

MUNICIPAL ELECTIONS GUIDE



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Introduction

This guide is intended to be a review and reference for important aspects of election law. Because there are both statewide laws which apply to all elections and laws which are specific to individual municipalities, this guide does not attempt to cover every detail, every provision, or every case. As such, this guide should only be used as a starting point and not a complete compilation of rules and regulations for West Virginia elections. Other important sources of information include additional manuals, guides, the West Virginia Code and Code of State Rules.

Citations

Throughout this guide there are a variety of cited sources. Here are a few examples of the types of citations in this guide and what they refer to.

Source:

The West Virginia Code (Chapter, Article and Section)
West Virginia Constitution (Article and Section)
Code of State Rules
Decisions of the West Virginia Supreme Court of Appeals

Opinions of the Attorney General
Forms Prescribed by the Secretary of State

Example:

W. Va. Code § 3-1-1
Const., Art. 4, § 1
CSR § 146-3-8
Marra v. Zink, 256 S.E.2d 581 (1979)

Op. Att'y Gen., Feb. 19, 1976
Form F-2 Muni

Additional Guides, Manuals and Training Materials

The Secretary of State's Office produces multiple guides and manuals, including materials for canvass, recounts, and poll worker training videos. All of these materials are available online at sos.wv.gov, or upon request to the Elections Division.

MUNICIPAL OFFICERS

The Governing Body

For a municipality with a charter, the governing body is comprised according to the charter. For a municipality without a charter or provision to the alternative, the law prescribes the governing body as a mayor, a recorder and council members. Each of these officers may participate and vote in official actions for the municipality.

When the municipality has not been divided into wards or election districts, there must be at least five council members. When the municipality is divided into wards, the governing body may determine the number of council members to be elected from each ward, and may provide for members to be elected at large. W. Va. Code § 8-5-7.

Terms of Office

Unless otherwise provided by charter, all officers serve two-year terms in municipalities holding biennial (every 2 years) elections, and four-year terms in municipalities holding quadrennial (every 4 years) elections. W. Va. Code § 8-5-9.

Vacancies

Unless a charter or ordinance provision provides otherwise, when a vacancy occurs in a municipal elective office, the governing body fills the vacancy by appointment until the next election. If the vacancy creates an unexpired term that is to appear on the ballot, it is treated as a separate office.

Example:

A recorder is elected to serve from 2017–2021. In 2018, the recorder resigns. The governing body will appoint a replacement recorder to fill the office until the election in 2019. The office will appear on the 2019 ballot as a 2-year, unexpired term position to be held until the next regular 4-year term begins in 2021. Please consult the ballot specifications for further details on how unexpired terms are to appear on the ballot. W. Va. Code §§ 8-5-10, 3-5-7; *Westfall v. Blair*, 87 WV. 564 (1921).

ELECTION DATES

The Secretary of State's Office creates an election calendar every year for the statutory general election day (*i.e.* second Tuesday in June). The Elections Division is always happy to assist with creating any municipality's election calendar whose election falls on a different day of the year.

Primary Elections

Most municipalities do not have primary elections. If the municipality does have a primary election, then charter or ordinance may set the date. There is no specified date for municipal primary elections in state law.

There should always be a minimum nine- to ten-week period between the primary and general elections. During that period, the results of the primary election are certified, recounts are conducted if requested, ballot position drawing for the general occurs according to the charter or ordinance, and absentee ballots are printed and mailed to absentee voters starting 46-days before election day.

To follow this schedule, if the general election is held on the second Tuesday of June, the primary election should be scheduled no later than the last Tuesday of March or the first Tuesday of April. If the primary date is also set by charter and needs to be revised, an ordinance calling for charter amendment by the alternate plan (without objection) should be initiated. This change will require about six weeks to effect, including ordinance, publication, and public hearing.

W. Va. Code § 8-4-8.

It is important to remember that any changes in primary election date may affect your candidate-filing schedule. No change should be made without appropriate changes to all dates that depend on the primary election date.

General Election

Every municipal general election which is not set by charter provision must be held on the second Tuesday in June. To hold the general election at any other time, the city charter—not an ordinance—must specifically set the date or clearly authorize the city council to set the date by ordinance.

A general election held on any date other than the date authorized could be ruled invalid. A charter which is believed to exist but which cannot be found may not be used to justify another date. W. Va. Code § 8-5-5; *Woofter v. Town of Clay*, 149 WV. 588 (1965).

CANDIDATES

Eligibility

Unless a charter states otherwise, municipal candidates must be a minimum of 18 years of age, be a resident of the municipality and not be under conviction of a felony or other disqualification. Potential candidates should check with the recorder to determine if there is a specific length of time attached to the residency requirement. W. Va. Code § 8-5-7; Const. Art. 4, §4. Any additional requirements such as property ownership, minimum

education, higher age and minimum amount of time as a municipal resident should be researched thoroughly for legality.

The eligibility requirements are generally applied as of the day of the election. For example, a person who is 17 years old at the time of filing, but will be 18 by the date of the general election, may be a candidate for office.

Regarding residency, a candidate is usually required to state his or her residence address under oath on the candidate's certificate of announcement. Consequently, the intention to establish residence by Election Day might not be sufficient for a non-resident to be placed on the ballot because there is no certainty that person will become an actual resident. Accordingly, candidate eligibility could be challenged and criminal penalties could be imposed if the candidate falsified the certificate of announcement. W. Va. Code § 3-5-7.

Partisan Elections and Changing Parties

Unless otherwise provided by charter or ordinance, a candidate cannot change party affiliation on his/her voter registration within 60 days immediately before filing for office. A person who switches a previous affiliation with a recognized political within 60 days could be disqualified from the ballot. However, a person who was registered as an "independent," unaffiliated, minor party or not registered at all would *not* be affected by this limitation.

Disqualification due to party switching may occur only if a signed formal complaint and a certified copy of the voter registration record of the candidate proving the violation is filed with the recorder within ten days following the close of candidate filing. W. Va. Code § 3-5-7.

Prohibitions Against Candidacy and Conflict of Interest

Municipal Employees

Some municipalities prohibit city employees from becoming candidates for city office. An employee in such a municipality should be free to seek office after resigning. Check the municipal charter and relevant ordinances for further information.

Except for municipal police (W. Va. Code § 8-14-19) and fire department employees (W. Va. Code § 8-15-24) under civil service plans, there is no statutory prohibition against municipal employees becoming candidates or holding office.

State and County Classified Employees

Persons employed in "classified" or "civil service" positions with the state or county, including all employees of the Department of Highways, correctional officers, deputy sheriffs in covered counties, and other covered employees, are prohibited from becoming

a candidate for any office, whether partisan or non-partisan. W. Va. Code §§ 7-14-15, 7-14B-15, 17-2A-5, and 29-6-20.

Federal Hatch Act Employees

Covered federal employees and certain covered state and local employees in programs funded by the federal government are generally prohibited from seeking partisan political office, but may seek non-partisan offices. All employees should contact their employer or the U.S. Office of Special Counsel to determine whether they may become a candidate while retaining their employment.

Challenging a Candidate's Eligibility

Neither the municipal recorders nor the governing bodies have the authority to make judgments about whether a candidate meets the eligibility requirements. Sometimes an opposing candidate will attempt to pressure the filing officer to take someone off the ballot based on information that the person is not a resident or is not eligible for some other reason. Only the "party-switching" provision provides a mechanism for refusing certification. Otherwise, eligibility can be challenged in only two ways: (1) by a court proceeding seeking the candidate's name be removed from the ballot before the election or afterward; or (2) by contesting the election if the candidate in question wins.

Nomination of Candidates

Non-Partisan Elections

The charter or ordinance will specifically call for a non-partisan election. Most towns and cities conducting non-partisan elections have a separate nominating process. Candidates file a certificate of announcement for an office and the individuals receiving a majority of votes for mayor and for recorder in a single general election are the winners. The candidates for council receiving the highest number of votes fill the available seats.

Two alternative nominating procedures exist. The first is a nominating petition that sets a minimum number of voters' signatures to get on the ballot. The second is a runoff election that is conducted by holding an initial non-partisan primary with the two candidates receiving the highest number of votes being placed on the general election ballot. Either of these procedures could be used only if established by charter or ordinance.

If a petitioning process is to be used, verify that all state laws are met. It is important that each signature on the petition is of a valid registered voter and all those signatures must be verified properly. Candidates are required to complete forms that comply with municipal ordinances and state law. Do not rely on general forms provided by the Secretary of State's Office because it is possible that municipal procedures do not match state law.

Partisan Nominating Procedures

In cities and towns that follow state law, or have charter or ordinance provisions which parallel state law, candidates will file a certificate of announcement, run in a partisan primary election and the party nominees will face off in the general election. W. Va. Code § 3-5-4.

Through charter provision or ordinance, some municipalities have established nominating conventions, allowing the political parties to conduct meetings to select those persons who would appear on the general election ballot representing the party. Conventions may present some complex problems if the ordinances authorizing those conventions are not specific enough or set attendance requirements that are difficult to meet.

An ordinance establishing nominating conventions should specify:

- The political parties recognized to hold conventions;
- Who calls and conducts a convention;
- Notice requirements;
- The earliest and latest date for the convention;
- Who is eligible to participate in the convention;
- What constitutes a quorum;
- Who certifies nominees; and
- Deadline for certification.

Municipalities holding partisan elections with established parties must follow state law to allow “no party” candidates access to the ballot. State law allows candidates to be placed on the general election ballot who meet all the following:

- File a certificate of announcement and filing fee by the end of the filing period;
- Obtain credentials before petitioning; and
- File petitions no later than the day before the primary election, which contain signatures of registered voters equal to 1% of total vote for the office sought in the last general election.

See W. Va. Code § 3-5-23 for specific details regarding nominating certificates and the petitions process.

Candidate Filing Requirements

Certificate of Announcement and Filing Period

State law requires candidates to file a certificate of announcement between the second Monday of January and the last Saturday of January before the election. The filing is made with the municipal recorder or clerk, and may be made by mail, but must be postmarked by the U. S. Postal Service no later than midnight of the last day of filing. The form of the certificate is set by law, and must be notarized. A certificate of announcement that lacks essential information may be rejected. W. Va. Code § 3-5-7.

A municipality may prescribe a different candidate filing period, but in any case, the filing period should be at least two weeks long to assure all candidates have sufficient time to file. The deadline pertains to filing by mail, unless charter or ordinance requires filing in person. Unless an ordinance sets a different deadline for candidate withdrawal and date for ballot drawing, the filing period should end about eleven or more weeks before the election. W. Va. Code §§ 3-5-11 and 3-5-13a.

Public notice of the candidate filing times and requirements should be made at least two weeks before the filing period. Forms and written information about candidate filing should also be available by that time.

Before distributing these forms, the recorder or clerk should enter the drawing date for ballot position on the reverse side of the certificate of announcement to meet the requirement that candidates be given notice of the drawing at the time of filing. Unless otherwise set by charter, for a primary election this date would fall on the fourth Tuesday following the close of the filing period. For a general election, the date would fall on the 70th day before the election.

Filing Fees

Candidate filing fees should be set by charter or ordinance provisions. The fee must be paid within the filing period. As a general suggestion, 1% of the salary of the position is a commonly used filing fee.

An alternative to the filing fee must be provided. Under state law, the candidate may have the filing fee waived by filing an oath that he/she is unable to pay the filing fee and a petition containing signatures of four registered voters of the municipality for each \$1 of the filing fee. The completed petition must be filed no later than the close of the candidate-filing period. W. Va. Code §§ 3-5-8 and 3-5-8a.

Prohibition Against Running for Multiple Offices

The law prevents a candidate's name from appearing on the ballot for any office if that candidate files a certificate of announcement for more than one office (excluding political party executive committees) and does not formally withdraw from all but one office before the close of the filing period. W. Va. Code § 3-5-7.

Filing With the Ethics Commission

Only candidates for office in cities that have adopted the disclosure provisions of the Ethics Act are required to file a financial disclosure with the West Virginia Ethics Commission. In those cases, the filing is due within 10 days after filing for office. W. Va. Code § 6B-2-6.

Cities that have adopted the Act should provide financial disclosure forms along with the certificate of announcement. Currently only a few municipalities have accepted the

provisions of the Ethics Act. Please verify with the Ethics Commission before providing them to candidates. Forms may be obtained from the Ethics Commission.

Withdrawal of Candidates

A signed and notarized statement of withdrawal (no reason given and no permission needed) must be received by the clerk or recorder for a candidate to be removed from the ballot. Be sure to check this deadline against your schedule if your charter or ordinances set a filing period different from that of the state or if you have an early election. If you do not have enough time between this deadline and the beginning of absentee voting to allow for ballot printing, an ordinance should be adopted to set an earlier withdrawal deadline. W. Va. Code § 3-5-11.

Non-Partisan Elections

In towns having non-partisan elections or having no established executive committees, vacancies on the ballot can't be filled unless a charter provision or ordinance specifies who has authority to make the appointments.

Write-in Candidates

Write-in candidates are required to file a certificate of announcement at least 49 days before the general election to have votes for them counted. The filing must be physically in the clerk's office, not just postmarked, by the filing deadline. Write-in candidates are required to file campaign financial statements. No filing fee is required for official write-in candidates. W. Va. Code § 3-6-4a; see *Phillips v. Hechler*, memorandum opinion and order (2000).

Only votes for certified write-in candidates are to be counted. Precincts are notified of official write-in candidates. Posting of official write-in candidates are required at all voting precincts, including the early voting location established by city council. W. Va. Code § 3-6-5.

BALLOTS

Recorder/Clerk and Board of Ballot Commissioners

Unless otherwise specified by charter or ordinance, the recorder assumes the responsibilities for ballots that are assigned to the county clerk in state law. When the law refers to the board of ballot commissioners, the duties are to be performed by the municipal board of ballot commissioners, consisting of the recorder and two appointed members, one of each party (even in the case of non-partisan elections). W. Va. Code §§ 3-1-2a and 3-1-19.

The recorder appoints the two other ballot commissioners between January 15 and January 30 of the election year. The appointment should be made as follows, unless charter or ordinance provisions provide otherwise:

- In municipalities holding partisan elections and having municipal executive committees, five days notice must be given to each party executive committee chair who then nominates one person to be ballot commissioner, and the recorder has no right to reject the nominee or substitute another.
- In municipalities holding partisan elections but having no executive committees, the recorder should work with existing party representatives (such as council members of the party) to identify an appropriate person to represent the party as ballot commissioner.
- In municipalities holding non-partisan elections, the ballot commissioners should represent the Democratic and Republican parties, and the recorder should work with the municipal council to identify those persons to appoint.

An important factor to consider in the selection of ballot commissioners is their availability to serve at the time of ballot certification. Committees should be discouraged from nominating people who expect to be traveling or otherwise unavailable during the election cycle, as this creates major problems for the municipality.

Drawing for Ballot Positions

Unless otherwise specified by ordinance, ballot positions are determined by a required drawing for ballot position for an office whenever more than one candidate has filed, or in a partisan general election, whenever more than one person is to be elected. State law sets the drawing on "the fourth Tuesday after the close of candidate filing beginning at nine o'clock a.m." for primary elections W. Va. Code § 3-5-13a(b)(1), or at 9:00 a.m. on the seventieth day next preceding the general election. W. Va. Code § 3-6-2(d)(2).

In some municipalities, those dates will not work with established candidate filing dates or time periods between the primary and general elections. It is essential to establish a drawing date by ordinance if you cannot comply with the state law. Be sure to mark the drawing date on the back of the candidate filing form and to notify candidates of the drawing date.

Once the drawing has been held, the ballot commissioners should meet as soon as possible to certify the ballot before it goes to the printer. At this meeting, the commission may want to set the dates for the testing of voting equipment. An authorized vendor will program any PEBs or flashcards to be used in the election.

Printing Ballots

Authorized Printers/Programmers

Only those printers who have applied and received approval as authorized ballot printers may contract with a municipality to print ballots. The Secretary of State publishes

the list of authorized printers on its website at the beginning of each election year, and updates the list as new printers become authorized. Municipalities who wish to do business with a printer who is not on the list should notify that printer of the requirement to obtain this authorization. W. Va. Code § 3-1-21a.

Ballot Layout and Printing Specifications

The law sets the requirements for ballot layout and printing, and the Secretary of State issues detailed specifications for ballot printing in the various voting systems. The specifications include the requirements for paper, type size, layout, instructions and other details and must be followed closely. These specifications are provided to authorized printers. Please follow up and verify with the printer that they have the most up-to-date specifications. W. Va. Code §§ 3-5-13, 3-5-13a and 3-6-2.

Ballot Number and Packaging

The number of ballots printed must be calculated exactly based on the number of active registered voters in the municipality. For the parties in the primary election, and where different wards or districts vote on different council candidates, the calculation must be made for each different ballot. Regular ballots, early voting and absentee ballots, and office extras should be calculated and tracked separately. W. Va. Code § 3-1-21.

The number of each different ballot to be printed is as follows:

- Regular official ballots (paper) or optical scan ballots = 105% of the number of registered voters eligible to vote; with 5% packaged as office extras and ballots equaling 100% of the number of voters in each precinct packaged for the precincts.
- Electronic Voting Systems = 80% of the number of registered voters eligible to vote *when paper ballots are used in conjunction* with an electronic voting system. W. Va. Code § 3-1-21(c).
- Absentee ballots = The number of absentee and early ballots are not specified in state law. However, keep in mind that during the 13 days prior to election, any voter may vote early in-person. This is not an issue if early voting is by machine, not paper. W. Va. Code § 3-1-21(e).
- Sample ballots = 2 per precinct plus sufficient number for office distribution. W. Va. Code § 3-1-20.

The ballots purchased for office extras are packaged and not opened unless those ballots are required for use in an emergency. If the office extra package is opened, careful documentation of the use of those ballots must be made. W. Va. Code § 3-1-21(d).

Publication of Ballot

The sample ballot must be published as a Class I or I-O legal advertisement in a qualified newspaper between 20-26 days prior to the day of the election, unless otherwise provided by charter or ordinance. A second publication, again as a Class I or I-O legal advertisement, is required in the last day that the qualified newspaper is published before the election. The second publication can be either the sample ballot or a list of the candidates.

Determining whether to publish as Class I or I-O is based on the following:

If your county has two or more qualified daily newspapers, you must publish in the two newspapers of opposite political parties with the highest circulation. If your county only has one qualified daily newspaper or one or more qualified weekly newspapers, you are required to publish in the newspaper with the highest circulation.

VOTER REGISTRATION

Registration Books

Who is Responsible?

The clerk of the county commission shall prepare pollbooks or voter lists to be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book. The municipal recorder can supply voter registration mail-in forms but has no authority to alter, transfer or purge registrations. All of these functions are the duty of the county clerk. W. Va. Code §§ 3-2-19, 3-2-22 and 3-2-21.

Poll Books

Poll books are used to meet the requirement of voter signature verification. **This is a requirement of law; each signature must be available or the voter must vote a provisional ballot.** If signatures are missing or not in the poll book as required, contact the county clerk to have the issue rectified as soon as possible. Do not process voters without a copy of their signatures.

At least one day before the municipal election, the poll books for the municipality must be picked up from the county clerk's office. Within 10 days after the municipal election, the poll books must be returned to the county clerk's office. The county clerk will make available any registration records necessary for election contests. W. Va. Code § 3-1-27.

When only part of a county precinct is within a municipality, voter registration records may be placed in a separate book or section of the county precinct book. If a county precinct book does not contain all registration records needed for a municipal election precinct, precinct books may be used in combination with other precinct books to make a

complete set of registration records for the municipal election precinct. W. Va. Code § 3-2-19.

Separate municipal precinct books should only be used when county precinct boundaries are divided by municipal or ward boundaries to the extent that it is impossible to use county precinct books or separate municipal sections of those precinct books.

Separate registration books can cause serious problems if they are not properly maintained. The municipal books must be an exact duplicate of all voter registrations for persons living within the municipality.

Changes Made to Registration Records

Within thirty days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality must file a certified, current, official municipality boundary map and a list of streets and ranges of street numbers within the municipality with the clerk of the county commission to assist the clerk in determining whether a voter's address is within the boundaries of the municipality. W. Va. Code § 3-2-19.

According to law, a person is only required to register once in order to vote in all elections in which he or she is eligible.

Example:

Joe Doe lives in the city. If Joe registers to vote, his card must be placed on both the city and county books. If Joe's registration is purged from the county registration books, he will be removed from the municipal registration books as well.

If the municipal and county books do not correspond, it will result in unqualified people staying on city books. Many qualified voters may have to vote a provisional ballot in city elections because they were never placed on city books. If this has been a problem in the past, the city should take steps to work with the county clerk, and perhaps set up a team to review records of voters with city addresses appearing on county books. Here are a few hints for making this process effective and simple:

- When a voter with a city address is registered on one book but not the other, simply duplicating the registration card for the city book can solve the problem -- the voter does not need to re-register.
- When a voter has been removed from the county books because of death, transfer out of the county, or legal purging, the registration may be removed from the municipal book.
- When a voter has been purged from the county book, but the municipal voting record shows voting during the time covered by the purge, the voter should be reinstated to the county book, and should remain on the municipal book.

See W. Va. Code § 3-2-19.

State law allows a registered voter to change his/her name and/or address on the polling slip at the polls on Election Day. If the registered voter has moved within the municipality but outside his/her precinct, he/she must vote a provisional ballot at his/her new precinct.

An "inactive" voter may vote a regular ballot at his/her precinct. By confirming the voter's address is correct on registration records and voting, the voter restores his/her voting status to "active". Remember, any change or correction to a voter's record is made by the county clerk.

Municipal Poll Slips

After an election is certified, the recorder should deliver the poll books containing the signatures of voters in that election to the county clerk so the voting records may be updated. This process is necessary for proper voter list maintenance.

Registering Voters

A city recorder may distribute mail-in voter registration forms to individuals. The deadline to register to vote in any election is 21 days before that election. The application for voter registration can be postmarked—it does not have to be in-hand to be valid. An inaccurate or incomplete voter registration card can be corrected up to four business days after the voter registration deadline. W. Va. Code § 3-2-10.

ABSENTEE AND EARLY VOTING

Absentee Voting

State law sets the required period for absentee voting by mail beginning 46 days before the election. This mandatory period exists to accommodate military personnel and others who must apply for, receive and return ballots from far away.

Municipalities which do not comply with the timeline should take steps to change candidate filing periods, primary election dates, or other conflicts which make it impossible to have an appropriate amount of time for absentee voting.

Absentee Balloting Materials

All absentee balloting forms, envelopes and other materials must be ordered from your election supplier early in the year. Remember: you must supply applications upon request as early as 12 weeks before the election. W. Va. Code § 3-3-2 and 3-3-5.

Absentee Voting by Mail

Applications for absentee ballots by mail may be accepted after January 1 of an election year for all elections in that year from persons residing outside the continental U. S. and all voters in the uniformed services (including dependents). Those who use the federal post card application form all ballots for every election that calendar year by submitting just one application. W. Va. Code § 3-3-5.

Applications for absentee ballots by mail may be accepted beginning January 1 or 84 days (12 weeks) before election, whichever is sooner, from all other persons eligible. W. Va. Code § 3-3-5.

General Procedures

Applications

A ballot shall not be sent until the recorder receives the completed application with the voter's signature. (application can be mailed, emailed, faxed or in-person). W. Va. Code § 3-3-2.

Special Absentee Voting List

A voter who is permanently disabled may apply to be placed on the special absentee voting list (a physician's certificate is required). Once this form is properly completed and filed, you are required to send an absentee ballot to those voters on this list. W. Va. Code § 3-3-2b.

Municipal officials should request and use the county's special absentee voting list for the city.

Mailed Ballots

When an application for a ballot by mail is received, the recorder examines the application to determine if it is complete and that the voter meets the requirements for voting by mail. The recorder then mails the ballot, along with the official list of write-in candidates, to the voter.

All voting materials must accompany the ballot according to the voting system used. When voting by mail, two envelopes must also be sent to the voter. One will contain the voter's information and the other will be a blank envelope that is placed inside the voter information envelope. This will serve to protect the voter's privacy. W. Va. Code § 3-3-5.

A permanent absentee voting record must be maintained for all persons requesting an absentee ballot by mail. This record should reflect all activity for the election cycle.

Absentee Ballot Return

A ballot is considered received in a timely manner:

- If it is received by mail no later than the close of polls on election day;

- If postmarked by the U. S. Postal Service with a date on or before the date of the election;
- If it is received before the beginning of the canvass;
- If it is not postmarked and received by mail no later than the day after the election; or
- If it is received by hand delivery to the recorder no later than the day before the election (note: no person may hand deliver more than two ballots).

See W. Va. Code § 3-3-5.

Receiving Absentee ballots by mail:

Be sure to check at the post office on Election Day to make sure all absentee ballots have been delivered. A mailed ballot may be accepted without postmark if received on the day after the election. No reference to postmark is made for military and overseas voters. W. Va. Code § 3-3-5.

A person may hand deliver the absentee ballot of an absentee voter -- this is especially useful when the voter is ill and has requested the ballot late. However, the ballot must be delivered to the recorder's office no later than the day before the election, and one person may not hand deliver more than two ballots.

When a ballot is received, the date and manner received is entered into the permanent absentee voting record. If the ballot is provisional, the ballot is placed in a separate envelope to be kept secure until canvass, when the recorder will deliver it to the canvassing board. If the ballot is not a provisional ballot, it is placed with other ballots according to procedures for the voting system used. W. Va. Code §§3-3-3 and 3-3-5.

Emergency Absentee Voting

No earlier than 7 days before the election and no later than noon on election day.

Eligibility

Voters in the hospital on Election Day and, depending on county policy, those who reside in nursing homes are eligible. This service is only available to the patient, not to family members. W. Va. Code § 3-3-5c.

If there is a hospital in the same county as the municipality, emergency absentee voting must be available. If a voter is in the hospital on Election Day, he/she may request an emergency absentee ballot. Counties are allowed to extend these services to nursing home residents within the county. Contact your county clerk to see if your county provides these services. W. Va. Code § 3-3-5c.

Each municipality located in a county with one or more hospitals should appoint at least one team (opposite parties) as emergency absentee voting commissioners.

The request for emergency services may come from the voter or a family member, and may be made by telephone between the seventh day before the election and noon of Election Day. The application for emergency absentee voting and the ballot is taken by the emergency absentee commissioners to the hospital within the county.

Note: The law allows a county to adopt a policy extending these services to hospitals outside the county within 35 miles or to county nursing homes, but this would only apply to municipalities if the county commission has adopted such policy. The voter completes the application and ballot envelope form, the commissioners sign it and the voter is given the ballot. The commissioners may provide assistance if the voter cannot vote alone. When voting is finished, they bring the ballot back to the recorder's office, where it is kept secure until processed according to procedures established for the voting system used.

EARLY VOTING IN PERSON

Schedule

Early Voting In-Person:

Early voting is not optional and must be provided for every election. Beginning 13 days before the election and ending 3 days before the election, any voter is permitted to vote during the early-in person voting period. A voter does not have to provide a reason for voting during this time. The voter does not complete an application for early voting in person.

Early voting must be available during regular business hours weekdays and 9:00 a.m. to 5:00 p.m. on any Saturday within the early voting period. W. Va. Code § 3-3-3.

Issuing Ballots:

When a voter appears in person to vote during the early voting period, the procedure is much like that on Election Day, except that all early voted ballots are to be placed in a sealed envelope with the precinct number noted on the front.

The voter will complete and sign the poll slip. The ballot is then issued, with the appropriate envelope, according to procedures established for the voting system used. After voting, the ballot is sealed in an envelope and inserted into the locked ballot box.

Processing Absentee and Early Voting Ballots

At the close of polls, ballots voted early in person and absentee ballots are processed according to procedures for the voting systems used.

If you use paper ballots, sealed absentee ballots and ballots voted during the early voting period are processed at the polling place. These sealed ballots in envelopes

should be included in the precinct supplies for the polling place. If paper ballots are used and if a counting board is used, specific procedures must be followed.

It is extremely important in this situation that nobody is allowed in the counting board room during the day or that members of the counting board speak to persons outside of the counting board room about the tally of votes being cast.

If you use an electronic voting system, absentee ballots and ballots voted during the early voting period are processed at the central counting center. Ballots must be reviewed for write-in votes by a resolution team that consists of two persons of opposite political parties. The counting center is open to the public. However, nobody except authorized election workers may handle election materials and ballots.

Early and absentee votes are processed, but NOT counted, during the three days between the end of early voting and Election Day. The sealed and labeled ballot envelopes are divided into larger envelopes for each specific precinct.

ELECTION OFFICIALS / POLL WORKERS

Eligibility

To work as an election official, a person may not be a candidate or an official write-in in the election. May not be a parent, child, sibling or spouse of a candidate or an official write-in candidate in the precinct where the official serves. W. Va. Code § 3-1-28.

Number of Election Officials

Receiving Boards

For municipal elections, every precinct must have a receiving board consisting of four officials: two poll clerks and two election commissioners. Early voting requires only two officials.

For all elections, the teams of poll clerks and election commissioners will be of different political parties. This procedure must also be followed during non-partisan elections. W. Va. Code § 3-1-29.

Appointment of Officials

Nomination

If the municipality has partisan elections and party executive committees:

The governing body must notify the executive committees at least 84 days (12 weeks) before the election of the number of poll clerks, commissioners and alternates to be nominated for the election (one clerk, one commissioner per precinct; plus, as many

alternates as there are precincts). W. Va. Code §§ 3-1-30 (b)(1), 3-1-30 (b)(2), and 3-1-29(c).

The executive committee must meet to make the nominations, and must submit the list of names for appointment at least 70 days (10 weeks) before the election. W. Va. Code § 3-1-30.

If the municipality does not have party executive committees:

The governing body shall provide, by ordinance, a method of nominating election officials, or shall nominate as many eligible persons as are required. W. Va. Code § 3-1-30.

Appointment

The municipal governing body appoints election officials no later than the 49th day before the election, unless the ordinances set another time. The governing body should also appoint additional alternates and determine how many alternates should attend training. W. Va. Code § 3-1-30.

Notice of Appointment

The recorder is required to mail notices to every person appointed as an election official within seven days following the appointment. The appointed officials must respond within fourteen days following appointment and state whether they will serve. If a person fails to respond in time, the recorder appoints a replacement from the alternate list or, after all alternates have been used, any eligible voter. W. Va. Code § 3-1-30.

Training Requirements

No person may serve as an election official unless he or she has attended training, which includes a showing of the election-training program produced by the Secretary of State. Please verify that the training received is the most current available, as regulations change frequently.

Written notice of the date on which the training will be given and notice that they must attend the training to work at the polls should be included with their notice of appointment. Those who fail to attend (except in emergency circumstances) should be replaced. A make-up training session should be held before the election if any officials are untrained. In a last-minute emergency, such as a cancellation immediately before or on Election Day, a person may be appointed who has not received the training. The regular training must be held within 30 days of the election.

Replacement of Election Officials

If a major problem arises with an election official on Election Day, and the official is unable to perform the duties or is violating the law, there are procedures set up to remove the problem official. Consult the law carefully before undertaking this.

Pay of Election Officials

The municipal council sets the pay of election officials by ordinance. A typical amount paid to poll workers is \$175 for Election Day and \$125 for training. Consult the county clerk to determine the rates election officials are currently paid in county elections. W. Va. Code § 3-1-44.

CAMPAIGN FINANCE

Beginning the Campaign

Pre-candidacy Filing: The First Step for Early Starters

Some candidates may want to raise or spend money before filing for office, either to "test the waters" to find out whether they should run or to get a head start on the campaign. W. Va. Code § 3-8-5e.

Any candidate that has decided to raise money before filing their certificate of announcement must submit the pre-candidacy statement to the municipal recorder. The candidate is not committed to run for office but will have to file campaign finance reports until the account is closed. There is no fee to file pre-candidacy paperwork. W. Va. Code §§ 3-5-7 and 3-8-2.

Once a person files a certificate of announcement during the official filing period and pays the filing fee with the recorder, that person is officially a candidate. If pre-candidacy papers were not previously filed, the financial reporting responsibilities begin at the time of this filing.

Designating a Treasurer or Financial Agent

The first thing a candidate should decide when starting a campaign is who will be responsible for handling all campaign financial transactions. In small campaigns, candidates often serve as their own financial agents receiving contributions, making expenditures and reporting all financial activity.

In larger campaigns, the candidate usually appoints another person as financial agent, or as treasurer if a committee is set up to handle campaign money. If the candidate decides to have a formal campaign committee or a financial agent, the designation of treasurer form must be filed with the recorder's office before contributions are accepted. If a treasurer is not appointed, the candidate must serve as the financial agent. W. Va. Code § 3-8-4.

Political Committees

If an individual or group wishes to form a political action committee to be active in a municipal election, a political committee statement of organization must be filed with the municipal recorder's office no later than twenty-eight days before the election in which it plans to be active.

If a person or group accepts contributions or makes expenditures relating to the election without filing this form, it is operating in violation of the law and could be subject to prosecution. W. Va. Code §§ 3-8-3 and 3-8-4.

Financial Activity

Who Is Responsible?

The treasurer has responsibility for all financial activity during the campaign. If the candidate has not designated a treasurer, the candidate assumes the responsibilities of the treasurer. The treasurer must receive all contributions, make all expenditures and file all required reports and forms. W. Va. Code § 3-8-3.

Contributions and Loans

It is important to remember that every cent or thing of value received must be reported and must include the name of the contributor, the date of the contribution and the amount, no matter how small. W. Va. Code § 3-8-5a.

Some other requirements include:

- Contributions are limited to \$2,800.00 per person, per election, except that candidates may contribute as much of their own personal funds as they want to their own campaign. (Primary & General Elections are considered separate elections.) W. Va. Code § 3-8-5c and CSR 146-3-4.
- Contributions over \$50.00 must be made by check, money order, credit card or similar monetary device. Cash over \$50.00 cannot be accepted. W. Va. Code § 3-8-5d.
- Single or combined contributions (the total amount contributed for one election year) of \$250.00 or more require that the name, address, employer and occupation of the contributor be listed in the financial report. W. Va. Code § 3-8-5a(3).
- Corporate contributions, whether in cash, materials or services, are prohibited. However, registered corporate political action committees can donate money. W. Va. Code § 3-8-8 and CSR 146-3-4.

- Non-monetary contributions -- known as in-kind contributions -- such as material for signs, office space, postage, photocopies, food, transportation or services paid for by the contributor are subject to the same limits, prohibitions and reporting requirements as money. W. Va. Code § 3-8-9.
- When having fundraisers, all money collected must be itemized by contributor and amount. Otherwise, it is an anonymous contribution and must be paid over to the state general revenue fund. W. Va. Code § 3-8-5a.
- If a candidate, candidate's spouse, or a lending institution makes a loan to the campaign, a loan agreement must be filed along with the financial report. Reporting must continue until the loan is repaid or the candidate forgives the loan. W. Va. Code § 3-8-5f.

Expenditures

Campaign advertising, a printed sign and any publication must have a disclaimer printed on it, stating the name of person or the campaign committee who paid for the item. W. Va. Code § 3-8-12.

Example: “Paid for by Committee to Elect Sue Jones”

Campaign Finance Reports

Reporting Periods

Anyone who spends money to support a candidate or group is required to file campaign finance reports detailing their financial activity with the city clerk or recorder’s office. Candidates or committees may use the “long form” or the “short form” depending on the type of activity. Those who hold fundraisers or who make or receive loans or in-kind contributions must use the long form. Reports must be filed according to the following timelines:

1 st Quarter	Due April 1 or within 6 days thereafter
2 nd Quarter	Due July 1 or within 6 days thereafter
3 rd Quarter	Due October 1 or within 6 days thereafter
4 th Quarter	Due January 1 or within 6 days thereafter
Primary	Due 15 days prior to the primary or within 4 business days thereafter
General	Due 15 days prior to the election or within 4 business days thereafter

It is necessary to file campaign finance reports if the committee has not closed the account. In order to close, the account must show a zero balance and no liabilities on a final campaign finance statement.

For those municipalities that do not have primaries, only the general election reports need to be filed. If a candidate or committee closes out the campaign account and files a final report no further reports have to be filed.

ELECTION DAY

Polling Place Hours

State law requires that the polls be open from 6:30 a.m. until 7:30 p.m. for all elections. This may not be changed by ordinance. W. Va. Code § 3-1-31.

Who May Enter Polls?

Unauthorized people are not allowed to enter the polling place during the hours the polls are open or the ballots are being counted. The law limits those authorized to enter to the following:

- a person entering to vote
- a person providing assistance to an illiterate or disabled voter who cannot vote alone
- the recorder or clerk, on official business only
- the county clerk, county prosecutor, or Secretary of State, or full-time employees of those officials

See W. Va. Code §§ 3-1-37, 3-9-6 and 3-9-9.

Family members of poll-workers, candidates, people delivering lunch, members of the press, and political workers are not allowed to enter the polling building, except when entering to vote. Voters should not be allowed to loiter in the polling place after casting a ballot.

Recorders/clerks are only allowed to enter a polling location for official business. Keep this in mind when entering a polling location. All other town officials, unless appointed election officials by charter, are not allowed to enter the polling place for any reason other than to cast a ballot.

100-foot “No Electioneering” or Campaign Free Zone

No electioneering is permitted within 100 feet of the entrance door of the polling building. On election morning, election officials are required to measure this area from the entrance to the polling place, then post a sign designating the boundary. Election kits contain a 100-foot string to make this measurement. The measurement is made along normal access ways, but the zone refers to the entire area within 100 feet of the door in all directions.

This prohibition means people may not pass out campaign literature, approach voters, advocate for a candidate or an issue, or to simply “check” the name or party of those voting. It also prevents campaign signs, stickers or other paraphernalia within the zone. However, persons on their own private property may engage in electioneering within the 100-foot area so long as they are the true owner of the property; no renters or guests, even if invited, may engage in electioneering on someone else’s private property within the prohibited area. CSR 153-8-1 *et seq.*

Drivers may deliver voters within the 100-foot area, but any campaign signs (except bumper stickers) must be taken off before entering the zone. The driver must exit the area, but may return to pick up the voters when they have cast their ballots. W. Va. Code § 3-1-37, CSR 153-8-7.

Media representatives with proper official credentials (including reporters and photographers from newspapers, television, radio, and representatives of polling services) may be positioned within the 100-foot zone to interview voters coming to and leaving from the polls. However, they may not campaign and they may not enter the polling building or photograph through windows into the polling room. CSR 153-8.

Procedures at the Polls and the 2018 Voter ID Law

W. Va. Code § 3-1-34, as amended in 2016, went into effect on January 1, 2018. Now, at every federal, state, county and municipal election, every voter who votes in person during the early voting period or on Election Day must present one form of “valid identifying document.”

By law, acceptable Voter ID documents include forms both of non-photo and photo ID.

Basic Voter ID Information:

When voters come in person to vote, they must now show one of the forms of valid identifying documents listed below. If a voter does not have any form of valid ID, and if the voter does not fall into an exception, that voter must vote a provisional ballot.

Exceptions

There are a few exceptions to the Voter ID law that allow voters to vote a regular ballot without the need to show ID. Specifically, the following voters do not have to show ID:

- Voters accompanied by an adult with a photo ID, who has known the voter for at least six months and who signs an affidavit;
- Voters known by a poll worker for at least six months; and
- Residents of licensed state health care facilities, whose facility is also the voter’s polling place.

Processing Voters and their Valid IDs:

Poll workers should politely ask each voter to present her or his Valid ID. For a list of acceptable forms of ID, see below. The ID must be valid and not expired.

Under the law, there are both non-photo and photo forms of valid ID. When reviewing the voter's ID, simply confirm that the name on the ID matches the name in the poll book—do not compare the address. If the ID has a photo of the voter, poll workers must confirm that the photo matches the voter presenting it.

If the photo does not match the voter, and if the voter does not have another form of ID, the voter must vote a provisional ballot. **As a reminder, never sign the back of a provisional ballot.** Before canvass, the county election officials compare the signature on the provisional ballot materials with the signature on file with the voter's registration. If the signatures match, the Board of Canvassers should count the ballot.

NOTE: this process only applies to Voter ID. It does not apply to an ID that must be shown for first-time voters who did not present proof of residence when they registered to vote. Those voters' names will be listed clearly in the poll book as "Needs to show ID."

All Forms of Valid Identifying Documents for Voter ID

Catch-All Acceptable Form of Voter ID

Any official document that is issued by the State of West Virginia, one of its subsidiaries, or by the United States Government, which contains the name of the person desiring to vote is a valid identifying document for voter ID purposes.

Specific Forms of Acceptable Non-Photo ID

- Voter registration card
- Medicare card
- Social Security card
- Birth certificate
- WV hunting or fishing license
- WV SNAP ID card
- WV TANF program ID card
- WV Medicaid ID card
- Bank or debit card
- Utility bill issued within six (6) months of the date of the election
- Bank statement issued within six (6) months of the date of the election
- Health insurance card issued to the voter

Specific Forms of Acceptable Photo ID

- WV driver's license or other WV ID card issued by the DMV

- Driver's license issued by another state
- U.S. passport or passport card
- Military ID card issued by the U.S.
- U.S. or WV Government employee ID card
- Student ID card
- A concealed carry (pistol/revolver) permit

Exceptions to the Voter ID Law

Exception 1: Voter Identity Affidavit (a/k/a the "Bring a Friend" Exception)

A voter DOES NOT have to show a Voter ID if the person:

1. Is accompanied to the polls (or selects someone in the polling place) with an adult (over 18-years old) who has known the voter for at least the past six (6) months;
2. The person accompanying the voter shows a *valid photo ID*; and
3. The person accompanying the voter signs the Voter Identity Affidavit, confirming the voter's identity.

If a voter falls under this exception, the voter can vote a regular ballot. Also, the person accompanying the voter *does not* have to be a registered voter or in the poll book; any adult can sign the Voter Identity Affidavit to confirm the voter's identity. However, of course, the voter must be in the poll book.

Exception 2: Poll Worker Knowledge

A voter DOES NOT have to show ID if:

1. A poll worker has known the voter for at least the past six (6) months; and
2. The poll worker writes the voter's name down for record-keeping purposes*.

Neither the poll worker nor the voter has to sign an affidavit; this list is a best practice but not statutorily mandated.

Exception 3: Residents of Licensed WV State Care Facilities

A voter DOES NOT have to show ID if:

1. The voter is a resident of a licensed WV state care facility;
2. The care facility is a polling place; and
3. The voter's polling place is located at the care facility.

Things to Remember

- Even if someone has multiple forms of ID, if someone is not in the poll book, they *MUST* vote a provisional ballot.

- NO voter may be turned away for not having ID. Those voters must vote a *provisional* ballot, and the poll clerks should keep a list of voters who do not show any ID to vote. The provisional ballot form/envelope includes an affidavit on the form/envelope itself, so no additional affidavit is required for voters who do not provide any ID.

The process of checking in voters, issuing ballots, handling assisted voters, issuing provisional ballots, closing the polls, counting ballots and other steps for election commissioners and poll clerks are spelled out in detail in the election training program produced by the Secretary of State. W. Va. Code § 3-1-46.

If the municipality uses the same voting system as the county, the county clerk can loan this training program early so the recorder can review these procedures. If the municipality uses a different voting system than the county, the training information can be obtained from the Secretary of State.

Remember, law requires training for election officials before each election. Even if you have election officials that have served before, they must again receive training. Laws and procedures change, so poll clerks must be made aware of any changes that have occurred.

Counting Ballots

Paper ballot systems

Paper ballots are counted at the polling place. If a separate counting board is used, the counting begins at 9:30 a.m. or as soon after that as 25 ballots are in the box (this number is recommended to help preserve the secrecy of the ballots). If a single board is used, the ballot box is not opened and no counting occurs until after the poll is closed. In no case can a candidate or their representative be present for the counting at the precinct. W. Va. Code § 3-1-33.

In counting paper ballots, a ballot, which is not signed by the two poll clerks, is not counted at the polls. It is marked provisional and, if determined to be eligible, counted at canvass according to those procedures.

A vote is counted for a candidate if the intention of the voter can be determined. The courts have given some basic guidance about this:

1. The mark need not be an X in the box; any mark which clearly shows the voter's choice must be counted. W. Va. Code § 3-6-7.
2. If two votes are cast for a single office (such as two votes for mayor), this is an over vote and both must be rejected.
3. For write-in votes in a general election:
 - a. the write-in vote must be placed on the face of the ballot;
 - b. the write-in vote must include the name and the office;

- c. the intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office;
- d. if no two official write-in candidates for an office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter; and
- e. the office intended may be demonstrated by the position where the name is written-in by the voter or may be specifically designated (example: a voter may write-in the name of their intended candidate immediately after the name of the office pre-printed on the ballot – MAYOR John Smith or write Mayor – John Smith).
 - i. Note: stickers and stamps are acceptable means of making write-in votes on paper ballots.

Electronic ballot systems

The ballot box is not opened at the polling place. When all ballots are inside, the opening is covered with a paper seal and returned to the central counting center, which may be the city office or the county clerk's office.

At the central counting center, the ballot box is opened, the ballots that do not contain write-in votes are separated and prepared for tabulation by resolution teams. Two persons of opposite political party affiliation work as a team to prepare ballots for the tabulator. Ballots containing write-in votes are handled according to proper procedures, valid write-in votes are tallied, and the ballots or ballot cards added to those ready for tabulation. The rules for counting write-ins are basically the same as those described above for paper ballots. The voter's intent must be considered when making a determination. W. Va. Code §§3-4a-19 and 3-4a-27; CSR 153-27.

CANVASSES, RECOUNTS AND CONTESTS

Canvass

As a general matter, the Secretary of State produces a canvassing manual. Please refer to that manual for detailed guidance on procedures, laws and the required forms used in canvassing an election.

Who Conducts the Canvass?

Elections ordered and held by a municipality, including elections of officers and special elections, are canvassed by the governing body of the municipality. W. Va. Code §§ 8-9-2 and 8-5-17; *Evans v. Charles*, 133 WV 463 (1949).

You must have a quorum to conduct the canvass. If there is not a quorum, the meeting must be rescheduled when a quorum can be present. The canvass is a public meeting.

Although some of the sitting members of the governing body may also be candidates on the ballot in the election, they still participate in the canvass, for which they have an official responsibility. W. Va. Code § 3-7-6.

Scheduling the Canvass

The canvass of the election begins on the fifth day, not counting Sunday, following the election. Do not begin the canvass on a Saturday, Sunday or legal holiday, but do count a Saturday or holiday when counting the five days. W. Va. Code § 3-6-9.

Conducting the Canvass

Ballots are not re-tallied and allegations of fraud or improprieties are not heard. The steps of a canvass are designed to create a record verifying that the ballots are properly accounted for, and to decide whether provisional ballots can be counted based on information available within the election materials. The board of canvassers may call an election official from the precinct if necessary.

Every municipal election canvass must be conducted according to the procedural rules of the Secretary of State. All the materials of the election are brought before the board of canvassers, which must consider one precinct at a time.

When the canvass is completed, the results of the election are declared, and the canvass is recessed for at least 48 hours (excluding any Saturday, Sunday or legal holiday which may fall within that period). After the 48 hours have passed, the board of canvassers convenes to certify the results of the election for any office or issue for which no recount request has been filed. If no office or issue is the subject of a recount request, all results are certified.

The certification of the results of the election must be made in the form set out in W. Va. Code § 3-6-10, giving the votes in both words and numbers. Municipalities are not required to send the results to the Secretary of State's Office, but it is recommended.

Tie Breakers

If the results of any contest within the general election are tied, and no recount is requested or the tie is not broken during a recount, the tie shall be decided by lot. The board of canvassers conducts the drawing or other procedure by lot. The board then certifies the winner as being elected. W. Va. Code § 8-5-15.

Recounts

As a general matter, the Secretary of State produces a recount manual. Please refer to that manual for detailed guidance on procedures, laws and the required forms used in recounts.

The Request for a Recount

Only a candidate may request a recount, and when a candidate wants a recount in his or her race, the candidate must do two things:

- File a written request for a recount within 48 hours after the declaration of the results (again, Saturdays, Sundays and legal holidays are excluded); and
- File, also within 48 hours, a bond “in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount,” but not to exceed \$300. This may be cash, personal property or other bond, with the amount set by the municipality.

See W. Va. Code § 3-6-9.

To make this process fair, the municipal governing body should determine at the canvass the amount of the bond required in case of a recount request.

Notice to Other Candidates

When a recount request is properly filed within the 48-hour period, the board of canvassers has an additional 48 hours in which to send notice to all candidates for the office for which the recount is requested, giving the date, time and place of the recount. The time for the recount can be no sooner than three days after the notice is served.

The sheriff of the county (or the sheriff’s designee) is required to serve and make return of the notice according to the procedure set out in W. Va. Code § 3-6-9.

Other Candidates Preserve Right to Continue Recount

After the other candidates in the race have received notice of the recount, any of those candidates (usually the winner or winners) who want to protect their rights in the recount must also file, within 24 hours of receiving the notice, the following:

- A written notice to the board of canvassers of their intention to preserve the right to demand a recount of precincts not requested by the candidate originally requesting the recount; and
- A bond in the same amount as required of the first candidate.

See W. Va. Code § 3-6-9.

Who Pays for the Cost of the Recount?

If the entire recount is conducted based on the original request, that candidate must pay the costs if the outcome of the election is not changed. Recounts can be expensive depending on the number of people and time needed to conduct the recount.

If the original candidate stops the recount and another person asks that it continue, the costs of each portion of the process are divided proportionally between the two. Each candidate is responsible for paying only if the winner does not change during the portion for which they are responsible. The remainder of the bond is refunded or released after costs are paid.

Contest

When a losing candidate wishes to contest certain matters in the election, the contest procedure must be used. The request for a contest must state a very specific reason(s).

For example, the contestant may challenge the decision of the board of canvassers to count or reject provisional ballots or the decision whether to count or reject a certain mark or vote on a ballot. If the issue is the eligibility of the winning candidate, the contestant must specify that issue. W. Va. Code § 3-6-9.

In some rare cases, the overall integrity of the election may be challenged, but a contest may not be based on general allegations of fraud unless the contestant is prepared to present specific evidence leading to the conclusion that the fraud was sufficient to change the outcome of the election.

For example, a candidate has evidence that two ineligible persons could cast ballots which were counted. However, the smallest difference between the winning and losing candidates in any office was 100 votes. Even though some fraud may have occurred, in this example, it would not have changed who was elected.

A candidate who wishes to contest the results of his or her race must file a notice of contest within 10 days following the certification of the results of the election for that office. The law (and a number of court cases) requires that the notice of contest be quite specific and properly written; candidates may want to consider contacting a lawyer. W. Va. Code § 3-7-6.

A candidate may appeal the results of an election contest to circuit court. If an incumbent office-holder's election is at stake in a contest, that member may not participate in contest proceedings for his/her race.

Taking the Oath of Office; Beginning the New Terms; Bonds

Every elected official must take the oath of office before beginning his or her duties. For municipalities, unless otherwise provided by charter, the oath must be taken after the certification of the election and within a 20-day timeframe.

The oath may be taken before the mayor, recorder, or any official authorized to give oaths (a judge, magistrate, clerk of any court of record, notary public), and must be filed with the recorder of the municipality. A certified copy of the oath is also filed with the clerk of the county commission. W. Va. Code § 8-5-8.

Persons elected to full terms take office on July 1, unless otherwise provided by charter, and persons elected to fill unexpired terms take office as soon as the election is certified, they are qualified, and take the oath of office. W. Va. Code § 8-5-10.

If an elected candidate decides to vacate the office, this is now considered a vacancy and will be filled by council, unless otherwise provided by charter or ordinance. The candidate with the next highest votes does not automatically take office. W. Va. Code § 8-5-10.