The Town Tea Leaves – Filling Mid-Term Vacancies in Elected Offices

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Creation of Midterm Vacancies in Elected Town Offices

○ Death of the incumbent (Public Officers Law § 30 [1][a])
○ Resignation/Retirement (Public Officers Law § 30 [1] [b])
○ Removal from office by court order (Public Officers Law §§ 30 [1] [c], 36)
○ Permanently moving out of town (Public Officers Law § 30 [1] [d])
○ Conviction of a misdemeanor in violation of one’s oath of office or any felony (Public Officers Law § 30 [1] [e])
○ Court order declaring the incumbent incompetent (Public Officers Law § 30 [1] [f])
○ Court order voiding the election (Public Officers Law § 30 [1] [g])
○ Failure to timely take and file the official oath or file an undertaking within 30 days of the start of a new term of office
  ○ Elected officers who are active military and stationed out of the country have 90 days (Public Officers Law § 30 [1] [h])

Filling Midterm Vacancies in Elected Office

○ Town Board Resolution - A resolution approved by a majority of the fully constituted town board is required to fill a vacancy (Town Law § 64 (5); General Construction Law § 41)
○ Term of Appointment / General Election – The answer depends on when the midterm vacancy occurs:
  ○ A person appointed to fill a vacancy occurring at least three months before the general election serves until the end of the calendar year in which the vacancy occurred (Public Officers Law § 42). The position will go on the ballot at the general election had that same year.
  ○ A person appointed to fill a vacancy occurring less than three months before the general election will serve for the remainder of the year and all of the next year. Where the vacancy occurs in the last year of the incumbent’s term then the appointee will only serve until the end of the year in which the vacancy occurred.
(Public Officers Law § 42). The position will go on the ballot during the general election held the following year.

- **Notification of Vacancies in Elective Office** – The town clerk is required to notify the county board of elections within three days of a vacancy in an elected town office (Election Law § 4-106 [4]). By February 1, the town clerk must provide the board of elections with a list of the positions that will be the ballot at the general election that year (Election Law, §4-106(2)).

- **Midterm Vacancy Elections** – A person elected to fill a midterm vacancy will hold office for the remainder of the unexpired term or for a new term if the election happens to coincide with the expiration of the incumbent’s term of office.
  - **Exception** - Town justices receive a four-year term regardless of when the vacancy occurs (Public Officers Law § 42)

- **Special Election** – the Governor may call a special election to fill a midterm vacancy where the town board does not fill the vacancy by appointment (Public Officers Law § 42).
  - A person elected during a special election will hold office for the remainder of the unexpired term.
    - The exception for justices applies to this as well – the justice will receive a four-year term regardless of the timing of the vacancy (Public Officers Law § 42)