

The Vermont Justice of the Peace Guide



Mr. J. C. C. C. C.

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On the cover:

Thomas Chittenden, Vermont's first governor, began his public life as a justice of the peace in Salisbury, Connecticut, before joining his neighbor Jonathon Spafford in the purchase of a tract of land along the Onion River, in Williston, Vermont. In later years, Spafford and Chittenden found themselves on different sides of a controversial appointment of one Daniel Stannard, of Jericho, as justice of the peace. Spafford prevailed, Stannard was appointed, and Spafford was not above needling Chittenden about how the right decision had been made.

"Well, well," replied the Governor, "I don't know but you have — he is a strange creature. I really believe he will make a better justice of the peace than I think he will."

Adapted from Daniel Chipman, L.L.D., *A Memoir of Thomas Chittenden*, 1849.

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We are pleased to offer you this updated *Vermont Justice of the Peace Guide*.

The duties of Vermont's justices of the peace (JP) are many and varied: from serving as election officials to determining tax appeals to giving oaths to solemnizing marriages. It is our hope that this guide will inform current justices of their rights and responsibilities under the laws of Vermont as they exist today. In addition to this guide, the Secretary of State's office and the Vermont Division of Property Valuation and Review have jointly published a comprehensive tax appeal handbook which is designed to help justices of the peace and other members of the board of civil authority conduct property tax appeals.

The publication of a JP guide has been a tradition within the Office of the Secretary of State for many years. With this new edition, we are pleased to advance this tradition and prompt a new appreciation of what it means to hold the office of a Vermont justice of the peace.

We have continued to make this guide more user friendly, thanks to feedback from JPs throughout Vermont. Please let us know what you think! Call us at 1-800-439-8683.

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A BRIEF HISTORY OF THE OFFICE OF THE JUSTICE OF THE PEACE

There are more than 1,800 justices of the peace in Vermont, making it Vermont's most numerous and popular public office. Yet it is an office that is not commonly understood or appreciated by the public, in part because of how the responsibilities of this office have changed over the years.

The office of the justice of the peace is one of the oldest public offices in the state. It was created by the Vermont Constitution in 1777. From 1777 to 1786, the voters of each county elected justices. In 1786, the constitution was changed to provide that the general assembly would elect justices of the peace. In 1850, the constitution was again changed and we adopted the present system, whereby justices of the peace are elected by the voters of their respective towns.

The first justices of the peace acted as judges in certain matters. A 1779 law provided that a justice could try any action in which the matter in demand or fine did not exceed ten pounds, or corporal punishment exceed ten lashes. It wasn't until 1974 that the general assembly removed all judicial powers from the office.

The power of a justice to solemnize marriages was first established in 1779, but the jurisdiction was limited to the county for which a justice was elected. In 1975, this jurisdiction was extended statewide.

A justice's responsibilities for elections began in the mid-nineteenth century and have evolved ever since.



HOW TO BECOME A JUSTICE OF THE PEACE

To become a justice of the peace, you must be elected at a general election or be appointed to fill a vacancy. Although elected by a town, justices of the peace are actually county officers. 17 V.S.A. § 2103(10).

1. ELECTION OF JUSTICES

A person must be a legal voter of the town and have been nominated by party caucus or, failing that, by the town committee in order to be elected justice of the peace. A person may also run as an independent. To be nominated by party caucus, the party members in each town must meet at a duly warned meeting, on or before the first Tuesday in August in even-numbered years. "Duly warned" means posting a notice of the caucus in at least three public places in town not less than seven days before the caucus. In towns having a population of more than 1,000, notice shall also be published in a newspaper not less than three days before the caucus. In towns without a formally organized party, three members of the party who are voters may call the caucus, elect a chair and secretary, and nominate its candidates. 17 V.S.A. § 2413.

If a caucus is not held on or before the first Tuesday in August the town committee may nominate justices at a meeting called by the town chair or by three members if the chair fails to do so. Five days written notice is required to each committee member. Nomination must be by majority of those present and voting, and if no candidate receives a majority after two ballots, the candidate with the lowest number of votes in the second and each succeeding ballot shall be eliminated until a candidate receives a majority. 17 V.S.A. §§ 2383, 2384.

For nominations by caucus and by committee, the committee chair and secretary must file an official statement of nomination, signed by them, with a copy of the notice of the meeting, with the town clerk, not later than 5 p.m. on the third day following the primary election. Before filing, the officers should check with each nominee and confirm that he or she consents to appear on the ballot and to serve if elected. 17 V.S.A. §§ 2385, 2413, 2387.

Independent candidates for justice of the peace must collect 30 signatures or one percent of the legal voters of the municipality, whichever is less. Petition and consent forms must be filed with the town clerk not earlier than the second Monday in May and not later than 5:00 p.m. on the second Thursday after the first Monday in June. 17 V.S.A. §§ 2356, 2386.

A person who is not nominated by party caucus or committee and failed to file petitions by the appropriate deadline may run as a write-in candidate on the general election ballot.

2. NUMBER OF JUSTICES TO ELECT

The Vermont Constitution Chapter II, Section 52 prescribes the number of justices of the peace for every town on the basis of population. In each case the constitution sets a maximum number of justices that may be elected. The town may elect fewer justices if it wishes.

- 5 justices may be elected from towns with populations of less than 1,000.
- 7 justices may be elected from towns with populations of 1,000 and less than 2,000.
- 10 justices may be elected from towns with populations of 2,000 and less than 3,000.
- 12 justices may be elected from towns with populations of 3,000 and less than 5,000.
- 15 justices may be elected from towns with populations of 5,000 and above.

If, after a census, a town's population has increased sufficiently to meet the threshold for electing additional justices of the peace, an article to increase the number of justices can be added to the warning. If the article passes, the increased number of justices will be elected at the next general election.

3. APPOINTMENT

The governor may fill a vacancy in the office of justice of the peace. A vacancy can occur by resignation, death, insanity or when an incumbent moves to another state. Resignations can be sent to the town clerk and the Office of the Governor. 17 V.S.A. §2623.

- * **Moving to another Vermont town or county does not create a vacancy. In most cases, however, a justice will resign when he or she leaves town.**



Before deciding who to appoint, the governor may request the town political committee (of the party that the justice represents) to submit one or more recommendations for replacements. The governor may appoint a qualified person (a legal resident of the town) whether or not the appointee is recommended by the party committee, for the remaining portion of the term. Governors usually appoint a member of the party of the former justice of the peace – although not always the person recommended by the party. 17 V.S.A. § 2623.

4. CAMPAIGN FINANCE

Candidates for the office of justice of the peace are required to file campaign finance reports and a treasurer and bank account designation form only if the candidate or candidate's political committee has accepted contributions or made expenditures of \$500 or more. A candidate who neither accepts nor spends \$500 in a campaign does not need to file.

If you need to file, forms are available from the town clerk or the secretary of state. JP candidates file reports in the office of the town clerk. Reports must be filed at least three times — 10 days before the primary election; 10 days before the general election; and a final report 40 days after the general election. 17 V.S.A. § 2821. Reports must cover all contributions, debts, loans and expenditures for the period.

A candidate for JP may not accept contributions totaling more than \$1,000 per election from a single source, or \$3,000 per election from a political committee. There are no limits on how much a political party may contribute to a candidate. More details can be found in the Vermont Campaign Finance Guide. A copy of this publication is available online at <http://www.sec.state.vt.us> or by calling the Secretary of State's office at 1-800-439-8683.

5. GETTING STARTED

- a) **Term.** The term of a justice of the peace begins on February 1 of the year following the general election and runs for two years. 4 V.S.A. § 491.
- b) **Oath of Office.** A justice of the peace is not fully qualified to serve until he or she has taken the oath of office and the oath of allegiance and has filed a notarized copy of those oaths with the town clerk. The secretary of state provides copies of these oath forms to every newly elected justice. 4 V.S.A. § 491. The required oaths are found in Chapter II, Section 56 of the Vermont Constitution. They are as follows:

THE OATH OR AFFIRMATION OF ALLEGIANCE

You do solemnly swear (or affirm) that you will be true and faithful to the State of Vermont, and that you will not, directly or indirectly, do any act or thing injurious to the Constitution or Government thereof. (If an oath) So help you God. (If an affirmation) Under pains and penalties of perjury.

THE OATH OR AFFIRMATION OF OFFICE

You (your name here) do solemnly swear (or affirm) that you will faithfully execute the office of justice of the peace for the town of (your town here) and will therein do equal right and justice to all persons to the best of your judgment and ability, according to law. (If an oath) So help you God. (If an affirmation) Under the pains and penalties of perjury.

The oath may be given by any justice of the supreme court, superior judge, assistant judge, justice of the peace, judge of the district court, notary public (including the town clerk) or the presiding officer, secretary or clerk of either house of the general assembly or by the governor. 12 V.S.A. § 5852.

Failing to file a copy of these oaths with the town clerk will prevent a justice of the peace from qualifying for office and from acting as a justice of the peace. Failure to take and file these oaths might also subject the justice to a fine of up to \$100. 4 V.S.A. § 492.

Every newly elected justice of the peace must take the oaths at the beginning of his or her term of office. This means that a person who has served continuously as a justice for years must still take the oaths before February 1 every time a new term begins.

6. COMPENSATION

No statute entitles justices of the peace to compensation for performing his or her duties under the law. However, in some instances compensation may be appropriate. The law permits the board of civil authority to fix the compensation

of justices for when they deliver absentee ballots. 17 V.S.A. § 2538(a). The voters or the selectboard may choose to pay a stipend to members of the BCA who hear tax appeals or for the time spent administering the elections. It is also traditional for parties to a marriage to offer some compensation to a justice of the peace. This is a matter between the justices and the couple, however; state law is silent on the subject.



OVERVIEW OF THE DUTIES AND RESPONSIBILITIES OF A JUSTICE OF THE PEACE

1. GENERAL DUTIES

The duties of justices of the peace can fall into five categories of responsibilities:

- a) **Elections.** Justices of the peace are members of the board of civil authority (BCA). Members of the BCA serve as election officials at town elections by Australian ballot and statewide elections. Justices also are responsible for delivering absentee ballots to voters at election time.
- b) **Tax Abatement and Appeals.** Justices of the peace sit as members of the town board for abatement of taxes to determine whether a taxpayer's tax obligation should be forgiven under certain circumstances. Justices of the peace also serve an important role in the town's tax appeal process. As a member of the board of civil authority, justices sit to hear and decide appeals when citizens do not agree with the final decision of the listers.
- c) **Marriages.** Justices of the peace may also solemnize marriages in Vermont.

- d) **Oaths and Notary.** Justices of the peace may also administer oaths in all cases where an oath is required, unless a specific law makes a different provision. A justice of the peace is a notary public ex officio and has all the acknowledgment powers of a notary public. However, the justice of the peace must file with the county clerk in order to act as a notary public (but the fee is waived).
- e) **Magistrate.** Justices of the peace may also serve as a magistrate when so commissioned by the Supreme Court.

2. MANDATORY VS. DISCRETIONARY DUTIES

Some of the duties of the justice of the peace are mandatory and some are discretionary. Mandatory duties are those duties which, by law, the justice must perform. These include: participating as a member of the board of civil authority by serving as an election official and assisting on Election Day, sitting on tax appeals and serving as a member of the board of tax abatement. Consistent, intentional failure to perform the mandatory duties of office could result in criminal penalties. 13 V.S.A. § 3006. (“A state, county, town, village, fire district or school district officer who willfully neglects to perform the duties imposed upon him by law, either express or implied, shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.”)

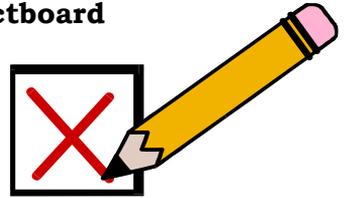


☛ **Note that occasional absences from meetings will not rise to the level of failure to perform an official duty.**

Discretionary functions of the office include performance of marriages, administering oaths and serving as a magistrate. Justices have the power to perform these functions but are not required to do so in any particular instance. In deciding whether or not to perform these functions the justice may not discriminate on the basis of any prohibited factor including race, sex, national origin, religion, sexual orientation, age or disability.

3. ELECTION RESPONSIBILITIES OF THE JUSTICE OF THE PEACE

- a) **The Board of Civil Authority.** The board of civil authority consists of the town clerk, the selectboard and the justices of the peace. If the board of civil authority does not include at least three members of each major political party, the town committee or three voters of the party may provide a list of six candidates and submit a request in writing to the selectboard to raise the number of party representatives on the board to three. The selectboard must then appoint a sufficient number of additional board of civil authority members to bring the party's representation to three. **Selectboard appointees to the board of civil authority may only serve in an election capacity.** Appointees may not serve in any capacity for other board functions. 17 V.S.A. § 2143.



- b) **Meetings.** As a member of the board of civil authority, justices of the peace must review the checklist and follow the statutory procedures to remove names from the checklist when voters have moved from the town. This must be done at duly warned meetings of the board of civil authority.
1. **Meeting Notice.** To warn a BCA meeting, at least five days before the meeting, all of the members of the board must receive written notice of the meeting, a public notice must be posted in two places in each voting district and the notice must be filed in the town clerk's office. 24 V.S.A. § 801.
 2. **Quorum.** In acting on any matter related to elections, except actions taken on Election Day, those members of the board present and voting constitute a quorum if at least three members are present. Board action may not be taken without the concurrence of at least three members of the board. 17 V.S.A. § 2103(5). On Election Day, the

majority of any board members present may take action. This means that even if the clerk is the only member present at the election, he or she may take action for the board.

3. **Open Meeting Law.** The open meeting law applies to BCA meetings. This means that not only must there be public notice of BCA meetings but members of the public must be given an opportunity to be present and speak. Minutes of BCA meetings must be taken and be available for public review within five days after the meeting. See 1 V.S.A. §§ 311-



314 or the “Pocket Guide to Open Meetings,” available through the Secretary of State’s Office, for details on executive session, minutes and other requirements of the open meeting law.

4. **Frequency of Meetings.** Meetings of the board may be held at any time, after due notice.

c) **Registering Voters.** Justices of the peace, as ex officio notaries, have authority to register people to vote in Vermont and administer the voter's oath. 17 V.S.A. § 2124(a). Note that a change in the law made in 2008 permits anyone over the age of 18 to administer the oath and it permits an individual to self-attest to taking the oath. The oath is found in Chapter II, Section 42 of the Vermont Constitution:

You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution without fear or favor of any person.

d) **Deadlines for Submitting Application.** Residents who wish to vote must submit an “application for addition to the checklist” to the town clerk. The application may be submitted at any time — but to be added to the checklist for a given election applicants must have submitted their forms by 5:00 p.m. on the Wednesday before the date of an election. Voter registrations postmarked on or before the deadline and those submitted to or accepted by the Department of Motor Vehicles or any voter registration agency on or before the deadline shall be considered to have met the filing deadline even if they arrive at the clerk's office after the deadline. 17 V.S.A. § 2144.

e) **Reviewing Applications to the Checklist if Requested by the Town Clerk.** Vermont law now authorizes the town clerk to add names to the checklist unless the town clerk has questions regarding eligibility of an applicant.

1. **Eligibility Criteria.** To be eligible the applicant must:
 - Be a citizen of the United States;
 - Be a resident of the town;
 - Be 18 years old on or before the day of election;
 - Have taken the voter's oath. 17 V.S.A. § 2121. As a justice of the peace, you may administer the voter's oath. 17 V.S.A. § 2124(a). See Registering Voters on page 10.

2. **Residency.** State law explains that a person may have his or her name on the checklist only in the town in which he or she is a resident. It is challenging for the BCA to objectively determine whether the "residency" requirement is met because the law sets out a subjective test. The law provides that "resident" means "a person who is domiciled in the town as evidenced by an intent to maintain a principal dwelling place in the town indefinitely and to return there if temporarily absent, coupled with an act or acts consistent with that intent." 17 V.S.A. § 2122(b).

3. **Questioning Applicant.** The BCA may question an applicant under oath about the facts stated in his or her application and the board may investigate any statement made under oath by an applicant in order to verify those statements. 17 V.S.A. § 2146(a). On the other hand, the board may not require an applicant to complete any other form than the application, and may not as a matter of policy require all applicants to appear personally before the board or to submit additional information on the application form. 17 V.S.A. § 2145(c).
4. **Decision.** Once the decision is made to add a person to the checklist, a copy of the completed application must be mailed to the applicant and to the town where the applicant was last registered, if any. 17 V.S.A. § 2145(d). Names may be added at any time until the closing of the polls on Election Day. If the decision is to deny the application, the applicant must be notified in writing by first class mail using the form provided in 17 V.S.A. § 2146.

f) Removing Names From the Checklist. (Challenging and Purging the Checklist)

1. **Timing.** Challenging voter names on the checklist is another function of the board of civil authority that may be done at any duly warned meeting. A review of the checklist may be done at any time. However, systemic purges must be completed at least 90 days before any federal, state or local election. 17 V.S.A. § 2150(b).



2. **Removal by Clerk.** The town clerk may remove names from the checklist at any time, without a meeting of the board, under four circumstances:

- Upon receipt of a death certificate of a voter;
- Upon receipt of a written request from a voter that his or her name be stricken;
- Upon official notice from another clerk in Vermont or election official in another state that a voter's name has been added to another checklist.
- Upon official notice from DMV that the voter has authorized his or her address to be changed for voting purposes.

3. **Biennial Purge.** Every two years the board of civil authority is directed by law to thoroughly review and purge the checklist. The biennial purge must be completed by September 15 of each odd-numbered year. The biennial purge involves a process of reviewing each name on the checklist and considering whether each person on the checklist is still qualified to vote. 17 V.S.A. § 2150(c). As the law explains, "[t]he intent [of this section] is that when this process is completed there will have been some confirmation or indication of continued eligibility for each person whose name remains on the updated checklist."



- **Inquiry.** The first step in the purging process is an initial inquiry. Is there any evidence that the voter is no longer eligible to vote? BCA members may consider and rely on official and unofficial public records and documents, including telephone directories, city directories, newspapers, death certificates, tax records or checklists showing whether the voter has voted in any election in the last four years. The board may even designate someone to contact the voter personally.
- **Leave Residents on the Checklist.** If there is any reason to conclude that the voter is still qualified to vote, the board must leave that voter's name on the checklist.

- **Sending Voter Notice (Challenge Letter).** If there is reason to question eligibility, or if the BCA has been unable to contact the voter, the board should send the voter written notice questioning whether the voter still resides in town. The notice should be sent to the voter's most recent known address, with "return service requested" on the envelope. A postage paid pre-addressed return card or letter must accompany the notice, giving the voter an opportunity to swear to maintaining his or her current legal street address within the town or to consent to removal of the voter's name from the checklist. 17 V.S.A. § 2150(d)(3). The notice should explain that if the voter fails to return the enclosed response card before the deadline for voter registration for the next election, written sworn affirmation of residence in town will be required before they will be allowed to vote. Challenge letters can now be printed from the statewide checklist.



- **Removal After Two General Elections.** If the voter fails to respond, the board of civil authority may remove the voter's name from the checklist on the day after the second general election from the date of the notice. However, if the voter has voted or appeared to vote in an election after the notice was sent and sworn on an affidavit of domicile that he resides at a specific legal address within the town, or has otherwise demonstrated his or her eligibility to vote in the town, his or her name must remain on the checklist. 17 V.S.A. § 2150(d)(5).



- **Reinstatement of Name.** If at any subsequent time the board determines that a voter whose name was removed from the checklist is still qualified to vote, the board must place the voter's name on the checklist immediately — even if it is the day of election. The statute reminds us all that "[t]he provisions of this chapter shall be liberally construed, so that if there is any reasonable doubt to whether a person's name should have been removed from the checklist the person shall have the right to have the person's name immediately returned to the checklist." 17 V.S.A. § 2150 (d)(6).

- **Record Keeping.** The law mandates that detailed records of the board's activities be kept. Records should include a clear statement of why each name has been removed from the checklist and a working copy of the checklist used for the biennial checklist review. In addition, the board must record the total number of new registrations during the period between general elections; the total number of individuals removed from the checklist during the period between general elections; and keep lists of the names and addresses of all people who were sent notices. The board must also note whether or not a response was received from each person to whom a notice was sent. 17 V.S.A. § 2150(d)(7).



- g) **Conducting Elections.** For all primary, general, special and local elections in which Australian ballot voting is used, the board of civil authority has charge of the conduct of elections within the political subdivision for which it is elected. 17 V.S.A. § 2451. This includes a variety of responsibilities, as follows:

1. **Choosing Presiding Officer.** The board of civil authority appoints a voter of the town as presiding officer of the election, if the regular presiding officer (usually the town clerk) is unavailable or unable to preside. 17 V.S.A. § 2452(a). The board also appoints a presiding officer for each additional polling place, if more than one polling place is used. 17 V.S.A. § 2452(b).

2. **Appointing Assistant Election Officers.** The board of civil authority appoints a sufficient number of election officials from each voting district, prior to the day of election. Political balance in these appointments is required by law ("as far as possible") and each official must be sworn before the election duties begin, using the oaths provided in an earlier section of this guide. 17 V.S.A. § 2454.



3. **Designating Polling Places.** At least 40 days before the election, the board of civil authority must designate one or more polling places in town, although voters at an annual or special meeting may designate different polling places. The law on this subject is found in 17 V.S.A. § 2501.

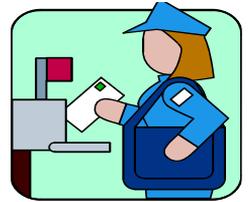
4. **Ensuring Accessibility.** The board of civil authority must take such measures as are necessary to assure that elderly and handicapped voters may conveniently cast their votes. The board of civil authority has full jurisdiction over the premises at which a polling place is located on the day of the election for this purpose. 17 V.S.A. § 2502(b).

5. **Determining Number of Voting Booths.** The board of civil authority must determine how many voting booths will be sufficient at each polling place. 17 V.S.A. § 2504.

NOTE:

While a person may serve as an election official even if their name appears on the ballot as a candidate for justice of the peace, a person may not serve as an election official in an election using the Australian ballot system if he or she is a candidate for another office on the ballot. The other exceptions to this rule, in addition to justices of the peace, are when the person is the only candidate for the particular office for which they are running or if the office for which the person is a candidate is that of moderator, constable, town clerk, clerk-treasurer, ward clerk or inspector of elections. 17 V.S.A. § 2456.

- Absentee Ballot Delivery.** Justices of the peace also serve as election officers for the purpose of delivering absentee ballots to voters who are ill or physically disabled. The board of civil authority designates pairs of justices of the peace to deliver ballots to absentee voters who have stated they will be unable to vote in person at the polling place due to illness or physical disability but who have not requested in their applications that absentee ballots be mailed to them. No pair shall consist of two justices from the same political party. If a sufficient number of justices are not available to make up the required pairs, individuals may be selected from lists of registered voters submitted by the chairs of the town committees of political parties and from among registered voters who make written application to the board stating that they are not affiliated with any political party. 17 V.S.A. § 2538(a).



Delivery may be made on any of the eight days immediately preceding the election and on election day. The town clerk divides the list of ill or physically disabled voters and then assigns a number of voters to each pair of justices. Ballots and envelopes are issued equal to the number of absentee voters the pair

has been assigned to visit on that day. The absent voter shall then proceed to mark the ballots alone or in the presence of the justices, but without exhibiting them to the justices or to any other person, with one exception. When the voter is blind or physically unable to mark the ballot, one justice may mark the ballot in full view of the other justice. 17 V.S.A. § 2538(a), (b) and (c).

☛ **Justices who are running for other offices and who consequently have been disqualified to serve as an election official under 17 V.S.A. § 2456 may not deliver absentee ballots. Neither shall the spouse, parent or child of the candidate. 17 V.S.A. § 2538(a).**

7. **Counting the Votes.** After the polls have closed, the counting process begins. The ballot boxes are opened and ballots distributed to election officials in approximately equal numbers. As before, election officials should work in bipartisan pairs, with the same pair retaining the same ballots throughout the counting process. 17 V.S.A. § 2584.

The rules for counting ballots are set out in 17 V.S.A. § 2587. Examples of how to determine voter intent are provided in our Elections Procedures Guide. Once the count is completed, the pair of election officials counting the votes must fill out and sign a tally sheet, indicating the vote total for their count and the number of blank and spoiled ballots. 17 V.S.A. § 2586.



Each pair must also securely bind the ballots together, once they have counted them, with a copy of the tally sheet, and indicate the total number of ballots and the names of the officials who counted them (as "50 ballots counted by John Doe and Mary Smith") on a separate sheet of paper. 17 V.S.A. §

2589. This package should then be delivered to the presiding officer. 17 V.S.A. § 2590(a).

8. **Special Responsibilities.** In addition to the duties mentioned above, the justice of the peace, as a member of the board of civil authority, has additional responsibilities for annual and special local elections. The board of civil authority plays a major role in recounts of local elections, and in answering questions for candidates or the general public. 17 V.S.A. §§ 2683-2688.
9. **Legislative Apportionment.** The board of civil authority also plays a significant role in the legislative apportionment process, which occurs decennially (10 years). See 17 V.S.A. Chapters 33, 34 and 34A.

☛ **For further details on the responsibilities of election officials, please consult Title 17 of the Vermont Statutes Annotated and the Elections Procedures Manual published by the Office of the Secretary of State in July of every even-numbered year.**

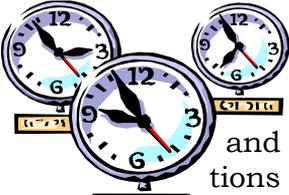
4. TAX APPEAL RESPONSIBILITIES OF THE JUSTICE OF THE PEACE

For a detailed, step by step discussion of the tax appeal process please consult the *Tax Appeal Handbook*, a joint publication of the Secretary of State's office and the Vermont Tax Department's Division of Property Valuation and Review. In addition, if you are not familiar with the work of the Board of Listers, the best educational resource, other than the lessons you may learn from the listers themselves, is the *Vermont Lister's Handbook*. This handbook is published by the Division of Property Valuation and Review and copies are provided to each town.



The following is an outline of the justice of the peace's obligations with regard to conducting tax appeals.

- a) **Meeting Time.** As a member of the board of civil authority, a justice of the peace sits to hear tax appeals from persons aggrieved by the final decision of the listers. Before the tax appeal is held the BCA will be notified in writing by the town clerk of the date of the initial meeting. The law then provides meeting "on that day and from day to day thereafter" to hear and determine all appeals until all questions and objections are heard and decided. 32 V.S.A. § 4404(c). This process may be extended, depending on the date the listers' abstract work is completed and the size of your town. 32 V.S.A. § 4341.



- b) **Oath.** Before hearing any appeal, BCA members must take an additional oath which must be signed and filed with the town clerk. The oath reads as follows:

I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue between taxpayers and listers submitted for my decision. So help me God (or) under pains and penalties of perjury.
32 V.S.A. § 4405.

- c) **Process Prior to the Appeal.** An appeal to the board of civil authority is the second step that an aggrieved taxpayer must take in contesting the valuation of real and personal property. Before any taxpayer appears before the board of civil authority, the board of listers must have held a grievance meeting on the valuation. Still dissatisfied with the appraisal, the taxpayer next takes an appeal to the board of civil authority by writing to the town clerk, who records the appeal and calls the board together.

d) **Quorum.** A quorum of the board in a tax appeal is satisfied by any number of board members (although never less than three) showing up for a duly warned meeting. 24 V.S.A. § 801.



e) **Inspection Committee.** Once the appeal process begins, you may be chosen to serve on a committee of three to inspect the property and report to the board within thirty days from the date of the original hearing. After the committee has made its report, the board has an additional fifteen days to certify its findings and file them with the town clerk. 32 V.S.A. § 4404(c).

f) **Decision.** After the close of all of the evidence in the hearing the BCA deliberates and comes to a decision, which is issued in writing. This decision may be appealed by the taxpayer to the courts or to the state appraiser.

☛ **You may not serve on the board of civil authority for the purposes of tax appeals during any year in which you bring an appeal to the board on any property you own, in whole or part. You are also excluded if you are an agent or attorney for an appellant property owner. 32 V.S.A. § 4404(d).**

5. THE BOARD FOR ABATEMENT OF TAXES

Justices of the peace, as members of the board of civil authority, serve on the board for the abatement of town and town school district taxes. 24 V.S.A. § 1533. For a detailed look at abatement procedures and considerations, please consult the “About Abatement” publication of the Secretary of State’s office.

a) **Meetings.** Meetings of the board of abatement are warned in the same manner as a board of civil authority meeting except that at least one of the listers must be given personal notice of the meeting. 24 V.S.A. § 1534.

- b) **Quorum.** The board of abatement consists of the justices, selectboard, town clerk, town treasurer and the listers. A majority of the total number of these officials must be present to meet as a board. The above requirement in respect to a quorum need not be met if the town treasurer, a majority of the listers and a majority of the selectboard are present. A majority of a quorum is required to take action to abate. The board for the abatement of a city consists of the mayor, city clerk, aldermen and the justices of the peace and assessors residing in the city. The board of abatement of a village includes the trustees and clerk of the village and justices of the peace and listers residing therein. This board may abate taxes, interest and fees accruing to the municipality in all cases where a different provision is not made by the charter, acts of incorporation, or amendments thereto, of the city or village. 32 V.S.A. § 1537.
- c) **Hearing.** A taxpayer is not required to attend the board of abatement meeting. If a taxpayer requests abatement of taxes in writing, for one of the reasons set forth in the statute, the board of abatement must meet at some time to consider the request. 24 V.S.A. § 1535. While a taxpayer has the right to attend the meeting or to have a representative act on his or her behalf at the meeting, if a taxpayer has made a written request for abatement which states the reason and supporting information for the abatement request, the statute does not require personal attendance by the taxpayer. The taxpayer should be told that the board may want additional information or the taxpayer may want to respond to other information presented at the meeting. However, if the taxpayer chooses not to attend, the board must still consider the request and take action to abate or deny the request.
- d) **Requirements for Abatement.** The board may abate (in whole or in part) taxes, interest and collection fees in the following cases:
1. taxes of persons who have died insolvent;
 2. taxes of persons who have removed from the state;

3. taxes of persons who are unable to pay their taxes, interest and collection fees;
4. taxes in which there is manifest error or a mistake of the listers;
5. taxes upon real or personal property lost or destroyed during the tax year;
6. the exemption amount available under 32 V.S.A. § 3802(11) to persons otherwise eligible for exemption who file a claim on or after May 1 but before October 1 due to the claimant's sickness or disability or other good cause as determined by the board of abatement (but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of a month the claim is filed late);
7. [Repealed].
8. [Repealed].
9. taxes upon a mobile home moved from the town during the tax year as a result of a change in use of the mobile home park land or parts thereof, or closure of the mobile home park in which the mobile home was sited, pursuant to 10 V.S.A. § 6237



- e) **Interest and Penalty.** The board may not abate only the interest or penalty that a taxpayer owes. However, any abatement of an amount of tax by vote of the board shall automatically abate any uncollected interest and fees relating to that amount. 24 V.S.A. § 1535.
- f) **Decision.** Whenever the board abates taxes, interest, and/or collection fees accruing to the town or denies an application for abatement, it must state in detail and in writing, the reasons for its decision.
- g) **Refund or Credit.** The board may order that any abatement of amounts already paid be in the form of a refund or in the form of a credit against the tax for the next ensuing tax year, and for succeeding tax years if required to use up the amount of the credit. Whenever a municipality votes to collect interest on overdue taxes

pursuant to 32 V.S.A. § 5136, the municipality must pay interest in a like amount to any person for whom an abatement has been ordered. Interest on taxes paid and subsequently abated accrues from the date payment was due or made, whichever is later. However, abatements issued pursuant to subdivision (5) above need not include the payment of interest. When a refund has been ordered, the board must draw an order to the town treasurer for such payment.



- h) **Record of Discharge.** The board of abatement must make a record of taxes, interest and fees abated and have it recorded in the town clerk's office. A certified copy must be forwarded to the collector of taxes and the town treasurer. 32 V.S.A. § 1536. The collector then marks in the tax bill all taxes, interest and fees that are abated and all persons against whom they were assessed shall be discharged from their payment. An abatement of a use change tax is separately recorded in the land records of the municipality in which the property subject to the abatement is located and effects a release of the land use lien on the portion of the property abated.
- i) **Discretion.** No law requires abatement under any particular circumstances, and the courts have affirmed a board's right to exercise discretion in these matters. Abatement is meant to be an equitable remedy, used only in the most unusual cases - as in a fire or where a survivor is temporarily unable to access the assets of an estate while it is in probate. It is not meant to be a way for the town to subsidize taxpayers who can no longer afford the taxes on their property. On occasion, the delinquent tax collector may request an abatement to clear up his or her records when a delinquent taxpayer cannot be found or if the taxpayer's property has no value and the delinquent taxpayer has no other assets to be taken. Note, however, that 24 V.S.A. § 1535 provides the complete list of reasons for abatement of local property taxes. These are the only reasons that local prop-

erty taxes can be abated. If a local property taxpayer wants to challenge the assessment or fair market value listing of his property, a property tax appeal process is available to the taxpayer every April.

- j) **Appeal.** Title 24 does not provide a specific route to appeal from a decision by the board of abatement. If a taxpayer believes that the board of abatement has abused its discretion in denying a request, case law in Vermont suggests that an appeal can be taken through Rule 74 or Rule 75 of the *Rules of Civil Procedure*. Appeals taken under these rules are not de novo and generally only review the proceedings below for abuse of discretion, but the avenue for a limited appeal does exist despite the silence in the statute. However, remember that the Vermont Supreme Court has held that



abatement requests cannot be a substitute for an appeal of a property assessment by the listers which must be appealed through the grievance and tax appeal process.

- k) **Notice of Tax Sale Should Include Notice of Right to Apply for Abatement of Taxes.** A superior court decision ordered a town to return property obtained at tax sale because it believed the town violated the taxpayer's right to due process by not clearly notifying the person of her right to seek an abatement of the taxes. The fact that the town included a copy of the abatement statute with the notice of sale was not deemed sufficient to satisfy due process. Although a decision of the Superior Court is not binding on other courts, it is advisable that towns conducting tax sales avoid the challenge and include a notice of the right to apply for abatement.

6. SOLEMNIZING MARRIAGES

One of the most delightful powers of a justice of the peace is the authority to perform marriages. 18 V.S.A. §§ 5144, 5164. A justice's jurisdiction is not limited to the town or county, and justices may perform marriages anywhere within the boundaries of the State of Vermont. Performing ceremonies are discretionary functions of this office. A justice may decide whether to perform a particular ceremony on a case by case basis, or may decline to perform all ceremonies or may decide only to perform ceremonies for family and friends. A justice may not discriminate on any basis prohibited by law (age, race, sex, national origin, religion or sexual orientation).

Before the ceremony, one of the parties to the proposed marriage must have applied to the town clerk of the town where either party resides or, if neither is a resident of the state, to any town clerk to obtain an application for a license. The application must be signed by one of the parties to the proposed marriage. Vermont law does not require a medical certificate, blood test or a waiting period. Once a license is obtained, the marriage can be celebrated anywhere in Vermont. 18 V.S.A. § 5145.



The marriage must be completed within 60 days of the issuance of the license or certificate. If the ceremony is delayed for more than 60 days, a new license must be applied for and issued.

An official who solemnizes marriages must complete a section on the form and return it to the town clerk who issued it within ten days of the ceremony. 18 V.S.A. § 5131. The official must sign the form and include his/her official title "Justice of the Peace."

State law is silent on the mechanics of wedding ceremonies. Some authorities say that a minimum ceremony could be as short as the justice saying, "By the authority vested in me

by the State of Vermont, I now pronounce you husband and wife" (or some variant of that phrase) or "By the authority vested in me by the State of Vermont, I hereby join you in civil marriage." By signing the license the official is certifying that the parties entered into the marriage with mutual consent. Parties are free to discuss with the justice their own ideas of what they want in a ceremony.

For those wanting a more formal civil marriage ceremony, a possible ceremony performed by a justice of the peace could include the following:

JUSTICE OF THE PEACE:

We are here to join ____ and ____ in civil marriage.

(Then to each in turn, giving names as appropriate)

Will you ____ have ____ to be united as one in your civil marriage?

RESPONSE: I will.

JUSTICE OF THE PEACE:

(Then to each in turn, giving names as appropriate)

Then repeat after me: "I ____ take you ____ to be my spouse in our civil marriage, to have and to hold from this day on, for better, for worse, for richer, for poorer, to love and to cherish forever."

(Then, if rings are used, each in turn says, as the ring is put on)

"With this ring I join with you in this our civil marriage."

JUSTICE OF THE PEACE:

By the power vested in me by the State of Vermont, I hereby join you in civil marriage.

7. ADMINISTRATION OF OATHS

The law says a justice of the peace may administer oaths in all cases where an oath is required, unless a different provision is made by law. 12 V.S.A. § 5854. This may include:

- the administration of the voter's oath (see Registering Voters on page 10);
- oath of office (see Oaths and Notary on page 8); and
- the oath for members of the board of civil authority hearing tax appeals (see Oath on page 20).

Note that a justice may not administer "oaths necessary to be taken for the establishment of truth or the furtherance of justice in any matter coming before such court, board or commission for investigation." 12 V.S.A. § 5853. Justices may, however, administer the oath of a witness before the board of civil authority or the board for abatement of taxes.

Remember that in cases where an oath can be given, affirmation is permitted, replacing the word "swear" with "affirm," and "so help me God" with "under the pains and penalties of perjury." For every purpose of privilege, qualification or liability, affirmation is sufficient as having been duly sworn. 12 V.S.A. § 5854.



8. EX OFFICIO NOTARY PUBLIC

A justice of the peace is an *ex officio* notary public and has all of the acknowledgment powers of a notary public. 24 V.S.A. § 441. However, before exercising these powers, *ex officio* notaries public must complete a notary public application and file the completed form with the County Clerk. (Applications can be obtained from the county clerk.) **The application fee is waived for *ex officio* notaries, but you must submit the application form before you undertake any notary duties!** The certificate of appointment is then returned to the county clerk and recorded in both the office of the county clerk and the Secretary of State's office. A

justice will lose his or her ex officio notary status when the justice resigns from office or completes his or her term. For more information about the authority and limitations of Vermont's notaries public please consult the *Short Guide for Vermont Notaries Public* which can be obtained from the Secretary of State's office or online at www.sec.state.vt.us.

9. JUDICIAL AUTHORITY

In 1974, the judicial authority of justices of the peace was eliminated by the general assembly, but the Vermont Constitution (Chapter II, Section 52) does permit the Supreme Court to commission justices of the peace to serve as magistrates. This is an unusual event, one that would occur only in extraordinary cases.



Any office that includes the word "Justice" in the title requires a certain commitment to procedure, legal authority, and fairness in making decisions. Use your authority as a justice of the peace carefully, "without fear or favor of any person," and with integrity. Honor the office by keeping your personal interests and concerns to yourself and apart from your actions as a JP. Know what you can do, by law, and do no more than that, and you will have done your duty as a Vermont Justice of the Peace.

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