

initiated by the voters or the selectboard. It will also depend upon the town's use of Australian ballot for public questions and elections.

After the town has voted to create new selectboard positions, the positions remain in effect until the town votes to eliminate them at an annual or special town meeting. 17 V.S.A. § 2650(c). If you are considering the addition of new members to your board, or have received a petition for a warning article on addition of new selectboard members, please feel free to contact VLCT for additional guidance.

#### **D. SELECTBOARD POWERS AND LIABILITY – INDIVIDUALLY VERSUS AS A BOARD**

As mentioned in the Introduction, a Vermont selectboard may serve, at various times, legislative, executive, and judicial functions. However, no individual selectboard member is given authority to serve any of these roles alone. Vermont law gives authority to selectboards and not to individual selectboard members. An individual selectperson has no more authority to take action on behalf of a town than any other resident. 1 V.S.A. § 172.

The only exception to this rule involves dogs causing damage to domestic animals. An individual selectboard member may determine the award of up to \$20.00 in damage done to domestic animals by dogs. 20 V.S.A. § 3742. An individual selectboard member may also identify such dogs and issue a warrant for their destruction. 20 V.S.A. § 3745.

Likewise, when an action is brought against a selectperson or any appointed or elected municipal official, it is brought in the name of the town, not the individual. 24 V.S.A. § 901(a). The municipality also assumes all reasonable legal fees incurred by an official when the official was acting in the performance of his or her duties and was not acting with malicious intent. 24 V.S.A. § 901(b). The same is true if the selectperson or official brings an action *against* someone else. The town is the party in the suit.

#### **E. TERM AND ELECTION**

How long do selectboard members serve? In towns with a three-member selectboard, the answer is simple: each elected member holds a three-year term. 17 V.S.A. §§ 2646(4), 2649. In those towns with a five-member selectboard, the answer is more complicated. Three members of the selectboard will hold three-year terms, but the remaining two members hold two-year terms or one-year terms. 17 V.S.A. § 2650(b). The length of these remaining members' terms will depend on whether he or she has been elected to a two or one year seat.

Regardless of the number of selectboard members, the election of a selectboard member must be by ballot, either paper ballot, 17 V.S.A. § 2646(4), or Australian ballot if the town has voted to elect its officers by Australian ballot. 17 V.S.A. § 2680(b).

#### **F. VACANCY ON THE SELECTBOARD**

When a selectperson resigns, moves from town, dies or becomes insane, the remaining selectpersons must post notice of this vacancy in at least two public places in town and in and near the town clerk's office within 10 days of the creation of the vacancy. 24 V.S.A. § 961.

When such vacancy occurs, the remaining selectpersons may then call a special town meeting to fill the vacancy, either on their own initiative or by a valid petition, or they may appoint a

person, in writing, to the position until an election is held, either at a special or the next annual town meeting. This appointment is filed with the town clerk and recorded in the town records.

If there are vacancies in a majority of the board of selectpersons at the same time, the vacancies *must* be filled by election at a special town meeting called by the remaining selectpersons for that purpose, and *not* filled with appointments by the remaining selectpersons. 24 V.S.A. §§ 961, 963.

In the event there are no selectpersons in office, the Secretary of State is required to call a special election to fill the vacancies. 24 V.S.A. § 963. If there is a vacancy on the selectboard or in any other elective office because no candidate filed a petition and no one was otherwise elected, a majority of the selectboard may appoint a voter of the municipality to fill that office until the next town meeting. 17 V.S.A. § 2682.

See Chapter 5, *The Selectboard and Town Officials/Employees*, for a more comprehensive explanation of vacancies in regard to other officials.

**Handling Resignations.** While state law provides that a vacancy is created by resignation, it does not set out what an official must do to resign from office. The law's silence has led to numerous questions, such as whether an oral resignation is sufficient to create a vacancy and whether a resignation must be formally accepted by the selectboard before the vacancy exists.

In the absence of some further guidance from the Legislature, the best policy is to require written resignations from local officials. Verbal resignations are often made in haste, in the heat of the moment, leaving the recipients to ponder whether the resignation was sincere or merely a spontaneous act of immediate and overwhelming frustration. At the very least, written resignations afford a small moment of contemplation and reflection; the act of putting pen to paper may prompt the official to consider the problems before him or her in a different light. From the recipients' perspective, the written resignation will usually remove questions of the official's true intention. We recommend that a local official who is resigning from office do so in writing, stating the effective date of the resignation. The written resignation can then be recorded with the record of the official's oath of office. 24 V.S.A. § 831.

## G. THE OATH OF OFFICE

All selectpersons are required to take an oath of office prior to assuming the office. The oath is:

*You solemnly swear that you will faithfully execute the office of selectperson to the best of your judgment and abilities, according to law. So help you God.*

The oath is given and taken orally; no forms are involved. 12 V.S.A. § 5813. The swearing in must take place before each new term. Usually this is done immediately following the election, upon adjournment of the meeting or at the first meeting of the board. The town clerk must have record of the fact that the oath was taken and must notify the Secretary of State of the names and addresses of the newly elected selectpersons. 24 V.S.A. § 831; 17 V.S.A. § 2665.