MODERATOR

Roles and Responsibilities

For the majority of Vermont towns that vote on town business and elect officers at an annual open town meeting, the moderator is a very visible and very important official. The moderator is the presiding officer at town meetings, and it is he or she who conducts the annual meeting, who keeps order, and who ensures that the business of the meeting proceeds in a fair and efficient manner and that those who wish have an opportunity to participate in the process.

- The moderator is the first official who is elected after town meeting convenes. He or she serves for a term of one year. 17 V.S.A. § 2646(1). The moderator does not have to be sworn before taking office. 24 V.S.A. § 831. If the moderator is absent, a selectboard member presides until a moderator *pro tempore* is chosen. 17 V.S.A. § 2657.
- The moderator usually reviews the proposed warning of the annual meeting with the selectboard (if it agrees to this) to ensure that the questions are written and ranked properly. The moderator should review the warning prior to the meeting, and should discuss with the selectboard who will move and second each item after it has been read.
- The moderator must follow reasonable and necessary procedures to ensure that persons who are not voters of the town do not vote. 17 V.S.A. § 2656. Non-voters may not participate in the meeting without permission of the assembly.
- The moderator calls the meeting to order at the appointed time, announces its business, decides all questions of order, makes public declarations of the votes (except Australian ballot votes), and preserves order and decorum at all times. 17 V.S.A. § 2658. The moderator may have a persistently disorderly person removed by the constable, and a person who refuses to leave may be fined up to $200. 17 V.S.A. § 2659.
- Under 17 V.S.A. § 2658, *Robert's Rules of Order* or some other rule of order adopted by the town must be used to govern town meeting. However, when state statute provides for particular rules of procedure, those rules will take precedence over *Robert's*. For example, state law permits a vote by paper ballot if requested by seven voters, unless the town has provided for some other procedure. (In contrast, *Robert's* requires a majority vote.) 17 V.S.A. § 2658. A meeting can be "divided" on the request of one voter, requiring all those who voted in favor to stand and be counted, and then all those opposed to do the same. 17 V.S.A. § 2658. Unlike *Robert's Rules*, state law prohibits reconsidering an article that has been voted on once the assembly has begun work on another article (17 V.S.A. § 2661), and action can only be taken on warned articles so that amendments to warned articles must be germane, and items taken up as "other business" cannot be binding on the town. 17 V.S.A. § 2660(d).
- The moderator is often improperly requested to perform responsibilities which go beyond the role of moderator. For example, the moderator may be called upon to determine the eligibility of a particular voter, or to decide whether a particular motion or amendment is legal. The moderator may know if the challenged voter, is, in fact, eligible to vote, or if the amendment is legal, but he or she must ask the board of civil authority to rule on the former, and the town attorney to provide advice on the latter question.

☞ **For more information on the position of town moderator, please consult VLCT's *Handbook for Vermont Moderators* and *Vermont Town Meeting Handbook* (call 800-649-7915 to order), as well as *Robert's Rules of Order*, available at most bookstores.**

CHAPTER 7. CLERK

Roles and Responsibilities

The municipal clerk plays a central role in the operation of local government, with duties that bring him or her into regular contact with the public. The clerk's statutory duties range from recording, preserving and certifying public documents to administering oaths of office, complying with public information requests, posting notices on the town's bulletin board, running the local elections, maintaining the grand list, selling fish and game licenses, issuing marriage licenses and licensing animals. The town clerk has many unofficial duties as well which vary from town to town. These duties may include administering the random drug testing program for the town, acting as the custodian of ticket books for local civil ordinance enforcement, attending and taking minutes of selectboard meetings, acting as mail-clerk for the town, and sending out the town's correspondence.

- The clerk is elected from the legally qualified voters at annual town meeting for a one-year term unless the town votes to make the office a three-year term. 17 V.S.A. §§ 2640, 2646(2). The town clerk will also act as the school clerk unless otherwise voted. 16 V.S.A. § 425.

- Municipal clerks are compensated either by fees collected for performing their duties or by a salary in addition to or in lieu of fees. This salary is established by vote at town meeting or is set by the selectboard. 32 V.S.A. §§ 1224, 1401, 1671.

- The municipal clerk is an independent official, answerable only to the electorate. He or she may set the clerk's office hours and may appoint an assistant clerk. 24 V.S.A. § 1170. Files and records maintained by the clerk must be available for public inspection upon proper request at all reasonable hours. 24 V.S.A. § 1165.

- The town clerk is a voting member of the board of civil authority and certifies the grand list. 17 V.S.A. § 2103(5); 24 V.S.A. § 801; 32 V.S.A. § 4151. The clerk has the power to administer oaths in all cases in which an oath is required. 24 V.S.A. § 1160. The clerk is an *ex officio* notary public. 24 V.S.A. § 441.

- The clerk runs the local elections and certifies the results to the secretary of state. 17 V.S.A. § 2645. The clerk manages all of the town's public records, records all public documents, including maps, plats, mortgages, liens and records of land transactions, and forwards property transfer tax returns and tax money to the State.

- The clerk issues dog licenses, marriage licenses, fish and game licenses (if he or she wishes) and any other municipal license that might be required. 10 V.S.A. § 4254; 18 V.S.A. § 5131; 20 V.S.A. § 3581.

- The clerk may be authorized to renew motor vehicle, snowmobile or motorboat registrations. 23 V.S.A. § 6.

☞ **For more information about the duties and functions of the municipal clerk, please consult VLCT's *Handbook for Vermont Municipal Clerks*. To order a copy of this handbook, please call 800-649-7915.**

TREASURER

Roles and Responsibilities

The town treasurer plays a vital role in the management of the finances of the town. He or she is responsible for keeping the town's accounts, investing money received by the town (with the approval of the legislative body), keeping a record of the taxes voted and paying orders drawn on him or her by officials authorized by law to draw orders on town accounts. The treasurer must work with the auditors to settle town accounts prior to the annual meeting, and he or she is often called upon to provide the selectboard with information about town finances. The treasurer can also perform the function of collector of current and/or delinquent taxes, and acts as the school treasurer unless a separate school treasurer is elected by the school district voters.

- A town treasurer is generally elected at annual town meeting and serves either a one-year or a three-year term. 17 V.S.A. § 2646(3). The treasurer may appoint an assistant who serves at his or her will. 24 V.S.A. § 1573. If the treasurer fails to appoint an assistant after a written request from the selectboard, the selectboard may appoint an assistant treasurer.

- The town treasurer serves as the school treasurer unless the town school district votes otherwise. 16 V.S.A. § 426. The school treasurer keeps the accounts, pays orders and invests money with the approval of the board. The school board may direct the treasurer as to the manner of keeping the accounts. The financial records must be made available to the board and superintendent upon request.

COLLECTOR OF DELINQUENT TAXES

Roles and Responsibilities

The collector of delinquent taxes plays a vital role in ensuring that property taxes owed to the town are paid by all taxpayers. It is the job of the collector of delinquent taxes to notify taxpayers when their taxes are overdue, to make arrangements for late payments, or to take formal collection actions, including conducting tax sales of the property when necessary. Finally, it is the obligation of the collector of delinquent taxes to keep records of all delinquent accounts, and to provide an accounting of these records to the locally elected auditors for inclusion in the annual report of the town.

- The municipality may vote to elect a collector of delinquent taxes for a one-year term (17 V.S.A. § 2646(9)), or vote to have its town manager collect its delinquent taxes (24 V.S.A. § 1236(10)). If the town does not indicate how it wishes to have its taxes collected, the first constable automatically becomes the collector of current and delinquent taxes. 24 V.S.A. § 1529. If the town has indicated that it wants its taxes collected by a tax collector but fails to elect one, or if there is a vacancy in the office, the selectboard may appoint or hire a collector of delinquent taxes. 32 V.S.A. §§ 4674, 4799.

- A collector of delinquent taxes may not also be an auditor or a member of the selectboard or school board. Neither shall the spouse of or any person assisting the collector of delinquent taxes serve as an auditor. 17 V.S.A. § 2647.

- Most collectors of delinquent taxes in Vermont get paid by keeping the eight-percent fee that is collected on delinquent accounts. Note that collection of the eight-percent penalty is not mandatory, but is at the discretion of the collector of delinquent taxes. 32 V.S.A. § 1674(2). The selectboard and collector may agree upon a salary, or the voters can vote to pay the collector a particular salary in lieu of fees. 24 V.S.A. § 1530.

- The collector must contact delinquent taxpayers to arrange for the payment of delinquent taxes plus penalties and interest. The collector should try to work out a payment schedule. He or she must keep accounts of every delinquent taxpayer, and the amounts of principal, interest and penalties owed, and payments made. Included with each notice of delinquent taxes sent to an owner of a homestead in town must be a notice, provided by the state tax commissioner, which describes the homestead property tax adjustment. 32 V.S.A. § 6065. At least every two months, and whenever demanded in writing by the selectboard, the collector must pay all collected taxes into the municipal treasury. Payments must be accompanied by a list of the taxpayers who paid, showing the amounts collected and the years in which the taxes were due. 32 V.S.A. § 4646. The collector must also direct the application of the payments received by indicating which accounts should be credited and by indicating how a particular payment must be allocated (principal/interest/penalty). 32 V.S.A. § 4647.

- After the collector of delinquent taxes pays the taxes to the treasurer, the treasurer then issues a paycheck to the collector of delinquent taxes of the penalties collected, minus payments for FICA and income tax withholding.

- When necessary for the collection of taxes, the collector of delinquent taxes must conduct tax sales of property, bring an action at law, or use other methods for collecting delinquent taxes for the town.

- When the collector of delinquent taxes resigns or the term expires, he or she must immediately lodge with the treasurer the tax bill committed to him or her which remains uncollected (in whole or in part) along with any money collected. 32 V.S.A. § 4671.

- The state commissioner of taxes may contract with a local tax collector to collect delinquent property taxes assessed on homesteads. 32 V.S.A. § 3109a.

NOTE: Legislation which may affect school property tax issues is pending in the legislature as of this writing (March 1999). If passed, it may create changes in the law regarding collection of taxes.

☞ **For more information about the duties and functions of the collector of delinquent taxes, please consult VLCT's *Handbook for Collectors of Delinquent Taxes.* To order a copy of this handbook, please call 800-649-7915.**

CONSTABLE

Roles and Responsibilities

The role of town constable varies from town to town, and depends upon whether he or she is elected or appointed, and whether the voters have elected to limit his or her law enforcement powers. At one end of the spectrum, the town constable is the town's local law enforcement officer, with all powers of search, seizure and arrest within the town. On the other end of the spectrum, the constable only has the power to serve civil process, assist the health officer in the discharge of his or her duties, destroy unlicensed dogs, kill injured deer, remove disorderly people from town meeting, and collect taxes if no tax collector is elected. Although there is no requirement that a locally elected constable have criminal justice training, the voters may restrict law enforcement activities of those constables who are untrained. The voters may also restrict the authority of its trained constables.

- A town shall elect a first constable and, if needed, a second at annual town meeting. Alternatively, a town may vote to authorize the selectboard to appoint a constable. 17 V.S.A. §§ 2646(7), 2651a. A constable's term of office is for one year unless a town votes to elect or appoint the constable for a two-year term. In addition, towns may vote to prohibit the constable from executing any law enforcement authority or may require that the constable be trained prior to exercising law enforcement authority. 24 V.S.A. § 1936a.

- The town may vote to pay the constable a salary and, at town meeting, fix the sum to be paid. 24 V.S.A. § 932. In addition, the constable may collect fees for service of civil process and for the transportation of mental patients and prisoners. 32 V.S.A. §§ 1591–1593. If no salary is fixed by the voters, the selectboard may set a salary for the constable.

- A constable may act only when authorized by a specific statute.

- A constable who has law enforcement authority has the powers of search, seizure and arrest within the town. V.R.Cr.P. 3, 41. Unlike other law enforcement officers, however, constables do not have statewide jurisdiction. Their jurisdiction is limited to the boundaries of the town. *State v. Hart*, 149 Vt. 104 (1987). However, a constable who has not been prohibited from exercising law enforcement authority may transport a person whom he or she has arrested for driving under the influence (DUI) to a police department outside the town for processing, and the constable may complete the processing if he or she has been certified to do so by the Vermont Criminal Justice Training Council. 24 V.S.A. § 1936a(c).

- All constables may serve civil and criminal process, may destroy animals when required by law, may kill injured deer in accordance with law, may assist the health officer in the exercise of his or her duties, may serve as a district court officer, may remove disorderly people from town meeting, and may collect taxes if no tax collector is elected. 24 V.S.A. § 1936a(b).

- The governor may employ constables and other law enforcement officers in the event of a state and/or national emergency. 20 V.S.A. § 2221.

AUDITOR

Roles and Responsibilities

Town auditors play a vital role in preserving the democratic nature of Vermont's local government by ensuring that local officials are accountable for their expenditures of taxpayers' money. It is the auditor's job to review the accounts of local officials and report the findings directly to the taxpayers for review. Because this report is presented only days before town meeting, the statutory scheme envisions that if the taxpayers do not like what the auditors' report indicates about how the officials have spent the taxpayers' money, the officials will be voted out of office. Thus, it is the auditor's function to present an easy-to-understand picture of the town's finances to its citizens.

- Historically, there have been three town auditors, one elected each year for a three-year term by the voters at the annual town meeting. 17 V.S.A. §§ 2646(6), 2649. In 1997 the legislature authorized towns to vote to eliminate elected auditors and to contract for the necessary services which auditors have provided. 17 V.S.A. § 2651b.

- Neither an auditor, his or her spouse, nor any person assisting the auditors can serve as town clerk, treasurer, selectperson, first constable, collector of current or delinquent taxes, trustee of public funds, town manager, road commissioner, water commissioner, sewer commissioner, or town district school director. Nor shall a spouse of, or any person assisting any of these officers in the discharge of their duties, be eligible to hold office as auditor. 17 V.S.A. § 2647.

- The board of auditors compiles the town's annual report. The auditors must mail or otherwise distribute a copy of the report to every legal voter of the town at least ten days before the annual meeting. 24 V.S.A. § 1682. At the same time, copies required by 24 V.S.A. § 1173 are delivered to the town clerk. This mailing requirement helps avoid the need to publish the warning of the annual meeting in a newspaper. See 17 V.S.A. § 2641(b).

- The auditors must begin meeting at least 25 days before each annual town meeting to examine and correct the accounts of all town and town school district officers, as well as the accounts of all other persons who are authorized to draw money from the town treasurer, including elected and appointed officials who submit bills for expenses to the town for payment on a monthly or annual basis. 24 V.S.A. § 1681. Officers who refuse to provide this information to the auditors will not be eligible for reelection for the ensuing year. 24 V.S.A. § 1686.

- The town report should provide a detailed financial statement of each department of the town and town school district for the preceding fiscal year, as well as a statement of the assets, receipts and disbursements of all trust funds in which the town has an interest, the bonded indebtedness of the town and the outstanding notes or orders of the town or town school district. 24 V.S.A. §§ 1683, 1684.

☞ **For more information about the duties and functions of the auditor, please consult VLCT's *Handbook for Locally Elected Auditors*. To order a copy of this handbook, please call 800-649-7915.**

CEMETERY COMMISSIONER

Roles and Responsibilities

Generally, town cemetery matters are the responsibility of the selectboard. However, the voters may decide to put the town's public cemeteries under the charge of cemetery commissioners. 18 V.S.A. § 5373. The voters then elect a board of three or five cemetery commissioners. 18 V.S.A. § 5374. This board is responsible for the care and management of the town's cemeteries, which includes the following tasks:

- The cemetery commission may grant and/or convey by deed lots in the cemetery and may make regulations governing the sale, price and care of the lots. 18 V.S.A. §§ 5376, 5377.

- Cemetery commissioners may set aside a portion of the cemetery for the burial of indigent persons, and may make regulations for the use of this special area. 18 V.S.A. § 5375.

- Cemetery commissioners may maintain the public cemeteries and hire someone to perform this work. The expenses, not to exceed $500 per year of town funds, may be paid by the commissioners drawing orders on the town treasury. 18 V.S.A. § 5362.

- Cemetery commissioners may grant a temporary right-of-way over private land to reach a graveyard to which there is no public right of way. 18 V.S.A. § 5322.

- Cemetery commissioners must keep in repair the fence around a public burial ground. 18 V.S.A. § 5364.

- Cemetery commissioners must submit an annual report to the town auditors, including a detailed financial statement and a listing of the work of the commissioners and the needs of the cemetery. 18 V.S.A. §§ 5379, 5380.

- The cemetery commissioners (and not the selectboard) may appoint individuals to fill vacancies on the board. 18 V.S.A. § 5373.

- A cemetery commissioner may be fined $400 for failure to keep a fence in repair after written notification of its disrepair, and may be fined $200 for the willful neglect of his or her duties. 18 V.S.A. §§ 5363, 5364.

TRUSTEE OF PUBLIC FUNDS

Roles and Responsibilities

Trustees of public funds shall be elected from among the legal voters at the annual meeting if the town so directs. 17 V.S.A. 2646(12). The duty of the three trustees is to manage real or personal property held by the town in trust for any purpose. 24 V.S.A. § 2431. Note that this excludes "United States public money," for which a separate trustee of public money must be elected. (This requirement only applies to towns which "retain possession of a portion of the surplus funds of the United States received under the Act of 1836." 17 VSA § 2646(13). Practically speaking, it is questionable whether any town still has any of this federal surplus "public money," and thus requires a trustee of public money.)

Twenty four V.S.A. § 2431 specifically grants the trustees of public funds responsibility for cemetery trust funds. This creates some overlap of responsibility for cemetery funds among trustees, cemetery commissioners and town treasurers. 18 V.S.A. Chapter 121, subchapter 2. It appears that if trustees of public funds are elected, they have primary responsibility for the investment of the cemetery funds and for the annual reporting on them. How this is practically worked out amongst the cemetery trustees, treasurer and trustees of public funds is probably the result of each town's unique arrangements.

The trustees have the duty and authority to manage public funds, including the authority to:

- Apply the income to its designated purpose.
- Create deeds and contracts.
- Lease, sell or convey real estate and invest the proceeds.
- Lend money and hold deeds and mortgages.
- Invest in certain bonds and shares.
- Hold, purchase, sell, assign, transfer and dispose of securities and investments and the proceeds of investments.

18 V.S.A. § 5384(b); 24 V.S.A. § 2432.

TRUSTEE OF THE PUBLIC LIBRARY

The board shall consist of not less than five trustees who shall have full power to manage the public library, make bylaws, elect officers, establish a library policy and receive, control and manage property which shall come into the hands of the municipality by gift, purchase, devise or bequest for the use and benefit of the library. The board may appoint a director for the efficient administration and conduct of the library. V.S.A. Title 22 Chapter 3 ss. 143.

AGENT

Roles and Responsibilities

The town agent plays a limited role in town government. Although statute provides that an agent to prosecute and defend suits shall be elected, no statute provides the agent with any independent authority to act. In fact, case law makes it clear that the town agent has no authority to originate suits in favor of the town or to settle or compromise suits in which the town has an interest. Instead, the agent's duty consists merely of assisting when litigation is in progress. *Cabot v. Britt*, 36 Vt. 349 (1863); *Clay v. Wright*, 44 Vt. 538 (1872).

The fact that a town agent is elected does not remove the authority of the selectboard to hire an attorney to represent the town, to conduct litigation and to settle suits on behalf of the town. Accordingly, many towns do not have active town agents, and those that do often limit the agent's activities to picking an attorney for the town or acting as a liaison between the selectboard and the town attorney in particular matters.

- The town agent to prosecute and defend suits is elected each year at annual town meeting. 17 V.S.A. § 2646(11).
- The town agent may become involved with suits in which the town or the town school district is interested. 17 V.S.A. § 2646(11).

GRAND JUROR

Roles and Responsibilities

The grand juror is responsible for inquiring into and providing information to the proper authorities of criminal offenses that may occur in the town in which he or she has been elected. 13 V.S.A. § 5504. This office is mostly obsolete; the state's attorneys provide most of the criminal investigation, enforcement and prosecution services in the local communities.