

## CHAPTER 19. JUSTICE OF THE PEACE

### *Roles and Responsibilities*

**The office of the justice of the peace is a county office; however, the justices are elected by the town voters. The justices of the peace at one time performed important judicial functions in towns, but this authority has largely been repealed. Justices of the peace can no longer exercise judicial powers, but they may serve as magistrates when so commissioned by the Vermont Supreme Court. Vermont Constitution, Chapter II, § 52. Aside from administering oaths of office and solemnizing marriages, virtually all of the justice's authority derives from his or her membership on the board of civil authority. These duties include assisting in elections, delivering and counting ballots, maintaining checklists, and hearing tax appeals.**

**History.** The Court of the Justices of the Peace was one of several local offices created in 15<sup>th</sup> and 16<sup>th</sup> century England by the Tudors to allow government participation at the grassroots level. This court handled minor civil and criminal matters and was presided over by the justice of the peace. By encouraging the burgeoning middle class to participate in local government, royalty strengthened English common law and, not accidentally, provided a tool to help the Crown keep the restless nobility in check. The system of justice courts came to Massachusetts in the 17<sup>th</sup> Century and to Vermont in the 18<sup>th</sup> Century.

In the years since, many of the duties and prerogatives of the justices have dissipated or have been repealed completely, with the district and small claims courts assuming the duties. As for prerogatives, not many justices of the peace really expect to be addressed as “Mr. (or Ms.) Justice” anymore.

In Vermont, the position of justice of the peace is created by the Vermont Constitution, which sets out the nomination, election and terms of the office. Vermont Constitution, Chapter II, § 43.

**Nomination and Election.** Justices are nominated for office on or before the first Tuesday in August in even numbered years, but because this position used to involve great political influence, the nominating procedure is considerably different than it is for town officers. 17 V.S.A. § 2413.

Political party members in each town, on each even year, upon the call of the town committee, may meet in caucus and nominate candidates for the office of the justice of the peace. If the town committee fails to call such a caucus, the committee itself shall meet and nominate candidates as provided in 17 V.S.A. §§ 2381-2385. Where a political party has not formally organized in a town, any three members/voters of the party may call the caucus to nominate candidates. 17 V.S.A. § 2413(c).

When a caucus is held to nominate candidates for justice of the peace, the town committee or other persons holding the caucus must post notice of the caucus in three or more public places in the town not less than seven days before the date of the caucus. In towns having a population of more than 1,000, a notice of the caucus must also be published in a newspaper of general circulation in the town not less than three days prior to the caucus. 17 V.S.A. § 2413(d).

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**The number of justices allocated to each town is apportioned according to population.** Vermont Constitution, Chapter II, § 52.

Allocation of Justices According to Population	
Population	Number of Justices
Fewer than 1,000	5
1,000-2,000	7
2,000-3,000	10
3,000-5,000	12
More than 5,000	15

In some small towns, members of the major political parties meet together and apportion the number of justices to be nominated from each party, so that only the total number of justices for that particular town is actually nominated. In larger municipalities, each party often fields a full slate.

Independent candidates for justice of the peace may have their names placed on the ballot if they file a consent form and a statement of nomination containing the signatures of 30 legal voters of the town, or one percent of the checklist, whichever is less, with the town clerk. 17 V.S.A. §§ 2401, 2402.

Justices of the peace are elected biennially on the first Tuesday next after the first Monday in November, during the general election. Vermont Constitution, Chapter II, § 43.

**Term of Office.** The justice's term of office runs for two years and takes effect on February 1 following the election. 4 V.S.A. § 491.

**Resignation.** In the event of a vacancy among the justices of the peace, the justice should notify the governor and the town clerk. This is because the governor appoints the successor justice. It is a courtesy to notify the town clerk, since he or she certifies the election of a justice. 17 V.S.A. §§ 2592(i), 2623(a)(5).

**Oath of Office.** Before assuming his or her duties, each justice must deposit with the town clerk a signed copy of the official oath, certified by the administering magistrate or notary public. The secretary of state provides the forms for the justice's oath. 4 V.S.A. § 491. Note that a justice who willfully fails to file a copy of the oath with the clerk may be fined up to \$100. 4 V.S.A. § 492. Failure to file was also held to disqualify a justice from serving on the board of civil authority. See *Federal Land Bank v. Flanders*, 105 Vt. 204 (1933).

**Compensation.** Compensation to justices for delivering early or absentee ballots must be set by the board of civil authority and paid by the town 17 V.S.A. § 2538(a). Otherwise, there is no compensation for performing the functions of justice. It is customary, but not required, to pay the justice of the peace when he or she performs a marriage ceremony.

**Administering Oaths.** In the absence of other provisions made by law, oaths of office may be administered by justices of the peace. 12 V.S.A. § 5852. When an oath is administered to a person who has religious objections to the use of the word "swear," the word "affirm" may be substituted. Likewise, the phrase "under the pains and penalties of perjury" may be substituted for the phrase "so help you God." 12 V.S.A. § 5851.

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**Certified Copies.** After the justice of the peace's term of office has expired, and so long as he or she is residing in the same county, a justice may make and certify copies of the records of his or her official business. Such copies shall have the same validity as though made and certified while he or she was in office. 4 V.S.A. § 500. Note that justices of the peace are *ex officio* notaries public under authority granted in 24 V.S.A. § 441(b).

**Performing Marriages.** Justices of the peace are among those authorized to perform marriage ceremonies. 18 V.S.A. § 5144(a). They may perform ceremonies anywhere within the state of Vermont. The law does not require any particular ceremony or speech by the justice for a marriage to be solemnized. For a suggested ceremony, please consult *The Justice of the Peace Guide*, published by the Vermont Secretary of State's Office, available online at [sec.state.vt.us/municipal/JP\\_Guide.pdf](http://sec.state.vt.us/municipal/JP_Guide.pdf).

Anyone authorized to solemnize marriages in the State of Vermont, including justices of the peace, shall require from the parties a license issued by the clerk of the town in which either one of the parties resides. If neither is a resident of the state, a license may be obtained from any town clerk in the state. The marriage must be solemnized within 60 days from the date that the license is issued, after which the license is void. After the ceremony, the justice must fill out the appropriate portion of the form, sign and certify it, and return it within ten days to the town clerk who issued it. 18 V.S.A. § 5131(b)(c).

According to statute, a justice of the peace must require a civil license of parties before solemnizing a marriage. The license immunizes the justice from all liability that might arise from performing the marriage. 18 V.S.A. § 5145.

**Confession of Debt.** Perhaps as an oversight, the legislature has left in the statutes a provision that permits a justice of the peace to accept and record a confession of debt to a creditor when this confession is made by the debtor personally. However, no judgment will be rendered until specific and particular details have been submitted in writing to the justice. 12 V.S.A. § 4671. This provision is a holdover from the time when justices had judicial authority. It means that if a debtor writes to a justice indicating that he owes a creditor a certain sum, the justice can render a "judgment" that is binding on the debtor and has the same effect as if a judgment had been rendered after court process.

**Board of Civil Authority.** As a member of the board of civil authority, the justice of the peace performs the following functions:

- **Maintaining the Checklist.** The town clerk must call a meeting of the board of civil authority before every election, and as may be necessary, to revise the voter checklist. The board must meet at least once after the deadline for filing applications to be added to the checklist has expired, which is five o'clock the Wednesday preceding the election. If no application is received, it is not necessary to meet. 17 V.S.A. §§ 2142, 2144.
- **Assisting in Elections.** The justice of the peace may work as an election official and assist at the polls, even if his or her name appears on the ballot to be reelected justice of the peace. 17 V.S.A. §§ 2451, 2456.
- **Delivering Absentee Ballots.** Justices of the peace are designated by the board of civil authority to deliver absentee ballots to voters who are ill or physically disabled, but who did not request absentee ballots be mailed to them. Pairs of justices of the peace (one from each major political party) will deliver absentee ballots on the day assigned to them during the eight days immediately preceding election day and on election day. Upon request, the justices may assist an individual in filling out the ballot and may explain how the absentee ballot form works, but they obviously cannot influence how the individual votes. The justices must return the completed absentee ballots to the clerk before the

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polls close on election day so that they may be counted. Note that a justice may not deliver absentee ballots if he or she is otherwise disqualified from serving as an election official under 17 V.S.A. §§ 2456, 2538.

- **Counting Ballots.** As election officers, the justices of the peace assist in tallying the official checklist and in counting the ballots. 17 V.S.A. § 2451.
- **Tax Appeals.** The board of civil authority hears appeals from final decisions of the listers as to the valuation of property for the purpose of property taxation. A person who wishes to appeal must write to the board within 14 days of receiving notice of the final decision of the listers, stating the reason for the appeal. The board hears the appeal and a committee of three or more members of the board makes an inspection of the property and files a report to the board within 30 days from the hearing and before the final decision. Within 15 days of the report from the committee, the board makes its findings and decisions, which it certifies and files with the town clerk. 32 V.S.A. § 4404. For a more extensive discussion of this topic, see VLCT's *Handbook for Vermont Selectboards*, available at [www.vlct.org](http://www.vlct.org), and the *Handbook on Property Tax Assessment Appeals*, available at [http://www.sec.state.vt.us/municipal/tax\\_appeal\\_handbook\\_2007.pdf](http://www.sec.state.vt.us/municipal/tax_appeal_handbook_2007.pdf), published by the Vermont Department of Tax's Division of Property Valuation and Review, 802-828-5860.
- **Board of Tax Abatement.** As members of the board of civil authority, justices of the peace are members of the board of tax abatement. 24 V.S.A. § 1533. The board may abate property taxes, collection fees, and interest, in whole or in part:
  - of a person who dies insolvent;
  - of a person who has removed from the state;
  - of a person who is unable to pay his or her taxes, interest, and collection fees;
  - in which there is a manifest error or a mistake of the listers;
  - upon real or personal property lost or destroyed during the tax year;
  - of real property owned and occupied as a residence by a veteran of any war or his or her spouse, widow(er), or child if one or more of them receives compensation for death or disability paid by the military or Veterans Administration, as described in 32 V.S.A. § 3802(11) who file a timely claim due to sickness or disability or other good cause as determined by the board; or
  - taxes upon a mobile home moved from the town during the tax year as a result of a change in use of the mobile home park land or parts thereof, or closure of the mobile home park in which the mobile home was sited, pursuant to 10 V.S.A. § 6237. 24 V.S.A. § 1535.

Decisions to abate or not to abate are wholly discretionary, and it is unclear whether an individual who does not like a decision of the board may appeal the decision to a court for review. The board may order an abatement to be paid in the form of a refund or as a credit against taxes for the ensuing year. If the town charges interest for overdue taxes, then the town shall also pay interest on the amounts to be abated, from the date that the payment was due or made, whichever is later. 24 V.S.A. § 1535.

For more information about the justice of the peace, please refer to *The Justice of the Peace Guide*, which is available online at [www.sec.state.vt.us/municipal/JP\\_Guide.pdf](http://www.sec.state.vt.us/municipal/JP_Guide.pdf).

For more information about the tax appeal process, please refer to the *Handbook on Property Tax Assessment Appeals*, also available online at [www.sec.state.vt.us/municipal/tax\\_appeal\\_handbook\\_2007.pdf](http://www.sec.state.vt.us/municipal/tax_appeal_handbook_2007.pdf).