

VACANCY IN AN OFFICE

Todd Valentine's Filling Vacancies in
Three "Easy" Steps*

*(reprinted with Todd's permission)

Step 1

- ▣ When does the vacancy occur?

Public Officers Law sections 30 (generally) and 31 (resignations).

Section 30 deals with the vacancy. Examples: death, resignation, removal from office, moving from the district, conviction of a felony, incompetency, failure to file an oath of office within 30 days of the commencement of the term of office.

Section 31 covers the resignation: who to resign to, timeframe, where it should be sent, who else to notify and that it can be rescinded and how that can be done.

Step 2

What election will the vacancy be filled at and how do you get candidates on the ballot?

- ▣ Unless filled earlier by a special election, vacancies occurring before September 20th shall be filled at the next general election held thereafter. Public Officers Law section 42 (1) and EL 6-158(14).
- ▣ There is the exception for selected judicial vacancies. See NYS Constitution Article VI, section 21(a).
- ▣ Party nominations for candidates will vary depending on when the vacancy occurs in the designating process. EL 6-116.

Step 2 Cont.

- ▣ Party nominations for a vacancy occurring after the primary are done by the party committee of the political subdivision, or as the rules of the party provide. EL 6-116
- ▣ The certificate of nomination is due 14 days from the date of the vacancy. EL 6-158(6)
- ▣ Acceptance, if needed, is due 3 days after the last day to file the certificate of nomination. EL 6-158(7)
- ▣ Authorization, if needed, is due 4 days after the last day to file the certificate of nomination. EL 6-120(3)
- ▣ Independent nominating petitions can also be filed. EL 6-158(10)

Step 3

What happens in the interim between the vacancy and the election?

- ▣ Varies with the office. For example, an interim appoint to fill a vacancy in a town office is made by the town board. That person holds office through Dec. 31st and the person elected in November takes office Jan. 1st. Town Law section 64(5); see also, County Law section 400(7) (also need to look to county charter); Village Law section 3-312(3)(4). NYS Constitution, Article VI, Section 21 (selected judicial offices).

*According to Todd, this is a starting point. For more information, it is best to call him at (518) 474-6236.