

The Vermont Justice of the Peace Guide

Revised February 2019



Mr. Williston, Genl.

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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 the 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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A Message from the Secretary

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

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

Vermont's justices of the peace do far more than solemnizing marriages. Their duties are many and varied, from administering oaths to deciding property tax assessment appeals to delivering and counting ballots as elections officials. It is our hope that this guide will help inform current JPs, and those interested in running for JP, of the office's powers and responsibilities under the Vermont laws as they exist today.

While our guide provides a summary of the law and suggests best practices, please remember to consider the Vermont statutes themselves, and any court cases interpreting them, as the final authority. Every town clerk's office has a set of green books containing the Vermont Statutes Annotated. (Make sure you check the pocket part in the back to see if there is newer law to review for each section!) You can also read the Vermont statutes online at the Vermont State Legislature's website: <https://legislature.vermont.gov/statutes/>. In addition, see the appendix at the back of this guide for additional resources on handling the duties related to elections, tax appeals, abatement hearings, marriage solemnizations, and the powers of a notary public.

We continue to make this guide more comprehensive and user-friendly, thanks to feedback from JPs throughout Vermont. Please let us know what you think!



James C. Condos

James C. Condos
Secretary of State

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I. A Brief History of the Office of the Justice of the Peace

There are nearly 2,000 justices of the peace in Vermont, making it Vermont's most numerous and popular public office. Yet it is an office not commonly understood or appreciated by the public, in part because of how the duties of the office have been altered over the years.

Created by the Vermont Constitution in 1777, the office of justice of the peace is one of Vermont's oldest public offices. For the next nine years, the voters of each county elected their justices of the peace. In 1786, the Constitution was changed to provide that the General Assembly would instead elect them. In 1850, the Constitution was again amended and we adopted the present system, whereby JPs 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 JP could try any action in which the matter in demand or fine did not exceed ten pounds, or potential corporal punishment did not exceed ten lashes. It was not until 1974 that the General Assembly removed all judicial powers from the office.

The authority of a justice of the peace to solemnize marriages was first established in 1779, but jurisdiction was limited to the county for which a justice was elected. In 1974, this jurisdiction was extended statewide.

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

II. Becoming a Justice of the Peace

To become a justice of the peace, you must either be elected at a general election or appointed to fill a vacancy in office. Vt. Const. Ch. II, § 52. Chosen by the voters of each town, JPs were nonetheless considered to be “county officers” until 2017, when the Vermont Legislature removed JPs from that statutory definition. 17 V.S.A. § 2103(10).

A. Election of Justices of the Peace

1. Nomination and Filing

Candidates for justice of the peace are nominated by town party caucus, or by the town party committee at a properly warned meeting. A candidate may also run as an independent. 17 V.S.A. § 2413.

a. Nomination by party caucus

To nominate JP candidates by party caucus, the party members in a town may meet at a duly warned meeting. “Duly warned” means that the town committee must post notice of the caucus in the town clerk’s office and in two other public places in town at least five days before the caucus. Additionally, for towns with over 3,000 voters, the town committee must publish notice, at least one day before the caucus: 1) either in a newspaper of general circulation within the town, or on a nonpartisan electronic news media website that specializes in news of Vermont or of the community; and 2) on the town’s website, if it actively updates its website on a regular basis. 17 V.S.A. § 2413(a).

In towns without a formally organized party, any three members of the party who are voters of the town may call the caucus by giving notice in the above manner, electing a chair and a secretary, and nominating its JP candidates. 17 V.S.A. § 2413(c).

b. Nomination by town committee

In the alternative, the town party committee may nominate justices of the peace at a meeting called by the town committee chair or, if the chair does not do so, called by any three committee members. 17 V.S.A. §§ 2381, 2413(c). The committee must give members at least three days’ written notice by mail or e-mail, and it must also post notice in the town clerk’s office and in two other public places in town. 17 V.S.A. § 2413(b). Each notice should state the date, time, and place of the meeting, as well as the specific offices for which nominations may be made. 17 V.S.A. § 2383.

At the town committee meeting, nomination must be by majority of those present and voting. If no candidate receives a majority after two ballots, the candidate with the lowest number of votes in the second and each succeeding ballot must be eliminated until a candidate does receive the majority. 17 V.S.A. § 2384.

c. Statements of nomination; candidate consent

For nominations by caucus or by committee, the chair and secretary must sign and file an official statement of nomination with the town clerk. The statement, accompanied by a copy of the meeting notice, must be filed no later than 5:00 p.m. on the third day following the primary election. 17 V.S.A. §2413(e). (See 17 V.S.A. § 2385(a) for the language to be used in the statement.) Before filing, the officers must check with each nominee to confirm that he or she consents to appear on the ballot and to serve if elected. 17 V.S.A. § 2385(e).

Independent candidates for justice of the peace must collect 30 signatures or the signatures of one percent of the legal voters of the town, whichever is less. 17 V.S.A § 2402(b)(1)(E). Petitions and consent forms must be filed with the town clerk not later than 5:00 p.m. three days after the August primary. 17 V.S.A. § 1756.

The following forms are available on the Secretary of State’s website at <https://www.sec.state.vt.us/elections/forms-publications/candidates.aspx>.

Statement of Nomination by Party Committee for Justice of the Peace Candidates
Statement of Nomination and Consent for Independent Justice of the Peace Candidates

A person who is not nominated by party caucus or committee and who failed to file petitions by the appropriate deadline may run as a write-in candidate on the general election ballot. 17 V.S.A. § 2587(c)(1).

2. How Many Justices to Elect

The Vermont Constitution prescribes, on the basis of population, the maximum number of justices of the peace that may be elected for each town. Vt. Const. Ch. II, § 52. A town may elect fewer JPs if it wishes.

POPULATION	NUMBER OF JUSTICES
Less than 1000	5
1000–1999	7
2000–2999	10
3000–4999	12
5000 and above	15

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 may be

added to the warning. If the article passes, the increased number of justices will be elected at the next general election.

3. Campaign finance

Justice of the peace candidates who raise or spend over \$500 are required to register and file campaign finance reports with the Secretary of State's Office. 17 V.S.A. § 2921. Candidates reaching this threshold must register and report online using the Campaign Finance Information System at www.campaignfinance.sec.state.vt.us. JP candidates are considered local candidates for campaign finance purposes.

Campaign finance reports are due to be filed 30 days before, 10 days before, 4 days before, and two weeks after the election. A final report must be filed within 40 days of the election. 17 V.S.A. § 2968. Reports should list all contributions, including any personal funds used, and all expenditures made. JP candidates may not accept contributions of more than \$1,040 from a single source, but can spend unlimited personal funds. Candidates who do not raise or spend over \$500 do not need to file.

**The Secretary of State's *Guide to Campaign Finance* can be found on our website:
<https://www.sec.state.vt.us/elections/campaign-finance.aspx>.**

B. Vacancies and appointment

If a vacancy occurs in the office of justice of the peace, the Governor may fill it by appointment. 17 V.S.A. § 2623. Resignations should be sent to the town clerk and the clerk can notify the town party of the resignation. If a justice of the peace moves out of town, it is best to get a letter of resignation prior to making an appointment to that seat.

Before deciding on an appointment, the Governor may ask the town political committee of the party the JP represents to submit one or more recommendations. The Governor is not bound by these recommendations, however; he or she may appoint any qualified person. 17 V.S.A. § 2623. Governors do usually appoint a member of the former JP's party—though not always the person recommended by the party.

Please note that no vacancy is created when a town fails to elect a full slate of JP candidates. For example, if a town has Constitutional authority to elect 10 JPs, but only nine are elected, there is no vacancy. In this situation, if the town does not opt to hold a special election for the unelected position, the town will operate with nine JPs only.

C. Getting Started

1. 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.

2. Oaths of office and allegiance

A justice of the peace is not fully qualified to serve until he or she has taken the oaths of office and of allegiance and has filed a notarized copy of each oath with the town clerk. 4 V.S.A. § 491.

The required oaths, which are found in Chapter II, Section 56 of the Vermont Constitution, 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 your God. (If an affirmation) Under the pains and penalties of perjury.

THE OATH OR AFFIRMATION OF OFFICE

You _____ do solemnly swear (or affirm) that you will faithfully execute the office of _____ for the _____ of _____ 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 oaths may be administered by any Supreme Court justice, Superior Court judge, assistant judge, justice of the peace, or notary public. They may also be administered by the Governor, or by the presiding officer, secretary, or clerk of either house of the General Assembly. 12 V.S.A. § 5852.

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

See 4 V.S.A. § 491.

Oath forms are available on the Secretary of State's website at:

<https://www.sec.state.vt.us/elections/forms-publications/town-clerks.aspx>

Failure to file a copy of his or her official oath with the town clerk will prevent a justice of the peace from qualifying for office and from acting as a justice of the peace. 4 V.S.A. § 491. Failure to take and file these oaths could also subject the JP to a fine of up to \$100. 4 V.S.A. § 492.

3. Compensation

No statute entitles justices of the peace to compensation for performing their duties under the law. In some instances, however, compensation may be appropriate.

The law permits Boards of Civil Authority to fix the compensation of JPs for when they deliver absentee ballots. 17 V.S.A. § 2538(a)(5).

The voters or the selectboard may choose to pay a stipend to BCA members, including JPs, who hear tax appeals or spend time administering elections. 24 V.S.A. §§ 932, 933.

It is also traditional for parties to a marriage to offer some compensation to the officiating JP. This is a matter between the JP and the couple, however; State law is silent on the subject.

III. Overview of the Responsibilities of a Justice of the Peace

A. Duties Generally

The responsibilities of justices of the peace can be divided into five broad categories:

- 1) **Elections.** Each justice of the peace is a member of his or her town's Board of Civil Authority (BCA). 24 V.S.A. § 801. The BCA is charged with the conduct of all elections that occur in town (primary, general, special, and local). 17 V.S.A. § 2451. Upon request, JPs are also responsible for delivering absentee ballots at election time to voters who are ill or physically disabled. 17 V.S.A. § 2538(a).
- 2) **Tax appeals and abatement.** As BCA members, justices of the peace hear and decide town property tax assessment appeals when local property owners do not agree with the final decision of the listers. 32 V.S.A. § 4404. Because JPs are BCA members, they also sit as members of their town's Board of Abatement to determine whether a taxpayer's property tax obligation should be forgiven under certain circumstances. 24 V.S.A. § 1533.
- 3) **Marriages.** Justices of the peace may solemnize marriages in Vermont. 18 V.S.A. § 5144.
- 4) **Oaths and notarial acts.** Justices of the peace may administer oaths in all cases where an oath is required, unless a specific law makes a different provision. 12 V.S.A. § 5852. Justices of the peace may also perform notarial acts. Under 2018 legislation modernizing notary public regulation, JPs must apply for and renew their notary public commissions through the Secretary of State's Office of Professional Regulation. There is no fee for this commission.
- 5) **Duties as magistrate.** If commissioned by the Supreme Court, a justice of the peace may also serve as a magistrate. Vt. Const. Ch. II, § 52.

B. Mandatory vs. Discretionary Duties

Some of the duties of the justice of the peace are mandatory, while others are discretionary and may be performed at the JP's option.

Mandatory duties are those duties which, by law, the JP must perform. These duties include participating as a Board of Civil Authority member by serving as an election official and assisting on election days, hearing and deciding tax appeals, and serving as a member of the Board of 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 or her by law, either express or implied, shall be imprisoned not more than one year or fined not more

than \$1000.00, or both.”) Note that occasional absence from meetings, without more, does not rise to the level of willful failure to perform an official duty.

Discretionary functions of the office include performing marriages, administering oaths, performing notarial acts when commissioned as a notary, and serving as a magistrate. A justice of the peace has the power to perform these functions, but an individual JP is not required to do so in any particular instance. In deciding whether or not to perform these functions, however, a JP must not discriminate on the basis of any prohibited factor like race, color, sex, religion, national origin, disability, sexual orientation, or gender identity. 42 U.S.C. § 1983; 9 V.S.A. § 4502.

C. The Board of Civil Authority

Justices of the peace sit on the Board of Civil Authority (BCA). The BCA is the municipal body responsible for handling election matters and deciding property tax assessment appeals.

1. Membership

The Board of Civil Authority usually consists of the town clerk, the selectboard, and the justices of the peace residing in that town, unless a town’s governance charter states otherwise. 17 V.S.A. § 2103(5); 24 V.S.A. § 801. If the BCA does not include at least three members of each major political party, the town committee or three voters of that party may provide a list of candidates and submit a request in writing to the clerk to raise the number of party representatives to three. Note that selectboard appointees to the BCA may perform election duties only; these appointees do not serve in any capacity for other BCA functions. 17 V.S.A. § 2143.

2. Meetings

BCA meetings are called by the town clerk (who is also the BCA clerk) or by one of the selectboard members. To warn a BCA meeting, notice must be posted in two or more public places in town at least five days prior to the meeting, and each member must be given written notice. 24 V.S.A. § 801. So long as proper notice is provided, BCA meetings may be held at any time.

The Open Meeting Law

Vermont's open meeting law applies to Board of Civil Authority meetings. This means that BCAs must provide advance public notice of meetings; discuss all business and take all action in open meeting (unless an exception in statute applies); allow members of the public to attend and participate in meetings; and make minutes available no later than five days after each meeting. 1 V.S.A. §§ 310–314.

For more information on the open meeting law, please see *A Guide to Open Meetings*, a Secretary of State's Office publication that is available on our website at <https://www.sec.state.vt.us/municipal/open-government-ethics.aspx>.

3. Quorum

For most public bodies, the number of members necessary to hold a meeting and to take action is a majority of the total membership. 1 V.S.A. §§ 172, 310(2). Special quorum rules apply to Board of Civil Authority meetings, however, and these rules differ depending on whether the BCA is acting on election matters or handling property tax assessment appeals.

In acting on any matter related to elections, except actions taken on Election Day, those BCA members present and voting constitute a quorum, so long as at least three members are present. BCA action requires the concurrence of at least three BCA members. 17 V.S.A. §§ 2103(5), 2144b(c).

On Election Day, the majority of any BCA members present may take action. 17 V.S.A. § 2451. This means that even if the clerk or any other single member of the board is the only member present at the election, he or she may take action on behalf of the BCA. This relaxed quorum requirement on Election Day is important to remember when approving any voter registration applications submitted on Election Day at the polls.

When a BCA handles tax assessment appeals, yet another standard applies. In these situations, "an act of the majority of the board present at the meeting shall be treated as the act of the board...." 24 V.S.A. § 801. This means that any number of BCA members (although never less than three, since three are needed for the inspection committee that visits the property under appeal) may take action at a duly warned meeting.

D. Election Responsibilities

Of all duties of the justice of the peace, election administration is the most crucial. It is expected that, as elected officials, JPs will assist with all elections: primary, general, special, and local. 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.

1. Reviewing Voter Checklist Applications

a. Generally

Vermont now has Election Day voter registration. Residents who meet the eligibility requirements (listed below) can register and vote during polling hours on Election Day. 17 V.S.A. § 2144.

On the day of an election, the presiding officer must review all applications submitted at the polling place, approving those that meet the eligibility criteria below. Upon approval, the voter's name is added to the checklist at the polling place (and must be added to the statewide checklist by the clerk within the next five business days). If the presiding officer has questions about the eligibility of an applicant, he or she must immediately refer the application to any BCA members present at the polling place. Those BCA members must meet immediately to determine whether the applicant meets checklist requirements. 17 V.S.A. § 2144b.

Vermont law authorizes the town clerk to add names to the voter checklist, unless the clerk has questions regarding eligibility of an applicant. 17 V.S.A. § 2144(b). In the latter situation, the clerk must immediately forward the application to the Board of Civil Authority. The BCA must then hold a duly warned meeting, in a timely manner after receipt of the application, to determine whether the applicant meets checklist requirements. 17 V.S.A. §§ 2144b, 2146.

For more information on notice and quorum requirements for BCA meetings about election matters, see section III-C above.

b. Eligibility criteria

To be eligible to vote, an applicant must:

- Be a citizen of the United States.
- Be a resident of the town. See below for more information on voter residency.
- Be 18 years old on or before the day of election. Note that a person who will be 18 years old on or before the date of a general election may register and vote in the immediately preceding primary election.
- Have taken the voter's oath.

17 V.S.A. §§ 2121, 2122.

c. Voter residency

State law dictates that a person may have his or her name on the checklist only in the town of which he or she is a resident. 17 V.S.A. § 2121. It can be challenging for the BCA to objectively determine whether the "residency" requirement is met because the law sets out a subjective

test. Under 17 V.S.A. § 2122(b), “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.” Note that a person may have only one residence at a given time.

d. Questioning the applicant

The BCA may question an applicant under oath about the facts stated in his or her application. The BCA may also investigate any statement made under oath by the applicant in order to verify the statement. 17 V.S.A. § 2146(a). On the other hand, the BCA may not require an applicant to complete any form other than the application, and it may not as a matter of policy require all applicants to appear personally before the BCA or to submit additional information on the application form. 17 V.S.A. § 2145(c).

e. Application decision

Once the decision is made to add a person to the checklist, a copy of the completed application must be returned to the applicant as soon as possible. 17 V.S.A. § 2145(d). Names may be added at any time until the closing of the polls on Election Day. 17 V.S.A. § 2144(b)(2). The town in which the applicant was last registered to vote must also be notified, whether within or outside Vermont. 17 V.S.A. § 2145(d).

If the decision is to deny the applicant, he or she must be notified “forthwith” of the reasons for the denial, using the form provided in 17 V.S.A. § 2146. Note that if the BCA rejects an applicant on Election Day, the BCA must notify him or her at the polling place. 17 V.S.A. § 2144(b)(3).

2. Removing Names from the Voter Checklist (Challenging and Purging)

a. Timing

Challenging voter names on the checklist is another function of the Board of Civil Authority that may be performed at any duly warned meeting. A review of the checklist may be done at any time. Systemic, name-by-name reviews, however, must be completed at least 90 days before any federal, state, or local election. 17 V.S.A. § 2150(b).

b. Removal by Clerk

The town clerk may remove names from the voter checklist at any time, without a meeting of the BCA, under four circumstances:

- Upon receipt of a voter’s death certificate or of public notice of the voter’s death.
- Upon receipt of a written request from a voter that his or her name be stricken.
- Upon official notice from another Vermont clerk or from an elections official in another state that a voter’s name has been added to another checklist.

- Upon official notice from the Department of Motor Vehicles that the voter has authorized his or her address to be changed for voting purposes.

17 V.S.A. § 2150(a).

c. Biennial Purge

Every two years, the Board of Civil Authority is directed by law to thoroughly review and purge the checklist. The biennial purge, which must be completed by September 15 of each odd-numbered year, involves a process of reviewing each name on the checklist and considering whether each person on it is still qualified to vote. As the law explains, “[t]he intent [of this provision] 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.” 17 V.S.A. § 2150(c).

The BCA may review and purge the checklist only at duly warned meetings. For more information on notice and quorum requirements for BCA meetings regarding election matters, see section III-C above.

i. 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 certificate, tax records, or checklists showing whether the voter has voted in any election in the last four years. The BCA may even designate someone to contact the voter personally. 17 V.S.A. § 2150(d)(2).

ii. Leaving Voters on the Checklist

If there is any reason to conclude that the voter is still qualified to vote, the BCA must leave that voter’s name on the checklist. 17 V.S.A. § 2150(d)(1).

iii. Sending Voter Notice (Challenge Letter)

If the inquiry reveals facts giving reason to question eligibility, or if the BCA is unable to locate the voter, the BCA must send the voter written notice questioning whether the voter still resides in town. The notice must be sent by first class mail to the voter’s most recent known address; “return service requested” should be marked 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 town, or, alternatively, to consent to removal of his or her name from the checklist. The notice must explain that if the

voter fails to return the enclosed response card, written sworn affirmation of residence in town will be required before he or she will be allowed to vote. 17 V.S.A. § 2150(d)(3).

iv. Removal after Two General Elections

If the voter fails to respond to the challenge letter, the BCA may remove the voter's name from the checklist on the day after the second general election from the date of the notice. If, however, the voter has voted or appeared to vote in an election after the notice was sent and has sworn on an affidavit of domicile that he resides at a specific legal address in town, or has otherwise demonstrated eligibility to vote in town, his or her name must remain on the checklist. 17 V.S.A. § 2150(d)(5).

v. Reinstatement of Name

If at any subsequent time the BCA determines that a voter whose name was removed from the checklist is still qualified to vote, the BCA must place the voter's name on the checklist immediately—even on Election Day. The statute reminds us that “[t]he provisions of this chapter shall be liberally construed, so that if there is any reasonable doubt 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).

vi. Record-keeping

The law mandates that the BCA must keep detailed records of its challenging and purging activities. These records must include a clear statement of why each name has been removed from the checklist, as well as a working copy of the checklist used for the biennial checklist review. In addition, the BCA 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; lists of the names and addresses of all people to whom the BCA sent notices; and information concerning whether or not a response was received from each person to whom a notice was sent. 17 V.S.A. § 2150(d)(7).

3. Conducting Elections

For all primary, general, special, and local elections, 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. Conducting elections includes a variety of responsibilities, which are summarized below.

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 Secretary of State’s Office in July of every even-numbered year.

The Elections Procedure Manual is available on our website at <https://www.sec.state.vt.us/media/769939/2016-election-procedures.pdf>.

a. Choosing a 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). If more than one polling place is used, the BCA also appoints a presiding officer for each additional polling place. 17 V.S.A. § 2452(b).

b. Appointing Assistant Election Officers

Prior to the day of the election, the BCA must appoint a sufficient number of elections officials from each voting district. Political balance in these appointments is required by law (“as far as possible”). Each official must be sworn before his or her duties begin, using the oaths provided in section II-C-2 of this guide. 17 V.S.A. § 2454.

Disqualification of Election Officials

General rule: 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 an office on the ballot.

Notable exceptions: Candidates for justices of the peace.

A person may serve as an elections official even if his or name appears on the ballot as a JP candidate.

Other exceptions include candidates for town clerk, treasurer, moderator, ward clerk, or inspector of election, as well as situations where the person is the only candidate for the particular office for which he or she is running. 17 V.S.A. § 2456.

c. Designating Polling Places

At least 30 days before the election, the BCA must designate one or more polling places in town, although the voters at an annual or special meeting may designate different polling places. 17 V.S.A. § 2502. If a town has more than one polling place, the BCA must divide the checklist at least 40 days prior to the election. 17 V.S.A. §2501. A town may only change a

polling place less than 30 days prior to the election in the case of an emergency. 17 V.S.A. § 2502(2)(A).

d. Ensuring Accessibility

The BCA must take such measures as are necessary to assure that voters who are ill, elderly, or have a disability may conveniently and secretly cast their votes. The BCA has full jurisdiction over the premises at which a polling place is located for this purpose. 17 V.S.A. § 2502(b).

e. Determining Number of Voting Booths

The BCA must determine how many voting booths will be sufficient at each polling place. 17 V.S.A. § 2504.

f. Absentee Ballot Delivery

Justices of the peace also serve as election officers for the purpose of delivering absentee ballots to voters who have stated that they have an illness or physical disability that prevents them from voting at the polling place on Election Day but who have not requested in their applications that absentee ballots be mailed to them. 17 V.S.A. § 2538(a).

The BCA designates pairs of JPs to deliver these absentee ballots, making sure that, to the extent possible, no pair consists of two JPs from the same political party. If a sufficient number of JPs is not available to make up the required pairs, the BCA may select individuals from lists of registered voters submitted by the chairs of the town committees of political parties, as well as from among registered voters who apply in writing to the BCA and state that they are not affiliated with any political party. 17 V.S.A. § 2538(a).

Delivery begins as soon as absentee ballots are available. The town clerk divides the list of applicants who have an illness or physical disability and then assigns a number of voters to each pair of JPs. Ballots and envelopes are issued equal to the number of absentee voters the pair has been assigned to visit on that day. The JPs call on each voter on their list; each voter may mark the ballot alone or in the JPs' presence, but without showing the marked ballot to the JPs or anyone else. (If a voter is blind or physically unable to mark the ballot, however, one JP may mark the ballot in full view of the other.) 17 V.S.A. § 2538.

Disqualification from Delivery of Absentee Ballots

A justice of the peace who is running for another office and who consequently has been disqualified to serve as an election official under 17 V.S.A. § 2456 is not permitted to deliver absentee ballots, nor is his or her spouse, parent, or child. 17 V.S.A. § 2538(a)(4).

g. Counting the Votes

After the polls have closed, the counting process begins. JPs are an integral part of the counting process, whether in a hand count town or a vote tabulator town.

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, available on the Secretary of State's website at <https://www.sec.state.vt.us/elections/town-clerks-election-workers/election-procedures.aspx>. Detailed instructions for vote tabulator towns are found here: <https://www.sec.state.vt.us/elections/town-clerks-election-workers/election-supplies.aspx>.

If a recount is requested, members of the BCA, as elections officials, may be needed to help conduct the recount. For local elections, the BCA conducts the recount. 17 V.S.A. § 2685.

h. Legislative Apportionment

The Board of Civil Authority plays a significant role in the legislative apportionment process, which occurs decennially (every 10 years). See 17 V.S.A. chapters 33–34A.

E. Property Tax Appeal Responsibilities

As a member of the Board of Civil Authority, a justice of the peace sits to hear property tax assessment appeals from persons aggrieved by the final decision of the listers.

The following is a brief summary highlighting the obligations of justices of the peace regarding tax appeals.

***A Handbook on Property Tax Assessment Appeals*, a joint publication of the Secretary of State's Office and the Vermont Department of Taxes' Division of Property Valuation and Review, provides a detailed, step-by-step discussion of the property tax assessment appeal process. This handbook is available on our website at <https://www.sec.state.vt.us/municipal/handbooks-guides/property-taxes.aspx>.**

In addition, the Division of Property Valuation and Review offers the *Vermont Lister's Handbook*, available at <http://tax.vermont.gov/municipal-officials/listers-and-assessors/resources>, which contains an overview of the appraisal process.

1. Process Prior to 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 BCA, the Board of Listers must have held a grievance hearing on his or her property valuation. 32 V.S.A. §§ 4221–4224. If still dissatisfied with the appraisal, the taxpayer may take an appeal to the BCA by writing to the town clerk, who records the appeal and calls the BCA together. 32 V.S.A. § 4404(a).

2. Meeting Time

The clerk will notify each BCA member in writing of the date of the initial meeting to hear these appeals. 32 V.S.A. § 4404(b). The law provides that the BCA shall meet “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). Statutory timeframes for beginning the hearing on each appeal vary, depending on the date the listers’ abstract work is completed and the size of your town. 32 V.S.A. §§ 4341; 4404(b).

3. Oath

Before hearing any appeal, BCA members must take an additional oath which must be signed and filed with the town clerk:

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 the pains and penalties of perjury). 32 V.S.A. § 4405.

4. Quorum

When a BCA handles tax assessment appeals, “an act of the majority of the board present at the meeting shall be treated as the act of the board....” 24 V.S.A. § 801. This means that any number of BCA members (although never less than three, since three are needed for the inspection committee that visits the property under appeal) may take action at a duly warned meeting.

Conflicts of Interest and Disqualification

Property tax assessment appeal hearings are quasi-judicial in nature, and so the prohibitions found in law on conflicts of interest while acting in a judicial capacity apply. No BCA member should participate in a BOA hearing on any matter in which he or she has a real or financial interest.

12 V.S.A. § 61(a).

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

5. Conducting the Hearing

The open meeting law applies to property tax assessment appeal hearings. Because these hearings are considered “quasi-judicial,” members of the public are permitted to observe, but the BCA may limit participation to the taxpayer, the listers or possibly someone else from town government, and anyone called as a witness or asked by the BCA to provide information. 1 V.S.A. §§ 310(5), 312(e) and (h).

Property owners appealing their taxes must be given Constitutional due process, so that certain formalities apply during the hearing process. At a minimum, due process requires a fair hearing where the property owner is given an opportunity to be heard by decision-makers who are unbiased and who will base their decisions on a determination of the relevant facts and the application of these facts to the relevant law. For this reason, it is advisable that the BCA record the hearing.

It is also advisable that a JP or notary administer the witness’s oaths to anyone presenting evidence in the hearing:

Do you solemnly swear (or affirm) that the evidence you shall give, relative to the cause now under consideration, shall be the whole truth and nothing but the truth so help you God (or under the pains and penalties of perjury)? 12 V.S.A. § 5810.

In addition, all evidence must be received in the hearing; *ex parte* communications are inappropriate. Specifically, BCA members should avoid communications with any party, party’s counsel or representative, or any person interested in the outcome of the proceedings, if these communications occur outside the hearing and concern the proceeding’s substance or merits.

6. Inspection Committee

Once the appeal process begins, you may be chosen to serve on a three-person committee to inspect a property under appeal. The inspection committee must provide a report to the full BCA within 30 days from the date of the original hearing on the property. 32 V.S.A. § 4404(c).

7. Deliberation and Decision; Appeals

After the inspection committee has made its report, the BCA has an additional 15 days to certify its notice of decision, with reasons, in writing and to file this notice with the town clerk. 32 V.S.A. § 4404(c). The decision may be made in a deliberative session, after the BCA has heard all the evidence. 1 V.S.A. § 312(e). In its decision, the BCA may increase, reduce, or sustain the appraisal made by the listers. 32 V.S.A. § 4409.

A BCA’s tax appeal decision may be appealed to the State Appraiser at the Vermont Department of Taxes or to Superior Court. An appeal to either forum must be filed no later than

30 days after the day the town clerk mails the BCA's notice of decision to the taxpayer.
32 V.S.A. § 4461.

F. Board of Abatement Responsibilities

As members of the Board of Civil Authority, justices of the peace serve on the Board for the Abatement of Town, Town School District, and Current Use Taxes. 24 V.S.A. § 1533. Abatement is a statutory process for relieving taxpayers from the burden of property taxes, collection fees, and interest when the law authorizes abatement and when the Board, in its discretion, agrees that the request is reasonable and proper.

The following is a brief summary highlighting the obligations of justices of the peace regarding abatements.

For a detailed look at abatement procedures and considerations, please consult *About Abatement*, a publication of the Secretary of State's office.

<https://www.sec.state.vt.us/municipal/handbooks-guides/property-taxes.aspx>

1. Membership, Notice, and Quorum

The Board of Abatement generally consists of the Board of Civil Authority (the town clerk, the selectboard, and the justices of the peace residing in that town), the listers, and the town treasurer. 24 V.S.A. §§ 1533, 1537. BOA meetings are noticed like BCA meetings (see section III-C-2 above), except that at least one lister must be given personal notice of the BOA meeting. 24 V.S.A. § 1534.

A majority of the BOA's total membership must usually be present to meet as a board. Alternatively, if the town treasurer, a majority of the listers, and a majority of the selectboard members are present, this is also sufficient to meet quorum requirements. In either situation, the BOA needs only the vote of the majority of the quorum present at the meeting to make a decision or otherwise take action. 15 V.S.A. § 1533.

2. Abatement Requirements

Under 24 V.S.A. § 1535(a), the BOA may generally abate taxes, interest, collection fees, or any combination of these, where:

- The taxpayer has died insolvent.
- The taxpayer has removed from the state.
- The taxpayer is unable to pay.
- A manifest error or a mistake of the listers has occurred.
- The property on which taxes are owed was lost or destroyed during the tax year.

- The taxpayer is entitled to a tax exemption amount available under 32 V.S.A. § 3802(11) (pertaining to certain military and veterans' benefits).
- The mobile home on which taxes are owed moved from the town during the tax year because of a change in use of the mobile home park or the park's closure, pursuant to 10 V.S.A. § 6237.

3. Abatement Hearings

If a taxpayer requests abatement of taxes in writing for one of the reasons set forth in statute, the Board of Abatement must meet at some time to consider the request. While the taxpayer has the right to attend, he or she is not required to do so. The taxpayer should be told that the BOA may want additional information or that the taxpayer may wish to respond to other information presented at the hearing. If the taxpayer nonetheless chooses not to attend, the BOA must still consider the request and take action to abate or deny it.

The open meeting law applies to Board of Abatement hearings. Because abatement hearings are considered "quasi-judicial," members of the public are permitted to observe, but the BOA may limit participation to the taxpayer, a lister or possibly someone else from town government, and anyone called as a witness or asked by the BOA to provide information. 1 V.S.A. §§ 310(5), 312(e) and (h). All evidence must be received in the hearing; there may be no *ex parte* communications.

Conflicts of Interest

Abatement hearings are quasi-judicial in nature, and so the prohibitions found in law on conflicts of interest while acting in a judicial capacity apply. No BOA member should participate in a BOA hearing on any matter in which he or she has a real or financial interest. 12 V.S.A. § 61(a). While a BOA member who seeks abatement of his or her own taxes may remain on the Board, the member should leave the room when his her case is being considered. Once that decision is over, the member may retake his or her seat.

4. Abatement Decisions

After the BOA hears all the evidence, it may meet in a closed session to deliberate and decide whether to grant the abatement. 1 V.S.A. § 312(e). Vermont law requires that this decision be made in writing; the BOA must state in detail the reasons for its decision. 24 V.S.A. § 1535(c). The BOA 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 year. 24 V.S.A. § 1535(d).

The BOA must make a record of any taxes, interest, and fees abated, which must be recorded in the town clerk's office. 24 V.S.A. § 1536.

5. BOA Discretion; Appeals

Abatement is meant to be an equitable remedy. No law requires abatement under any particular circumstances, and Vermont courts have affirmed a BOA's right to exercise discretion in these matters. *Garbitelli v. Town of Brookfield*, 2011 VT 122. This means that a BOA may choose not to abate taxes on request even if one of the statutory reasons for granting abatement clearly applies.

The abatement statutes do not provide a specific route to appeal from a decision. If the taxpayer believes that the BOA has abused its discretion in denying a request, Vermont case law indicates that an appeal can be taken through Rule 75 of the Vermont Rules of Civil Procedure. However, the Vermont Supreme Court has made it clear that if the taxpayer wants to challenge the assessment or fair market value listing of his or her property, an abatement request cannot substitute for the property tax grievance and appeal process. *Garbitelli v. Town of Brookfield*, 2011 VT 122.

G. 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. A justice of the peace may perform marriages anywhere within Vermont's boundaries—the JP's jurisdiction is not limited by town or county. Marriage solemnization is a discretionary function of the office; that is, a JP may decide whether to perform a particular ceremony on a case-by-case basis, may decline to perform all ceremonies, or may decide to perform ceremonies only for family and friends. A JP may not, however, discriminate on any basis prohibited by law.

Changes to the Vital Records Laws

Assorted amendments to Vermont's vital records laws go into effect on July 1, 2019. 2018 Acts and Resolves No. 46, as amended by 2018 Special Session Acts and Resolves No. 11. These changes are intended to enhance security and clarify how vital records (including marriage records) will be created, stored, copied, and shared.

For more information on changes to the vital records laws, visit the Vermont Department of Health's website at <http://www.healthvermont.gov/stats/vital-records/changes-vital-records-law>.

Before the ceremony, one of the parties to the proposed marriage must apply to the town clerk of a town where either party resides or, if neither party is a Vermont resident, to any town clerk to obtain an application for a marriage license. (The application is also available on the Vermont Department of Health's website at <http://www.healthvermont.gov/health-statistics-vital-records/vital-records-population-data/marriage-and-civil-unions>.) At least one party must sign

the application in the presence of the town clerk. Vermont law does not require a medical certificate, blood test, or waiting period. 18 V.S.A. §§ 5131, 5141–5142.

Once a license is obtained, the marriage may be celebrated anywhere in Vermont. 18 V.S.A. §§ 5137, 5145. The marriage must be completed within 60 days of issuance of the license. If the ceremony is delayed beyond that, a new license must be applied for and issued. 18 V.S.A. § 5131.

A JP or other official who solemnizes a marriage must complete a section on the license form and return it to the town clerk within 10 days of the ceremony. 18 V.S.A. § 5131. The JP must sign the form and include his or her official title, “Justice of the Peace.” By signing the license, the JP is certifying that the parties entered into the marriage with mutual consent.

Vermont law is silent on the mechanics of wedding ceremonies. Some authorities say that a minimum ceremony could be as short as the JP saying, “By the authority vested in me by the State of Vermont, I hereby join you in civil marriage.” For those wanting a more formal civil marriage ceremony, a possible solemnization 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:

(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 cherish forever.”

RESPONSE:

(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.

Parties are free, of course, to discuss with the JP their own ideas of what they want in a ceremony.

H. Administering Oaths

Vermont statute authorizes a justice of the peace to administer oaths in all cases where an oath is required, unless a different provision is made by law. 12 V.S.A. §§ 5852, 5854. This may include administering the oaths of allegiance and office, as well as the oath for members of the Board of Civil Authority hearing tax appeals. (For more info on these oaths, see sections II-C-2 and III-E-3 respectively.)

Note that a justice of the peace may not generally administer “oaths necessary to be for the establishment of truth or the furtherance of justice” in any matter coming before a court, board, or commission for investigation. 12 V.S.A. § 5853. This provision does not prevent a JP, however, from administering the oath of a witness before the Board of Civil Authority or the Board of Abatement.

Remember that in cases where an oath may be given, affirmation is permitted. That is, the word “swear” may be replaced with “affirm” and the phrase “so help you God” with “under the pains and penalties of perjury.” For every purpose of privilege, qualification, or liability, affirmation is sufficient for being considered duly sworn. 12 V.S.A. § 5851.

I. Performing Notarial Acts

As notaries public, justices of the peace may take acknowledgements, administer oaths and affirmations, take verifications on oaths and affirmations, attest to signatures, and note protests of negotiable instruments. 26 V.S.A. § 5304(7).

Historically, justices of the peace were considered *ex officio* notaries public; that is, a JP had notarial powers by virtue of holding the JP office. 24 V.S.A. § 441(b) (repealed effective July 1, 2019). Despite having *ex officio* status, JPs were required to file an application, which included the notary’s oath, with their county clerk before undertaking any notarial duties. 24 V.S.A. § 442 (repealed effective July 1, 2019).

In 2018, the Vermont Legislature enacted legislation to modernize regulation of notaries public. 2018 Acts and Resolves No. 160. Under the new law, JPs who wish to perform notarial acts must file an application and oath of office with the Secretary of State’s Office of Professional Regulation. 26 V.S.A. § 5341. (Existing notary public commissions received by county clerks before December 1, 2018 remain in effect until February 10, 2019.) The application fee is waived for justices of the peace. 26 V.S.A. § 5305(c). As in the past, all justices of the peace must file an application and oath of office before exercising any notarial powers.

Effective July 1, 2019, the new law sets standards for notarial acts and for notarial professional conduct. Beginning in 2021, applicants will need to pass a basic examination, and renewing applicants are required to complete two hours of continuing education every two years.

For more information about the new notary public law and applying for or renewing your commission, please visit the Office of Professional Regulation's website:

<https://www.sec.state.vt.us/professional-regulation/list-of-professions/notaries-public.aspx>

J. Judicial authority

The judicial authority of justices of the peace was eliminated by the General Assembly in 1974. The Vermont Constitution does, however, permit the Supreme Court to commission JPs to serve as magistrates. Vt. Const. Ch. II, § 52. This is an unusual event, one that would occur only in extraordinary cases.

Any office that includes the word "Justice" is 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.

Appendix: Resources for Justices of the Peace

SECRETARY OF STATE'S OFFICE

Elections Questions:

Will Senning, Director of Elections
(802) 828-2363
sos.elections@sec.state.vt.us

Municipal and Open Government Questions:

Jenny Prosser, General Counsel and Director of Municipal Assistance
(802) 828-1027
jenny.prosser@sec.state.vt.us

Chris Winters, Deputy Secretary of State
(802) 828-2124
chris.winters@sec.state.vt.us

Notaries Public Questions:

Office of Professional Regulation
(802) 828-1505
<https://www.sec.state.vt.us/professional-regulation/list-of-professions/notaries-public/frequently-asked-questions.aspx>

OTHER RESOURCES

Division of Property Valuation and Review, Vermont Department of Taxes
(802) 828-5860
tax.pvr@vermont.gov
<https://tax.vermont.gov/municipal-officials>

Office of Vital Records, Vermont Department of Health
(802) 863-7275
VitalRecords@vermont.gov
<http://www.healthvermont.gov/stats/vital-records>

Vermont League of Cities and Towns' Municipal Assistance Center (for municipal officials only)
(800) 649-7915
info@vlct.org
<https://www.vlct.org/mac>