of their last day, and that day comes and goes without the officer changing their mind, then the office becomes vacant on the next day.

Does a resignation need to be accepted to be effective?

No. There is nothing in State statute or case law that requires that a selectboard to "accept" a resignation. A leading treatise on municipal law states that "[w]here the holding of an office is not compulsory, in the absence of legal provision, resignation upon delivery to the proper authorities takes effect without acceptance; and in such case a successor may be appointed or elected without the formal acceptance of the resignation." McQuillin, Municipal Corporations, § 12.125. There being no "legal provision" in Vermont, to the contrary, it seems appropriate to focus on receipt rather than

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acceptance of a resignation.

Can a resignation be withdrawn?

Yes, but only prior to the date and time the resignation takes effect. A resignation cannot be withdrawn after it takes effect. Since a resignation is completely voluntary and does not have to be accepted, a court would likely hold that when an officer has given a specified date for resignation, that officer is free to rescind their resignation at any time before the stated effective date.

Does the public need to be notified of a vacancy?

Yes. The town is obliged to provide public notice of the vacancy within ten days of the effective date of the vacancy by posting such notice in the town clerk's office and at least two public places in town. 24 V.S.A. § 961(a). The notice serves to inform the public of the change in leadership and of the citizens' right to petition for a special town meeting to elect someone to the position. 24 V.S.A. § 961(a). Posting the notice of vacancy is required in all instances, regardless of whether the selectboard fills the vacancy by appointment. Note that the selectboard may appoint to fill a vacancy before the notice is publicly posted. Please see below for a model "Notice of Vacancy."

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Is there a template I can use for a Notice of Vacancy?

Vermont law merely states that the selectboard is obliged to post notice of the vacancy but does not give any detail about what the notice looks like. Below is a suggested template for a vacancy notice. A selectboard may fill the vacancy prior to noticing it, though not prior to the creation of the vacancy. The selectboard may also want to supplement this template to advertise the availability of a vacant office to interested applicants.

Copy below this line

TOWN OF [*INSERT NAME OF TOWN*]

NOTICE OF VACANCY

[*insert date of notice*]

In accordance with 24 V.S.A. § 961(a), the Selectboard of the Town of [*insert name of town*] hereby gives notice of a vacancy created by [*insert applicable reason such as "resignation," "death," etc.*] in the office of [*insert name of office*] effective [*effective date of vacancy*].

The Selectboard, pursuant to 24 V.S.A. § 963, [*insert "will make" or "made" as appropriate*] an appointment to fill this vacancy at its meeting on [*insert date and time of meeting*]. The person appointed will serve until a town election is had.

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CITIZENS' RIGHT TO PETITION FOR VOTE: Titles 17 V.S.A. § 2643 and 24 V.S.A. § 963 grant citizens the right to petition for a vote to replace the Selectboard's appointee at a special town meeting. If a special town meeting is called, the newly elected town officer will remain in office for the balance of the unexpired term. If a special town meeting is not called, the Selectboard's appointee will remain in office until the next annual town meeting.

To exercise this right, citizens must present a petition calling for an election for this office signed by five percent of the legal voters of the Town to the Town Clerk prior to the next annual Town Meeting.

ADDITIONAL INFORMATION pertaining to this notice and its contents may be obtained by contacting [*insert name, title, phone number of a person with knowledge of this vacancy*] during normal office hours.

Dated this _____ day of _____, 202_.

_____

Selectboard Chair

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