

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The justice of the peace used to perform important judicial functions in the towns, but this authority has largely been repealed, so that today justices of the peace play a very limited role in Vermont. 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 15th–16th 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 17th century and to Vermont in the 18th 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In the years since, many of the duties and prerogatives of the justices have dissipated or have been repealed completely, with the district and small claims courts assuming the duties.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. VT Constitution, Chapter II, § 43.

Nomination and Election. Justices are nominated for office at the September primaries 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 or before the first Tuesday in September of 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. §§ 2381–2387. 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).

The number of justices allocated to each town is apportioned according to population. VT 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.

Note that amendments passed in 1996 allow independent candidates for justice of the peace to have their names placed on the ballot if they file a statement of nomination containing the signatures of 30 legal voters of the town, or one percent of the checklist, whichever is less. 17 V.S.A. §§ 2401, 2402.

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

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 it is the governor who appoints the successor justice. It is a courtesy to notify the town clerk, since it is he or she who certifies the election of a justice. 17 V.S.A. §§ 2592(I), 2623.

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. 17 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 \$100.00. 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. A justice of the peace shall be compensated for delivering absentee ballots if the board of civil authority fixes an amount. 17 V.S.A. § 2538. 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 marriage ceremonies.

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.

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 civil marriage ceremonies. 18 V.S.A. § 5144. 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, 26 Terrace Street, Montpelier, VT 05609-1101 (800-439-8683).

Anyone authorized to perform marriages in the State of Vermont, including justices of the peace, shall require from the parties being married a license issued by the clerk of the town in which either the bride or groom resides. If neither is a resident of the state, there should be a license from the office of a clerk of a town in the county in which the marriage is to be solemnized. The marriage must be solemnized within 60 days from the date that the license is issued, after which the license is void. After the marriage, 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).

Note that, according to statute, a justice of the peace who solemnizes a marriage is immunized 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 a variety of functions. They are as follows:

- **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 noon of the second Saturday preceding the elections. 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, 2546.
- **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 before or on the day of the elections. Upon request, the justices may assist an individual in filling out the ballot and may explain how the absentee ballot form works, but obviously cannot influence how the individual votes. The justice must return the completed absentee ballots to the clerk before the 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. 17 V.S.A. § 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 by June 19, 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. 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*, Chapters IV and XIII.
- **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: (1) of a person who dies insolvent; (2) of a person who has removed from the state; (3) of a person who is unable to pay his or her taxes; (4) in which there is a manifest error or a mistake of the listers; (5) upon real or personal property lost or destroyed during the tax year; or (6) 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). 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*, published by the Vermont Secretary of State's Office, 26 Terrace Street, Montpelier, VT 05609-1101 (800-439-8683).
- ☛ For more information about the tax appeal process, please refer to the *Handbook on Property Tax Appeals*, published by the Vermont Department of Tax's Division of Property Valuation and Review (802-828-5860).