

## 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 (BCA) 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** employs a director of elections and campaign finance and three 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. Statewide candidates for the Primary and General Elections file campaign finance reports with the Secretary of State.

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. **Board of civil authority members should serve as election officials at polling places on Election Day whenever possible.** 17 V.S.A. §2451

The board of civil authority establishes policy; makes decisions involving voter registration, 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 ill or disabled voters who request personal delivery. If there are not enough BCA members to serve on election day or to deliver ballots to the ill and disabled, the BCA shall appoint additional legal voters of the town to serve as election officials. 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. 17 V.S.A. §2103(5) 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 at all times, but in emergencies you can continue to function with two officials present. **However, 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 all 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. 17 V.S.A. §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 all voter information on the statewide checklist, posts all notices and warnings, processes absentee ballot requests, monitors returned ballots, delivers absentee ballots to the polling place, generally serves as presiding officer at the polling place, and prepares and submits the Official Return of Vote (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 legal voter to serve as presiding officer. 17 V.S.A. §2452 Presiding officers are required by law to attend one election workshop presented by the Secretary of State every two years. 17 V.S.A. §2457(b)

**Representative District Clerks** are 92 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 representative districts for the 2012 elections following the 2010 census.

17 V.S.A. §2103(29) **Representative district clerks:**

- accept primary petitions and consent forms from **major party candidates** for state representative from Monday, May 10, 2010 until 5 p.m. Thursday June 17, 2010; (Independent candidates and minor party candidates must file petitions, statements of nomination, and consent forms with the Office of the Secretary of State in Montpelier—do NOT accept these forms.);
- fax major party consent forms to the Elections Division (802-828-5171) after you have checked the petition for the required 50 signatures for all major party state representative candidates who properly file petitions and consent forms—do NOT accept a petition without consent form!!;
- chair a canvassing committee following the Primary and General Elections to tabulate election results for the representative district (an email election bulletin will be sent to each representative district clerk 2 weeks before the canvass with procedural details and forms);
- send completed Certificates of Election to the winning candidate(s);
- send signed canvassing report (election results) for the representative district to the Elections Division by fax to 802-828-5171 followed by signed originals by mail,
- and accept campaign finance filings from candidates for state representative.

**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 candidates and minor party candidates must file petitions, statements of nomination, and consent forms with the Office of the Secretary of State in Montpelier—do NOT accept these forms.);
- fax consent forms to the Elections division for all candidates who properly file petitions and consent forms—do NOT accept a petition without consent form!!;
- chair canvassing committees following the Primary and General Elections to tabulate election results for the senatorial district (an email election bulletin will be sent to each representative district clerk 2 weeks before the canvass with procedural details and forms);
- send completed Certificates of Election to winning candidates;
- send signed canvassing report (election results) for the state senatorial district in the district to the Elections Division by fax to 802-828-5171 followed by signed originals by mail;
- and accept campaign finance filings from candidates for state senator.

**County Clerks:**

- accept petitions and consent forms from county office candidates (in 2010, assistant judges, state's attorney, sheriff, high bailiff, and probate district judges);
- fax consent forms to the Elections division for all candidates who properly file petitions and consent forms—do NOT accept a petition without consent form!;
- chair canvassing committees following the Primary and General Elections to tabulate election results for the district (an email election bulletin will be sent to each representative district clerk 2 weeks before the canvass with procedural details and forms);
- send completed Certificates of Election to winning candidates;
- send signed the canvassing report (election results) for the county offices to Elections Division by fax to 802-828-5171 followed by signed originals by mail;
- and accept campaign finance filings from candidates for county offices.

### 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 percent of the total votes (2010 law change from 5% to 2%) cast for all candidates in the race divided by the number of candidates for statewide, senatorial and county offices, the percentage for state representative candidates remains at 5%;
- accept petitions to contest elections.
- Superior court clerks manage all recounts within the county under the supervision of the Superior Court Judge. 17 V.S.A. §§2601, 2602

**Election Officials** are legal 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 legal voters of the town). 17 V.S.A. §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 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.*

**Election Official Training** -- Each even-numbered election year, the Office of the Secretary of State provides election official trainings. All election officials are invited. However, the Vermont statutes require that each **presiding officer** attend at least one election workshop every two years. 17 V.S.A. §2457(b) There was a Presiding Officer workshop on Monday June 7 from 9:15 until Noon at the Town Clerk's Educational Conference at St. Michael's College in Colchester, VT. Additional workshops in June, July and August were announced in the monthly *Opinions*, in Election Bulletins e-mailed to all town clerks, and in postcards mailed to all BCA members.

### 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** printed on the ballot may serve as an election official for that election EXCEPT if the person is on the ballot as a candidate for justice of the peace, town clerk, treasurer, moderator, or in charter towns, for another election official position such as ward clerk. So 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 should obviously not count ballots for his or her own race. 17 V.S.A. §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 ill or physically disabled voters. 17 V.S.A. §2538

**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.** 17 V.S.A. §2455

The compensation, if any, of those who deliver absentee ballots is established by the BCA. 17 V.S.A. §2538(a) 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. Regularly Occurring Election Related Responsibilities of Town Clerks and BCA**

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

### **Voter Registration and Statewide Voter Registration Checklist Duties** (town clerks and BCA)

Town clerks must expeditiously add, edit, challenge and purge voters from the statewide voter registration checklist. Please review the User Guide for the statewide checklist for details or contact [mhodge@sec.state.vt.us](mailto:mhodge@sec.state.vt.us) or [klane-karnas@sec.state.vt.us](mailto:klane-karnas@sec.state.vt.us) with questions or to request training. Clerks need to check email for Election Bulletins and log on to the Statewide Checklist at least once each week to look for HAVA Messenger notifications from other clerks and to process notices to remove voters.

Clerks must keep offices open from 3 p.m. until 5 p.m. on the Wednesday immediately prior to each election. 17 V.S.A. §2144 The deadline for registration for the applications for addition to the checklist for the Primary will be 5 p.m. on Wednesday, August 18 and for the General Election will be 5 p.m. on Wednesday, October 27. All applications accepted by the DMV or by a voter registration agency on or before 5 p.m. on the Wednesday prior to the election shall be considered to have met the filing deadline even if the clerk receives those applications after the deadline.

Vermont law gives the town clerk the authority to add names to the checklist. If a town clerk is uncertain if a person meets the qualifications, the town clerk notifies the board of civil authority of a meeting to review any application(s) that have raised questions re qualification for the town clerk. 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 denial to the person's last known address. 17 V.S.A. §2146(b)

Some persons may become qualified to vote between the deadline for application to the checklist and the election day (persons turning 18 or becoming a new resident of the town). A letter or the partial completion of a voter application form submitted to the town before the voter registration deadline can be used as notice of intent to apply for addition to the voter registration checklist. These applicants must then submit a completed application before the polls close on election day. 17 V.S.A. §2144(b) If the qualifying event takes place before or on the election day and the application is completed, the person can be added to the checklist and take the Voter's Oath on election day.

A board of civil authority (BCA) meeting is no longer required between the cut-off date for submitting applications for addition to the checklist and the day of election. 17 V.S.A. §2144b If the town clerk has added names, the clerk forwards a list of additions to the BCA at least five days prior to each election.

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. 17 V.S.A. §2103(5) On election day, the board of civil authority consists of those members of the BCA present at the polls. 17 V.S.A. §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 if it has been removed by mistake, or if an applicant filed an intent and qualified after the deadline, or if a person swears that a timely application was submitted but not received, and completes the sworn affidavit. (Appendix B is the sworn affidavit—clerks make copies for each polling place.) 17 V.S.A. §2147

No application to the BCA is required when a voter moves to a new location in the same town or changes his or her 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 Required for Legal Voter in Vermont**

A person may be added to the voter registration checklist if all of the following are true: (1) citizen of the United States; (2) resident of the town or city in Vermont where the application is submitted; (3) 18 years of age or older by election date; and (4) has taken the Voter's Oath. Three out of four of these qualifications are easy. Whether an applicant is 18 or whether an applicant has taken the Voter's Oath is easy to determine. 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 to vote.

It is the "**residency**" issue where most questions arise. 7 V.S.A. §2122(b) provides:

A person may have his or her 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 removes 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? It is not length of time alone that is the determining factor. 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.

### **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 have established residency, while citizens 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. §1973cc and 17 V.S.A. §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. However, a person cannot create a residency in a new location until he returns to the U.S. and establishes a new principal dwelling place. If a person never lived in Vermont, he or she cannot decide to register in a town where he or she hopes to live in or retire.

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. 17 V.S.A. §2145(c)

### **Denying an Application; Challenging a Voter**

However, on a case-by-case basis the BCA can make inquiry 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 applicants as individuals 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. 17 V.S.A. §2146(a) See the statute for details.

The law provides procedures the town clerk and board of civil authority must follow in denying an application. When a board votes to reject an application, it must notify the applicant, in person or by first class mail, giving its reason(s) and offering an opportunity for a hearing. The notice to be used for this purpose is set out in 17 V.S.A. §2146(b).

To challenge a voter (because the BCA believes he or she no longer resides in town) or to purge or remove a person's name from the checklist, the BCA must follow the detailed guidance provided in 17 V.S.A. §2150 and in periodic Elections Bulletins to town clerks regarding the challenge and purge procedures. If the voter has moved out of town, you can remove the name from the checklist immediately upon written notice from the voter, or written notice from another Vermont town or another state that the person has registered to vote in another place. Without written notice from the voter, the BCA must follow the procedures in section 2150. Remember: "The provisions of this chapter shall be liberally construed, so that if there is any reasonable doubt whether a person's name should have been removed from the checklist the person shall have a right to have his name immediately returned to the checklist."

### **Records of Voter Registration; Checklist Maintenance**

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 be 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

Records of the number of new registrations occurring between general elections, the number of persons removed from the checklist between general elections, the lists of names and addresses of all persons to whom challenge or purge letters were sent, and notes of whether each person responded must be kept. These records are public and must be retained for at least two years. 17 V.S.A. §2150(d)(7)

**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 a nearby town that is both in the probate district and in the representative district in which he or she resides. You must 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.** 17 V.S.A. §2123

### **Election Envelopes, Ballot Bags, Seals, Warnings, ORVs, Forms/Notices**

Town clerks who ordered envelopes received them for the Primary and General Election in late May. Ballot bags and seals were already distributed—if you suddenly realize you didn't order enough, email [mhodge@sec.state.vt.us](mailto:mhodge@sec.state.vt.us). You can download and print the various ballot box signs and the absentee ballot request form (Appendix A) from our website.

The Elections Division will automatically send you five copies of the Warnings/Notice to Voters in time for posting before the Primary and General Election. The Elections Division will automatically send tally and summary sheets, the Official Return of Votes, certificates of nomination for the Primary Election and certificates of election for the General Election to each town clerk.

### **Vote-By-Phone**

**EVERY POLLING PLACE MUST have the TELEPHONE supplied by our office set up with the table top voting booth AND there must be at least two election officials present at each polling place who have been trained and can assist voters who want to use this voting system to vote privately and independently.** If a voter uses this system on election day, you must have at least two other volunteers who will vote using the telephone system in order to protect the secrecy of the ballot. Our office will send out an Election Bulletin prior to the August Primary providing detailed instructions to refresh your memory. If you have questions, please contact Melanie Hodge or Katie Lane-Karnas.

### **Additional Duties of the BCA before Election Day**

There are a number of decisions the board of civil authority must make before elections:

- The proper number of voting booths. 17 V.S.A. §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). 17 V.S.A. §2501 **ALL polling places must be accessible to voters with disabilities.** The BCA must take measures to assure that elderly and physically handicapped voters may conveniently and secretly cast their votes. 17 V.S.A. §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.
- Ill or disabled persons 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 <http://www.ada.gov/votingck.htm>.
- At least 30 days prior to an election the BCA can divide the checklist into geographical segments if more than one polling place is designated. 17 V.S.A. §2501 If separate checklists are to be used, the board is responsible for determining the geographical location of each voter's last known address and correct placement of voters in geographic districts. 17 V.S.A. § 2501(c)
- May vote not to use an exit checklist. 17 V.S.A. §2507 If the BCA so votes, the town clerk must place alternative material (tabulator tapes, number of voters on the entrance checklist and explanations of discrepancies between the vote totals and the number of voters) into the ballot bags.
- 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. 17 V.S.A. §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. 17 V.S.A. §§2494, 2561
- Appoints a sufficient number of assistant election officials, to work in politically balanced pairs, when possible. 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. 17 V.S.A. §2454

### **III. Filing Procedures for Petitions and Consent Forms for Candidates to Qualify to be Placed on the Major Party Primary Election Ballots**

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

#### **Primary Petitions (called “statements of nomination” in the statutes) and Consent Forms**

No sooner than May 10, 2010 and no later than 5 p.m. on Thursday, June 17, 2010, **major party candidates** can file petitions and consent forms with the appropriate representative district clerk, county clerk, senatorial district clerk, or the Office of the Secretary of State (for statewide candidates). A completed **consent form signed by the candidate must be filed with the petition before the filing deadline**. The designated official CANNOT ACCEPT A PETITION WITHOUT A CONSENT FORM. 17 V.S.A. §2361 (Petition and Consent forms can be downloaded from <http://www.sec.state.vt.us> .)

For 2010, the major parties are: Democrat, Progressive, and Republican. Representative district clerks, senatorial district clerks and county clerks CAN ONLY accept petitions for candidates who want to run as candidates for one of the three major parties— **all independent candidates (except JPs) MUST FILE WITH THE OFFICE OF THE SECRETARY OF STATE**. Candidates may not be on the Primary ballot of more than one party for the same office. 17 V.S.A. §2353

#### **Major Party Candidates filing requirements for 2010 Primary: (17 V.S.A. §§2355, 2356 and 2357)**

Statewide Officers (U.S. Senate, U.S. Representative, Governor, Lieutenant Governor, State Treasurer, Secretary of State, Auditor of Accounts, and Attorney General – **500 signatures with the Secretary of State**

County Officers (Assistant Judges, State’s Attorney, Sheriff, High Bailiff) State Senators, and Probate Judges –**100 signatures with the county clerk**

State Representative -- **50 signatures with the representative district clerk**

(Justices of the Peace do not run in the Primary Election—they are nominated by caucus in August 2010.) Information on JPs is presented on page 11.

#### **Petition Signatures**

**At the time the voter signs a petition**, the voter must be registered (name on the voter registration checklist of a Vermont town) and must be qualified to vote for the candidate (voter in the district). Each petition signer must print his or her name and town of residence next to the signature, and a voter may not sign more than one petition for the same office in the primary, unless more than one nomination is to be made (as in a two-seat representative district or one for each major party). Signing a petition does not bind a signer to vote for that candidate in the primary. 17 V.S.A. §2354

**With the petition, each candidate must submit a consent form** providing the name as the candidate wants it 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 be used.) **A consent form must be filed at the same time as the petitions**. 17 V.S.A. §2361

**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 of legal voters who live in the district 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. 17 V.S.A. §2358  
**CLERKS: Please fax the consent form to the Office of the Secretary of State at (802) 828-5171 as soon as you have confirmed that the petition is valid—do not wait until the filing deadline.**

Petitions with obviously less than the required number of signatures must be rejected, and cannot be supplemented. If you find a petition that has the required number of signatures but does not contain a sufficient number of legible signatures, you reject the petition and notify the candidate that he 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.

Candidates may not file and cannot be printed on the primary ballot for more than one party for the same office in one election. 17 V.S.A. §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, county and probate—50; state representative—25). 17 V.S.A. §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 candidates. All Independent candidates must file with the Secretary of State (except for independent justice of the peace candidates who must file with the town clerk).

All petitions for the primary must be kept until December 2, 2010 (30 days following the General Election) at which time they may be destroyed. 17 V.S.A. §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 **unless the candidate files a letter of withdrawal with the secretary of state** before the ballot printing deadline. Unless a candidate formally withdraws, 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 secretary of state within five days of receipt.** 17 V.S.A. §2371

## **IV. Party Nomination Processes and Independent Candidate Petition Procedures for the General Election (including justice of the peace)**

### **Candidates Nominated by Other Means for the General Election**

This section pertains to independent candidates; candidates nominated by minor parties; 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 all candidates for justice of the peace.

### **Independent Candidates** (except justices of the peace, discussed on page 11)

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. The law was amended in 2008 and no longer requires independent candidates to have signatures verified and certified by town clerks prior to submission to the Secretary of State in Montpelier (except Presidential/Vice-President nominations still require certification prior to filing).

**Independent petitions** must contain:

- Statewide and congressional office—500 signatures
- County offices (assistant judge, state’s attorney, sheriff, high bailiff), State Senate, and probate court judges—100 signatures
- State representatives—50 signatures

**Independent petitions** for ALL OFFICES (except Justice of the Peace) **must be filed by the candidate at the Office of the Secretary of State in Montpelier no sooner than Monday, May 10, 2010 and no later than 5 p.m. on Thursday, June 17, 2010.**

A voter may not sign more than one statement of nomination for an Independent candidate for the same office, unless there is more than one seat in the district (Where ballot states: “Vote for not more than 2”). 17 V.S.A. §§2402, 2403 However, a person who has signed a candidate’s petition for an office for the primary can sign another petition for a different Independent candidate. (The primary and general are considered different elections for the purpose of signing petitions.)

An **Independent** candidate will have his name printed on the General Election ballot with the word "Independent" next to the name, unless the petition specifies a political party name. 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 already on a statement of nomination already on file with the secretary of state. 17 V.S.A. §§2402, 2403 and 2472(b) A statement of nomination must contain the name of only one candidate, except that statements for U.S. President contain the name of the Vice Presidential running mate. 17 V.S.A. §2403

**Nominations of Candidates by Minor Parties—New June 17 filing deadline**

Minor parties properly organized for 2010 are Liberty Union, Libertarian and Working Families. Minor parties nominate candidates for the General Election by party committee. Nominations for 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. 17 V.S.A. §2382 The chair of the committee, or if the chair fails to act, any three members of the committee, must send a **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. 17 V.S.A. §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. 17 V.S.A. §2384 The chair and the secretary of the committee file a signed statement of nomination with the secretary of state. Each candidate nominated must also file a consent form. 17 V.S.A. §2385(a),(d) **Statements of nomination by minor party committee and consent forms must be filed with the Secretary of State by 5:00 p.m. on June 17, 2010.** 17 V.S.A. §§2386

**Major Party Fails to Nominate a Candidate in the Primary Election—New June 17 filing deadline**

When a major party fails to nominate a candidate for an office by the primary (no candidate petitions to place his or her name on the ballot and there is no successful write-in candidate), the party may nominate a candidate by party committee. Nominations for state or congressional office are made by the state committee; county office by the county committee; state senate by the senatorial district committee; and state representative by the representative district committee. 17 V.S.A. §2382 The chair of the committee, or if the chair fails to act, any three members of the committee, must send a 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. 17 V.S.A. §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. 17 V.S.A. §2384 The chair and the secretary of the committee file a signed statement of nomination with the secretary of state. Each candidate nominated must also file a consent form. 17 V.S.A. §2385(a), (d)

### **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 Secretary of State. Candidates should expect to receive a phone call from the Secretary of State's Office asking for an early decision, so that we can prepare the General Election ballots in time for delivery on September 20, 2010.

The party designated as first 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 secretary of state or town clerk for JPs will designate by lot the party to be printed first. 17 V.S.A. §2474

### **Withdrawals by Candidates**

A candidate can withdraw his or her candidacy before 5 p.m. on August 27 by filing a notice of withdrawal with the secretary of state. (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 secretary of state may remove the candidate's name until the printing deadline that was announced and posted. 17 V.S.A. §2412

### **Major Party nominations after candidate death or withdrawal**

In the case of death or withdrawal of a candidate of a major political party nominated by the primary, the party committee shall have 7 days from the death or withdrawal to hold a party committee meeting to nominate to fill the vacancy by filing a statement and consent form with the name of a replacement candidate not later than 60 days prior to the election..

### **Justice of the Peace**

The number of justices of the peace that a town may elect depends on its 2000 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 on November 2, 2010 will begin his or her term on February 1, 2011.** County officers, including justices of the peace, hold over until successors are elected and qualified. 3 V.S.A. §259 Clerks will receive certificates of election and oath forms for JPs before the General Election.

Justices of the peace can be nominated by party caucus or, failing that, by party committee of **major or minor political parties by filing of a statement of nomination signed by the town party chair and secretary and a copy of the notice** sent to all town committee members not later than 5 p.m. on August 27, 2010 with the town clerk. 17 V.S.A. §§2382, 2413 The statement of nomination forms were sent to all major parties for distribution to town chairs and can be downloaded from <http://www.sec.state.vt.us>. 17 V.S.A. §§2385, 2386 Although consent forms are not required for justice candidates nominated by the party, party officials must confirm the consent of all candidates to have their names on the ballot. Our office sends a detailed memo to party chairs detailing procedures with copies of all necessary forms. Contact your party if you did not receive this material. (A courtesy copy of this memo is sent to town clerks for information only.)

### **Independent Candidates for Justice of the Peace: New June 17, 2010 filing deadline**

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 legal voters, whichever is less. 17 V.S.A. §2402 Petitions and consent form must be filed with the town clerk by 5 p.m. on June 17, 2010.

**Clerks should publicly announce the printing deadline for JP ballots by posting a written notice in the town office.** 17 V.S.A. §2412

Candidates for justice of the peace may withdraw their names by filing a written notice of withdrawal with the town clerk by August 27. Notices of withdrawal filed after August 27 may result in the removal of the candidate's name if the printing deadline has not passed. September 3 is the deadline for filing nomination statements for candidates who replace those who have withdrawn.

If a JP candidate has been nominated by more than one major party, the candidate must notify the town clerk which party name shall appear first by September 3, 2010. 17 V.S.A. §2474(a)

Some towns have had an historical "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, there are more and 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. Town Clerk's Responsibilities to Prepare for ALL Statewide Elections**

### **Primary Election Ballots and General Election Ballots**

Primary ballots (50 percent of your checklist for each party with 40 percent scored for machine towns) and General Election ballots (100 percent of your checklist with 40 percent scored for machine towns) will be sent to your town clerk's office directly from the printer. 17 V.S.A. §2478 If you believe you will need more than this projected amount of ballots for the Primary, notify the Elections Division by July 1. You will receive your ballots at least 30 days before each election (not later than July 12, 2010 for the Primary and not later than September 20, 2010 for the General Election.) **Please check your ballots as soon as you receive the delivery.** Call or email the Elections Division immediately if there is any error.

### **Justice of the Peace and Municipal Special Meeting Articles**

The town clerk must print the **justices of the peace ballots** and **local election (public questions) ballots**, if any, in towns using paper ballots. The town clerk can make arrangements to have the JP ballot done by a professional printer or the clerk can design the ballots and make colored paper copies on a copier; either way, the ballots must have the printed ballots available no later than September 20, 2010 for the General Election (The Justice of the Peace ballot is part of the General Election for which ballots must be available 45 days prior to the election.) Appendix G is a sample JP ballot. 17 V.S.A. §§2471 and 2472

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 ballots carefully. **We suggest that you have someone from outside of your office proofread your ballots.** It is very expensive to reprint ballots or to hold another election due to errors on a ballot.

**If your town uses the Accuvote Optic Scan vote tabulators**, the elections division will include JPs and local articles on your ballot **if there is enough space on the General Election ballot AND if the town clerk emails an attachment** in the format we will describe in more detail in an August Elections Bulletin before 5 p.m. Tuesday, August 30, 2010 to [mhodge@sec.state.vt.us](mailto:mhodge@sec.state.vt.us). You must list your JPs in an excel file in alphabetical order by last name with the first name, middle name or initial, nickname and then last name exactly as it is to appear on the ballot including the designated party or independent. Before any special meeting article(s), add a "column heading" such as "Special Town Meeting" or "Special Town School District Meeting." Please proofread carefully. **Ask someone outside your office to proofread your JP list and articles. If there are mistakes in the JP list or article(s) that you send to us, your town will pay for all costs of reprinting the ballots.**

### **Pre-Election Sign(s) Placed by Candidates or Citizens**

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.

### **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 not later than Tuesday, July 13 for the Primary Election and not later than Tuesday, September 21 for the General Election. 17 V.S.A. §2521(b) **Clerks must fill in the blanks on each warning for the location of the polling place(s) and the time polls open.** The notice and warning must be posted by Sunday, July 25 for the Primary Election and not later than Sunday, October 3 for the General Election. You must also post a copy of the most recent checklist. 17 V.S.A. §2641 If you have a local election scheduled for the same date, you must post its warning and notice by these deadlines. The town clerk must post the notice and warning in two public places **in each voting district** and in or near the clerk's office. 17 V.S.A. §2521

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

During the 30 days prior to the Primary or General Election, one copy of the checklist must be made available upon request, without 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. 17 V.S.A. §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. 17 V.S.A. §2507 Please consider posting an extra copy of the checklist near the entrance to the polling place so a voter can see if his name is on the checklist before he goes to the entrance checklist.

### **Prior to the Election the Town Clerk With Other Presiding Officers, if Any, Must:**

- make assignments and schedule the hours of election officials,
- train election officials,
- develop a policy for regulating placement of signs at the polling place on the day of elections,
- develop a policy for conduct of persons outside the polling place, and
- develop a policy for pollwatchers inside the polling place.

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

**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 spoiled and defective ballots, voting booths, ballot boxes or vote tabulating machines, tabletop voting booth, telephone, headphones, instructions for use of the telephone system including your poll worker code and ballot code, pens for marking ballots, pens and rulers for marking checklists, copies of the sworn affidavit to be added to the checklist, copies of the affidavit of domicile for voters who had been challenged, copies of the affidavit of undelivered or lost ballot, 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 Checklist in Appendix J.**

### **Procedures for Early Absentee Ballots PRIOR to the Election**

Federal law now requires that ballots must be available for military and overseas voters at least 45 days prior to the Primary and General Elections. The elections division will have PDFs of all ballots at least 55 days before the election that can be used to email ballots along with the certificate and instructions to military and overseas voters. If military and overseas voters have requested that the ballot be sent by email, please request a PDF of your ballot from mhodge@sec.state.vt.us. (You cannot email a ballot to a civilian voter living in the U.S.)

As soon as your printed ballots are received and proofread (notify the elections division immediately if you find an error), immediately mail ballots to all voters who have requested absentee ballots. The town clerk must store the remainder of the ballots, except those used for sample ballots and absentee ballots, in a secure place until the day of election. On Election Day, the clerk must deliver ballots to the presiding officer of each polling place, together with JP ballots and other local ballots prepared by the town clerk.

**Sample Ballots** -- The town clerk must post sample ballots by Sunday, July 25 for the primary and by Sunday, October 3 for the General Election. The clerk must mark "SAMPLE BALLOT", place a line through all ovals and then post one sample at each place where the warning has been posted. 17 V.S.A. §2522 Make sure "Sample" covers all sections on each ballot so that a sample ballot cannot be stolen and used.

**Early Voter/Absentee Ballots** -- Any voter, family member, health care provider, or authorized person can request an early voter 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. 17 V.S.A. §2531 One request for absentee ballots can be made for the Primary and General Elections if the ballots are to be sent to the same address. 17 V.S.A. §2532(d)

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 by phone. Any other authorized person, including a friend of the voter, may request a ballot in person or in writing and must sign the absentee ballot request form. (Appendix A) 17 V.S.A. §2532(a)

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. 17 V.S.A. §§2532 and 2549 All first time applicants for addition to a Vermont checklist must take the Voter's Oath which can now be administered and attested to by any person over 18 or by the voter. 17 V.S.A. §2124

Federal law now provides that the Vermont absentee ballot request form must allow a military or overseas voter to request the ballot and all election materials to be sent to the voter by email. You can request a PDF of your ballot from the elections division by email to mhodge@sec.state.vt.us.

The clerk must keep a file or make a list of each early absentee voter's name and address. A copy of the file or the list shall be made available upon request at the clerk's office. A copy of the list shall be available upon request in each polling place in the town upon the opening of the polls. 17 V.S.A. §2534 The elections division has created an Access database CD with user guide to track absentee ballots and information needed for the post election EAC Survey. You can request a copy by emailing mhodge@sec.state.vt.us.

A new federal law, known as the MOVE Act was passed in October 2009 amending the existing Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). This law requires that each state create a free access system so that military and overseas voters can go online at any time to find out if a voted absentee ballot returned by the voter has been received back by the town clerk. The elections division is working with a consultant to create a web based application so that town clerks can data enter absentee ballot information so that a voter will be able to go onto a web browser to look up when the voter's ballot was sent to the voter and when it is received back by the clerk.

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

- The voter may apply in person to the town clerk and **vote in person** in the clerk's office on an absentee ballot, seal and sign the envelope, and return the ballot(s) to the town clerk without leaving the clerk's office. This may be done at any time the town clerk's office is open before the closing of the town clerk's office on the day before each election. 17 V.S.A. §2537
- The **voter may pick up a ballot** at the town clerk's office and return the ballot in the same manner as if the ballot was received by mail—anyone can return a ballot in a sealed certificate envelope. 17 V.S.A. §2537 **No other person can pick up a ballot for a voter**—not the spouse, not the son or daughter, not the parent.
- A voter may vote **by mail**. The voter can request absentee ballots and the clerk 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. 17 V.S.A. §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.
- A town clerk can **email or fax a ballot to an overseas or military voter** along with instructions and a copy of the certificate on 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. Upon receipt of the ballot PDF the voter can print and mark the printed the ballot, put the voted ballot inside a No. 10 envelope, seal the envelope, cut out the printed certificate and paste it on the envelope, complete and sign the certificate, place 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 a faxed ballot 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 but a town is not required to pay for it.

If a military (stationed in U.S. or overseas) or overseas voter requests a mailed ballot, the ballot must be sent airmail, first class, postpaid using the postage paid envelopes provided by the election division.

- **Justices of the Peace may deliver absentee ballots to voters who are ill or physically disabled** (the request must be made by 5PM or the close of the town clerk's office the day preceding the election). 17 V.S.A. §2539(b) Only voters who are ill or have a physical disability may choose this method. At least three days before the election, the BCA designates pairs of JPs to deliver ballots. If not enough JPs are available, the BCA appoints other legal voters as election officials to assist. During the eight days before the election, and on election day, the town clerk makes assignments to pairs of JPs to deliver and return the ballots of ill and physically disabled voters. 17 V.S.A. §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 justices of the peace.** 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 justice of the peace. 17 V.S.A. §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, make a notation “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. 17 V.S.A. §§2538, 2545 If prior to election day, the ballot envelopes are stored securely with all returned absentee ballot envelopes.

**For all early absentee ballots, the certificate envelope must be signed by the voter** (or by two JPs if the voter is not physically able to sign) **or the ballot cannot be counted**—it will be marked defective by the election officials at the entrance checklist.

**For every absentee ballot request, the clerk needs to put the following materials in the outer envelope to send to the voter:**

- (1) A folded outer envelope for the voter to use to return the ballots to the polling place;
- (2) An inside certificate envelope for the Primary or the General Election;
- (3) Ballot(s); and
- (4) An **“unvoted ballot” envelope for the Primary ONLY.**

For the Primary Election, if the unvoted ballots are not returned in the unvoted ballot envelope, the absentee ballots must be marked "defective" and not counted. 17 V.S.A. §2547

### **Municipalities with over 5,000 registered voters may process absentee ballots before the election**

In 2007, the law was amended to allow the town clerk in municipalities with over 5,000 registered voters to open the returned outside absentee ballot envelopes, data enter the return of the absentee ballots and arrange ballots by district within the 30 days prior to the election. Within 48 hours of the election, pairs of election officials in all other size municipalities may check the names off the entrance checklist and place the certificate ballot envelopes in a secure container marked “checked-in early voter absentee ballots.” Upon the opening of the polls, the certificate ballot envelopes can be opened and the ballots fed into the tabulator or deposited in the ballot box. This is an optional procedure. 17 V.S.A. §2546

## **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 9 p.m. on every Primary and General Election day to assist you 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 9 p.m. to let us know you will need help.

### **Opening the Polls – Post the opening time in large print on the polling place doors.**

The polls must be opened by **the presiding officer** on election day at the time between 5 a.m. and 10 a.m. as established by the BCA. 17 V.S.A. §§ 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 assigns election officials to work in pairs, with no pair containing members from the same political party, if possible. 17 V.S.A. §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 use the rest room or to pick up lunch, etc. and there will still be at least two officials in the polling place.

### **Pollwatchers**

Representatives of political parties, candidates and political committees have a right to be present and observe 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 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 for**

**distribution.** We suggest that interested persons contact the town clerk before election day to discuss activities 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. 17 V.S.A. §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. 17 V.S.A. §2564

**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. 17 V.S.A. §2572

### **Campaigning Outside the Polling Place**

The **presiding officer** must ensure that no one hinders or interferes with the progress of any voter to and from the polling place. 17 V.S.A. §2508 **Vermont law does not provide a specific distance or number of feet that campaigners must be from the polling place.** The presiding officer 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. The presiding officer must make sure that no one physically interferes with a voter's ingress and egress, but cannot establish limits that interfere with First Amendment rights by being too distant from the polling place. 17 V.S.A. §2508 The presiding officer can use discretion and establish a reasonable interpretation of the statute 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 interpretation 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.** Most campaigners feel better if they can see they are being treated equally (and a written policy reinforces this).

### **Buttons, Campaign Literature, Stickers or Labels Inside the Polling Place**

Within the building containing a polling place, the presiding officer is responsible for insuring that no campaign literature, stickers, buttons, name stamps, information on candidates or other political materials are placed, handed out, displayed or allowed to remain. 17 V.S.A. §2508 **Any voter may bring a small card or folded paper to remind the voter how he wants 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 his paper or label to others in the room. 17 V.S.A. §2587(e)

The presiding officer is also responsible for insuring that no candidate, election official or other person solicits voters or otherwise campaigns in the polling place. 17 V.S.A. § 2508 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 his 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 deal with that problem.

### **Signs Outside at 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. 17 V.S.A. §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, so 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.

### **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. 17 V.S.A. §2545 The law states that the voter must return the absentee ballot to the town clerk or to the polling place before the close of the polls on election day. Some voters have placed absentee ballots in “slots” for tax, water, or sewer payments or at town clerk’s offices that were closed on election day. **We suggest that you post a sign stating that after the close of the town clerk's office on the day before the election, all absentee ballots must be delivered to the polling place.** Alternatively, you or another election official must check the mail slots or drop boxes just before the close of the polls.

Clerks in municipalities with over 5,000 population may check in absentee ballots in the 30 days prior to the election, and smaller municipalities may check in absentee ballots within 48 hours of the election (see detailed information on pages 14-15). 17 V.S.A. §2546

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 open the outside envelope, check to see that the absentee voter is on the checklist, that he has not already voted, that the certificate on the voted ballot envelope is signed, and for the primary only, that the unvoted ballot(s) in the unvoted envelope is returned. **If the certificate has not been signed by the voter, the entire ballot is spoiled.** 17 V.S.A. §2547

The absentee voter’s name is then checked on the entrance checklist. The election officials then open the inside envelope and, without unfolding the ballots or looking at them, deposit the ballots in the proper ballot box—unvoted primary ballots into the unvoted ballot box; voted ballots in the primary voted ballot box and the General Election ballot into the voted ballot box. The officials also ensure that the name is also checked off the exit checklists, if any. 17 V.S.A. §2546

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. 17 V.S.A. §2548 The returned absentee ballots should then be treated as spoiled or unused ballots. 17 V.S.A. §2568 The law has now been amended so that 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 her 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. 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. 17 V.S.A. §2564 If the voter is a first-time voter who registered individually by mail, the person must provide identification. 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. 17 V.S.A. §2563

**If a person chooses to use the Vote-By-Phone system the election officials must mark a tic in the space provided on first page of the entrance checklist so that the presiding officer will be able to determine how many ballots were cast using this system.**

**Procedure If Name Not Found on Checklist** -- Sometimes legal residents who are not on the checklist come to the polling place and ask to vote. If, 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, the BCA members present may vote to add the name to the checklist. 17 V.S.A. §§2147 and 2150(d)(6)

If the person has never been on the checklist for this polling place, but asserts that he or she submitted a timely application to register to vote, you must offer to have the person complete the **sworn affidavit** (Appendix B) and add the name to the checklist. This voter now votes a regular ballot. This procedure must be used when the person alleges that he or she submitted a timely application to register. This Vermont law makes it unnecessary to use a provisional ballot. 17 V.S.A. §§2145 and 2147(a)(4)

If the person cannot be added to the checklist by completing the sworn affidavit, 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, staff can assist the presiding officer in determining how to handle an insistent voter who does not qualify for the sworn affidavit or a provisional ballot under federal law.

Provisional ballot envelopes and notices to voters will be sent to all towns in July. The provisional ballots and notices must be available at the polling place. **Please call the elections division on election day before using any provisional ballot envelopes or notices.**

Once a voter has been marked as voting by the entrance checklist election officials, an election official hands the voter the ballot(s), asks the voter if he or she has any questions, and shows the voter to a voting booth. 17 V.S.A. §2565 If the voter spoils a ballot, up to three additional ballots may be provided. 17 V.S.A. §2568 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 important in paper ballot towns so voters carefully check the ballot before depositing the voted ballot into the ballot box.

If a voter makes a mistake and returns his or her ballot to obtain another ballot, place the spoiled returned ballot in the manila envelope for SPOILED ballots, and give the voter another ballot. The ballots in the spoiled 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. If a voter returns an absentee ballot with no return address and a blank certificate envelope so that it is impossible to ascertain the identity of the voter who returned the ballot, this ballot is also considered spoiled and goes into the spoiled ballot envelope. Make a copy of Appendix I to attach to a manila envelope to hold spoiled ballots.

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 because the early absentee voter did not sign the certificate envelope but you have the voter’s name checked off from the return address on the envelope, the voter did not place the ballots in the certificate envelope, or the voter identified herself on the ballot. We have provided a chart to “tally” each defective ballot as you place it in the envelope. After the polls close, you will need to know the total number of defective ballots to add to the total number of ballots counted in order to reconcile with the number of voters on the checklist.

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 spoiled 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.

Voters who do not use their ballots must return them to the presiding officer. Spoiled and unused ballots must be immediately marked with a notation on a separate paper and placed in the spoiled ballot envelope to be returned to the town clerk for disposition in accordance with 17 V.S.A. §2590.

In the **Primary Election only**, each voter will be given a ballot for each major party—there are three major parties in 2010. The voter can vote on only ONE PARTY ballot. The voter is checked off the exit checklist, if any, delivers the unvoted ballot(s) to an election official for deposit in the unvoted ballot box, and the voter then feeds the ballot(s) into the tabulator or folds the ballots and deposits his own voted ballots in the voted ballot box and leaves the polling place. 17 V.S.A. §§2570 and 2571

In the **General Election**, after the voter votes his ballot(s), the voter is checked off the exit checklist, if any, and then feeds the ballot(s) into the tabulating machine or folds the ballot(s) and deposits her own ballots into the ballot box before leaving the polling place. 17 V.S.A. §§2570 and 2571

In all elections, **only the voter must place his or her 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 carry ballots to voters for home delivery or two election officials take a ballot outside for the purpose of allowing a legal voter to vote from a motor vehicle adjacent to the polling place (known as curbside voting). 17 V.S.A. §2502(b)

If a voter who wants to use the **Vote-By-Phone system arrives at the polling place after 6:30 p.m., call the Elections Division immediately** to let us know that we may need to leave the telephone voting system “open” for your polling place until the ballot is cast.

### **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 polls closing announcement can be allowed to vote at that election. 17 V.S.A. §§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.

## VII. Election duties after the polls close and in the next 48 hours

**The 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. 17 V.S.A. §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 should be tallied on the entrance checklist and exit checklist, if any, and the tallies recorded by the presiding officer.** 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 # of ballots, 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 finding discrepancies. Before the **exit checklist** or alternate materials (if there is no exit checklist) and the statement of discrepancies are placed in a ballot bag for storage, **the exit checklist must be marked as the exit checklist.** 17 V.S.A. §§2582 and 2583 The exit checklist, if any, should be placed with the statement of discrepancies in the ballot bag. If there is no exit checklist, alternative information including the number of persons checked 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 entrance and exit 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. 17 V.S.A. §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 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 outside the 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 upon payment of the statutory fees. 17 V.S.A. §2590(e)

**Appendix J** 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.

The next step **is ballot counting** in hand count towns. If you are using a vote tabulator, you can skip this section and see the process for vote tabulator towns that follows.

**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. 17 V.S.A. §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 any legal voters in your town who are members of different parties, or independent, it is best if additional election officials from different parties or independents are appointed as election officials prior to each election.)

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. If counts are off for a race, the pair may review the ballots for that race to find the error. Pay particular attention to races with a "Vote for not more than THREE" for example. If a voter has only voted for one candidate, the tally sheet must show two blanks. The counting pair can go back through the ballots as many times as necessary to make sure that the tally sheet is correct.

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. 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, and spoiled 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 more than one ballot is used at the election, only one type of ballot should be distributed at a time. 17 V.S.A. §2584 Make sure each set of ballots is counted correctly before ballots and tally sheet are given to the presiding officer. 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."

The presiding officer must not accept the ballots and tally sheet from a pair of election officials until she confirms that all the races have counts equal to the number of votes cast, blanks, or spoiled for that race. 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 number of totals for each race (including blanks and spoiled) matches the number of ballots. Once the ballots and tally sheet have been accepted by the presiding officer and entered onto the summary sheet, the ballots cannot be recounted. So, make sure all the tallies total the number of ballots in the set before giving the ballots and completed tally sheet to the presiding officer. 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 spoiled for that race.

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. 17 V.S.A. §2588 Hand count towns can skip the next section of procedures for tabulator towns. Start again at the last paragraph below for detailed instructions for determining voter intent that applies to both hand count and machine count towns.

**Procedures for Accuvote Optic Scan Tabulator Towns**—In towns using vote tabulators, after the presiding officer has printed out the tapes from the tabulator, the presiding officer opens the ballot box and removes the ballots in the emergency side bin and gives them to a pair of election officials to be counted and recorded on tally sheets.

The presiding officer then removes the ballots from the write-in bin and gives them to a pair of election officials to have the officials tally write-in votes. The presiding officer then removes the remaining ballots from the larger side of the ballot box and divides them among remaining pairs of election officials to quickly look at the ballots to see if there are any indications of clear voter intent with markings outside of the oval, such as circling a name or checkmarks to the left of the candidate name or write-in votes where the voter did not fill in the oval. When the pairs have completed the tally for each set of ballots, the tally sheet is given to the presiding officer who adds the votes for candidates to the vote counts on the tabulator printouts.

Reminder on overvotes—In towns using vote tabulators, the tabulators have been set to reject any ballot that contains an “overvote” in order to give the voter an opportunity to return that ballot as spoiled and receive a new ballot to vote. An “overvote” occurs when a voter fills in more candidates for a race than the “Vote for not more than” number, i.e., voting for four candidates in a “Vote for not more than THREE” race. When a ballot is ejected from the tabulator, the election official standing near the tabulator can look at the display on the front of the tabulator and tell the voter that he or she has marked more candidates than is allowed in a particular race—the tabulator will display the first race in which an overvote has occurred. If the voter returns the ballot to the election official it is marked spoiled, and the voter is given a new ballot. If the voter is in a hurry, or does not want to correct the overvote, the election official can either place the voted ballot in the emergency bin, or have the presiding officer or assistant open the top tab of the ballot box in front of the tabulator, and press the YES button while having the voter reinsert the ballot. The tabulator will then tabulate all races except those races where an overvote has occurred. This process has been reviewed at trainings by LHS and the Elections Division. If you have questions during the election, you can call the Elections Division.

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. 17 V.S.A. §2587(f)

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 Vote or put the summary sheets in the town clerk's vault and complete the Official Return of Vote the next morning. (See our packing list suggestions in Appendix J.)

**Securing and storing ballots, tally sheets and checklists** -- The presiding officer must place the tally sheets, ballots, a description of any discrepancies between the entrance checklist and the exit checklist or number of ballots counted or votes on the tabulator tape, and the **exit checklist or alternate materials** in one or more ballot bags, tag and seal the bags, and deliver all to the town clerk. Keep the ENTRANCE checklist and SUMMARY SHEETS outside of the ballot bag to give to your town clerk. If your BCA has voted not to use an exit checklist, you must include alternative material that provides a tally of the number of persons checked on the entrance checklist which may include the printed tapes from the tabulator and any other notes you would want the court to see if a recount is requested. See Appendix J for a sample checklist for packing the ballot bag. Copy this and bring it with you as a reminder.

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 J. 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 17 V.S.A. §2590(d)

#### **Completing and Filing Official Return of Votes**

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 24 hours after the polls close, the presiding officer and one other election official must complete the Official Return of Votes and sign it. 17 V.S.A. §2588

The day after the election, and in no circumstances later than 48 hours after the close of the polls, the town clerk must make three copies (four if your senatorial clerk and county clerk are different) of the Official Return of Votes, and then deliver in person or use the prepaid overnight delivery envelope to send the original of the Official Return of Votes (ORV) to the Secretary of State and copies to the representative district clerk, senatorial clerk, and county clerk, if different from your senatorial clerk. **You must use the prepaid overnight envelope or hand deliver—do not send your ORVs to us by only first class mail no matter what your post master tells you about delivery.** Also hand deliver or FAX a copy of the Official Return of Votes to the senatorial district clerk, the county clerk, and the representative district clerk. 17 V.S.A. §2588 **Keep one copy for your files.**

#### **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 secretary of state will send you the certificate of election form and the oath of office form to you before the election. 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, 2011. 4 V.S.A. §491 Town clerks must send the names and addresses of all justices to the Secretary of State following the election. 17 V.S.A. §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, 2011 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 serve as the representative district canvassing committee. This committee **tallies returns received from the town clerks within the representative district, completes the canvassing report to be sent to the Office of the Secretary of State, and issues certificates of nomination for the major party candidates for state representative.** 17 V.S.A. §2592(d) In single town districts the canvassing committee meets at 10:00 a.m. on Wednesday, August 25 (the day following the Primary). In multi-town representative districts the canvassing committee meets at 10:00 a.m. on Friday, August 27. 17 V.S.A. §2368

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. 17 V.S.A. §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 wants to designate a member. If not, the committee meets without representation from that party. The senatorial district canvassing committee meets on Friday, August 27 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.** 17 V.S.A. §2368

The **county clerk** with the chair of the county committee of each major political party or their designees comprise the **county canvassing committee.** 17 V.S.A. §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 Friday, August 27, at 10 a.m. to **complete the canvassing report and to issue certificates of nomination for major party candidates for probate judge, assistant judges, state's attorney, sheriff and high bailiff.** 17 V.S.A. §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. 17 V.S.A. §2369 Each canvassing committee must **prepare and sign certificates of nomination for the major party nominees and mail/deliver them to the nominee** and send a copy of the canvassing committee report and the certificates to the Secretary of State. 17 V.S.A. §2371

**Tie Votes in Primary**—If 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 then shall determine who shall be the party candidate for a statewide office or congressional office. The law was amended in 2010, so now 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, or the county committee for a county office, will meet upon 5 days notice to nominate a candidate for the General Election. 17 V.S.A. §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 at least one-half of the number of votes 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 receives a greater number of votes than all other candidate(s). 17 V.S.A. §2370

The statewide canvassing committee comprised of the Secretary of State and the chair of each major party or designee meets at 10 a.m. on Tuesday, August 31, 2010 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 Tuesday, November 9, 2010. 17 V.S.A. §2592(a) to (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. 17 V.S.A. §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, Secretary of State, and Auditor of Accounts. The prepared 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.** 17 V.S.A. §2592(l) The recount for a tie vote shall be conducted by the procedures set out in detail in 17 V.S.A. §2602a.

Representative district committees are required to send a copy of each Certificate of Election to the Secretary of State. 17 V.S.A. §2592(h)

Each Senate winner must provide a copy of her Certificate of Election to David Gibson, Secretary of the Senate.

Each canvassing committee must also send a copy of the canvassing committee report to the Secretary of State who preserves the reports as permanent records. 17 V.S.A. §2592(m)

## **VIII. Recounts and Contests of Election**

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 that losing candidate shall have the right to have the votes for that office recounted.

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. 17 V.S.A. §2601 The process to petition for a recount is in 17 V.S.A. §2602 and the detailed procedures for the county clerk to follow for the recount are in 17 V.S.A. §2602.

Any legal voter entitled to vote for a candidate for an office may also contest an election by filing a complaint with the Superior Court. See 17 V.S.A. §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 Secretary of State within statutory time frames. 17 V.S.A. §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 17 V.S.A. §2606.

