

2018 ELECTION PROCEDURES

A guide for Town Clerks, Presiding Officers, Representative District Clerks,
Senatorial District Clerks, County Clerks, Boards of Civil Authority,
Election Officials, Candidates and Voters.



Prepared by the
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The Vermont Constitution: A Word on Elections

Chapter I, Article 8 of the *Vermont Constitution* requires:

"That all elections ought to be free and without corruption, and that all voters, having a sufficient, evident, common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution."

This is not just a homily. The purity and basic fairness of Vermont elections is both a philosophical and practical objective of our social and political lives as Vermonters. We begin this review of the Primary and General Elections by proudly repeating the purposes of the Vermont election laws, as explained in 17 V.S.A. §2101:

- to provide equal opportunity for all citizens of voting age to participate in political processes;
- to assure that political campaigns are fairly and honestly conducted and financed;
- to define unacceptable conduct among political candidates and public servants;
- to insure that public service will be in the public interest, rather than the special interest of groups or individuals;
- to encourage citizens to become more actively involved in the political processes which affect the quality of life; and
- to provide uniform practices and procedures in the conduct of elections throughout the state.

Introduction

Members of our Boards of Civil Authority know that there is more to running Vermont's elections than checklists and tabulators. In fact, the biggest challenge for those charged with running Vermont's elections is doing what needs to be done next -- before the deadline passes.

At the Office of the Secretary of State we work hard to help ensure that Vermont's local officials run all elections in a proper and legal manner. The "2018 Election Procedures--A Guide for Election Officials" is designed to be used as an overview of the election process and as a step-by-step reference for election officials for conducting elections. This guide is supplemented during the election year by Elections Bulletins sent out by the Elections Division to the town clerks as a reminder of the various requirements of election administration as deadlines near.

A detailed 2018 Elections Calendar is available on the Elections page of the Secretary of State's web site at <http://www.sec.state.vt.us/elections>.

This year, Vermont has three major parties that will be holding primaries the second Tuesday of August: Democratic, Progressive and Republican. It is a year in which we will elect a U.S. Senator, our U.S. Representative, all six statewide offices, all 30 members of the State Senate, all 150 members of the Vermont House of Representatives, probate judges, assistant judges, state's attorneys, sheriffs, high bailiffs, and justices of the peace.

We have a lot of work to do! I am very pleased that we have a great Elections Division staff to serve you. As always, we encourage you to call us for additional information or assistance.



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I. Overview of Administrators of Statewide Elections

The primary and general elections in Vermont are administered through teamwork between the Secretary of State, who is the chief election official of Vermont; the 246 local election boards known as the Board of Civil Authority in each town or city; the town clerk, also a member of the BCA; additional election officials appointed by the Board of Civil Authority; and the fourteen county clerks.

The **Secretary of State** (SOS) employs a director of elections and four election administrators. The Elections Division provides information and training about election law and procedures to local election officials, parties, candidates, and citizens. The Elections Division reviews petitions and consent forms, prepares and distributes ballots and the Official Return of Votes (used to report election results) for all voting districts, and reports election results. All candidates file campaign finance reports with the SOS.

The **Board of Civil Authority** (BCA) of each town or city (except where local charters may provide differently, such as Burlington and Rutland City) is composed of the town clerk, the members of the local selectboard or city council and the justices of the peace (JPs) elected every two years in the General Election (5 to 15 JPs depending upon the population of the town). The BCA is in charge of the conduct of elections within the municipality. BCA members should serve as election officials at polling places on Election Day whenever possible. §2451¹.

The BCA establishes policy; makes decisions involving voter registration and challenging and purging voters; determines polling places and hours; members serve as election officials at the polling place; and justices of the peace may deliver absentee ballots to voters who are ill or who have a disability who request personal delivery. If there are not enough BCA members to serve on Election Day or to deliver ballots, the BCA shall appoint additional registered voters of the town to serve as election officials. §2454.

A quorum of at least three members of the BCA must be present and in agreement to take official action, except on Election Day, when any number present, even if only one, can take action. §2103(5), §2451. Although one BCA member can make decisions on Election Day regarding additions to the checklist to correct inadvertent mistakes or regarding challenges to voters, **there must be at least two sworn election officials at the polling place at all times on Election Day.** We strongly recommend that even the smallest towns plan to have at least three election officials present at all times. In order to protect the integrity of the election, no election official should be alone at the polling place from the opening of the polls until the count is completed, ballot bags sealed, and materials are locked in the town clerk's vault.

If a town does not have at least three BCA members belonging to one of the major parties, any three voters in the town, or the town chair of that political party, can submit a list of names and request that the selectboard appoint additional members to the BCA, for election purposes only, from its proposed list so that the major party will have at least three members serving on the BCA. Any BCA members appointed under this provision serve **ONLY AS ELECTION OFFICIALS**. These appointees do not become JPs, cannot perform marriages, and cannot participate in tax appeals or tax abatements. §2143.

The **Town Clerk** is the key player in the preparation for and the administration of the Primary and General Elections. The town clerk maintains voter information on the statewide checklist, posts all notices and warnings, processes absentee ballots, serves as presiding officer at the polling place, and prepares and submits the Official Return of Votes (with another election official).

The **Presiding Officer** is the chief election official at each polling place. The town clerk is the presiding officer unless the town has voted otherwise, the clerk is unavailable, or there is more than one polling place in the town. If the town clerk is unavailable or there are multiple polling places, the BCA appoints a registered voter to serve as presiding officer. §2452. Presiding officers are required by law to attend one election workshop presented by the SOS every two years and must certify with the SOS by December 31 of even-numbered years that they have attended a training. §2457(b).

¹ Unless otherwise noted, all sections referred to are in Title 17 of the Vermont Statutes.

Representative District Clerks are town clerks who are assigned additional responsibilities related to the election of the **150 State Representatives**. Vermont statutes designate the town clerk of the whole town with the largest population within each representative district as representative district clerk. These town clerks will continue to serve as representative district clerks until the General Assembly finishes reapportionment creating new districts for the 2022 elections following the 2020 census. §2103(29).

Representative district clerks:

- accept primary petitions and consent forms from **major party** candidates for state representative. (Independent and minor party candidates must file petitions and consent forms with the SOS in Montpelier—DO NOT accept these forms.);
- for all major party candidates who properly file petitions with the required **50** signatures along with a consent form, enter the candidate's information into the Vermont Elections Management System (VEMS)—DO NOT accept a petition without a consent form!!;
- chair a canvassing committee following the Primary and General Elections to tabulate election results for the representative district (an election bulletin will be emailed to each representative district clerk prior to the canvass with procedural details);
- send completed Certificates of Election to the winning candidate(s);
- upload the signed canvass report (election results) for the representative district into VEMS;

Senatorial District Clerks are 12 of the county clerks who are designated by state statute to perform additional duties related to the election of **30 State Senators** (Essex and Orleans Counties are combined in one senatorial district with the Orleans County Clerk serving as senatorial district clerk and the Chittenden County Clerk serves as clerk for both the Chittenden and Grand Isle Senate Districts).

Senatorial district clerks:

- accept primary petitions and consent forms from **major party** senatorial candidates; (Independent and minor party candidates must file petitions and consent forms with the Office of the SOS in Montpelier—DO NOT accept these forms.);
- for all major party candidates who properly file petitions with the required **100** signatures along with a consent form, enter the candidate's information into the Vermont Elections Management System (VEMS)—DO NOT accept a petition without a consent form!!;
- chair a canvassing committee following the Primary and General Elections to tabulate election results for the senatorial district (an election bulletin will be emailed to each senatorial district clerk prior to the canvass with procedural details);
- send completed Certificates of Election to winning candidates;
- upload the signed canvass (election results) for the state senatorial district into VEMS;

County Clerks:

- accept petitions and consent forms from **major party** candidates for county office;
- for all candidates who properly file petitions with the required **100** signatures along with a consent form, enter the candidate's information into the Vermont Elections Management System (VEMS)—DO NOT accept a petition without a consent form!!;
- chair a canvassing committee following the Primary and General Elections to tabulate election results for county offices (an election bulletin will be emailed to each county clerk prior to the canvass with procedural details);
- send completed Certificates of Election to winning candidates;
- upload the signed canvass report (election results) for the county offices into VEMS;

Superior Court Clerks:

- accept petitions for recounts after the Primary or General Elections from candidates for state representative, state senate and county offices if the difference between a winning candidate and a losing candidate is less than 2% of the total votes cast for all candidates in the race divided by the number of candidates. The percentage for state representative candidates is 5%;
- accept petitions to contest elections.
- County clerks manage all recounts within the county under the supervision of the Superior Court Judge. §§2601, 2602.

Election Officials are registered voters of the town who are appointed by the BCA as needed or to ensure political party balance and can include assistant town clerks (who may serve as election officials even if they are not registered voters of the town). §2454. **All appointed election officials must be sworn in before entering upon their duties.** Sixteen and seventeen-year-olds can be appointed as assistant election officials working under the direct supervision of adult election officials, but are not sworn in because they are under 18 and therefore cannot take oaths.

The oaths required for election officials are set out in the Vermont Constitution. They are as follows:

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

I (give name) do solemnly swear (or affirm) that I will faithfully execute the office of assistant election official for the town of (give town) and will therein do equal right and justice to all persons, to the best of my judgment and ability, according to law. (If an oath) So help me God. (If an affirmation) Under the pains and penalties of perjury.

Disqualification of Election Officials

In certain cases, members of the BCA or election officials may not serve at a particular election due to a statutory disqualification. **No person who is a candidate for an office in a contested race whose name is printed on the ballot** may serve as an election official for that election **EXCEPT** if the person is a candidate for justice of the peace, town clerk, treasurer, moderator, or in charter towns, for another election official position such as ward clerk. For example, if a town clerk or justice of the peace is running for state representative, the clerk or JP cannot serve as a presiding officer or election official. However, if a person is **ONLY** running for JP or town clerk, then the person can serve as an election official, but we recommend they do not count the ballots for their own race. §2456. When a candidate is disqualified from serving as an election official, then that candidate's spouse, parent or child cannot deliver absentee ballots to voters who are ill or who have a disability. §2538(a)(4).

***Whenever possible, the best practice is to avoid even the suggestion of a lack of impartiality.** So, even if a candidate is permitted by the statutes to serve as an election official, do not have the candidate count ballots for the office that he or she is seeking. The standards of voters are often higher than the standards of the law, and while you are obliged only to follow the law, a little prudence goes a long way.

Assignments and Compensation of Election Officials

The **presiding officer** makes assignments of the hours and duties of election officials. The presiding officer must sometimes make difficult decisions to assign the person with the best skill set for a particular duty even if someone else has traditionally performed that function. **Please accept and support your presiding officer's decisions with grace—the accuracy and integrity of the election is paramount.** §2455.

The compensation, if any, of those who deliver absentee ballots is established by the BCA. §2538(a)(5). Compensation of election officials, if any, is determined by the electorate at town meeting as part of the normal budget process, or in lieu of a town vote, by the selectboard. Some towns pay wages while other towns ask for and receive volunteer service.

II. Election Related Responsibilities of Town Clerks and BCA

Certain election related duties are performed by the **town clerk** and local **BCA** throughout every year, and are not necessarily related to a particular election. These duties include:

Voter Registration and Statewide Voter Checklist Duties

Town clerks must add, edit, challenge and purge voters from the voter checklist. Please review the VEMS User Manual for details on performing voter registration related actions in that system, or contact one of the Elections Administrators with questions or to request training. **All clerks must check their email for Election Bulletins on a daily basis.**

Individuals may register to vote during the town clerk's normal business hours on any day up to Election Day and may register at the polling place during polling hours on Election Day. §2144(a) and (b).

Vermont law gives the town clerk the authority to add names to the checklist. If an application meets the requirements, the person's name must be added to the checklist within **three days** of the clerk receiving the application. §2144b. If a town clerk is uncertain if a person meets the requirements, the town clerk should request a meeting of the BCA to review any questionable applications. BCA meetings require five days written notice to each member of the board and posting a notice in at least two public places at least five days before the meeting. 24 V.S.A. §801. If the board denies the application, the clerk must send a notice with reason(s) for the denial to the person's last known address §2146(b). The rejection notice must inform the applicant that, any person whose application to vote has been rejected or whose name has been removed from the checklist may appeal to Superior Court. §2148.

Periodically, or at least five days prior to each election, the town clerk is required to forward a list of additions to the checklist to the BCA. §2144b(d).

Meetings of the **board of civil authority**, except for Election Day meetings, use a present and voting standard for a quorum, but require at least three members present and in agreement to take official action. §2103(5). **On Election Day, a quorum of the BCA consists of those members present at the polls.** §2451. Therefore, on Election Day, if no other members of the BCA are present, the town clerk or any BCA member can add a name to the checklist or take other official action. §2147.

No application to the BCA is required when a voter moves to a new location in the same town or changes their name. If the voter notifies the clerk, or if a change of address or name comes from the Department of Motor Vehicles, the clerk simply makes the changes on the checklist.

Qualifications to Become a Registered Voter in Vermont

A person may be added to the voter registration checklist if that person: (1) is a citizen of the United States; (2) is a resident of the town or city in Vermont where the application is submitted; (3) is 18 years of age or older by the General Election date; and (4) has taken the Voter's Oath. Any person meeting the requirements above who will be 18 years of age on or before the date of a General Election may register and vote in the Primary Election immediately preceding that General Election. 17 V.S.A §2121(b). Sometimes a person misunderstands and believes that a resident-alien "green" card allows one to register to vote, but it does not. A person must become a U.S. citizen, not a resident-alien, in order to register.

It is the **"residency"** issue where most questions arise. §2122(b) provides:

A person may have their name on the checklist only in the town in which the person is a resident. For the purpose of this section, **"resident" shall mean 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.** If a person moves to another town with the intention of remaining there indefinitely, the person shall be considered to have lost his residence in the town in which he originally resided even though he intends to return at some future time. However, a person shall retain the ability to vote in a town of former residence for a period of 17 days after becoming a resident of a new town. A person may have only one residence at a given time.

Intent is the key. What about a student in a dorm, living nine months of the year in Vermont and intending to remain in Vermont indefinitely? Case law tells us the college student can choose his primary residence but cannot be registered in two places. Or, what about an owner of houses in two Vermont towns, living in one and renting out the other house, but intending to return to the rented house when he or she retires? As long as the person is only claiming one town as a principal dwelling place and is not on any other checklist, he or she may qualify to register and vote. There can be complicated factual questions involving residency. However, as long as a person is not registered and voting in two places, the Vermont statutes appear to place the most emphasis on the intent of the voter if temporarily absent, and Vermont court cases uphold this statutory standard.

The law on residency and voter registration checklists also provides that the town clerk and BCA must treat each applicant equally. **The law prohibits the BCA from requiring applicants to complete any form other than the “Application to the Checklist” or from requiring that all applicants or any particular class of applicants appear before the BCA or submit additional information.** §2145(c).

Denying an Application

On a case-by-case basis the BCA can conduct an inquiry into a person’s eligibility if the town clerk or the BCA has reason to question residency or other information on an application. On demand of a majority present (at least three members for a majority, except on Election Day, when any number of BCA members present at the polls may act, even if only one is present) the BCA may require that an applicant be examined, under oath, concerning the facts stated in the application. The board may also make such investigation as it deems proper to verify any statement made under oath by an applicant. §2146(a). See the statute for details.

Military and Overseas Voters

Federal law requires that U.S. citizens have the right to maintain their status as voters in the last place within the United States where they had established residency, while citizens, their spouses and dependents, are serving in the military (in the U.S. or outside) or while citizens are living outside of the United States. 42 U.S.C. §1973c and §2122(a). Whether in military service (in the U.S. or abroad), or living by choice abroad, a person can maintain residency for voting purposes indefinitely in the last town of former residence in the United States until the person returns to the U.S.

Challenging a Voter

To challenge a voter (because the BCA believes the voter no longer resides in town) or to purge a person's name from the checklist, the BCA must follow the detailed guidance provided in §2150 and in periodic Elections Bulletins to town clerks regarding the challenge and purge procedures.

Records of Voter Registration; Checklist Maintenance

Completed applications for addition to the checklist, or an electronic copy thereof, must be retained until the end of the General Election cycle following the one in which they were submitted. For example, an application submitted during the current 2018 election cycle must be retained until the end of the 2020 general election cycle.

The **town clerk** must keep records of actions by the BCA to maintain the checklist. Minutes must be kept of each BCA meeting. The records must include the reason for removal of each voter. This may include keeping a copy of the written request, a copy of the new registration form or making notations in the comments section of the Statewide Checklist. The minutes need to include the names of all board members present and all members of the public who participated in the meeting; all motions made, action taken, and the results of all votes. 1 V.S.A. §312.

Voter Registration for Primary and General Elections for Residents of Gores and/or Unorganized Towns -- Residents of gores and unorganized towns can register **for state and federal elections only** in any town that is in the county, senatorial district, and representative district in which he or she resides. When printing a local checklist, residents of Unorganized/Unified towns and gores will not be included (if you have entered the voter correctly in VEMS) or you can add a notation that will be clear to election officials at the polling places that these voters can only vote in state and federal elections. **Many clerks add a “G” in the suffix field.** Residents of gores and unorganized towns **cannot vote in town elections, town school board elections, or union high school elections.** §2123.

Additional Duties of the BCA before Election Day

There are a number of decisions the BCA must make before elections:

- The proper number of voting booths. §2504. Your town needs to have enough voting booths so that voters are not held up for more than 10 minutes waiting for a booth.
- Designates the location of polling place or places (although voters may petition to decide on other polling places at a duly warned annual or special meeting). §2501. **ALL polling places must be accessible to voters with disabilities.** The BCA must take measures to assure that elderly voters and voters with a disability may conveniently and secretly cast their votes. §2502. There must be **designated handicapped parking** outside a polling place, and no person should be permitted in a handicapped space for longer than the time needed to vote.
- At least 30 days prior to every election, the town clerk must report their polling place(s) to the SOS’s Office. Location of polling places is a question we include every year on our Town Meeting Survey that all clerks complete. By answering this question on the survey you have met the requirement to report these polling locations to our office. Locations may only be changed within 30 days of an election in cases of emergency and those changes must be reported to the SOS within 24 hours. §2502(c)(1).
- Voters who are ill or who have a disability can also ask two election officials to deliver a ballot to the parking area to vote (curbside voting). A polling place accessibility guide from the U.S. Department of Justice can be downloaded at <https://www.ada.gov/votingck.htm> §2502(b).
- May vote not to use an exit checklist. §2507.
- Designates pairs of justices to deliver absentee ballots to ill and physically disabled voters no later than three days before Election Day. No pair shall consist of two JPs from the same political party. If there are not enough JPs, additional voters may be appointed from a list provided by the chairs of the town committees of political parties organized in town to balance the pairs. §2538.
- Designates the time for opening the polls between 5 a.m. and 10 a.m. All polls close at 7 p.m. throughout the State of Vermont. §§2494, 2561.
- Appoints a sufficient number of assistant election officials, to work in politically balanced pairs, when possible. (The law now explicitly states, whenever the law requires two or more officials of different parties to perform a task, equal representation shall not be required if the clerk’s attempts to achieve it were unsuccessful. In other words, if you have tried but failed to recruit an equal number of officials from both parties and as such cannot have a balanced pair to perform a certain task, then two election officials of the same party are allowed to perform the task.) The appointed election officials must be sworn in before participating in any election duties. Sixteen- and seventeen-year-old residents of a voting district may be appointed as election officials working under the direct supervision of adult election officials. §2454.
- At a meeting held not less than 60 days prior to an election, the BCA may vote to require the town to use vote tabulators for the registering and counting of votes in subsequent local, primary, or general elections, or any combination of those. If your BCA is interested in adopting the use of tabulators in your town or city, please contact the Elections Division. §2491(a).

III. Major Party Petition and Consent Filing Procedures for the Primary Election

The Primary Election is the method of nomination that **major parties** (Democratic, Republican, and Progressive) use to select candidates to represent the party on the ballot in the General Election. Independent and minor party candidates can skip this section and go immediately to Section IV for the General Election.

Candidates may not be on the Primary ballot of more than one party in the same election. §2353.

Primary Petitions and Consent Forms and filing requirements (§§2355, 2356 and 2357)

Representative district clerks, senatorial district clerks and county clerks **CAN ONLY** accept petitions from major party candidates— **all independent candidates (except JPs) MUST FILE WITH THE OFFICE OF THE SOS.**

****Major party petitions and consent forms must be filed not earlier than the fourth Monday in April and not later than 5:00 p.m. on the fourth Thursday after the first Monday in May.****

Petition Signature Requirements

Congressional and Statewide Office (U.S. Senate, U.S. Representative, Governor, Lieutenant Governor, State Treasurer, SOS, Auditor of Accounts, and Attorney General) – **500 signatures, file with the SOS**

State Senate – **100 signatures, file with the senatorial district clerk**

State Representative – **50 signatures, file with the representative district clerk**

County Office (Probate Judges, Assistant Judges, State’s Attorney, Sheriff, High Bailiff) – **100, file with the county clerk**

(Major party candidates for Justice of the Peace do not run in the Primary Election—they are nominated by caucus or party committee in August.) Additional information on JPs is presented on page 10.

At the time of signing a petition, the person must be a registered voter in a Vermont town and must be qualified to vote for the candidate. Each petition signer must print their name and town of residence next to the signature. A voter may sign as many primary petitions for each major party for a given office as there are nominations to be made for that office. For example, a voter may sign one primary petition for Governor for each major party. A voter may sign primary petitions for two different state representatives for each major party if they live in a two-member district. §2354.

Every candidate must submit a consent form with their petition. The consent form should contain the candidate’s name as they want it to be printed on the ballot, the candidate’s town of residence and correct mailing address. **DO NOT ACCEPT A PETITION WITHOUT A CONSENT FORM.** Without the consent form, the person’s name will NOT appear on the ballot. (Nicknames can be included, but titles will not be printed on the ballot. This means that Rick “Speedy” Harris can be included, but Dr. Samuel Jones cannot.) **A consent form must be filed along with the petition.** §2361.

Financial Disclosure: Candidates for Statewide Office, State Senate, and State Representative (not County office candidates) must now file a financial disclosure form along with their consent and petition. The financial disclosure form is available on the SOS website along with the petition and consent. You are required to scan the financial disclosure form and email a copy to our office at: sos.elections@sec.state.vt.us.

Although the form is required to be filed at the same time as the consent and petition, it is not required in order for the candidate’s name to be printed on the ballot. If a candidate files their petition and consent

form prior to the filing deadline, but not their financial disclosure form, please still enter their information into VEMS so that they will appear on the ballot.

Signatures on petitions for primary elections do not need to be verified or certified. The designated filing official checks that the petition contains the required number of legible signatures and **that a consent form is filed.** If there are sufficient legible signatures, and you have no reason to believe the petition is otherwise defective, the petition is valid. §2358. **CLERKS: Please enter a qualified candidate into VEMS as soon as you have certified they have met the requirements to be on the ballot- do not wait until the filing deadline. If a candidate is not a registered voter, please call the Elections Division to have the candidate entered into VEMS (check your email for election bulletins with instructions).**

Petitions must contain at least the required number of signatures when filed. Do Not accept a petition that does not contain at least the minimum number of signatures, because it cannot be supplemented. If you review a petition that has the required number of signatures but enough of them are not registered voters, or are not legible, such that there are not enough valid signatures, reject the petition and notify the candidate that he or she has ten days to submit the required number of legible signatures. **Call the Elections Division immediately if you have rejected a petition** and returned it to a candidate for collection of supplemental signatures. Please encourage candidates to file supplemental petitions as soon as possible so we can prepare the Primary ballots. No official notice is required to be given to candidates of conforming petitions. §2358.

Candidates may not file and cannot be printed on the Primary ballot for more than one party for the same office in one election. §2353. However, a candidate on the ballot in one party can ask for **write-in votes** in another party. A candidate can be nominated through the write-in process if the candidate is the highest vote-getter even if other names are printed on the ballot. A candidate may also be nominated by write-in if no names are printed on the ballot, provided that the candidate is the highest vote-getter and receives votes totaling at least 50 percent of the number of signatures required for petitions for nomination for that office (statewide offices—250; senatorial and county—50; state representative—25). §2370.

If you are NOT the filing official designated by statute, DO NOT accept a Primary petition—you must direct the candidate to the correct place to file. DO NOT accept petitions from independent or minor party candidates. They must file with the SOS (except for independent justice of the peace candidates who must file with their town clerk).

All petitions for the primary must be kept until 30 days following the General Election at which time they may be destroyed. §2360.

Primary Election Winners

The winner of each race in the Primary Election is the major party's nominee for that office and is automatically placed on the General Election Ballot. The name, residence, and party affiliation on the Certificate of Nomination will be printed on the General Election ballot. **If a candidate discovers an error on the Certificate, the candidate must notify the SOS within five days of receipt.** §2371.

Candidate Withdrawals

In order to withdraw and remove their name from the General Election ballot, candidates must submit a written notice of withdrawal with the SOS no later than 5:00 p.m. on the tenth day following the Primary. After that time, the SOS may still withdraw a name if a written notice of withdrawal is filed prior to the ballot printing deadline. §2412.

IV. General Election Party Nomination and Independent Candidate Petition Process

Candidates Nominated by Other Means for the General Election (not nominated by Primary)

This section pertains to independent candidates; candidates nominated by minor party committees; candidates nominated by party committee when a major party has failed to nominate by primary or where the candidate has withdrawn, died or been removed, and candidates for justice of the peace.

Independent Candidates (except Justices of the Peace, discussed on page 10)

The law requires independent candidates to file petitions ("statements of nomination" in the statutes) and consent forms to be placed on the General Election ballot with the SOS. The law no longer requires independent candidates to have signatures verified and certified by town clerks prior to submission to the SOS (except Presidential/Vice-Presidential nominations, which require certification of signatures by the clerk on the original petition prior to filing with the SOS).

Independent petitions must contain:
<ul style="list-style-type: none">• Presidential — 1,000 signatures• Statewide and Congressional office — 500 signatures• State Senate and County offices (probate judge, assistant judge, state's attorney, sheriff, high bailiff) — 100 signatures• State Representatives — 50 signatures

Independent Candidates Petition Filing Requirements:

Presidential Candidates require certification of signatures by the clerk on the original petition prior to filing with the SOS. Deadline to file is no earlier than the fourth Monday in April and not later than 5:00 p.m. on the August 1 preceding the presidential general election.

Justice of the Peace Candidates file with the town clerk, not earlier than the fourth Monday in April and not later than 5:00 p.m. on the third day following the primary election.

All other candidates file with the office of the SOS in Montpelier not earlier than the fourth Monday in April and not later than 5:00 p.m. on the Thursday preceding the primary election. SOS

A voter may not sign more than one statement of nomination ("petition") for an Independent candidate for the same office, unless there is more than one seat in the district. §§2402, 2403. However, a person who has signed a candidate's petition for an office for the primary can sign another petition for an Independent candidate for that office. (The primary and general are considered different elections for the purpose of signing petitions.)

An **Independent** candidate will have their name printed on the General Election ballot with the word "Independent" next to the name, unless the petition specifies a political party name. The word "party" will in no case be printed on the ballot. The party name of three words or less may not include the word "Independent." The name chosen must be substantially different from the name of any organized political party in Vermont and from any other name on a statement of nomination already on file with the SOS. If no party is indicated, the word "Independent" shall be printed on the ballot. §§2402, 2403 and 2472(b). A statement of nomination must contain the name of only one candidate, except in the case of presidential and vice presidential candidates. §2403.

Nomination of Candidates by Party Committee

Nominations may be made by party committee in the following cases: all minor party nominations; nominations by a major party in the event that party fails to nominate a candidate by primary; the death, removal, or withdrawal of a candidate; or the nomination of candidates for Justice of the Peace in the event a caucus is not held.

Which Committee Makes Nomination

Nominations for President, Vice President, State or congressional office are made by the State committee;

county office by the county committee; State Senate by the senatorial district committee; State Representative by the representative district committee, and by the town committee for Justice of the Peace. §2382.

Notice and Voting

The chair of the committee, or if the chair fails to act, any three members of the committee, must send **written notice stating the offices for which nominations are to be made** to each committee member at least five days in advance of the meeting. §2383. **Nomination requires a majority vote of those present and voting**, and if no candidate has received a majority after two ballots, the candidate with the lowest number of votes in the second and in each succeeding ballot is eliminated until a candidate receives a majority. §2384. The chair and the secretary of the committee file a signed statement of nomination with the SOS. Each candidate nominated must also file a consent form. §2385(a),(d).

Deadline for Minor Party Committee Nominations

Statements of nomination by minor party committees and consent forms shall be filed with the SOS not earlier than the fourth Monday in April and not later than 5:00 p.m. on the Thursday preceding the Primary. §2386(c)(1).

Deadline for Major Party Committee Nominations in Event of Failure to Nominate by Primary

In the case of a major political party failing to nominate a candidate by primary, a party committee must file a statement of nomination and a candidate consent form not later than 5 p.m. on the sixth day after the Primary. §2386(a).

Withdrawals by Candidates

A candidate can withdraw their candidacy before 5 p.m. on the 10th day following the Primary by filing a notice of withdrawal with the SOS. (Justices of the Peace file withdrawal with the town clerk.) If a candidate files a written withdrawal after the deadline, the town clerk or the SOS may remove the candidate's name until the printing deadline. §2412.

Nominations after candidate death, removal, or withdrawal

In the case of death, removal, or withdrawal of a candidate following the primary, the party committee shall have 7 days from the death, removal, or withdrawal of that candidate to hold a party committee meeting to nominate to fill the vacancy. In no event shall a statement and consent form with the name of a replacement candidate be filed later than 60 days prior to the General Election.

Candidates Nominated by More Than One Party

A person nominated for the same office by more than one political party may decide the party or parties in which he or she will be a candidate, and the order the party names will be listed on the ballot by filing a written statement with the SOS **no later than 5 p.m. on the 10th day after the primary**. §2474(a). Candidates should contact the clerk or the Elections Division as soon as possible with their decision, so that the ballots are prepared for the General Election in time for delivery 46 days prior to the election.

The party designated as first to appear on the ballot by the candidate will be counted in statewide races toward major party status. If a candidate does not file the statement to designate which party is to appear first, the SOS will list the parties in the ordered described in §2474(a)(2).

Justice of the Peace

The number of justices of the peace that a town may elect depends on its population. Towns with fewer than 1,000 residents may elect up to five justices of the peace. Towns between 1,000 and 1,999 residents may elect up to seven; between 2,000 and 2,999, ten; between 3,000 and 4,999, twelve; and 5,000 or more, up to fifteen. Vermont Constitution, Chapter II §52

To increase the number of JPs, your town must vote at an annual or special town meeting before the General Election to authorize the election of a larger number of justices of the peace.

Every justice of the peace elected at the General Election will begin their term on February 1 of the following year. Justices of the peace hold over until successors are elected and qualified. 3 V.S.A. §259.

Justices of the peace can be nominated by party caucus or, failing that, by party committee. **A statement of nomination signed by the town party chair and secretary and a copy of the notice** sent to all town committee members must be filed with the town clerk not later than 5 p.m. on the third day following the primary election. §§2382, 2413. The statement of nomination forms can be downloaded from <http://www.sec.state.vt.us/elections/candidates>. §§2385, 2386. Although consent forms are not required for JP candidates nominated by the party, party officials must confirm the consent of all candidates to have their names on the ballot.

Independent Candidates for Justice of the Peace:

To run as an Independent candidate for JP, a voter of the town must file a petition (statement of nomination) with 30 signatures or the signatures of one percent of the registered voters, whichever is less. §2402. **Petition and consent forms for Independent candidates for Justice of the Peace shall be filed with town clerks not earlier than the fourth Monday in April and not later than 5:00 p.m. on the third day following the primary. §2402.**

Candidates for justice of the peace may withdraw their names by filing a written notice of withdrawal with the town clerk by the Friday following the Primary Election. Notices of withdrawal filed after the deadline may result in the removal of the candidate's name if the printing deadline has not passed.

Historically, some towns have had a "gentlemen's agreement" that each major party will only nominate one-half of the number of justices of the peace to be elected by your town. There is nothing illegal about this practice, but there is no obligation for any party to follow this practice. As more voters decide to run as independent candidates, there are more towns where the old "gentlemen's agreement" is being discontinued. **All major and minor parties can nominate as many JPs as there are positions to be elected, and there is no limit to the number of independent petitions that can be filed for justice of the peace in a town.**

V. Pre-Election Responsibilities - ALL Statewide Elections

Justice of the Peace and Municipal Special Meeting Articles Data Entry

All towns have the ability to include justice of the peace candidates and local articles (public questions), if any, on their general election ballots. If you want to include either you must notify the Elections Division to gain access for data entry into VEMS. Justice of the peace candidates' names will appear in alphabetical order by last name, no matter how you enter them into the system. **Proofread your data carefully.**

Articles should be entered into VEMS exactly as the question was presented on the Petition. **Proofread your data carefully.**

For towns that want to continue using separate ballots for their justice of the peace candidates, the town clerk can make arrangements to have the JP ballot prepared by a professional printer or the clerk can design the ballots and make colored paper copies on a copier. Either way, the ballots must be printed and available no later than 45 days prior to the election. Justice of the peace candidates' names must be placed in alphabetical order by last name. Nicknames may be included but titles cannot be used. (A candidate can be on the ballot as Rick "Speedster" Harris, but NOT as Dr. Rick Harris.) **Proofread your data carefully.** Appendix G is a sample JP ballot. §§2471 & 2472.

Town Clerk to Post Warnings and Checklists at Least 30 Days Prior to Each Election

Each clerk will be sent five copies of the Notice and Warning for each polling place from the Office of the SOS. §2521(b). **Clerks must fill in the blanks on each Warning for the location of the polling place(s) and the time the polls open.** The Notice and Warning must be posted at least 30 days prior to the Primary Election and at least 30 days before the General Election. You must also post a copy of the

most recent checklist. §2141. The town clerk must post the Notice, Warning and checklist in two public places **in each voting district** and in or near the clerk's office. §2521, §2141.

Primary and General Election Ballots

All ballots are shipped by the printing vendors. You will receive your ballots at least 46 days before each election. **Please check your ballots for errors as soon as you receive the delivery.** Call or email the Elections Division immediately if you find any errors.

Presidential Primary ballots – towns will receive a number of ballots for each party estimated to be a percentage of the number of voters on your checklist with 40 percent scored for absentee mailing.

Primary ballots - towns will receive a number of ballots for each party equal to approximately 50 percent of the number of voters on your checklist with 40 percent of those scored for absentee mailing.

If you believe you will need more than this amount of ballots received for the Primary, please notify the Elections Division by July 1.

General election ballots – towns will receive a number of ballots equal to approximately 100 percent of the number of voters on your checklist with 40 percent of those scored for absentee. §2478.

Sample Ballots -- The town clerk must post sample ballots at least 20 days before the Primary and General election. Sample ballots can be printed from VEMS, you can find a sample ballot on your Dashboard. Post one sample ballot wherever the warning has been posted. §2522.

Election Signs Placed by Candidates or Citizens before Election Day

The issue of how, when, and where campaign signs can be placed in a town other than at the polling place on Election Day is an issue that must be decided by the **owner of the property** in accordance with the state law relating to placement of signs along state highways (Title 10 of the Vermont Statutes Annotated), any lawfully adopted zoning bylaw regulations, and/or lawfully adopted sign ordinance. Questions from candidates should be referred to the zoning administrator if your town has a zoning bylaw, or to the selectboard if your town has a sign ordinance or to the Vermont Agency of Transportation for enforcement along state highways. There are rules promulgated by the State Agency of Transportation that give details for placement of signs along state highways, which include that the signs must be outside of the right of way of the highway. There is a guide on placement of political signs posted on our website <https://www.sec.state.vt.us/elections/town-clerks-election-workers/polling-placecampaign-sign-rules.aspx>.

Copies of the Checklist Requested by Chair of Town Party or by the Public

During the 30 days prior to any election, upon request, clerks must make available a copy of the checklist, free of charge, to the chair of each political party in town. The checklist is a public record so that a copy must also be made available for actual cost to anyone else who requests a copy. The checklist shall state the name and address of each voter. §2141.

Town Clerk to Prepare Materials to be delivered to Each Polling Place

The town clerk must also furnish two copies of the checklist to each presiding officer for use at the polling place, unless the BCA has voted to abolish the exit checklist, in which case only one checklist is needed or as many copies as there are entrance checklist check-ins. §2507. Please consider posting an extra copy of the checklist near the entrance to the polling place so a voter can see if their name is on the checklist before they enter. Tally, summary sheets and ORVs should be printed from VEMS. Make as many copies as necessary for each polling place.

The town clerk must make arrangements to have the following delivered to each polling place:

BALLOTS, ballot bags, seals, returned absentee ballots in the certificate envelopes, provisional ballot envelopes, manila envelopes, clips and paper to mark defective ballots, voting booths, ballot boxes or vote tabulating machines, accessible voting system, pens for marking ballots, pens and rulers for marking checklists, voter registration forms, copies of the affidavit of undelivered or lost ballot (Appendix C), copies of the affidavit of domicile for voters who had been challenged (Appendix D), envelopes for “Returned” and “Defective” ballots, copies of the “Do not over vote” signs, signs for ballot boxes, copies of your polling place policies, a copy of the list of early absentee voters, and whatever other supplies your election officials have requested. **We recommend you copy and use the list in Appendix B to help you remember items to bring.**

Prior to the Election the Town Clerk must:

- make assignments and schedule the hours of election officials (scheduling of hours and duties is up to the town clerk, who should think about the strengths and weaknesses of each worker when making these assignments)
- train election officials
- test and prepare the vote tabulator and the accessible voting system
- develop policies for:
 - regulating placement of signs at the polling place on the day of elections
 - conduct of persons outside the polling place
 - poll watcher conduct inside the polling place

Make copies of policies, post them at the polling place, and have them available to give to citizens who have questions.

ABSENTEE BALLOTING

Procedures for Early Absentee Ballots to Military and Overseas Voters

Federal law requires ballots be sent to military and overseas voters at least 45 days prior to the Primary and General elections. All absentee ballot requests must be entered into VEMS upon receipt. §2534(b). If military and overseas voters have requested that the ballot be sent by email, a PDF of the ballot and certificate/instructions for voters will be issued to a voter’s “My Voter Page”, and an instructional email is sent by VEMS to the voter notifying them of the availability of their ballot. You cannot email a ballot to a civilian voter living in the U.S.

Town clerk offices must remain open on the 46th day before any primary or general election to send out ballots to any military or overseas voter who has requested an absentee ballot on or before that day. §2539(c). The 46th day before the primary or general election is almost always a Friday, so please plan accordingly. On that day, the clerk must enter any remaining requests from military or overseas voters into VEMS, and send ballots by mail for any requests for a ballot to be sent by mail. Between the 46th day prior to the election and Election Day, absentee ballots must be sent to any military or overseas voter that requests them within 24 hours of receiving the request. When a military or overseas voter requests a mailed ballot, the ballot must be sent airmail, first class, using the postage paid envelopes provided by the Elections Division.

Requests for Early Voter/Absentee Ballots -- Any voter, family member, health care provider, or authorized person can request an absentee ballot in Vermont without any reason. Voters who want to vote by absentee ballot may apply to the clerk no later than 5 p.m. or the closing of the town clerk’s office on the day before the election. §2531(a)(1). If a town clerk does not have regular office hours on the day before an election and the office will not otherwise be open on that day, a voter may apply for an absentee ballot until the closing of the clerk’s office on the last day that office has hours preceding the election. §2531(a)(2).

An application for an early voter absentee ballot shall be valid for the elections or time frame specified by the applicant. A single application may only be valid, however, for any elections within the same calendar year. §2532(d) and (e). Requests may be made through a voter’s “My Voter Page”, these types of requests will appear on your VEMS Dashboard for you to process.

In the event a petition is received for reconsideration or rescission of an Article previously voted on, absentee ballots for the reconsideration or rescission vote shall be sent to all voters who requested an absentee ballot be sent to them for the initial vote on that article. §2661(d)(2).

Only a voter, family member (a spouse, child, brother, sister, parent, spouse's parent, grandparent or spouse's grandparent), or health care provider may request a ballot for another person by phone. Any other authorized person (someone who the voter has directed to request a ballot on the voter's behalf) may request a ballot in person or in writing; provided, however, that voter authorization to such a person shall not be given by response to a robotic call. That person must sign the absentee ballot request form (Appendix A) and must identify the organization they work for, if any. §2532(a)(2).

Applicants who live outside the United States or who are in the military can also use the Official Federal Post Card application to request absentee ballots and to apply for addition to the checklist. §§2532 and 2549. All first time applicants for addition to a Vermont checklist must take the Voter's Oath which can now be administered by any person over 18 or by the voter. §2124.

The clerk must enter all absentee requests into VEMS upon receipt. Copies of the early ballot absentee request form can be found on our website or in Appendix A. §2534.

For every absentee ballot request, the clerk needs to send or give the following to the voter:

- (1) An outer mailing envelope for the voter to use to return the ballot(s);
- (2) An inside certificate envelope for the voted ballot (there are unique certificate envelopes for the Primary and General Elections);
- (3) Ballot(s); and
- (4) An “**unvoted ballot**” envelope for the August primary ONLY.

For the August Primary Election, if the unvoted ballots are not returned in the unvoted ballot envelope, the absentee ballots must be marked "defective" and not counted. §2547.

For the Presidential Primary, the voter must request which ballot they would like to vote and only that ballot that they requested is sent to the voter.

Five ways to vote by absentee ballot (only the first three methods can be used by all voters):

- **Vote In Office** -- Voters may fill out a request and **vote in person** at the clerk's office. They will place the voted ballot in the certificate envelope, complete and sign the certificate, and return the ballot(s) without leaving the clerk's office. This may be done during all regular business hours before the closing of the town clerk's office on the day before each election. §2537.
- **Take From Office** – Voters may fill out a request and (only the voter) may take the ballot from the clerk's office. The ballot can be returned in the same manner as if the ballot was received by mail—anyone can return a ballot in a certificate envelope. §2537. **No other person except the voter can pick up a ballot for a voter**—not the spouse, not the son or daughter, not the parent.
- **Mail** – The voter can request absentee ballots through the My Voter Page (<https://mvp.sec.state.vt.us/>) or can submit a paper request. The clerk then mails the absentee ballots, with the appropriate envelopes, to the registered voter. We suggest that you offer to use a delivery service for military and overseas voters, if at all possible. §2539. All absentee ballots must be returned to the clerk before the close of the polls on Election Day, either in person or by mail, in order to be counted. On Election Day, clerks should check both the U.S. mail and any “drop box” at the town clerk's office before the close of the polls.
- **Electronic or Fax** – Ballots can be **electronically delivered or faxed to overseas or military voters** along with instructions and a copy of the certificate for the inside absentee envelope. The absentee ballot request form provides a place for a military or overseas voter to pick the method of ballot delivery. If the voter chooses “email”, once the request is approved by the clerk the system will send an email to the voter that night. Upon receipt of the email the voter can log in

and print the instructions, certificate, and ballot from their “My Voter Page”. Voters will mark the printed ballot, put the voted ballot inside an envelope, cut out the printed certificate and affix it to the envelope, complete and sign the certificate, place the certificate envelope containing the ballot inside a mailing envelope and mail or have delivered to the town clerk by the close of the polls. Please urge any person who requests this method close to Election Day to use an overnight delivery service to return the ballot to you before the polls close on Election Day. A town can pay for a delivery service, however a town is not required to pay for it. **All ballots must be returned by mail, electronic return of ballots is not allowed.**

Voters who are visually impaired or have another disability which makes marking a paper ballot difficult may also choose to have their ballot delivered electronically, and may take advantage of the new online ballot marking tool. This tool allows the voter to register their votes on the screen of whatever device they are using and to print a marked ballot, along with the certificate and instructions for return. The marked ballot will then be returned by mail to the clerk. Military and overseas voters may also choose this option for marking their ballots.

- **Home Delivery – Pairs of justices of the peace may deliver absentee ballots to voters who are ill or voters with disabilities** (the request must be made by 5 p.m. or the close of the town clerk’s office the day preceding the election). §2539(b). Only voters who are ill or voters with a disability may choose this method. Anytime after the clerk receives ballots, but no later than three days before the election, the BCA, or at the request of the BCA, the town clerk, may designate pairs of JPs to deliver ballots. If not enough JPs are available, the BCA may appoint other registered voters as election officials to assist. Anytime after the ballots are received and the BCA has designated pairs of JPs, the town clerk makes assignments to pairs of JPs to deliver and return the ballots of voters who are ill or who have a disability. §2538(a) and (b). A BCA is not required to deliver ballots outside of the town, but the BCA may choose to do so—if it chooses to do so, it must have a fair policy to decide how far to go for deliveries so that all voter requests are treated equally.

Once the JPs have reached an absentee voter, **the JPs must work as a pair to present the ballot(s) and envelope to the voter, who may then vote in private or in the presence of both JPs.** An absentee voter who is physically unable to mark the ballot may request that one of the JPs mark the ballots as directed by the voter in full view of the other JP. §2538(c). The voter places the ballots in the certificate envelope and completes the certificate on the front of the voted ballot envelope. The certificate must be signed by the voter unless physically unable, in which case the JPs print the voter’s name, note “signed by JPs for voter,” and both sign.

The JPs return the ballots and envelopes to the polling place where the voter would have voted in person or to the town clerk, if done on days preceding the day of election. §§2538, 2545. If prior to Election Day, the ballot envelopes are stored securely with all returned absentee ballot envelopes.

Return of Early Voter/Absentee Ballots

Absentee ballots must be returned to the clerk’s office before the close of business on the day before the election. The clerk is also required to retrieve and count any absentee ballots that arrive to the clerk by mail before the close of the polls on Election Day, or that are hand delivered to the polling place before the close of the Polls on Election Day. §2543.

If a ballot includes more than one page, the early or absentee voter is only required to return the page upon which the voter has marked their vote. §2543(c). This provision is intended for the rare case where the language of an Article is so long that it takes up one or more pages of the ballot before the voter is even asked to record their vote (ie. union school district formation votes). In these cases, the page containing the voter’s vote is the only page that must be returned.

Defective Ballots

With the exception of ballots that have been found to include identifying marks during counting, all “Defective” ballots are a result of errors in the process of returning absentee ballots. When absentee ballots are returned, they **shall be considered Defective if:**

1. the absentee voter has voted in person;
2. the absentee voter is not legally qualified to vote;
3. the certificate envelope is not properly completed or is not signed;
4. the voted ballot is not inside the certificate envelope; or
5. in the case of the August Primary election, the voter has failed to return the unvoted primary ballots.

If a ballot is determined to be defective for any of the reasons listed, each defective ballot or unopened certificate envelope shall be affixed with a note from the presiding officer indicating the reason it was deemed defective (see Appendix J) and shall be placed with any other defective ballots in an envelope marked “Defective Ballots – Voter Checked Off Checklist – Do Not Count”. (See Appendix H).

Make a copy of Appendix H to attach to a manila envelope to hold all defective ballots—these are ballots that the statutes say cannot be counted for one of the reasons listed above. We have provided a chart for the front of the envelope to “tally” each defective ballot as you place it in the envelope. After the polls close, you will need to know the number of defective ballots (excluding those where the voter voted in person – because a voted ballot will have been cast for them) to add to the total number of ballots counted in order to reconcile with the number of voters on the checklist.

Towns may process absentee ballots during the 30 days preceding the election

During the 30 days preceding the election, Vermont law allows (this is an optional procedure) the town clerk to direct two election officials working together to:

1. open the outside mailing envelope on any returned absentee ballot,
2. check that the certificate envelope has been properly completed and signed,
3. check the name of the voter off the checklist (record the return date of the ballot in VEMS), and
4. place the certificate envelopes in a secure container marked “checked-in early voter absentee ballots” to be transported to the polling place(s) on Election Day.

During polling hours on Election Day, the certificate envelopes can be opened and the ballots fed into the tabulator or deposited in the ballot box in accordance with the process described in §2546(b).

Tabulator Towns May Process Ballots Through Machine the Day Before the Election

The BCA may vote to permit elections officials to deposit early voter absentee ballots through the tabulator in accordance with detailed procedures in statute, §2546a.

VI. Election Day Duties – From Opening the Polls Until the Polls Close

The Elections Division staff is available from 6 a.m. until at least 10 p.m. on every Primary and General Election day to assist if you have any questions. Call 800-439-8683 or our direct lines on the cover of this Guide. Please call us with questions. We will stay as late as necessary to assist you, but you must call before 10 p.m. to let us know you will need help.

Opening the Polls – **Post the polling hours in large print on the polling place doors.** The polls must be opened by **the presiding officer** on Election Day between 5 a.m. and 10 a.m. at such time as is established by the BCA. §§ 2494, 2561. Some neighboring states have uniform opening hours and voters hear radio announcements that do not apply to Vermont which causes voter confusion. In addition to posting the Warning, we suggest you post a LARGE notice of opening and closing hours on the door to the polling place(s) and at your town clerk’s office.

The presiding officer (the town clerk unless unavailable) assigns election officials to work in pairs, with no pair containing members from the same political party, if possible. §2562. **There must be at least two election officials at the polling place at all times and we strongly suggest that you have at least three officials scheduled at all times.** If at least three officials are present, then one official can leave briefly to pick up lunch, etc. and there will still be at least two officials present.

Pollwatchers

Representatives of political parties, candidates and political committees have a right to have no more than two representatives for each voting district present and observing voters at the entrance checklist. The town clerk and presiding officers, if any, should either set out chairs, guardrails, or mark with tape where the pollwatchers can be located to observe. They have a right to hear the name of each voter restated by the entrance checklist election official. Pollwatchers do not have the right to set up their own tables and require voters to stop and give them their names. This is beyond what the statute permits. Presiding officers have the right to make reasonable rules to control the activities of pollwatchers. These rules can include: no use of cell phones in the polling place; no talking that interrupts the work of the election officials, etc. **We suggest that presiding officers develop a policy for pollwatcher conduct at the polls and that the policy be posted with copies available.**

We suggest that persons interested in being pollwatchers contact the town clerk before Election Day so that pollwatchers can perform permitted activities without interfering with the voting process. Political parties, candidates and political committees have a right to challenge a voter's right to vote **on only two grounds**: 1) that a voter has already voted in the same election or 2) that the voter is not, in fact, the person whose name appears on the checklist. §2564. These are the only two reasons to challenge a voter on Election Day. If a voter is challenged for one of these two reasons, then the BCA must convene immediately to hear the facts and rule on the matter at the polling place. §2564. Please note that asserting that a person does not reside in the town is not one of the permitted bases for a challenge.

In polling places with 500 or fewer names on the checklist, these same groups, political parties, candidates, and political committees have a right to view the checklist twice during the Election Day at times convenient to election officials if prior written requests were made at least 12 hours before the polls open. §2572.

Campaigning Outside the Polling Place

On Election Day, the **presiding officer** must ensure that no one interferes with any voter entering or exiting the polling place. §2508. **Vermont law does not provide a specific distance or number of feet that campaigners must be from the polling place.** The presiding officer and BCA must establish a policy and then show candidates and supporters where they can stand outside each polling place so that voters can enter and leave without interference. You should remember that campaigning is a First Amendment right that can't be unreasonably restricted. The presiding officer should use discretion and establish a reasonable policy based upon the specific situation and terrain at each polling place. For example, a presiding officer can direct campaigners not to block the stairs or walkways, or to stand in particular places next to the walkways. However, a campaigner may be able to challenge the policy of the presiding officer if the interpretation unreasonably restricts First Amendment rights to present information to voters. The key is to develop a policy that will prevent interference with voters but still allow campaigners to put out a message. We strongly suggest that **the presiding officer develop written guidelines for campaigning at the polls that can be handed out to candidates and other interested citizens.** The Elections division will review any such policies upon request. Most campaigners feel better if they feel they are being treated equally (and a written policy reinforces this).

Signs Outside the Polling Place on Election Day

The law states that on Election Day the presiding officer shall control the placement of signs on the property where the polling place is located in a fair and even-handed manner. §2508. A presiding officer can develop a policy that would not allow signs to be affixed to the building or signs being placed in the ground on the property containing the polling place on Election Day. Or, a presiding officer may allow signs to be placed on a certain area of the lawn, with reasonable limits as to size and number of signs per candidate. However, if a citizen wants to stand outside a polling place and hold a sign, there are First Amendment rights to do so, as long as the sign holder does not interfere with the ingress and egress of

voters. Likewise, if a car is legally parked outside a polling place, and happens to contain a political sign, the presiding officer cannot order the car to be moved. Please make sure that each polling place has at least two well marked handicapped parking spaces that are kept open for voters.

NO Buttons, Campaign Literature, etc. Inside the Building Containing the Polling Place

On Election Day, *within the building containing a polling place*, **no campaign** literature, stickers, buttons, name stamps, information on candidates or other political materials may be placed, handed out, displayed or allowed to remain. §2508. **Voters may bring a small card or folded paper to remind the voter how to vote**, or a label or sticker to affix it to the ballot to vote for a write-in candidate so long as the voter is not displaying the paper or label to others in the room. §2587(e).

On Election Day, the presiding officer is also responsible for ensuring that no candidate, election official or other person solicits voters regarding an item or candidate on the ballot or otherwise campaigns in the polling place. § 2508. (The law does now explicitly allow, however, for a candidate nominated for local office from the floor at annual meeting to introduce their candidacy to the extent permitted by the voters at the meeting. See 2640(c)(2).)

Voters wearing buttons or stickers should be asked politely to remove them while inside the polling place. However, do not attempt to remove buttons, other insignia, or prohibit a determined button-wearer from voting if he or she refuses to remove the political insignia. Simply ensure that the voter casts their ballot as quickly as possible and leaves the polling place with the button or T-shirt. **Assign one election worker to check the voting booths regularly to make sure that no political materials have been left inside the booths.**

In addition to election law, the Vermont statutes that apply to behaviors in any public place, such as disorderly conduct, also apply to the polling place. If voters have complaints about actual harassment outside the polling place, call a law enforcement officer to resolve the problem.

These provisions regarding campaigning at the polling place apply to the town clerk's office during the early or absentee voting period. §2508(a)(1)(C) (as opposed to Election Day, when these provisions apply to the entire building containing the polling place).

Processing Absentee Ballots on Election Day

On Election Day, the clerk delivers all absentee ballot envelopes that have been received to the presiding officer in the polling place where the absentee voter would have voted in person. §2545.

The town clerk should **add a note to each voting district entrance checklist: "2 Boxes of Absentee Ballots to Process" or "4 Boxes of Absentee Ballots to Process."** **In addition, each box of absentee ballots should be clearly labeled: "Box 1 of 3," "Box 2 of 3," etc.** The boxes of absentee ballots should be placed together in a place where only the designated election officials will have access and where no one might place a coat or other object on top of a box, thus obscuring the box from view.

In municipalities that have not already checked in absentee ballots in advance of the election, when time is available, pairs of election officials (from different parties, if possible), shall process them as follows:

Process for properly returned ballots:

1. Open the outside mailing envelope,
2. Check to see that the absentee voter is on the checklist, has not already voted, and is not marked as requiring additional documentation,
3. Check that the certificate on the voted ballot envelope is properly completed and signed, and for the primary only, check that the unvoted ballot(s) has been returned in the unvoted envelope.
4. If the ballot and contents are all correct then the voter's name is checked off the entrance checklist. For the Presidential Primary make sure your check in officials mark the party of the ballot returned (R or D).
5. If an exit checklist is used, check the voter off that list as well §2546.
6. One official will open the inside envelope, turn the certificate side face down and,
7. Hands the certificate envelope face down to a third election official.

8. That third election official shall remove the ballot from the face down envelope and deposit the ballot in the ballot box or tabulator.

Process for ballots returned defective:

1. Open the outside mailing envelope,
2. Check to see that the absentee voter is on the checklist, has not already voted, and is not marked as requiring additional documentation,
3. Check that the certificate on the voted ballot envelope is properly completed and signed, and for the primary only, check that the unvoted ballot(s) has been returned in the unvoted envelope.
4. If the certificate is not properly completed or signed the ballot is marked as defective
5. If the voted ballot is outside the certificated envelope then the ballot is marked defective.
6. If the unvoted ballots have not been returned in the unvoted ballot envelope mark the ballot defective (Primary Election only).
7. Affix all defective ballots with a note describing why it is defective (see Appendix J).
8. Place all defective ballots into an envelope marked “Defective ballots-Voter Checked Off Checklist-Do Not Count” (see Appendix H). §2547.

On Election Day, if a voter appears at the polls with all unmarked absentee ballots and envelopes and wants to vote in person, the presiding officer must turn all of the absentee ballots and envelopes over to the town clerk and allow the voter to vote in person. §2548. The returned absentee ballots should then be marked “Replaced – Voter Given another Ballot” and placed in the envelope marked “Replaced Ballots-Do Not Count”. §2568. If a voter who requested absentee ballots comes to the polling place to vote and does not have the unmarked absentee ballots, the voter can sign an **affidavit of undelivered or lost ballots** and then be given ballots to vote in person. (see Appendix C for form). Make copies to bring to the polling place.

In-Person Voting Procedures

At the **entrance checklist**, the voter must state their name and, if requested, street address in a clear and audible tone of voice. The election officials at the entrance checklist repeat the name out loud and check the person's name off on the checklist. For the Presidential Primary, remind your checklist officials to mark the party for the ballot that the voter requested. Repeating the name in a loud voice also serves the needs of pollwatchers, who have the right to hear, or see, the name of each person seeking to vote. §2564.

If the voter is a first-time voter who registered individually by mail or online and did not send identification documentation with their application, the person must provide identification (unless their driver's license or last four of SSN has been verified in VEMS, in which case they will not be marked as requiring additional documentation). Acceptable identification includes: valid driver's license, government check, utility bill, or other government correspondence showing current address. If a person has properly applied for addition to the checklist, but has not yet taken the Voter's Oath, the checklist will have a notation and the person must take the Voter's Oath. §2563.

Procedure If Name Not Found on Checklist -- Sometimes voters are removed from the checklist in error. If someone is not on your checklist and, after discussing the facts, it appears that the voter was removed from the checklist in error, the presiding officer can call together the members of the BCA who are present, and, after explanation of the error, they may vote to return the name to the checklist. §§2147 and 2150(d)(6).

If the person has never been on the checklist for this polling place, but asserts that he or she is qualified to register to vote, the person must complete the **voter registration application** and their name may be added to the checklist. Every person registering to vote on Election Day needs to understand that they are stating, under the penalties of perjury, that they meet the requirements to register to vote in your town or city. They should be advised that they are completing the application under the pains and penalties of perjury, which carry up to a \$10,000 fine and 15 years in prison, or both.

If the person is unwilling to complete a voter registration application but is still demanding to be allowed to vote, refer the person to the presiding officer. For example, some voters hear on the news that voters in

other states can go to any polling place in the state to vote for president. This is NOT TRUE in Vermont, but it is allowed by state law in Connecticut. If the presiding officer can call the Elections Division, the staff can assist the presiding officer in determining how to handle an insistent voter who does not qualify to register to vote or to use a provisional ballot under federal law.

You should bring a supply of provisional ballot envelopes to the polls. If you find you are running low, contact the elections division. **Please call the Elections Division on Election Day before using any provisional ballot envelopes.**

Once a voter has been checked off on the entrance checklist by the election official they should be handed the ballot(s), asked if they have any questions, and shown to a voting booth. §2565.

Post “Do Not Overvote” signs in each voting booth to remind voters to only vote for the number of “vote for not more than” in each race. (Appendix F) This is especially important in paper ballot towns so voters carefully check the ballot before depositing the voted ballot into the ballot box. In towns that use tabulators, the tabulator will initially reject any ballot with an overvote, giving the voter an opportunity to receive a replacement ballot to correct the error, or the rejection can be overridden by the election worker at the request of the voter and the tabulator will count the ballot, registering an overvote or overvotes for that race.

Replacement Ballots – If a voter makes an error or requests a replacement ballot to complete, the voter can be provided up to two additional ballots, each time returning the ballot they want replaced. Any replaced ballots should be marked “Replaced- Voter Given Another Ballot” and put into the envelope marked “Replacement Ballots – Do Not Count”. §2568.

The ballot returned by the voter shall be immediately delivered to the presiding officer or their designee, who shall tear it in half and place it in an envelope containing all ballots returned by the voters that is clearly marked “Do Not Count—Replaced Ballots.” (See Appendix I) The ballots in the “Replaced Ballots” envelope are not needed to reconcile with the checklist because each voter was given a new ballot that was voted and placed in the ballot box or tabulator. The votes on these ballots should never be counted and they do not need to otherwise be accounted for. Make a copy of Appendix I to attach to a manila envelope to hold Replaced ballots.

Accuvote tabulators are configured to reject the ballot if the voter has **overvoted** in a race (marked more candidates than the “vote for not more than”). If a ballot is rejected for an overvote, explain to the voter that she has voted for too many candidates in one race and that she can have that ballot replaced and vote a new ballot. If the voter does not want to take a new ballot, the official can place the overvoted ballot in the emergency bin of the ballot box or the top front tab of the ballot box can be unlocked, and the election official can press the YES button as the ballot is inserted in the tabulator to allow the ballot to be accepted. **See your Vote Tabulator Guide binder for more details.**

In the **Presidential Primary Election**, voters are asked which ballot they would like to vote. The checklist officials give that parties ballot to the voter and marks the party of the ballot selected by the voter off from the checklist, by the voters name.

In the **Statewide Primary Election in August only**, each voter will be given a ballot for each major party—there are three major parties in 2018 (Democratic, Progressive, and Republican). A voter may vote only ONE PARTY ballot. After voting on one of the three ballots, the voter hands the unvoted ballots to an election official for deposit in the box marked “unvoted ballots”, and the voter then feeds the voted ballot into the tabulator or deposits it in the voted ballot box. §§2570 and 2571.

In the **General Election**, after the voter votes the ballot(s), the voter is checked off the exit checklist, if any, and then feeds the ballot into the tabulator or deposits it into the ballot box before leaving the polling place. §§2570 and 2571.

In all elections, **only the voter may place a voted ballot(s) into the ballot box or feed the ballot(s) into the vote tabulator.** No election official can take a voted ballot from a voter. No ballot should be taken

from the polling place by a voter, election official, or other person except when JPs perform home delivery or two election officials take a ballot outside for curbside voting. §2502(b).

Closing the Polls

Polling places in every town in Vermont must close at 7:00 p.m. It is the duty of the **presiding officer** to announce that the polls are closed at this time. If there are voters still waiting to be checked in or to vote, they must be given the opportunity to complete the voting process, but no one arriving after the poll closing announcement can be allowed to vote at that election. §§2561 and 2581. The presiding officer should place one election official at the end of the line as the polls are closed to ensure that no one enters the line after the announcement and votes. If throughout the day all absentee ballots were unable to be run through the tabulator or processed you shall continue to do so just as if the voter was present and voting before the polls closed.

VII. Election Duties after the Polls Close and the Next 48 hours

Presiding Officer Directs all ballot counting procedures. 17 V.S.A §§2583 and §2587.

Once the polls are closed and the last voter completes the process, the presiding officer is responsible for ensuring **that all persons who are not election officials are prevented from entering within the guardrail until all votes have been counted. Members of the public must be allowed to watch the counting process** (but not stand over election officials' shoulders). If counting is done in a separate room, the public must still be given an opportunity to observe the counting process from a designated area. Interested persons must be able to observe the counting process, but not to interfere with the orderly count and return of votes. §2581. Observers must not be allowed to mingle and wander around in the area where election officials are counting.

First, the **checklists should be examined and the number of voters checked off should be tallied on the entrance checklist and exit checklist (if used), and then the presiding officer records the number of voters tallied on the ORV.** If the tallies don't match on the first count, you must try to find any errors in counting. If errors cannot be found, the presiding officer must prepare a statement listing any discrepancies between the checklist(s) and the number of ballots counted, including a list of names that are checked off on only one checklist and other details related to the discrepancies between the entrance and exit checklists or the tabulator tape. You can call the Elections Division for help if you are having difficulty explaining discrepancies.

Ballot Counting Procedures

In counting for justices of the peace, if the number of candidates nominated is the same as JPs to be elected, the presiding officer may declare the entire slate elected without individual tallies, so long as each person has more votes than the number of write-ins for any write-in candidate. §2587(f).

Procedures for Accuvote Optic Scan Tabulator Towns – In towns using vote tabulators, please follow the detailed instructions in the Vote Tabulator Guide. Please remember, while vote totals for candidates named on the ballot are found on the tabulator tape, all ballots must still be reviewed for write-in votes.

Election night results reporting is a requirement and must be completed in VEMS. You can use the tabulator tape to do the entry and go back in the next day to make corrections.

After the presiding officer has collected all of the packets of ballots with tally sheets and completed the summary sheet, the election officials have completed their tasks and can begin packing up supplies to return to the town clerk's office. The presiding officer and one election official either complete the Official Return of Votes (in VEMS) or put the summary sheets in the town clerk's vault and complete the Official Return of Votes (in VEMS) the next morning. (See our packing list suggestions in **Appendix B.**)

Procedures for Hand Count Towns – In a hand count town, the presiding officer opens the ballot boxes and instructs election officials to divide the ballots into sets of equal numbers. We generally suggest sets of 50 ballots, but some presiding officers prefer 25. Ask the officials to count carefully as your entire count will be off if the sets contain 49 or 51 ballots and it will take a lot more time later to discover the error. After dividing the ballots into sets of equal numbers with the last set containing the remaining ballots, add up the totals of each set to make sure it matches the total voters checked on the checklist. §2581 to 2589.

It is easier to look for a discrepancy now and recount the sets of 50 ballots before any tally sheet is completed. If your total ballots voted number and the number of persons checked off the checklist do not agree, you must write up an explanation of the discrepancy. For example, if your total number of voted ballots is 350 and there are only 348 names checked off the entrance checklist, then some official most likely missed checking off two names. This can happen during a long day at the polling place. If you have more names checked off than voted ballots, most likely a voter or voters walked out with a ballot and did not deposit it in the tabulator or ballot box. Make notes of what you and the other election officials present think is the most likely reason for the discrepancy.

A set of 50 ballots are then given to a pair of election officials. Election officials must work in pairs, with no pair containing members from the same political party, if possible. If the BCA and election officials are all members of one political party in your town, you must try to pair counters by personality and temperament so that the public will have confidence that the officials are not acting in collusion. (If there are registered voters in your town who are members of different parties, or independent, try to appoint some election officials from different parties or independents prior to each election.)

If more than one ballot is used at the election, only one type of ballot should be distributed at a time. §2584. On a separate piece of paper, indicate the number of ballots in the packet and the names of those who counted them, as "100 ballots counted by Mary Smith and John Johnson."

Once ballots are distributed to a pair of election officials that pair must retain custody of those ballots throughout the counting process until the ballots and tally sheet are given to the presiding officer. One election official reads out the votes on each ballot, while the other official marks the tally sheet. After counting the set, the pair of officials should review the tally sheet to see that they have correctly counted the ballots. The counting pair can go back through the ballots as many times as necessary to make sure that the tally sheet is correct. The presiding officer must not accept the ballots and tally sheets from the pair of officials until the presiding officer has confirmed that the pair has accounted for all votes, blanks (undervotes), and overvotes for each race.

This is particularly important for counting races that have a "Vote for not more than TWO" or THREE. The totals will not come out correctly if all blanks are not accounted for on the tally sheet. (If someone only votes for one candidate in a "Vote for not more than THREE" race, this must be counted as one vote and two blanks.)

If the counts don't look correct, or the presiding officer notices an obvious error BEFORE entering the tallies onto the summary sheet, the presiding officer can give the ballots back to the pair with instructions on how to find and correct the errors so that the totals for each race (including blanks and overvotes) matches the number of ballots cast. Once the ballots and tally sheet have been accepted by the presiding officer and entered onto the summary sheet, the ballots cannot be recounted. Pairs of election officials continue to count sets of ballots in this manner until the counting is completed.

If the counting pair cannot determine or agree upon the voter intent of a marking on a ballot, the pair contacts the presiding officer who shall present the ballot marking to all of the election officials present to determine by majority vote the intent of the voter. If the intent cannot be determined, the ballot is blank or overvote for that race, as the case may be.

After the presiding officer has accepted the ballots and tally sheets and has begun entering onto the summary sheets, the presiding officer can only look for errors in transferring the numbers from the tally sheets to the summary sheets. Another election official should check each set of entries from the tally

sheets to the summary sheets. In the statewide recount in 2006, we found that hand count towns made serious errors in transferring the totals from the tally sheet to the summary sheets. If a candidate receives no votes, enter a zero (0). Make sure the totals are entered next to the correct candidate's name. Once the summary sheets are completed, you can check for errors in recording or entering the numbers from the tally sheets. However, **do not recount the ballots**. Even if you think there is a tie, you do not recount the ballots. If there is a problem, an official recount can be requested as outlined in the statutes.

As the count for each office or question is completed, the presiding officer in the presence of another election official transfers the count from each tally sheet to the summary sheet(s), adds and enters the sum of the figures on the summary sheets and the two officials then sign the summary sheets. As each summary is completed for an office, the presiding officer publicly announces the results. §2588.

After the presiding officer has collected all of the packets of ballots with tally sheets and completed the summary sheet, the election officials have completed their tasks and can begin packing up supplies to return to the town clerk's office. Election night results reporting is a requirement and must be completed in VEMS. The presiding officer and one election official either complete the Official Return of Votes (in VEMS) or put the summary sheets in the town clerk's vault and complete the Official Return of Votes the next morning (in VEMS). (See our packing list suggestions in **Appendix B**.)

Securing and storing ballots, tally sheets and checklists -- The presiding officer must place the following items in one or more ballots bags, tag and seal the bags and deliver the bags to the town clerk (see §2590(a)(2)) :

1. packages of **voted** ballots;
2. envelope(s) containing "Replaced" ballots;
3. envelope(s) containing "Defective" ballots;
4. the exit checklist, if any, and statement of discrepancies;
5. tally sheets; and
6. other election material (as necessary)

The following items should **not** be placed in the sealed ballot bag but should be returned to the clerk along with any sealed ballot bags:

1. ballots that were never distributed to voters;
2. any vote tabulator memory card(s);
3. the original entrance checklist.

A copy of the entrance checklist shall be placed in the outside pocket of the ballot bag or otherwise stored along with, but outside of, the sealed ballot bags for delivery to the court in the event of a recount.

Please do not roll the ballots before placing them in the bags – in the event of a recount it is very difficult to handle ballots that have been rolled. See **Appendix B** for a sample checklist for packing the ballot bag. Copy this and bring it with you as a reminder.

The exit checklist, if any, should be **marked as the exit checklist** and placed with the statement of discrepancies in the ballot bag. §2583. If there is no exit checklist, alternative information including the number of persons checked in on the checklist as having voted, and a statement explaining or at least listing any discrepancies between that number and the number of ballots voted, and the tabulator tapes must be stored in a ballot bag. If there is a recount, the county clerk needs to know as much as possible about the accuracy of the checklists.

The entrance checklist must be kept out of the ballot bags and placed in a secure location in the town clerk's office as a public document to make copies at cost upon request. §2583. If you place the entrance checklist in a sealed ballot bag by mistake, you will need to make a written request to the Director of Elections to receive written permission to open the bag in the presence of at least two election officials who are not affiliated with the same party, if possible, and to take the entrance checklist out of the bag to be available upon request. **Please be careful. Exit checklist in the ballot bag, entrance checklist**

outside the ballot bags. The entrance checklist is a public record that must be kept by the town clerk for a period of five years and made available for inspection and copying upon request and payment of the statutory fees. §2590(e).

Appendix B provides a sample “packing list” that you can print or modify to your specific town needs to use when packing the ballot bags and other materials to return to the town office.

All ballot bags must be sealed and tagged. The **tag for each ballot bag must list all of the contents of the bag (note which bag contains the Exit Checklist), the town to which it belongs, the name of the presiding officer, the date, and Bag # X of XX...** If you have trouble writing the contents on the tag, you can insert a paper list of the contents in the outside open pocket of the ballot bag. You can copy the sample CONTENTS of ballot bag list in **Appendix B**. The seal numbers for the ballot bags should be listed on your Official Return of Votes—keep a copy for your files.

The town clerk must store the ballot bags for a period of 22 months for all primary and general elections but for only 90 days following local elections. If necessary for safe storage, the town clerk may store them in a bank vault or other secure place, provided that no one may have access to them without the town clerk’s consent. After 90 days, the unused ballots may be disposed of for all elections, but federal law requires that all voted ballots and the remaining election material must be kept in the ballot bags in a secure location for 22 months following the election. 42 U.S.C. §1974 and §2590(d).

If you receive a formal records request for voted ballots during the retention period, do not destroy them when the retention period runs out. At that time, if there is a pending request, the ballots need to be made available for inspection. Please call the Elections Division if you receive a records request for voted ballots from any election.

Election Night Reporting & Completion and Filing of Official Return of Votes

Clerks are required to report unofficial election results to the SOS’s office as soon as practicable on the night of the election. The report shall be made by submitting vote counts in VEMS, or if unable to submit electronically, then submitting via fax (802-828-5171), e-mail (sos.elections@sec.state.vt.us), or telephone. Please make every effort to get your election night results into VEMS as soon as possible on election night.

*The **presiding officer** and another election official then complete the Official Return of Vote immediately, or store the summary sheets in a safe, secure place until their completion the following morning. **No later than 48 hours after the polls close**, the presiding officer and one other election official must complete the Official Return of Votes through VEMS and sign it. §2588.*

The day after the election, and in no circumstances later than 48 hours after the close of the polls, the town clerk must complete the Official Return of Votes in VEMS.

Town clerk prepares and sends certificate of election to Justice of the Peace candidates (following the General Election only)

The town clerk is also responsible for notifying successful candidates for justice of the peace of their election, following the General Election. The clerk must send or deliver a certificate of election signed by the clerk and one other election official to each candidate elected. The certificate of election form and the oath of office form are always available on our website. The newly elected JP must take the oath of office and deposit a signed and certified copy of the oath with the town clerk before taking office on February 1. 4 V.S.A. §491 Town clerks must send the names and addresses of all justices to the SOS following the election. §2592(i) **Please remind newly elected justices that even if they take the oath of office immediately following the election, the justice of the peace term does not start until February 1, and no official acts can be done before that time.** Also, remind the newly elected justices that although they will become *ex officio* notaries public, they must file applications to become notaries with the county clerk before performing any notary duties (there is no fee, but the application must be submitted).

Canvassing Committees Duties Immediately Following the Primary (See below for General Election canvassing committees)

The **representative district clerk** and one other election official from the district serve as the representative district canvassing committee. In single town districts the canvassing committee meets at 10:00 a.m. on Wednesday, the day following the Primary. In multi-town representative districts the canvassing committee meets at 10:00 a.m. on the Friday after the election. §2368.

Using VEMS, this committee **tallies returns received from the town clerks within the representative district, completes the canvassing report to be sent through VEMS to the SOS, and issues certificates of nomination for the major party candidates for state representative.** §2592(d).

Certificates of nomination are generated from the VEMS system when the canvass is completed. Detailed instructions on performing the canvassing and printing the certificates in VEMS will be emailed to the clerks in advance of the canvassing meetings.

The **senatorial district canvassing committee is composed of the senatorial district clerk** and the chair of the county committee of each major political party or their designees. §2592(c) We suggest clerks contact county committee chairs to remind these officials of their duty to serve on the canvassing committee. If a major party in your district does not have a chair, contact the state party chair to see if he or she wants to designate a member. If not, the committee meets without representation from that party. The senatorial district canvassing committee meets on the Friday at 10 a.m. to **tally returns from town clerks within the senatorial district, to complete the canvassing committee report, and to issue certificates of nomination for major party candidates for state senator.** §2368.

The **county clerk** with the chair of the county committee of each major political party or their designees comprise the **county canvassing committee.** §2592(b) Remind these officials of their duty to serve on the canvassing committee. If a major party in your district does not have a chair, contact the state party chair to see if he or she wants to designate a member. If not, the committee meets without representation from that party. The county officers canvassing committee meets on the Friday following the election, at 10 a.m. to **complete the canvassing report and to issue certificates of nomination for major party candidates for state's attorney, sheriff and high bailiff.** §2368.

Special Counting Rules for Primary Election

For all races in the **Primary Election**, the person(s) receiving a plurality (the greatest number) of all the votes cast by the party in the Primary shall be declared the party's candidate(s) for that office and shall be issued a certificate of nomination. §2369. Each canvassing committee must **prepare and sign certificates of nomination for the major party nominees and deliver them to the nominee and send a copy of the canvassing committee report and the certificates to the SOS.** §2371.

Tie Votes in Primary—If, after the 7-day period for requesting a recount has passed and no recount has been requested, two or more candidates of the same party are **tied for statewide or congressional office**, the state committee of the party must give five days notice of a meeting and within 10 days following the Primary shall nominate a candidate for the General Election. If there is a **tie vote for a county office, for state senator or for a State Representative** to the General Assembly, the senatorial district committee for State Senate, the representative district committee for a State Representative, or the county committee for a county office, will meet upon 5 days notice and not meet later than 10 days following the primary election to nominate a candidate for the General Election. §2369.

Write-in Candidates—If no candidate's name is printed on the ballot for an office for a political party, a **write-in candidate** for that office and party must receive votes equal to at least one-half of the number of signatures needed to submit a petition for the primary in order to be declared a primary winner. **This means at least 25 votes for state representative, 50 votes for state senate, and 250 votes for the congressional and statewide offices must be received by a write-in candidate, as well as the highest number of votes**, in order to be the primary winner. If another candidate's name was printed on the ballot

for that office and party, a write-in candidate may qualify as a winner of the primary if he or she receives a greater number of votes than all other candidate(s). §2370.

The statewide canvassing committee comprised of the SOS and the chair of each major party or designee meets at 10 a.m. on the Tuesday following the election to certify the statewide race nominees of each major party and prepare and distribute certificates of nomination.

Canvassing for the General Election

The committee membership is the same for the Primary and the General Election for the representative district, senatorial district and county canvassing committees. For the General Election, all canvassing committees meet at 10 a.m. on the Tuesday following the election. §2592(a)-(g). Each representative, county, and senatorial canvassing committee shall tally the returns from its district, complete the canvassing report, declare the person receiving the largest number of votes for each office to be elected, and issue a certificate of election signed by a majority of the committee. §2592(h).

The statewide canvassing committee approves the results of statewide office elections and prepares its report to submit to the General Assembly for Governor, Lieutenant Governor, Treasurer, SOS, Auditor of Accounts, and Attorney General. The certificates shall be presented to the official canvassing committee appointed by the General Assembly. Vermont Constitution, Chapter II, § 47.

In the case of a **tie vote in the General Election, the canvassing committee shall immediately petition the Superior Court for a recount.** §2592(l). The recount for a tie vote shall be conducted by the procedures set out in detail in §2602a. Either of the candidates that is involved in a tie may notify the appropriate Superior Court that he or she is withdrawing, in which case the court shall certify the other candidate as the winner.

Representative district committees are required to provide a copy of each Certificate of Election to the SOS. §2592(h). When the certificate is generated in VEMS a copy is sent to the Elections Division. A paper copy does not have to be mailed to the SOS.

Each canvassing committee must also send a copy of the canvassing committee report to the SOS who preserves the reports as permanent records. §2592(m). When the signed copy of the canvass is uploaded in VEMS, it is sent to the SOS's office. A signed copy does not have to be mailed to the SOS. Please keep the original in your records.

Voter Participation Recorded in VEMS

Not later than 60 days following the Primary and General elections, every town clerk is required to enter a participation report into VEMS checklist indicating which voters on their checklist participated in the election.

VIII. Recounts and Contests of Election

The recount process for local elections has been simplified. As a general matter, the law now calls for recounts of local elections to be conducted “in the same manner as the votes were counted on the day of the election.” §2685. See sections §2683 - §2686 for details regarding local election recounts.

Recounts for primary and general elections will now be conducted by tabulator. County clerks will recruit town clerks to help with the operation of tabulators. Clerks or their designee will be required to transport ballots to and from county courts for recounts. §2602. **In the event of a recount, detailed instructions and guidance will be provided by the Elections Division for conducting the recount.**

In either the **Primary or General Election**, in an election for **statewide office, county office, or State Senator**, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is **less than two percent** of the total votes cast for all the candidates for

an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted. §2601(a).

In an election for **State Representative or justice of the peace**, if the difference between a winning candidate and a losing candidate is **less than five percent** of the total votes cast for all the candidates for that office, divided by the number of persons to be elected, the losing candidate has the right to request a recount. §2601(b). The process to petition for a recount is in §2602 and the detailed procedures for the county clerk to follow for the recount are in §2602a - §2602l.

Any registered voter entitled to vote for a candidate for an office may also contest an election by filing a complaint within 15 days after the election with the Superior Court. See §2603 for criteria and procedures.

Candidates for State Representative, an elected town officer in the representative district, or 25 voters of the district may request that the House of Representatives exercise its constitutional authority to judge the elections and qualifications of its own members by filing a written request with the SOS within statutory time frames. §2605.

A candidate for state senate or 100 voters of the district may similarly request the Vermont Senate to exercise its right to judge the elections and qualifications of its members, within the time frames and by the process set out in §2606.

REQUEST FOR EARLY ABSENTEE VOTER BALLOT for (ONE YEAR ONLY)

**(All voters including military and overseas voters must now submit a new request for absentee ballots each year.)
(SUBMIT DIRECTLY by fax, email or mail to the Town Clerk of the town in which you are on the voter checklist.)**

FOR Civilian Voters Living in the U.S.:

Voter's Name: _____ (First, Middle, Last Name)

☐ Check if last name is different than when you registered to vote--Former Name: _____

Voter's Current Mailing Address: _____

Voter's Town of Residence: _____

Telephone Number: _____ Email Address: _____

(Contact Only - NOT for Ballot Delivery)

I request early absentee voter ballot(s) for the election(s) checked below: (select Pres. Primary in Presidential Election years)

☐ Annual Town Meeting ☐ All other local elections ☐ August Primary Election
 Presidential Primary (1st Tuesday in March) **YOU MUST SELECT PARTY:** ☐ November General Election
☐ Democratic Ballot ☐ Republican Ballot

Please deliver the ballot(s) as indicated below (check one):

☐ Mail to voter at: _____

Street or PO Box Town/City State Zip Code

☐ Deliver by two Justices of the Peace (This may only be selected if you are ill or physically disabled.)

Signature of Absentee Voter or Authorized Person

Date _____

For Clerks

☐ Voted at town clerk's office

Date Request Received: _____

Use Only: ☐ Ballot picked up at town clerk's office

Date Ballot Mailed: _____

Date Ballot Returned: _____

FOR Voters serving in the MILITARY (active U.S. or overseas) and OVERSEAS Voters:

Check one: ☐ Military (Active in U.S. or overseas) ☐ Overseas voter (not military)

Voter's Name: _____ (First, Middle, Last Name)

Voter's VT Town of Residence (before joining military or moving overseas): _____

I request early absentee voter ballot(s) for the election(s) checked below:

☐ Annual Town Meeting
 ☐ August Primary Election
 Presidential Primary (1st Tuesday in March) **YOU MUST SELECT PARTY:**
☐ November General Election
 (select Pres. Primary in Presidential Election years)
 ☐ Democratic Ballot
 ☐ Republican Ballot

Please deliver the ballot(s) and all election materials as indicated below (check one):

☐ E-mail Address: _____ (Blank ballot will be delivered by e-mail to the voter. All voted ballots must be mailed or sent by a delivery service to the town clerk.)

☐ Fax to fax number: _____ (You must provide country codes and all other codes or numbers necessary to fax successfully to the number provided from a VT telephone.)

☐ Regular mail delivery to: (Print exactly as necessary to complete delivery to you.)

IF YOUR INFORMATION for the delivery method selected above **CHANGES** during the year, you must notify your town clerk of your new contact or delivery information in order to receive your ballots.

Signature of Absentee Voter or Authorized Person

Date _____

IF YOU ARE REQUESTING A BALLOT FOR SOMEONE OTHER THAN YOURSELF, you **must** complete the information below: (family member, health care provider, or person authorized by the absentee voter):

Name of Requestor: _____ Signature: _____ Date: _____

Organization Name (if applicable):

Address of Requestor:

Relationship to Voter (check one): ☐ Family member ☐ Health care provider ☐ Person authorized by voter

Civilians Living in the U.S.

Military and Overseas Voters

Please Note:

Appendix B

Packing List for Delivery to Polling Places Before the Polls Open

Each Legislative District needs:

Can be distributed the day before the election if the polling place will be locked overnight:

- ☐ Voting booths
- ☐ Ballot bags – Provide enough bags for each legislative district so that no more than 1,500 ballots are placed in one bag
- ☐ Seals for ballot bags
- ☐ Manila tags or contents lists to be attached to each sealed ballot bag
- ☐ Paper clips and stapler for processing mutilated ballots
- ☐ Black felt-tip pens for marking ballots
- ☐ Ball point pens and rulers for entrance checklist
- ☐ Manila envelope for defective ballots and manila envelope for spoiled ballots
- ☐ Accessible voting system equipment and a tabletop voting booth for privacy
- ☐ Elections Guide binder
- ☐ Duct tape
- ☐ Summary and tally sheets, printed copy of a blank Official Return of Votes
- ☐ Copies of appropriate Appendices for voters to fill out.

Must be secured and delivered on Election morning:

- ☐ Vote tabulator in case with ballot test decks and Vote Tabulator Guide with backup memory card. Tabulator seal for memory card slot
- ☐ Boxes of ballots for legislative district
- ☐ Entrance checklist for each legislative district and exit checklist if used
- ☐ List of absentee voters
- ☐ Voted absentee ballots for each legislative district—in secure containers with notation of whether voters have been checked off Entrance Checklist

After the Polls Close: Where does it all belong?

Important: Use this to assist you in packing after the count is completed

Bring to Town/City Clerk (in folder or envelope provided by Clerk) for EACH Legislative District:

- ☐ First printed tally tape
- ☐ **Entrance Checklist for the Legislative District**
- ☐ Written explanation of any discrepancies between the Entrance Checklist and total number of voted ballots
- ☐ Completed Write-in Summary Sheet(s) (white) (All tallies of ballots counted by hand must be added to the summary sheet(s))

Also return to Town/City Clerk:

- ☐ All unused/undistributed ballots
- ☐ Opened (used) absentee ballot certificate envelopes. Store for 2 years, then destroy.
- ☐ Remainder of supplies (stapler, unused forms, pens, etc)

Place in ballot bag and seal:

- ☐ Exit checklist (if any)
- ☐ All voted ballots for ONE Legislative District (DO NOT put more than 1500 ballots in one ballot bag and do not mix ballots from different legislative districts!!)
- ☐ 2nd printed tally tape from the tabulator
- ☐ All used tally sheets (totals have already been transferred to summary sheet(s))
- ☐ Defective Ballots Envelope (containing ballots that are defective and cannot be counted because the voter failed to sign the early absentee certificate, or voter failed to place the ballots in the certificate envelope, or voter marked ballot in way that disclosed identity of the voter—**You must “include” the total number of these ballots when reconciling the Entrance Checklist to the # of voted ballots.**
- ☐ Replaced Ballots Envelope (containing ballots that were surrendered by voters who obtained a new ballot and deposited new ballot into the tabulator—Do NOT include the total number of these ballots when reconciling Entrance Checklist to # of voted ballots)
- ☐ Attach manila tag to each ballot bag: Tag must contain: Election Date, Legislative District, Destroy Date, and Bag _____ of _____.
- ☐ Place Contents List (sample on next page) in outside pocket of each ballot bag

Appendix B

Sample: To photocopy and place in outside pocket of ballot bag

Ballot Bag Contents

Bag _____ out of _____

- ☐ EXIT Checklist, IF ANY _____
- ☐ All voted ballots for _____ (Legislative District). DO NOT put more than 1500 ballots in one ballot bag, and do not mix ballots from different legislative districts!! Lay ballots flat in ballot bag, **DO NOT ROLL OR RUBBER BAND THE BALLOTS.**
- ☐ 2nd printed tally tape from the tabulator
- ☐ All used tally sheets (totals have already been transferred to summary sheets).
- ☐ Defective Ballots Envelope (containing ballots that are defective and cannot be counted because the voter failed to sign the early absentee certificate, or voter failed to place the ballots in the certificate envelope, or voter marked ballot in way that disclosed identity of the voter—**You must “include” the total number of these ballots when reconciling the Entrance Checklist to the # of voted ballots.**
- ☐ Replaced Ballots Envelope (containing ballots that were surrendered by voters who obtained a new ballot and deposited new ballot into the tabulator—Do NOT include the total number of these ballots when reconciling Entrance Checklist to # of voted ballots).
- ☐ _____ Please list any other items packed in ballot bag.

Vermont Voter Affidavit Form
For Undelivered or Lost Absentee Ballots

To the Board of Civil Authority of the town of: _____:

By checking the box below, I _____, swear or affirm that the statement is true:

- ☐ I never received an absentee ballot that was mailed to me for this election.
17 VSA §2532(f)

- ☐ I received the absentee ballot that was mailed to me but have lost or misplaced it.
17 VSA §2548(b)(2)

Date

Signature of Voter

*Retain for 2 years.

Affirmation of Residence/Domicile

17 V.S.A. §2150 (d)(3)(A)

This affidavit must be given to Inactive/Challenged voters who have not responded to a challenge letter, before they are permitted to vote.

For Civilian Voters:

I, _____, do hereby swear/affirm that my principal dwelling place (my residence where I actually live) is located at: _____ (physical location or E-911 address) in the town of _____. I swear or affirm this pursuant to 17 V.S.A. §2122(b) and under pains and penalties of perjury pursuant to 13 V.S.A. § 2901.

FOR MILITARY/OVERSEAS VOTERS:

I, _____, do hereby swear/affirm that my principal dwelling place (my residence where I actually lived) *immediately prior* to moving overseas/joining the service was located at: _____ (physical location or E-911 address)) in the town of _____ in the state of _____. I swear or affirm this pursuant to 17 V.S.A. §2122(b) and under pains and penalties of perjury pursuant to 13 V.S.A. § 2901.

My current mailing address is: _____

Subscribed and sworn to this _____ day of _____, 20____.

Signature of Voter

13 V.S.A. §2901 – Punishment for perjury: “A person who, being lawfully required to depose the truth in a proceeding in a court of justice, commits perjury shall be imprisoned not more than fifteen years and fined not more than \$10,000.00, or both.”

17 V.S.A. §2122(b) – “A person may have his or her name on the checklist **only in the town of which the person is a resident**. For the purpose of this chapter, “resident” shall mean **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**. If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some future time. However, a person shall retain the ability to vote in a town of former residence for a period of 17 days after becoming a resident of a new town. A person may have only one residence at a given time.”

Vermont Voter Bill of Rights

You have the right to vote if you are a U.S. citizen, live in Vermont, are 18 years old and have registered to vote in the town where you reside.

You have the right to vote if you are homeless.

You have the right to vote if you have been convicted of a felony, even while you are incarcerated.

You have the right to vote even if you have a guardian and even if you need help reading or filling out your ballot.

You have the right to vote or cast your ballot if you are in line by 7:00 p.m. on Election Day.

You have the right to know if you are registered to vote.

You have the right to ask for help from elections officials or from a friend or family member. There are some people who cannot help you vote, for example, your boss or a union officer from your job.

You have the right to a secret vote. You do not have to tell anyone how you voted.

You have the right to get a new ballot if you make a mistake.

You have the right to vote for the person you want. You can write-in someone else's name if you don't like the choices on your ballot.

You have the right to leave some choices blank on your ballot. The choices you do mark will still count.

You have the right to use a voting system for all federal elections that makes it possible for people with disabilities to vote privately and independently.

You have the right to get a "provisional ballot" if you are told you are not registered to vote and you cannot swear or affirm that you submitted an application to register to vote in Vermont before the deadline.

You have the right to know if your ballot, including a "provisional ballot," was accepted for counting.

You have the right to file a complaint if you think your voting rights have been denied.

Call toll-free within Vermont at 1-800-439-8683 to get more information.

NOTICE TO VOTERS – Instructions for marking your ballot

Make sure that you only fill in an oval for **NO MORE THAN** the “VOTE FOR NOT MORE THAN #” that is printed for each race.

Example 1:	
VOTE FOR NOT MORE THAN ONE:	
Tom Jones	●
Joseph Smith	○

Example 2:	
VOTE FOR NOT MORE THAN TWO:	
Jane Doe	●
Tom Jones	○
Joseph Smith	●

For example, for statewide offices, you can only vote for one candidate in each race. In some Senate Districts and Representative Districts, you may vote for 2, 3 or 6 candidates. Do not vote for more candidates than allowed in each race. If you vote for more than the allowed number, your vote will not count!

SAMPLE LOCAL JP BALLOT FOR PAPER BALLOT TOWNS

Name of
town in 12
point bold

20 point bold
upper case

12 point bold
type

14 point bold
underlined

12 point bold

10 point bold
upper case;
Names
alphabetical;
No titles

Town of _____	
OFFICIAL GENERAL ELECTION BALLOT	
NOVEMBER 2, 2010	
To vote for a person whose name is printed on the ballot, mark a cross (X) in the square at the right of the person's name. To vote for a person whose name is not printed on the ballot, write his or her name in the blank space provided for that purpose.	
<u>For Justice of the Peace</u>	
Vote for not more than FIVE:	
JANE ADAMS, Independent.....	<input type="checkbox"/>
MARK BROWN, Libertarian.....	<input type="checkbox"/>
NANCY CABOT, Independent.....	<input type="checkbox"/>
JOHN DOE, Democratic.....	<input type="checkbox"/>
GEORGE EDWARDS, Republican.....	<input type="checkbox"/>
JAMES JONES, Democratic.....	<input type="checkbox"/>
PAUL MARTIN, Democratic.....	<input type="checkbox"/>
WILLIAM SMITH, Republican.....	<input type="checkbox"/>
ROBERT WHITE, Constitution.....	<input type="checkbox"/>
ANN WRIGHT, Democratic.....	<input type="checkbox"/>
ROGER WYLER, Republican.....	<input type="checkbox"/>
_____ Write-In	<input type="checkbox"/>
_____ Write-In	<input type="checkbox"/>
_____ Write-In	<input type="checkbox"/>
_____ Write-In	<input type="checkbox"/>
_____ Write-In	<input type="checkbox"/>

17 V.S.A. §§2471 provides ballot shall use black printing and conform as much as possible to style of the general election ballot.

Defective Ballot Envelope

Voter Checked Off Checklist

DO NOT COUNT

TALLY	TOTAL	REASON FOR DEFECTIVE BALLOT
		The absentee voter is not legally qualified to vote
		The affidavit on the certificate envelope is not completed
		The certificate is not signed
		The voted ballot was not in the certificate envelope
		Voter identified themselves on the ballot
		The Primary early or absentee voter failed to return the unvoted Primary ballots
		**TOTAL DEFECTIVE BALLOTS (Report this number on Line 5 of Part A of your ORV)

TALLY	TOTAL*	REASON FOR DEFECTIVE BALLOT
		The absentee voter has already voted

(*Do not include in # reported on line 5 of Part A of your ORV – a ballot was cast for these voters and is included in the ballot count)

Each Defective ballot or unopened certificate envelope must:

- ✓ Have an attached note from the presiding officer indicating the reason the ballot was determined defective
- ✓ Be placed with the other defective ballots in this envelope
- ✓ Be returned in this envelope to the town clerk and **placed in the ballot bag**

****These ballots should not be counted. Add the total number of Defective ballots, as indicated above, to the number of ballots counted, and that number should match the number of voters checked off of the checklist.**

REPLACED BALLOTS ENVELOPE

DO NOT COUNT

If a ballot is returned by a voter for any reason and they are given a replacement ballot, tear the returned ballot in half and place it in this envelope.

**The same voter may be given up to three replacement ballots

**If a ballot is returned to an election official by a voter,
the ballot shall be immediately:**

1. Delivered to the presiding officer or his or her designee.
2. The presiding officer shall tear the ballot in half and place it in this envelope.
3. At the close of the polls, this envelope shall be sealed and delivered to the town clerk or election official **to be placed in the ballot bag.**

**Do not count the ballots in this envelope for any reason. All ballots in this envelope were replaced with another ballot given to the voter.

Appendix J

- Print and cut-out the individual notice cards (you will get four from each page).
- If a ballot is deemed Defective, mark the box to the left of the reason that the ballot is considered defective with an **X**.
- Attach the notice card to the defective ballot before placing it into the envelope marked **DEFECTIVE BALLOTS**.

REASON FOR DEFECTIVE BALLOT

	The early or absentee voter has voted in person
	The early or absentee voter is not legally qualified to vote
	The affidavit on the certificate envelope is not completed
	The certificate is not signed
	The voted ballot was not in the certificate envelope
	Voter identified themselves on the ballot
	The Primary early or absentee voter failed to return the unvoted Primary ballots

REASON FOR DEFECTIVE BALLOT

	The early or absentee voter has voted in person
	The early or absentee voter is not legally qualified to vote
	The affidavit on the certificate envelope is not completed
	The certificate is not signed
	The voted ballot was not in the certificate envelope
	Voter identified themselves on the ballot
	The Primary early or absentee voter failed to return the unvoted Primary ballots

REASON FOR DEFECTIVE BALLOT

	The early or absentee voter has voted in person
	The early or absentee voter is not legally qualified to vote
	The affidavit on the certificate envelope is not completed
	The certificate is not signed
	The voted ballot was not in the certificate envelope
	Voter identified themselves on the ballot
	The Primary early or absentee voter failed to return the unvoted Primary ballots

REASON FOR DEFECTIVE BALLOT

	The early or absentee voter has voted in person
	The early or absentee voter is not legally qualified to vote
	The affidavit on the certificate envelope is not completed
	The certificate is not signed
	The voted ballot was not in the certificate envelope
	Voter identified themselves on the ballot
	The Primary early or absentee voter failed to return the unvoted Primary ballots

Appendix K

Counting Rules for All Towns – Voter intent.

The statutory rules for counting ballots are in 17 V.S.A. §2587. The Secretary of State has adopted a rule for **“What Constitutes a Vote”** in Appendix M. Ballots will be printed in the style used for tabulators. (ovals to be filled in instead of checkmarks in boxes--but checkmarks will still be counted.)

If the BCA by majority vote determines that a mark was made on a ballot to allow the ballot to be identified and the vote traced, defeating the secrecy of the ballot, the entire ballot must be marked defective and placed in the defective ballot envelope and none of the votes on the ballot should be counted. If the voter marks more names than there are persons to be elected to an office, overvotes equal to the number of candidates to be elected for that office (the “Vote For” number) should be entered on the tally sheet for that ballot. If a candidate receives more than one vote for the same office, i.e., the voter fills in the oval next to the candidate’s name and then writes in the same candidate, the candidate shall receive only one vote.

Vermont law allows the voter to affix a sticker or label bearing a candidate’s name to the ballot for write-in candidates. **The act of writing in a name or attaching a sticker or label bearing a candidate's name must be counted as a vote for that candidate, even if there is no "x" in the accompanying box or the oval is not filled in.** 17 V.S.A. §2587(e)

The following illustrations help explain the rules for determining a **voter's intent**:

No. 1: The voter added a note to the ballot that allows election officials to know who marked the ballot. *Mark the ballot DEFECTIVE, place in the Defective ballot envelope and do not count any votes from the ballot*

Vote for not more than ONE:	
Hi Mom! How's it going?	
Morton Main	<input type="radio"/>
Dee Fault	<input type="radio"/>

No. 2: Here the voter made no marks at all. *Count this as BLANK (UNDERVOTE).*

Vote for not more than ONE:	
Morton Main	<input type="radio"/>
Dee Fault	<input type="radio"/>

No. 3: The voter only voted for 1 candidate in a “Vote for not more than TWO” contest. *Count one vote for the candidate and add one mark to the BLANK (UNDERVOTE) column.*

Vote for not more than TWO:	
Morton Main	<input type="radio"/>
Dee Fault	<input checked="" type="radio"/>

No. 4: The voter circled the name without making an X or filling in an oval. *Is the voter's intent clear? If the pair is in doubt, put it to a vote of the election officials present.*

Vote for not more than TWO:	
<u>Morton Main</u>	<input type="radio"/>
Dee Fault	<input type="radio"/>

No. 5: The voter’s X is in between two candidate names, so intent is not clear. *Count this as BLANK (UNDERVOTE).*

Vote for not more than ONE:	
Morton Main	<input type="radio"/>
Dee Fault	<input type="radio"/>

Appendix K

No. 6: The voter changed his mind. *If the pair agrees, count this for Main.*

Please
can't
↓

Vote for not more than ONE:	
Morton Main	<input checked="" type="radio"/>
Dee Fault	<input checked="" type="radio"/>

No. 7: The voter wrote the name but did not fill in the oval or make a checkmark. *Vermont law requires this to be counted as a vote for Whist.*

Vote for not more than ONE:	
Morton Main	<input type="radio"/>
<u>Pam Whist</u> Write-in	<input type="radio"/>

No. 8: A write-in for a fictional person or a dead person is not counted. *Count this as BLANK (UNDERVOTE).*

Vote for not more than ONE:	
Morton Main	<input type="radio"/>
<u>Mickey Mase</u> Write-in	<input checked="" type="radio"/>

No. 9: The voter filled in the write-in oval but no name was written. *Count this as BLANK (UNDERVOTE).*

Vote for not more than ONE:	
Morton Main	<input type="radio"/>
_____ Write-in	<input checked="" type="radio"/>

No. 10: The voter made two marks and may have tried to erase one of the marks or may have just smudged a mark. *If the pair is uncertain, all of the election officials present decide.*

Vote for not more than ONE:	
Morton Main	<input checked="" type="radio"/>
Dee Fault	<input checked="" type="radio"/>

No. 11: The voter marked two names for a "Vote for not more than ONE" race. *Enter one overvote on the tally sheet for this race.*

Vote for not more than ONE:	
Morton Main	<input checked="" type="radio"/>
Dee Fault	<input checked="" type="radio"/>

ADMINISTRATIVE COMPLAINT PROCEDURE

- I. Authority:** In accordance with the provisions of 42 U.S.C. § 15512(a) and 17 V.S.A. § 2458 this rule provides for a uniform, nondiscriminatory procedure for the resolution of a complaint alleging a violation of provisions of Title 17 of the Vermont Statutes or Title III of the Help America Vote Act of 2002 (HAVA). It is not intended to over-ride any specific provisions of Title 17 that provide for dispute resolution for specific aspects of Vermont elections (e.g. complaint in Superior Court for recounts).
- II. Definitions:**
- A. “Complaint” means an allegation in writing that there is a violation of provisions of Title 17 of the Vermont Statutes or Title III of the HAVA that has occurred, is occurring or is about to occur in an election.
 - B. “Complainant” means any person filing a complaint in accordance with the provisions of paragraph III, below.
 - C. “Election” means a primary or general election in which a federal office appears on the ballot.
 - D. “Respondent” means any state or local elections official whose actions are alleged to be violation of Title 17 or Title III.
 - E. “Secretary” means the Vermont Secretary of State or his or her designee.
 - F. “Title 17” means 17 V.S.A. §§ 2451-2602.
 - G. “Title III” means Title III of the Help America Vote Act of 2002; 42 United States Code §§ 15281-15485.
- III. Complaints:** Any person who believes that a violation of provisions of Title 17 or Title III by any state or local election official has occurred, is occurring or is about to occur may file a complaint with the Secretary.
- A. Complaints must be in writing, sworn under oath under penalty of perjury, signed by the complainant and notarized.
 - B. Complaints must include the full name, telephone number and mailing address of the complainant.
 - C. Complaints must include a description of the alleged violation sufficient to make the Secretary and respondent aware of the nature and specifics of the complaint.
 - D. If a hearing on the record is requested, the complaint must so state.
 - E. The notarized complaint must be filed with the Secretary at 26 Terrace Street, Drawer 9, Montpelier, VT 05609-1101.
 - F. The complainant must also send a copy of the complaint to each respondent by first class U.S. mail.
- IV. Procedures:** The Secretary may process complaints in any of the following ways:
- A. Dismiss the complaint and issue a final determination if the complaint does not comply with the requirements of paragraph III above; or if the complaint does not, on its face, allege a violation of Title 17 or Title III with regard to an election.
 - B. Dismiss the complaint and issue a final determination if the complaint is not filed within sixty (60) days of the final certification of the federal election at which the alleged violation took place.
 - C. Resolve the complaint informally, and issue a final determination without a formal proceeding unless the complainant requests a hearing on the record.
 - D. Designate a hearing officer and schedule a date, time and place for a hearing on the record.

- E. Consolidate multiple complaints into a single proceeding if the complaints relate to the same actions or events giving rise to the complaints, or the complaints raise common questions of law or fact.

V. Hearing Procedures: If requested in the complaint, and if no other summary action has occurred, the Secretary shall schedule a hearing as follows:

- A. Written notice of the hearing shall be given to all parties setting out the date, time and place of the hearing. Notice must be sent by first class U.S. mail as least seven (7) days prior to the date of the hearing.
- B. The hearing shall be recorded. The audio recording shall constitute the official record of the hearing.
- C. An extension of time for a hearing may be granted for good cause.
- D. At the hearing all parties shall have the opportunity to be heard and to present evidence relevant to the determination of the complaint. Witnesses shall be sworn.
- E. Any party may be represented by legal counsel.
- F. If a complainant fails to appear at the hearing then the complaint shall be dismissed with prejudice.

VI. Determination:

- A. A written determination on the complaint shall be made within ninety (90) days of the filing of the complaint.
- B. A written determination shall be issued within ten (10) days of the conclusion of any hearing.
- C. The determination shall be final. The determination may be appealed to the Superior Court in the county where an appellant resides.

VII. Alternative Dispute Resolution: If, for any reason, the Secretary does not make a final determination within ninety (90) days after the complaint was filed, or within any extension of time to which the complainant consents, the complaint shall be resolved under this section:

- A. The Secretary shall immediately designate a three-member arbitration panel, which shall consider the complaint and any record previously created and reach a final determination by majority vote of the panel. If no record has been created, or the record is incomplete, the panel may receive evidence in accordance with provisions contained in paragraph V, above.
- B. The panel shall issue a written, final determination within thirty (30) days of its designation.
- C. The final determination of the panel may be appealed to the Superior Court in the county in which an appellant resides.

(End of Rule)

RULE ON WHAT CONSTITUTES A VOTE

- I. Authority:** In accordance with the provisions of 42 U.S.C. § 15481 and 17 V.S.A. § 2587 this rule provides for uniform, nondiscriminatory standards for establishing what constitutes a vote and what shall be counted as a vote for all categories of voting systems and voting procedures used in Vermont.
- I. Definitions:**
- A. Board of Civil Authority: The Town Clerk, members of the select board, and Justices of the Peace in each municipality.
 - B. Election Official: A member of the Board of Civil Authority, an assistant Town Clerk, or any election official appointed by the Board of Civil Authority to assist in an election.
 - C. Machine Ballot: A machine ballot is an official ballot printed by the Vermont Secretary of State to be used in a municipality that counts ballots by using optic scan tabulator machines.
 - D. Paper Ballot: A paper ballot is an official ballot printed by the Vermont Secretary of State to be used in a municipality that counts ballots by hand count.
 - E. Presiding Officer: The Town Clerk, unless the town has voted otherwise, or the person appointed as presiding officer by the Board of Civil Authority for an election.
- II. What Constitutes a Vote for a name printed on the ballot:**
- A. On a paper or machine ballot, a vote shall be cast for the candidate where the voter has marked the box or oval opposite one candidate's name, or in races where the voter is instructed to "Vote for not more than" a number of candidates, a vote shall be cast for each candidate where the voter has marked the box or oval opposite each candidate's name so long as the voter has not marked more candidates than the number of "Vote for not more than" in that race.
 - B. On a paper ballot, the two election officials who are tallying the ballot shall follow the rules set out in Section IV below for determining the voter's intent in marking the ballot.
 - C. On a paper ballot, if a voter has marked in the box or oval opposite more candidate(s) than are to be elected in that race, the ballot shall be counted as spoiled for that race. This is an overvote. The secretary of state shall provide notices and public information to educate voters to try to eliminate overvoting in any race.
 - D. On a machine ballot, if a voter has marked in the oval opposite more candidate(s) than there are candidates to be voted in that race, the optic scan tabulator machine shall be set to reject the ballot, and an election official shall instruct the voter that he or she had overvoted in a race, and shall offer the voter the opportunity to void that ballot, and to take another ballot into the voting booth in order to properly mark the number of candidates to be voted in each race.
- III. What Constitutes a Vote for a write-in candidate:**
- A. On a paper ballot or machine ballot, the act of writing in the name of candidate, or pasting a label or sticker containing a candidate's name on the write-in line for a race on the ballot, shall constitute a vote for that candidate even if the box or oval opposite the write-in line has not been marked.
 - B. In a machine ballot town, the presiding officer shall direct not less than two election officials to fan the ballots from the large ballot bin to look for ballots where a write-in candidate's name has been written in or a label affixed, but where no mark was made in the

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oval. The ballots found with a write-in name but no mark in the oval shall be combined with the write-in ballots in the “write-in bin” of the machine. All ballots containing write-ins shall be counted by teams of two election officials using the same rules as paper ballots and the tally for each write-in candidates shall be added to the summary sheet and to the official return of votes.

- C. On each tally sheet, the counters shall add together the names of candidates that are clearly the same person, even though a nickname or last name only is used.
- D. Names of fictitious persons shall not be counted or listed as write-in candidates.

IV. Determination of Intent of the Voter on paper ballot:

- A. In counting votes, where a box or oval is not clearly marked for a candidate as determined by the two counting election officials, the following guidance shall assist the election officials in determining the intent of the voter as expressed by the markings on the ballot:
 - 1. The two election officials agree that the voter’s act of circling a candidate or making any mark that shows clear intent to vote for a particular candidate shall be counted as a vote for that candidate, even if the mark is made outside of the box or oval (such as circling a name).
 - 2. If the two election officials determine that no marks have been made indicating the intent of the voter in a race, the ballot shall be counted as blank for that race.
 - 3. If the two election officials agree that either the voter has marked more candidates than the “Vote for” in the race (overvote), or the election officials agree that it is impossible to determine the intent of the voter from marks that were made, then the ballot shall be counted as spoiled for that race. An overvote only spoils the ballot for the race in which it occurred and the remainder of the races are counted.
 - 4. If the two election officials agree that a voter has cast a vote for fewer candidates than the “Vote for” in the race (undervote), the vote or votes properly cast shall be counted and a blank vote or votes shall be recorded for each undervote (number of “Vote for not more than” less the number of votes cast).
 - 5. If the two election officials determine that a candidate has received more than one vote for the same office on any ballot, such as a box or oval being marked and the same candidate name is written on the write-in line, the candidate shall receive one vote only for that office and the write-in shall not be counted.
 - 6. If the two officials determine that the write-in box or oval has been marked, but no name has been written in and no sticker or label affixed, it shall be counted as a spoiled ballot for that race.
 - 7. If the two election officials cannot agree on the intent of the voter although some mark or marks have been made for the race, then they shall notify the presiding officer who then presents the question of the intent of the voter for a decision by majority vote of all the assembled election officials.
 - 8. If the two election officials determine that any mark was made on a ballot for the purpose of allowing the ballot to be identified and the vote traced, they shall notify the presiding officer, and if by majority vote of the Board of Civil Authority members present it is determined that any mark was made on a ballot for the purpose of allowing the ballot to be identified and the vote traced, the entire ballot shall be marked spoiled.