

**A MANUAL
FOR TOWN CLERKS
IN THE
COMMONWEALTH OF MASSACHUSETTS
VOLUME II**

**MEETINGS,
TOWN BUSINESS,
FILING AND RECORDING
LICENSES AND PERMITS**

Written by

Massachusetts Town Clerk's Association

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FOREWORD

The manual on meetings, town business, recording, filing, licenses and permits, the second in a series of 6 volumes covering a town clerk's duties, was originally published in October of 1984. In 1997, the work began to update this volume in order to reflect the changes in the laws over the last 13 years.

The update process was slow, but many thanks are due to those clerks who took the time to be involved. Each clerk was assigned a section of the manual and checked the statutes to see if any changes had taken place in the law. If there was a change, the language in the manual was updated to reflect that change. What all town clerks should appreciate is the hard work and efforts of the original group of town clerks that put this manual together. They informed us of how the duties of the town clerk evolved over the years - and made this volume the valuable resource that it is.

Thanks go to all the clerks who played a role in updating this manual. And to the original group of clerks that put this manual together - we dedicate this update, and give our humble thanks for a wonderful document.

Wilma and Linda

2007-2008 - Thanks to Beverly Guarino from Topsfield and Jeanne Pryor from Becket for working on the update of this manual. It is an on-going process and their excellent help is appreciated.

INTRODUCTION

The office of town clerk is probably one of the oldest in municipal government. It appears in the Bible in the Book of Acts, Chapter 19, verse 35 written in A.D. 58. A search of other early written records would no doubt reveal other instances in which mention of this office appears.

In Massachusetts, town clerk was one of the earliest offices established in colonial towns although the title itself may not appear in the earliest records. The settlers were well aware of the importance of keeping accurate written records of their agreements and actions including grants of land, regulations governing animals, the collection of taxes and the expenditure of town funds. If your town records date back to the first half of the 17th century, you will probably find that a person was given the specific duty of writing down town orders and will see many entries in the record which include the words "It is ordered by the inhabitants," or some similar words.

The person given the responsibility for recording these orders was also often given other duties, such as sweeping the meeting house and selling the seats, warning town meetings, ringing the bell, and paying the bounty for jays and blackbirds whose heads were presented to him by the citizens.

By the middle of the 17th century, the title, *town clerk*, appears in the town records and that title has been continued to the present time.

One of the earliest statutory duties imposed by the General Court on town clerks was that of recording births, deaths and marriages. Since that time, the General Court has formalized by statute many of the duties first delegated by vote of the town and has added others. By 1692, the town clerk was required to enter and record divisions of land and orders of the selectmen as well as all town votes, orders and grants. Warrants directed to the constable for the collection of taxes were to be signed by the assessors or the town clerk. Between 1742 and 1756, the General Court made the town clerk responsible for receiving and producing, if necessary to substantiate a person's voting rights, the list of each inhabitant's property value, and the town clerk had to administer and record the oath of office taken by town officials. By 1776, the town clerk was empowered to call town meetings to elect selectmen if a majority of the selectmen had moved from the town or were absent in the service of the United States of America.

Since the Revolution, the General Court has continuously added new duties and at the present time, there are hundreds of sections of the General Laws related to town clerks. In addition, in most towns, bylaws, ordinances, charter or special acts require town clerks to fulfill duties in addition to those required by the General Laws, and many town clerks are providing needed services simply by town custom and tradition, or because of their firm dedication to serving the public.

Throughout this manual, many references will be made to the General Laws of the Commonwealth which apply to specific items and where further information may be found. In order to conserve space, the following legend will be used: The first number denotes the chapter of the General Laws and numbers after the colon, the section of that particular chapter. For example: (41:1, 107) means Chapter 41, Sections 1 and 107 of the Massachusetts General Laws.

During the course of the regular business of the office, the town clerk's duties bring him/her into contact with every level of government: state agencies, county government, and almost every officer, board or committee of his/her town. In addition, the clerk probably has more frequent contact with the public than any other town officer and is constantly called upon to provide information, not only about his/her own office, but about the rest of government as well. "Perhaps more than any other public official, he or she symbolizes the stability and continuity of local government."*

The many duties of the town clerk with respect to meetings, town business, recording and filing, and licenses and permits are discussed in some detail in this volume of the Massachusetts Town Clerks' Manual. However, there are some important sections of the General Laws which do not fall within the subject categories of the four chapters of this volume and with which a town clerk should be familiar. These sections are covered on the following pages.

* Massachusetts Practice Series, 3rd Edition, Vol. 18, Douglas A. Randall, Douglas E. Franklin, West Publishing Co., St. Paul, Minn., 1982, p. 204.

1. Elected or Appointed Town Clerk [41:1, 107]

Prior to 1915, all town clerks in Massachusetts were elected at the annual town meeting but, currently over 48 town clerks are appointed. An elected town clerk may serve for a term of one or more years, with a maximum term of five years, to be determined by vote of the town. [41:1]. The town clerk, unlike other elected town officers, does not enter upon the performance of his official duties until the seventh day after his/her election and remains in office until the seventh day after the election in the year in which his/her term expires. The clerk would remain in office beyond the seventh day following the election should the successor not be qualified (sworn in) by that day. An elected town clerk must be sworn into office by the moderator or by a justice of the peace. [41:107].

Since 1915, special acts have been passed by the General Court establishing the so-called town manager form of government and many of these acts provide that the town clerk shall be appointed. In addition, since 1966, the General Laws have provided in Chapter 43B for the adoption or amendment of town charters and the appointment of the town clerk may be specified in such charters. The town clerk is usually appointed by the selectmen, the town manager, or the town manager with the approval of the selectmen. The term of office is usually specified in the special act or charter. An appointed town clerk may be sworn into office by his predecessor town clerk before he/she leaves office, by a justice of the peace, or by a notary public.

You should make and keep a record of your own election or appointment and oath of office in the same manner as you record the election or appointment and oaths of other town officials.

2. Town Clerk's Bond [41:13]

Every town clerk shall, within ten days after his/her election or appointment, and thereafter at intervals of not more than one year, so long as he continues to hold office, give bond to the town for the faithful performance of his/her duties. The form of the bond must be approved by the Commissioner of Revenue and be in a sum to be fixed by the selectmen/mayor and aldermen, but not less than the amount established by the commissioner.

Each year you will receive from the Department of Revenue a notice and form requesting information concerning the amount of money received for all fees received by you for licenses and duplicates thereof for which you are required by law to account, and for the payment over in accordance with law of all such fees, less such sums, if any as you are allowed by law to retain therefrom. This information is used by the commissioner to determine the minimum amount for the bond you must file. The form should be completed, signed and returned to the Department of Revenue, 100 Cambridge Street, Boston, MA 02204. If you are a new town clerk, this form may have been completed, signed and returned by your predecessor.

Sometime after receipt of the completed form, the commissioner will notify the selectmen/manager of the minimum amount for your bond and he will usually send a copy of this notice to the town clerk. You may find a copy of this notice in your files. If not, the amount can be obtained from the selectmen/manager's office or by calling the Department of Revenue.

As soon as possible after taking office for the first time, and each succeeding year prior to the expiration of your bond, you should arrange with an insurance or bonding company to prepare the necessary bond. You will need to check with the selectmen/manager to determine the amount they have fixed for the town clerk's bond and be certain it is at least the minimum established by the Commissioner of Revenue. The form of the bond must be one approved by the commissioner. The insurance company will usually complete part of the form, you must sign it and complete a certificate and the selectmen must complete a certificate. (see sample approved form on page 9). The insurance company will also attach its own completed form signed by the appropriate company officials.

The bond should be completed and signed in triplicate and all copies forwarded to the commissioner of revenue. He will then endorse his approval and return two copies to you, one for your file and one to be filed with the selectmen or town accountant.

SAMPLE APPROVAL OF COMMISSION

The within Bond is hereby approved by me as
Commissioner of Revenue.

April 4, 1997

Commissioner

In some towns, the selectmen or town accountant will obtain the necessary performance bonds for the town clerk, the town treasurer and the tax collector. In this case, you should be certain that this is done since 41:13 specifies that if the town clerk does not give bond as required, the selectmen, under the provisions of 41:14, may declare the office vacant and fill the office by appointing a temporary town clerk.

Your bond should be kept on file in your office for seven years from its expiration date. If, however, litigation is pending, it should be kept longer. [State retention schedule #2.7].

3. Certificate of Election or Appointment [41:19A]

Upon the election of a town clerk, the chairman of the board of selectmen must sign and file with the state secretary a certificate of election. Upon the appointment of a town clerk, the appointing authority must sign and file a certificate of appointment. The certificate must specify the date of election or appointment and the date the term expires.

A statement signed by the town clerk that he has entered upon his official duties must be attached to the certificate before it is forwarded to the state secretary.

After the certificate and statement have been filed, the state secretary has the authority to attest to the genuineness of the town clerk's signature when a paper attested or certified by the town clerk is presented to him.

The certificate and statement should be sent to the Office of the Secretary of State, Public Records Division, Commissions Section, One Ashburton Place, Room 1703, Boston, MA 02108. It is suggested that you keep a copy of the certificate and statement in your files.

SAMPLE CERTIFICATE AND STATEMENT

(Selectmen's letterhead)

April 1, 1997

This is to certify that (*name of clerk*) was duly elected/appointed to the office of Town Clerk of the (*name of town*) on March 24, 1997 for a 3-year term to expire on April (*date - 7th day following election*), 2000.

Signature _____
Chairman, Board of Selectmen
(or Appointing Authority)

(Town Clerk's Letterhead)

April 3, 1997

This is to certify that I was sworn to the faithful performance of the duties of my office and entered upon my official duties as Town Clerk on April 2, 1997.

Your Signature
Town Clerk

Your statement may be typed directly on the selectmen's certificate if you wish and if there is room.

4. Compensation [41:19G, 19H, 19I, 108]

a. Received as town clerk [41:108]

The compensation of an elected town clerk shall be fixed annually by vote of the town at an annual town meeting. The compensation may be revised by a 2/3rds vote at a special town meeting held later in the fiscal year for which the compensation was fixed, provided that the salary revision occurs before the tax rate for that fiscal year has been established. The salary of elected officials cannot be included in a town's personnel classification and salary plan. (See 41:108A). The salary of an appointed town clerk may be determined in accordance with the provisions of the special act or charter and may be included in the town's personnel classification and salary plan.

Depending upon the custom, charter or special act of a town, the town clerk may be paid by the fees collected by the office, by a combination of fees and salary appropriated at town meeting, or entirely by appropriated salary. NOTE: only appropriated salary is counted toward retirement benefits.

b. Received as member of board of registrars [41:19G, 19H]

If the town clerk also serves as a member of the board of registrars he/she shall, in addition to any compensation to which he is entitled as town clerk, receive the sum of \$50.00. If the number of registered voters exceeds 1,000, the town clerk shall receive an additional \$50.00 for each additional 1,000 registered voters or major fraction thereof. The maximum compensation is \$1,500. [41:19G] However, if the town accepts 41:19H, the maximum compensation is increased to \$2,000.

This additional compensation would need to be appropriated by the town meeting under the budget article. In some towns, the town clerk calculates the amount of additional compensation based upon the number of registered voters at the time the budget is being prepared and enters this amount in his requested budget. In other towns, the amount is calculated based upon an estimate of the average number of voters during the fiscal year for which the compensation is to be appropriated.

c. For other services [41:19I, Chapter 5 of the Acts of 1984]

A town clerk who also serves in any other position for his town may, in addition to any compensation to which he is entitled as town clerk, receive additional compensation for such additional services. The additional compensation may be provided by the selectmen or by the town meeting. In either case, the compensation would need to be appropriated by town meeting.

Such additional services would include: parking clerk, clerk to the board of selectmen, etc.

5. Tenure [41:19B, 19C, 19D]

An elected or appointed town clerk, except a temporary clerk, under the age of 70, who has served as town clerk continuously for not less than five years, shall hold office during good behavior until he has attained age 70, provided that 41:19B is accepted by the town. He is subject, however, to retirement under applicable general or special law relative to retirement systems. [41:19B]

The following procedures must be used for the acceptance of 41:19B. [41:19C] A petition requesting the acceptance of 41:19B and containing the signatures of not less than 5,000 registered voters or 5% of the registered voters, whichever is the lesser number, must be filed with the town clerk. It must be filed at least 60 days before the next annual town election. The form for this petition is not specified in the General Laws.

The petition must bear the endorsement of the names and addresses of three registered voters designated as filing the petition. The petition must be submitted to the board of registrars for certification of signatures. The certification process must be completed within five days after receipt of the petition and the board must make and certify a statement of its determination including the number of certified signatures and whether or not the petition has been signed by the required number of registered voters. This statement must be attached to the petition, and returned to the town clerk.

If the town clerk finds that the petition contains sufficient certified signatures and that it is in order, he must have the question of acceptance of 41:19B printed on the official ballot to be used in the next annual town election. The form of the question is specified in 41:19C as follows:

Shall the (city) (town) vote to accept the provisions of section nineteen B of chapter forty-one of the General Laws and thereby provide permanent tenure for (name of incumbent), the present incumbent in the office of (city)(town) clerk?

41:19B is in effect following the election only if a majority of votes were cast in favor of the question and the incumbent's term is a continuing one or, if the term is expiring, he was re-elected.

After the acceptance of 41:19B, the town clerk shall not be removed from office, lowered in rank or suspended, except for just cause and for reasons specifically given him in writing by the board of selectmen, board of aldermen or other appointing authority as the case may be. Before any action is taken affecting his employment, the town clerk is entitled to a full hearing before the appropriate board as referred to in the prior sentence. The board must give the town clerk at least five days written notice and must allow him/her to answer the charges and be represented by legal counsel. Within three days after the hearing, the board must notify the town clerk of its decision, stating fully and specifically the reasons for removal or suspension. [41:19D]

Within 30 days after the date of decision, the town clerk may bring a petition in the district court within the judicial district in which such clerk resides, praying that the action of said board in removing, lowering him/her in rank, or suspending him, as the case may be, may be reviewed by the court, and after such notice in writing to the board which has ordered such removal, lowering in rank, or suspension, as the court deems necessary, it shall hear witnesses and the court may affirm or reverse the decision of the action of the appropriate board. [41:19D]

SAMPLE APPROVED FORM FOR BOND

LOCAL OFFICIAL BOND

(Execute in Triplicate)

BND 314 13 55

KNOW ALL MEN BY THESE PRESENTS, That we (*your name*) of (*name of town*) in the County (*name of county*) and the Commonwealth of Massachusetts as Principal, and (*name of insurance or bonding company*) a corporation duly organized and existing under the laws of the State of Massachusetts and having an office and usual place of business at (*name of town*) in said Commonwealth of Massachusetts, as Surety, are held and firmly bound unto the town of (*name of town*) in said Commonwealth of Massachusetts in the sum of (*amount in words* Dollars) (*\$-amount in numbers*) for the payment of which, well and truly made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT

WHEREAS, the said Principal was on the _____ day of _____, 19____, duly *(elected or appointed)* to the office of Town Clerk in and for the said town of (*name of town*).

AND WHEREAS, it is provided by law that such an official shall give bond annually for the faithful performance of his duties:

NOW THEREFORE, the condition of this obligation is such that if the said Principal shall from and after the date here faithfully perform all the duties of his said office, as required by law, during the period of twelve months from the date hereof or until he is relieved from office by the qualification of a successor or files a subsequent annual bond, than this obligation shall be void: otherwise, it shall remain in full force and effect.

This bond is nevertheless executed with the express understanding that upon the filing by said Principal of a subsequent annual bond as required by the statutes, this bond shall be held and remain in force to cover any failure of said Principal to faithfully perform the duties of his office between the date hereof and the effective date of said subsequent bond, but shall not apply to or cover any failure to faithfully perform the duties of his office occurring after the effective date of such subsequent annual bond.

IN WITNESS WHEREOF, the said Principal has hereunto set his hand and seal, and the said Surety has affixed its corporate seal and caused these presents to be signed in its behalf by its duly authorized attorney-in-fact (*officer*) this (*date*).

Signed in the presence:

Witness signature

Your signature (I.s.)

Witness signature

(Typed name of insurance company)

By: Signature of company attorney
Typed name and title

THE COMMONWEALTH OF MASSACHUSETTS

Town of *(name of town)*

Date: _____

This is to certify that the above-named Principal was duly (*elected/appointed*) to the office of Town Clerk in and for the town of (*name of town*) on (*date*), to a term expiring on (*date*), or until his successor is duly qualified, whichever is later.

(TOWN SEAL)

By: Your signature
Town Clerk

THE COMMONWEALTH OF MASSACHUSETTS

Town of *(name of town)*

Date: _____

This is to certify that the Board of Selectmen has fixed the sum of the foregoing bond at the amount shown therein.

Board of Selectmen

By: _____ (*Signature*) _____
Authorized representative

NOTE: Blank forms are available from the Department of Revenue.

MEETINGS

I. TOWN MEETING

A. GENERAL

Town meeting is the legislative branch of local government in Massachusetts. It has the two basic powers of a legislature, the power to adopt laws (general and zoning bylaws), and the power to appropriate money.

The institution of town meeting developed naturally from the necessity of those who gathered in a wilderness to have some means of establishing the rules under which they would operate as a unit.

Town meeting government is unique to the New England states and there are now two forms governed by state statute.

1. Open Town Meeting (OTM)

The essential feature of the open town meeting government which sets it apart from all other forms of local government, is that all registered voters of the town are entitled to vote on all issues which are presented to the town meeting. In the early years of town meeting government, attendance was mandatory and fines were levied for nonattendance. Today, attendance at an open meeting is a matter of the voter's personal decision. Open town meeting is the oldest existing form of direct popular government having continuously served its citizens for some 350 years.

2. Representative Town Meeting (RTM)

Representative town meeting evolved directly from the open town meeting form of government. The most common reasons generally cited for this development are that the open meeting had become unwieldy and that space limitations prevented voters from being accommodated.

Representative town meeting government has been permitted in Massachusetts since 1820 when the Second Amendment to the Massachusetts Constitution was adopted allowing this form in towns of 12,000 or more people. In 1926, Article 70 of the Amendments to the Constitution authorized this form of government in towns of more than 6,000 inhabitants. Since that time, a number of towns have adopted this form of government, each under a separate act of the legislature designed by the people of the town to meet their specific needs. A town operating under a special act may now accept the Standard Form of Representative Town Meeting under Chapter 43A of the General Laws, or it may also be adopted under the provisions of Chapter 43B of the General Laws, the "Home Rule Procedures Act."

While the details of representative town meeting government vary from town to town, there are essential similarities. The towns are divided into precincts and town meeting members are elected by the voters of each precinct to represent them at the town meetings. The boundaries of the precincts or the number of town meeting members representing the precinct must be periodically changed to maintain a reasonably equal representation based upon the one man-one vote principal.

Only elected town meeting members are entitled to vote on the issues presented at town meeting. However, all voters are entitled to speak at town meeting upon being recognized by the moderator and there is usually a provision in the special act for a referendum by petition on certain types of votes passed by town meeting members.

While many of the requirements and procedures related to town meeting are governed by General Laws and will be the same whether you have open or representative town meeting, there will be important

differences in detail required by your own bylaws, town charter or special acts. These areas of variation have been indicated where possible, but it will be essential to your effectiveness as town clerk for you to become familiar with your town's bylaws, charter or special acts. In addition, an excellent reference book on town meetings, both open and representative, is **Town Meeting Time** by Johnson, Trustman & Wadsworth, published by Little, Brown & Co., Boston, 1962.

B. THE WARRANT

1. General

All town meetings must be called pursuant to a warrant signed by the selectmen. [39:10]. However, if there are no selectmen, the town clerk may call the meeting [39:11] and, under certain circumstances, a justice of the peace may call a meeting upon petition of 100 registered voters, or 10% of the total number of voters. [39:12].

Two or more separate town meetings for distinct purposes may be called by the same warrant [39:10]. For example, a special meeting may be called on the same warrant as the annual town meeting, or two separate special meetings may be called on one warrant

a. Time and place of the meeting

The warrant must specifically state the time and place of the meeting even though the time and place may be specified in your bylaws or charter. The opening paragraph or paragraphs of the warrant containing this information is the "Call of the Meeting." (see prior warrant in your files for specific wording used in your town). Unless your town has a special act, charter or by-law providing otherwise, town meetings must be held within the town limits. The special act, charter or by-law provides towns with the flexibility to use larger facilities in adjoining communities, such as regional schools. [39:9].

If a town meeting is held in more than one location, the rooms must be connected by a public address system and loud speakers so that all voters present may hear and participate in the proceedings [39:10].

A town meeting cannot be held on a legal holiday. If the day specified in the bylaws for a town meeting falls on a holiday, it must be held on the following day [39:9].

b. Notice of the meeting

The warrant must be directed to a constable or to some other person who must give notice of the meeting as prescribed by the bylaws or by a vote of the town [39:10]. Usually a constable is responsible for posting a copy of the warrant, certified by him as a true copy, in one or more public places of the town. Additional notice requirements may be specified in your bylaws, charter, or special act and **may** be the duty of the town clerk. These requirements may include publishing the warrant in a newspaper, mailing a copy to each household (OTM), or mailing a copy to each town meeting member (RTM).

c. Articles

The warrant must contain all subjects (articles) to be acted upon at the meeting [39:10] No action shall be valid unless the subject matter thereof is contained in the warrant. Subjects not contained in the warrant may only be acted upon at the discretion of the moderator under resolutions which are not binding on the town.

2. Warrant for Annual Town Meeting

a. Annual town election [39:9A]

The annual town election is considered a part of the annual town meeting unless your special act, charter or bylaws specify that the election and business meeting are to be held more than 35 days apart. In this case, the election and meeting must be called on separate warrants.

The annual town election may appear as Article 1 in the warrant and be held on the same day as the business meeting. Your bylaws may specify that the annual election be held on a different day from the business meeting, either before or after. If the two are held within 35 days of each other, one warrant may be used to call both.

b. When held [39:9]

The annual town election must be held, and the annual town meeting for other business must commence in February, March, April or May of each year. However, your charter or special act may provide that the annual election only be held at a different time of year.

The annual town meeting is not required to complete its business in one session but may adjourn from time to time. The hour of adjournment of a session and the days to which it may adjourn may be specified in the bylaws.

NOTE: The annual election, even if held as part of the annual meeting, may not adjourn. It must be held during the time the polls are to be open as specified in the bylaws or by vote of the town and stated in the warrant.

c. Articles [39:10]

The selectmen may, in their discretion, include in the annual town meeting warrant any articles submitted to them. Such articles are usually submitted by the various boards, officers, or committees of the town or by the selectmen themselves.

The selectmen must include any article submitted to them by petition of 10 or more registered voters of the town. The petition must include the text of the article, the signatures of the petitioners together with their residence including street and number, if any. The petition must be submitted by the selectmen to the board of registrars for certification of signatures.

d. Reports

While [39:10] requires only the call of the meeting, the time and place of the meeting and the subjects to be acted upon to appear in the warrant, many towns also include in the printed warrant the reports of various boards or committees thereby fulfilling requirements of other sections of the General Laws, town bylaws or charter.

(1) Budget report/Table of estimated appropriations [41:60]

At the close of each calendar year, the town accountant shall compile statements in tabulated form showing the amounts appropriated and the amounts expended from each appropriation during the preceding fiscal year, the amounts appropriated for the current fiscal year and the amounts expended from such appropriations during the first six months of such year and the amounts estimated to be expended from such appropriations during the second six months of such year, and the estimates for the next ensuing fiscal year, and shall furnish a copy thereof to the selectmen, or to such committee as the town may appoint to consider and report on proposed appropriations.

The selectmen or a committee, if one has been appointed, shall designate the amounts which, in their opinion, should be appropriated for the ensuing fiscal year, and shall give an explanation and suggestion relative to said opinions. These opinions or explanations of the recommendations must be printed in a report

form and distributed at or before the annual town meeting, and the town clerk shall transmit a copy thereof and of all town reports to the director of accounts.

(2) Planning Board report [40A:5; 41:81I,81G]

Unless more than 21 days have elapsed between the date of the planning board hearing on zoning bylaw amendments and the date on which the meeting votes, a planning board must submit a report to the town meeting, either by having it printed in the warrant or by giving it at the meeting. [40A:5]

The General Laws also require that the conservation commission or planning board report on roads proposed for designation as scenic roads [40:15C] and an historic district commission report is required for the establishment or amendment of an historic district. [40C:3,4]. The finance committee must consider any or all municipal questions for the purpose of making reports or recommendations to the town. [39:16].

Your bylaws or charter may require that town counsel give his opinion on all bylaw amendments and that standing or special committees give reports on articles related to subjects under their jurisdiction.

e. Notice and return of service [39:10]

If the annual town election and annual town meeting (business meeting) are called on the same warrant, notice must be given by posting the warrant at least 7 days prior to the earliest event. If, however, the election and business meetings are called on separate warrants, notice must be given by posting the warrant at least 7 days prior to each event.

At the end of the warrant, the selectmen direct the constable, or other officer, how to “serve” the warrant, usually specifying the locations in which it is to be posted. They also direct him to make his return of service to the town clerk.

In some towns, the warrant containing the original selectmen’s signatures is given directly to the town clerk who provides the constable with copies for posting. The constable certifies each copy, posts them, and then comes to the town clerk to sign the return of service on the original warrant.

In other towns, the selectmen keep the original warrant and provide the copies to the constable. The warrant is then given to the town clerk after the constable has posted the copies and signed the return of service on the original.

Regardless of the specific method used, the town clerk should be aware that the warrant containing the original selectmen’s and constable’s signatures should be securely kept as it constitutes proof that the town meeting was legally called and that the citizens were legally notified. It is a permanent record of the town.

The return of service should be written or typed on the original warrant. The return does not need to state specifically how and when the warrant was posted, but having this stated will prevent questions from being raised later concerning the legality of the notice. Even though the warrant has been published in a newspaper or mailed to each household because of bylaw or charter requirements, it must also be posted and the return of service must be signed. (see sample order and return of service at end of this chapter).

3. Warrant for Special Town Meetings

a. when held

Special town meetings may be held at such times as the selectmen may order or as prescribed by your bylaws or charter. [39:9] Special meetings must be held upon petition of 200 registered voters, or 20% of the total number of voters. The petition must be in a form approved by the state secretary and the selectmen must submit it to the board of registrars for certification of the signatures. Unless a union contract,

bylaw or charter provision requires that the meeting be held sooner, it must be held within 45 days of receipt of the petition by the selectmen. [30:10] (See sample petition at end of this chapter).

b. articles

The selectmen, in their discretion, may include any articles submitted to them and any articles they wish to include themselves. However, they must include any article requested in a petition to call a special town meeting and any article submitted to them by 100 registered voters, or 10% of the total number of voters. The petition for an article must also be submitted to the board of registrars for certification of signatures. [30:10] There is no printed form for this petition.

c. notice and return of service [39:10]

Notice of a special meeting must be given by posting the warrant at least 14 days prior to the day on which it is to be held. Additional notice requirements may be specified in your bylaws or charter. The requirements for the return of service are the same as for an annual town meeting. (See former reference under town meeting).

C. PREPARING FOR TOWN MEETING

1. Review of Warrant Articles

Carefully review the warrant articles as early as possible so that you will become very familiar with their contents prior to the meeting. Be alert for any typographical errors and errors in bylaw or general law references. You may be able to save yourself and the town meeting a considerable amount of time by notifying the selectmen or other appropriate board of these errors so that they may be corrected either prior to printing the warrant or under the main motions at the meeting.

You should note any articles which refer to a map or plan on file with the town clerk. Be sure that you have each of the maps or plans on file prior to the distribution of the warrant as you will undoubtedly receive requests from the public to view them shortly after the warrant is distributed. If the article states a title or dates of a map or plan, be sure that the same title and dates appear on your file copy. If not, notify the appropriate board.

With respect to any street acceptance articles, the plan showing the layout, relocation, or alteration with boundaries and measurements must be on file with the town clerk at least 7 days prior to the meeting or valid action cannot be taken under the article. [82:23]

a. conference with the moderator

In some towns the moderator regularly confers with the town clerk prior to each town meeting; in other towns he does not. However, if you are a new town clerk, a conference with the moderator can be very helpful.

b. warrant review meeting

A warrant review meeting may be held prior to each town meeting. The warrant review meeting usually includes the selectmen, town counsel, moderator, and town clerk who go over all the articles in the warrant and discuss any anticipated problems and how to handle them at the town meeting. Sometimes the warrant review meeting includes the town boards, committees and officers who have submitted articles and citizens who have submitted articles by petition.

If you have such a warrant review meeting, you will probably not need a separate conference with the moderator and/or selectmen.

2. Preparing Your Town Meeting Notebook

Your town meeting notebook can be prepared as soon as you have a printed or typed copy of the warrant and should be prepared not later than the day before the meeting. If your town holds a warrant review meeting, the notebook should be prepared prior to that meeting.

The primary consideration in preparing a town meeting notebook is that the format be convenient for you and contain sufficient space for your notes. Some clerks issue a printed copy of the warrant or the finance committee report and make notes in the margin opposite each article. Extra paper can be used in case extensive notes are needed on any particular article such as one under which a large number of amendments or moderator's rulings on points of order are made.

Other clerks use a loose leaf notebook. The text of the article, including printed reports, may be pasted on the left side of a page. A blank piece of paper for notes is placed on the right. Extra paper can be placed in the back of the notebooks. If the warrant contains a large number of articles, number tabs in the notebook are helpful, particularly if articles are taken out of order or tabled and taken up at a later time. Written motions can be easily inserted in the notebook as they are received.

It may be helpful to you to prepare an outline covering the town meeting preliminaries so that you can simply check these off as they are taken care of.

SAMPLE OUTLINE

Call to order (time) P.M.

Quorum present (if required)

Invocation by (name) of the (name of church)

Pledge of allegiance to the flag

Free cash \$(amount) as certified by the town accountant (if announced)

Read call of meeting/return of service; or, examined and found to be in order

Unanimously voted: to dispense with the reading of the call of the meeting and the officer's return of service and to waive the reading of the separate articles of the warrant. Use exact text of the motion, if possible.

Announcements: Note any of importance to the meeting such as motions must be in writing, special meeting within the annual meeting, new procedures the moderator intends to use, etc.

Resolutions (honoring retired or deceased town officials, etc.)

The first two items above would apply to all sessions of a town meeting. The other items would probably apply only at the opening session of the annual or a special town meeting.

After you have prepared your notebook, add notes next to each article. You will find these very helpful during the meeting. Such notes might include the following:

- vote required to pass the article: majority, 2/3rds, 4/5ths, etc.

- for street acceptance articles or other articles containing a reference to a map or plan on file in your office: plan (map) filed on (date) - title, references OK

- for zoning bylaw amendments: planning board report needed/printed in warrant; town counsel opinion needed/printed in warrant

- for general bylaw amendments: town counsel opinion needed/printed in warrant
- the name of the person who will make the main motion
- the name of the committee member who will make the report.

3. Physical Arrangements

While the selectmen or moderator are usually responsible for the physical arrangements at town meeting, it is important that you know what these arrangements are and that they meet your needs. In many towns, the town clerk sits at a table facing the voters either on the stage or at the front of the hall. Be sure that the table is large enough for you and your assistant, your town meeting notebook, warrant, bylaws, and any other papers you consider necessary. It should be placed so that you have a good view of the hall and so that you can hear everything that is said. Women should ask to have a cloth covering the front of the table.

You will need a reasonably comfortable chair for you and your assistant and a pitcher of water and glasses on your table is helpful particularly if the hall tends to be warm. If you use a tape recorder at town meeting, (or a laptop computer), you may need extra room for that. In some towns the town clerk is provided with a microphone. If this is the case, be sure it is conveniently located. (Don't forget that any comments you make may be heard by the audience.)

If the voters are checked in, you will need a sufficient number of tables placed in the lobby or at the entrance doors to accommodate the checkers.

4. Checklist of Materials

CHECKLIST

The following has been prepared as a suggested checklist of items to be taken to town meeting.

- town meeting notebook containing articles, written motions, if possible, and your notes, extra paper
- a good supply of pens or pencils for note taking during the meeting
- a copy of the bylaws or charter unless you are sure that the moderator or town counsel will bring a copy
- secret ballots, ballot boxes
- forms for recording roll call votes, if used (RTM)
- tape recorder and extra tape, if one is used. NOTE: a stenotypist or court stenographer may be employed for town meetings in which case the person is usually sworn in prior to the start of the meeting
- the moderator's gavel, if you are responsible for bringing it
- a copy of the warrant showing the call of the meeting and the return of service
- certificate showing compliance with notice requirements
- supplies for those checking in the voters, unless the head checker is responsible for this

- voter lists
- a copy of your most recent street list
- a copy of the most recent annual town report - additional copies may be placed in the lobby available to citizens.
- a copy of the town meeting proceedings for the previous year, if not included in the annual town report - additional copies may be placed in the lobby available to the citizens
- a supply of lifesavers, cough drops, sour balls or whatever you like to help keep you going during long sessions of town meeting
- whatever else you think might be helpful to you; stapler, paper punch, calculator, watch or clock if there is a time limit on speeches, etc.

D. TOWN MEETING DAY

1. Arrival Time

Remember that the meeting cannot start without a town clerk. You should arrive well before the hour scheduled for the meeting so that you will have ample time to check out physical arrangements and be sure that everything you need has been supplied. You will also need time to arrange your notebook and other materials on your table.

2. Checking in the Voters

Checking in voters at a town meeting using the voting list is required for the election of a moderator if he is not elected for a specific term. [39:14] This does not apply to the election of a temporary moderator.

The voting list must also be used for the election of town officers whose election is required by law to be by ballot and for the election of other town officers if the town meeting has so voted. [41:5] This would apply if you hold your election on the same day as your business meeting as Article 1 of the warrant.

The use of the voting list for checking in voters may be required under your bylaws or charter or it may be used as a matter of custom and tradition even though there is no requirement that this be done. In a RTM town, the check-in list would contain the names of town meeting members only.

NOTE: There are a few sections of the General Laws which require the voting list to be used at a town meeting for voting on certain articles. (See 40:38, 39A for examples) It is suggested that you contact your town counsel for specific procedures should such articles appear in the warrant.

In any case, the town clerk is usually responsible for personnel, materials, and procedures.

a. personnel

Those checking in voters need not have been officially appointed as election officers unless the election of a moderator or other town official is involved. However, election officers may be used for this purpose and their election experience is generally helpful.

The number of checkers you will need will depend entirely upon how many tables or gates you plan to have. It is helpful to have two checkers at each table, although the General Laws do not require this at a business meeting. Hire the checkers well in advance of the meeting and, if possible, for all sessions of the meeting.

You may designate one person to act as head checker and assign him or her the responsibility for getting the necessary materials to the meeting and supervising the check-in process.

b. materials

You will need an up-to-date copy of the voting list. Be sure it includes all those who registered prior to the close of registration for the meeting. Names of those not eligible to vote because they have moved, died, or registered elsewhere should have been deleted.

In some towns, colored cards are handed to each voter after the name has been checked. In this case, the moderator may ask that each voter raise his card when a counted vote is being taken and, therefore, it will be important to you to provide a different color for each session of the meeting. Bold colors that cannot be confused should be used. For example, pale blue and pale green will look the same a short distance from the stage and should not be used for two sessions of the same meeting.

If colored cards are used, an easy method for keeping track of how many voters have been checked into the hall is simply to divide the cards into blocks of 10 or 25 and have the checkers mark on a slip of paper when each block has been used. The head checker will be able to count quickly and inform the moderator when a quorum has arrived. You will also need a supply of colored pencils for marking the voter list. One voting list may be used for several sessions of the meeting by using a different color for each session.

A table and two chairs should be provided at each gate. If more than one gate is used, you will need to provide sufficient signs to direct the voters to the correct table.

c. number of gates

The number of gates or check-in tables will depend upon the number of voters expected to attend. Voters tend to resent having to wait for any length of time to get into a town meeting, particularly if the meeting begins promptly when a quorum is in the hall.

If the town is divided into precincts and if space permits, one gate per precinct is a convenient division. Be sure that your signs clearly inform the voters of which gate they will be checked in and that the signs can be seen easily even if lines form. Precinct maps or indexes should also be posted for those voters who are not sure of their precinct.

E. THE MEETING

1. Officials at Town Meeting

The town meeting cannot conduct its business without a moderator, a town clerk, and the voters (OTM) or town meeting members (RTM). Other officials have important duties and functions at town meeting, but are not indispensable.

a. the moderator

A moderator must be elected prior to proceeding with the business of the town meeting. He may be elected for one or three years at the annual election of town officers. If he is not elected for a specific term, he must be elected by ballot as the first order of business at each meeting. [39:14]

If a moderator who has been elected for a term is absent from a town meeting, a temporary moderator must be elected to preside at that particular meeting. The town clerk must preside at the meeting until a moderator is elected. You may wish to discuss the procedure with your town counsel, particularly if you have sufficient advance notice that the moderator will be absent. A recommended procedure is as follows:

- call the meeting to order

- if there is a quorum requirement, announce that a quorum is present
- read the call of the meeting and the officer's return of service or announce that these have been examined and found to be in order
- announce that, due to the absence of the moderator, the first order of business is the election of a temporary moderator
- ask for nominations from the floor and note any which are made and seconded - you may have to request a second if one is not forthcoming
- obtain a motion that nominations be closed and ask for a second
- take a vote on the motion to close nominations and declare the result - this may be a voice or hand vote
- if only one nomination has been made, obtain a motion that the town clerk cast one ballot for (name of the person nominated) and obtain a second
- take a vote on the motion that the clerk cast one ballot and declare the result - this may be a voice or hand vote
- declare (name) elected temporary moderator and administer the oath of office
- if more than one person has been nominated, you may need to use a ballot - the ballot may be a blank piece of paper on which the voter writes the name of the person for whom he wishes to vote - distribute, collect, and count the ballots - the shoe boxes or tissue boxes you have available for secret ballots may be used.
- after the ballots have been counted, announce the results and declare (name) elected temporary moderator and administer the oath of office.

You then resume your regular duties as town clerk and the temporary moderator presides over the meeting.

The moderator has considerable power under the General Laws. He presides at the meeting and regulates proceedings, publicly declares all votes and decides all questions of order. [39:15] If a town meeting is held in more than one place, he may appoint assistant moderators to preside in each place where he is not present. [39:14] No person may address the meeting without first obtaining the moderator's permission. [39:17] The moderator may also administer the oath of office to elected officials [39:15] and appoints committees as voted by the town meeting.

b. the town clerk

A town clerk must be elected prior to proceeding with the business of the town meeting. A town clerk may be elected for a term of one or more years (Maximum of five year) at the annual election of town officers. [41:1]

If the office of town clerk is vacant or the town clerk is absent from a town meeting, a temporary clerk must be elected by the meeting. [41:14] A temporary clerk appointed by the selectmen to fill a vacancy in that office cannot automatically fulfill the duties of a town clerk at town meeting, nor can an assistant town clerk appointed and sworn under the provisions of 41:19 unless that individual is also specifically elected as temporary clerk by the meeting itself.

NOTE: Your charter or special act may require that the town clerk be appointed rather than elected. If so, it may specify different procedures in case the office is vacant or the town clerk is absent from the town meeting.

The town clerk's primary duty at town meeting is to make and keep a record of all votes and transactions of the meeting as announced by the moderator. [41:15] The town clerk's record is the only official record of a town meeting vote and it cannot be changed or corrected except by the town clerk himself while he holds office.

The town clerk also assists the moderator as requested and must, if necessary, preside at the meeting until the election of a moderator or temporary moderator. (See 1a. above).

After the meeting, the town clerk must issue a variety of certificates and reports to town, county and state officials and prepare the town meeting proceedings. The many duties of a town clerk will be covered in detail in subsequent sections of this manual.

c. the selectmen

While the selectmen are usually present at town meeting and play a major role in the proceedings, their primary statutory responsibility is to call the meeting and to prepare and issue the warrant. [39:10]

Since the selectmen are responsible for selecting the meeting place, they are usually also responsible for making the arrangements for its use and furnishings and for hiring policemen.

If a moderator or temporary moderator is to be elected and there is no town clerk, the chairman of the board of selectmen presides until a moderator is selected. [39:14] If a temporary clerk is to be elected, the selectmen must count the ballots and declare the results of the election. [41:14]

2. Recording the Meeting

Your record of the meeting should make it clear that the requirements of the general laws and of your bylaws, charter or special act have been complied with. However, if the moderator does not take the necessary action or make the necessary announcements or declarations, you cannot record them. Your record must accurately reflect what was actually done and said. For example, if the moderator did not count a vote which was required by the General Laws to be 2/3rds and it was not unanimous, you cannot make your own estimate and record it as 2/3rds or more. Take enough notes so that you can prepare an accurate record of the meeting showing that the required procedures were followed, the required reports were given, and the exact votes which were taken.

a. the call to order

As the moderator calls the meeting to order, note the time to establish a record that the meeting was not called to order prior to the time stated in the warrant.

b. quorum [39:13]

If your bylaws or charter require a quorum, the moderator should announce that one is present. He usually does this just before or just after calling the meeting to order. Note in your record that he has done so.

A quorum may be a specified number of voters or town meeting members or it may be a majority of town meeting members. The moderator will need to know what that number is. A quorum may also be a percentage of the total number of registered voters. In this case, you will need to obtain an accurate count of the number of registered voters as of the close of registration prior to the meeting. The moderator may calculate the quorum himself, or ask that you do so and certify to it. (See sample at end of chapter.)

The moderator may ask your advice prior to calling the meeting to order as to whether or not a quorum is present. If the voters are checked in to the meeting using a voting list, he may ask that you inform him when a quorum has been checked in. (See D section b printed in this chapter).

Once announced, a quorum is considered to be in the hall until such time as it is challenged and a count taken. This is true even though a particular counted vote under an article may total less than a quorum. If it is determined that a quorum is not present, no action may be taken by the meeting except to adjourn.

A quorum requirement does not apply to that part of a town meeting devoted exclusively to the election by ballot of town officers.

c. call of meeting/return of service

A record should be established that the meeting was properly called and that notice was properly given. This may be done by having the moderator or town clerk read the call and return of service at the beginning of the meeting. If so, you will need to take a copy of the call and return to the meeting with you. To avoid the risk of its being lost, it is suggested that you do not take the warrant with original signatures. Note in your record that the call and return were read and by whom.

The moderator may prefer to examine the call of the meeting and the return of service at your office a few days before the meeting, or he may ask you to bring a copy of these for him to examine just before he opens the meeting. In this case, the moderator would announce that he has examined the call and return and has found them to be in order and you should note this announcement in your record.

If your bylaws or charter require that the call of the meeting and the return of service be read to the meeting, a vote may be taken to dispense with such reading, usually upon the motion of the chairman of the board of selectmen or finance committee.

d. notice

The reading of the return of service or announcement that it is in order will establish that the warrant posting requirement has been met. If, however, your bylaws or charter specify that the warrant or notice be mailed to each household or town meeting member, or published, the moderator may ask you for your certificate that this has been done. If someone else is required to do the mailing, you may obtain his certificate of compliance to provide to the moderator.

e. articles

Your bylaws or charter may require that each article be read to the meeting. If so, the moderator may do that just prior to accepting a motion under the article or he may request unanimous consent to dispense with the reading of each article.

A vote to dispense with the reading of the articles may be included in a vote to dispense with the reading of the call of the meeting and the return of service. Your record should show just how the requirement for reading the articles was handled regardless of which method was used.

Note the order in which the articles were taken. Generally articles are taken in the order in which they appear in the warrant, but this may not always be true. The moderator may change the order unless the bylaw or charter requires a vote of town meeting to make such a change. Also, articles may be tabled or postponed to a later time. If the order is changed by vote, note the exact wording of the motion and vote.

Note the exact text of each motion and each amendment to a motion which is made under each article. If you have been provided with written motions, check the text as the motion is being read and note any

differences between what is in the text and what is stated. The person making the motion may have decided to make some changes in the written text.

If possible, note the name of each person who makes a motion, and whether or not the motion was seconded. The moderator may want to check with you occasionally to be sure a second was obtained.

f. reports

If a report under an article is required by law, your bylaws or charter, note that it was given. If the moderator should forget to ask for a required report, quietly remind him. A committee report may be simply that the committee makes no recommendation and such a report will comply with the requirement that one be given.

The General Laws do not require that the text of these reports appear in the town meeting proceedings. However, you will need a copy of any written planning board reports to include in your submission of zoning bylaw amendments to the Attorney General. In addition, you may be asked to verify that a required report was given if the validity of a vote is questioned.

g. resolutions

Note each resolution presented and its substance. If a resolution is voted, you will need the exact text. Therefore, it is helpful if you can obtain it in writing prior to its being presented. Again, note the vote as declared by the moderator.

h. motions in writing

It is essential that your record contain the exact text of each vote, including each amendment. Therefore, unless you are an expert in shorthand, it is strongly recommended that you insist upon being given each main motion and each motion to amend in writing prior to, or at least immediately after, it is presented to the meeting.

Your bylaws may require that motions be reduced to writing, or may require written motions upon the request of the town clerk. If not, ask for your moderator's help in getting written motions. Written motions will not only help you to fulfill your statutory duty to make and keep a record of the meeting, but they may save the meeting a considerable amount of time since the text of the motion before the hall will be clear prior to the start of the debate.

To assist voters who propose motions from the floor during the debate, you may prepare carbon sets and have them available for this purpose. Simply staple two carbon sets to a piece of paper. This will provide three copies of each motion, one for you, one for the moderator, and one for the voter. Usually one-half of a regular 8 1/2 x 11 piece of paper is sufficient.

i. votes

The moderator is required to make public declaration of all votes. [39:15] The moderator may use a variety of words to declare a vote such as "passed," "voted," "carried," "lost," "defeated," etc., but his declaration should be clearly stated. If you are in doubt about what he has declared, ask him to repeat it for the record. You must record the vote just as the moderator declared it, even if you believe that his declaration is not correct.

There are many sections of the General Laws which require that certain articles be passed by more than a majority vote, usually 2/3rds. The final vote under each of these articles must be counted unless it is unanimous. [39:15]

It is particularly important that the moderator obtain a counted vote on zoning bylaw amendments and on articles dealing with borrowing money. Declarations such as “unanimous but one,” or “nearly unanimous” may result in disapproval by the Attorney General of a zoning bylaw amendment and will undoubtedly result in disapproval by bond counsel of a bond issue. The extra minutes it takes to obtain an actual count in these cases may well save many hours in the long run by avoiding the need to call a special town meeting to re-vote a critical zoning bylaw amendment or bonding article.

Unless the moderator’s declaration is challenged by 7 or more voters [39:15], procedural motions and motions required by bylaw or charter to be passed by more than a majority vote, do not need to be counted. However, many moderators regularly count these votes.

For all counted votes, you should record the number in favor and the number opposed as declared by the moderator.

The specific procedure for counting votes is usually not stated in bylaws or charter but is entirely up to the moderator. The moderator may ask you to assist, but he usually appoints, swears in and instructs his own tellers for this purpose.

j. secret ballots

A secret ballot is not often used in open town meeting. Under his power to regulate the proceedings [39:15], the moderator may determine that a secret ballot be used, but he usually would ask the meeting to vote on this question.

In representative town meeting towns, under 39:15, a secret ballot may not be used unless 2/3rds of the members present vote to do so.

In both OTM and RTM towns, provisions for secret ballots may be contained in the bylaws, charter or special act. However, there is at least one section of the General Laws which requires that a secret ballot be used to vote on the establishment of a regional school district and the form of the question is also specified. [71:15]

The materials required for a secret ballot are usually provided by the town clerk and you should be prepared for a secret ballot at all sessions of town meeting since the voters or town meeting members may unexpectedly decide to use one. The voting list does not need to be used and ballots need not be printed with specific wording unless this is specified in your bylaws, charter or General Laws for certain questions.

The ballots may simply be blank pieces of paper on which the voter writes “yes” or “no,” or they may be pre-printed. You may make up one of your own design. Two commonly used pre-printed forms are: 1) A form that has YES on the top half and NO on the bottom half and is perforated for easy separation and voting. 2) A form that has YES on the top with a line next to it for marking and NO on the bottom with a similar line for marking.

Ballots do not need to be any particular size, but they should be large enough to be easily handled during distribution, collecting and counting. About 2 1/2” x 4” is a convenient size, but they may be larger.

Official ballot boxes do not need to be used (except for the election of town officers) at town meetings. Shoe boxes make adequate ballot boxes. Tape the top on so that it will remain in place while the box is being handled and cut a slot in the top so that ballots may be inserted. Tissue boxes may also be used.

Procedures for distributing, collecting and counting secret ballots are the responsibility of the moderator and vary widely from town to town. You should know the procedure your moderator plans to use so that you will be able to provide sufficient materials.

k. adjournment

Town meetings may adjourn from time to time. [39:9] A session of the meeting may vote to adjourn to another date, time or place. Your bylaws or charter may specify that a session must adjourn after the completion of business of the article under discussion at a certain hour, the date to which the session must adjourn and/or that a notice of adjournment must be posted.

A vote “to adjourn without day,” or “to dissolve the meeting” or, simply “to adjourn” will end the meeting regardless of whether or not all articles in the warrant have been acted upon. Your bylaws or charter may prohibit ending or dissolving a meeting until action has been taken on all articles in the warrant. Note, however, that a vote to indefinitely postpone is action under an article and should not prevent the dissolution of the meeting. Note in your record the exact text of the vote to adjourn, including the date, time and place to which the meeting is adjourned unless the meeting was ended by the vote.

I. miscellaneous

Also include in your notes anything you believe will be helpful in assisting the moderator during the meeting or that will be helpful to you in preparing the town meeting proceedings after the meeting. Such notes might include the following:

- ⇒ committee reports given although not required by the General Laws or bylaw and the name of the person giving the report
- ⇒ the name of the voter making a motion or amendment
- ⇒ points of order allowed by the moderator and his rulings on them, particularly if his ruling establishes a procedure not previously in use
- ⇒ the names of the various speakers under the article and a resume of what each said
- ⇒ a time record of each speech, particularly if there is a bylaw limiting the length of speeches - the moderator is responsible for enforcing the time limit, but he may ask for your help
- ⇒ the names of non-voters or non-residents who were given permission to address the hall, particularly if their comments are to be part of a committee report - if you have a bylaw requirement that non-voters must receive permission of the hall, the fact that the moderator asked for and received such permission should be noted.

F. AFTER THE MEETING

1. Issuing Certified Copies of Votes

If you have open town meeting, you should not issue any certified copies of votes until after the final adjournment, or dissolution, of the meeting. It is always possible that a particular vote may be reconsidered. However, if a vote has been reconsidered prior to the final adjournment, it cannot be reconsidered a second time; and, if necessary, that vote certificate might be issued.

If you have representative town meeting, your special act may provide for a referendum petition for certain kinds of votes, or it may specify that votes are not in effect until after a certain number of days following final adjournment. If so, vote certificates should not be issued until after the required time has expired.

Each vote certificate should include the type of town meeting, annual or special, the date on which the vote was taken, the article number, the exact wording of the motion voted and if counted, the number in favor and opposed. If the motion was voted “in the words of the article,” include the text of the article as well.

The following is a listing of those officers to whom certain vote certificates must be issued.

a. assessors and town accountant (if no town accountant, assessors and treasurer) [41:15A]

Issue a certificate of each vote appropriating money regardless of the source of funds; taxes (raise and appropriate); transfer, borrowing, other. Other might include such sources of revenue as a sewer enterprise fund. Your aim in certifying all monies is to provide an accurate record of what your town will spend for the next fiscal year, and where the money will come from. Although not required, you may also prepare and provide an appropriations chart in the form recommended by the Department of Revenue. Your treasurer would probably also appreciate having a copy.

b. treasurer of regional school district [71:16B; Chapter 51 of the Acts of 1984]

Issue a certificate of each vote concerning a regional school budget or appropriation to the treasurer of the regional school district within 7 days following the vote.

c. Debt Section, Dept. of Local Services

The Department of Revenue will send you an annual memo detailing the provisions of 44:28 and including the DA-82 Loan Authorization Report Form.

Each vote which authorizes occurrence of debt (long-term bonds, anticipation notes, etc.) must be reported **separately on its own DA-82 form, within 48 hours after the vote becomes effective.**

See the end of the chapter for a sample report. The form is fairly self-explanatory. If there are sections which do not apply to your town, just type in N/A (not applicable). You must include a certified copy of the warrant. The date of posting should be on the last page on the return of service. If mailing the warrant is required, the information can be obtained from your own records, if you are responsible for the mailing, or from the selectmen's records, if mailing the warrant is their responsibility.

You can get the date of the Finance Committee meeting from the meeting notice posted in your office. If the Finance Committee holds several meetings on articles, ask them to check their minutes to find out which dates certain articles were discussed. It is recommended that you send your submission(s) to the DOR by certified mail, return receipt requested, so you will have a record of timely filing.

d. State Secretary, Public Records Division/Commissions Section, One Ashburton Place, Room 1703, Boston, MA 02108 [4:4,5]

You are required to notify the state secretary of the acceptance or rescission of acceptance of a section of the General Laws or of a special act of the legislature relating to your town within 30 days after the vote becomes effective. This notice may be in the form of a letter which states the chapter and section of the General Laws, or chapter and year of the special act, together with the action taken. Or, you may send a certificate of each vote accepting or rescinding acceptance.

If a statute requires that action be taken by the town within a specified time period and no action is taken, you must notify the state secretary within 30 days after the expiration of the time period that no action has been taken.

e. county commissioners [82:18]

Issue a certificate of each vote altering, relocating or making repairs on a county road in your town and a certified copy of the record of final action relating to such road to the county

commissioners within 2 weeks after the final action has been taken. Final action in 82:18 with respect to alteration or relocation of a road means the acceptance by town meeting of the selectmen's layout so issuing the vote certificate alone is sufficient. However, final action with respect to road repairs means the order of the selectmen, so you should attach a certified copy of the selectmen's order to the vote certificate appropriating money for repairs. The provisions of 82:18 do not apply to town ways. If you are in doubt as to whether a road is a county road or a town way, contact your town engineer or town counsel.

f. Registry of Deeds for your county and Executive Office of Communities & Development, with their current address

Issue a certificate of each vote adopting or amending the official map to the Registry of Deeds and to the Division of Community Services of the Department of Community Affairs. You will also need to send a copy of the map to each of these places along with the certificate. It is suggested that you send the certificate and map by certified mail, return receipt requested, so that you will have a record of having complied with the law.

Note that there are detailed regulations governing the size, format, material, etc. of maps and plans which are to be recorded in registries of deeds in the Commonwealth. You will need the assistance of your town engineer and/or town counsel in preparing the copy to be recorded. Your town counsel may also assist you by taking care of the actual recording, but it is your responsibility to see that this is done.

For your information, a copy of the regulations of the Registries of Deeds is included at the end of the chapter.

Note: An official map may be changed following a vote to accept or discontinue a public way or to establish, enlarge or close a public park without a specific separate vote to amend the official map. [41:81H, 81J]. In these cases, the certificate to be issued and sent together with the amended map would relate to the vote on the public way or park.

Under certain circumstances [41:81F], a private way appearing on an official map may be modified or removed by the planning board acting in accordance with the procedures appearing in 41:81W (see Subdivision Control Law elsewhere in this manual). In these cases, check with your town counsel for procedures to follow.

g. Massachusetts Department of Public Works [90:34, 81:31]

Issue a certificate of each vote appropriating money for roads to the district office of the Massachusetts Department of Public Works for the district in which your town is located.

Appropriations for roads may be made entirely under the highway department budget. If so, issue a certified copy of that budget as voted by the town meeting including the line item details.

Appropriations for roads may also be made under separate articles in the warrant. Issue a certificate of the vote under each article.

h. Massachusetts Department of Public Utilities, 100 Cambridge St., Room 1210A, Boston, MA 02202 [164:37, 38, 68]

Issue a certificate of each vote related to the acquisition of a municipal electric or gas plant or community antenna television system to the Massachusetts Department of Public Utilities. [164:37]

If your town has authorized the acquisition of such a plant or system and subsequently votes to establish, purchase, reconstruct or extend it, or to issue bonds, notes or certificates of indebtedness on account thereof, or to regulate the management or conduct thereof, or to adopt a bylaw relative

thereto, a certified copy of such vote must be sent within 10 days after the vote. [164:38]. If the town votes to sell a plant or system, a certified copy of that vote should also be sent. [164:68]

Note: The penalty on the town clerk for failing to comply with sections 37 and 38 is not more than \$25 [164:39]

It is suggested that you send the certificate by certified mail, return receipt requested, so that you will have a record of having complied with the law.

i. as directed by bylaws, charter or town meeting votes

Issue a certificate of each vote as directed by your bylaws, charter or by a town meeting vote. For example, your bylaws or charter may require that a vote certificate be sent to each board or committee which may be affected by that vote. They may require that a vote certificate be sent to the appointing authority, for each vote establishing, enlarging or decreasing a board or committee.

The vote under a particular article may include a directive that you issue a vote certificate to a particular individual or committee. Often the vote under a memorial resolution will direct that you send a certified copy of the resolution to members of the deceased's family.

j. as requested by town officers, committees or the general public

From time to time you will undoubtedly be requested by town officers, committees or by the general public to issue certified copies of votes relating to specific articles. These requests may relate to votes recently taken or votes taken years ago.

The certificates may be prepared as each request is received. Or, you may save yourself time in the long run, if you prepare certificates for all votes during or shortly after each town meeting, keeping the original unsigned certificate in your files. As each request is received, you need only pull the appropriate certificate from your file and make a copy. Sign, seal and issue the copy. Do not sign the original certificate you plan to keep in the file as a photocopy of your signature is not a valid certification.

2. By laws

a. submission to the Attorney General [40:32; 40A:5: 40C:3,4]

Within 30 days after the final adjournment of a town meeting, you must submit all new bylaws and amendments voted by the meeting to the attorney general for his approval. If you do not act within the 30 days, the selectmen may make the submission. [Chapter 38 of the Acts of 1981].

You must include in your submission proof that all procedures required by the General Laws and by your bylaws or charter have been satisfied. Since the statutory time limit is rather short, it is suggested that you start collecting the needed material well before town meeting begins.

Since the timing of various events leading up to town meeting is critical and a fairly large number of papers and certifications are required, the Department of Community Affairs has prepared a chart relating to zoning bylaw amendments.

The attorney general must approve the bylaw amendments within 90 days of the receipt of submission, unless he has requested additional proof. If he takes no action on the submission within the 90 day period, the bylaw amendments take effect "by reason of the failure of the Attorney General to seasonably act." If he disapproves a bylaw amendment, he must notify you and state his reasons for disapproval.

The Attorney General's Office has a packet available which will guide you through the process of submitting bylaws. Submit only the necessary pages.

It is suggested that you send your submission by certified mail, return receipt requested, so that you will have proof of the date of submission and the date received by the attorney general.

(1) general bylaws [40:32]

For adoption of or amendments to the general bylaws, the following must be submitted:

- - a certificate of each vote taken which amended the main motion under the article
- - **two** certificates of each final vote taken under the article with all amendments incorporated within the final text. The vote amending and the final vote may be included in one certificate provided the action taken is clear. A majority vote only is required to amend a General Bylaw, but if the final vote was counted, include the count in the certificate. (Sample certificate to follow).

In addition, the following will need to be submitted as proof that the required procedures were followed:

- ⇒ - a certified copy of the call of the meeting showing the date and place of the meeting, the closing of the warrant showing the manner in which service was ordered, the date the warrant was issued and the persons who issued it (the selectmen except under unusual circumstances) and the officer's return showing the date of service and posting.
- ⇒ - simply make a copy of the appropriate sections of the warrant containing the original signatures of the selectmen and the officer who posted it. Attest each page as a true copy, add your signature and the town seal. (See sample closing and officer's return at end of this section).
- ⇒ - your certificate that the service of the warrant was in accordance with the town's bylaws or vote of the town, and that any adjournments of the town meeting met all notice requirements of the bylaws or town meeting votes. If you have a quorum requirement, include in the certificate that the quorum requirement was met and that a quorum was present at all sessions of the meeting at which bylaw amendments were voted. (See sample at end of this section).
- ⇒ - a certified copy of each bylaw amendment article as it appeared in the warrant including any material referred to by reference in the article such as maps, plans, fee schedules, etc. If the warrant is fairly short, you may include a certified copy of the entire warrant, and you will not need to include a separate certified copy of the call of the meeting, the close of the warrant and the officer's return.

If, however, the warrant is fairly long, include only those articles which relate to bylaw amendments, certifying each page. In this case, it is suggested that you type at the top of each page "(year) Annual Town Meeting Warrant, Town of (name)" or "(date) Special Town Meeting Warrant, Town of (name)." This will specify the warrant from which the pages were taken in case they become separated from the rest of the submission.

If the substance of the bylaw being amended is not clear from the language of the warrant article, include a copy of the text of the bylaw section as in effect just prior to amendment. If you are submitting a large number of amendments, it may be helpful to the Attorney General if you include a certified copy of the entire bylaws.

Note: You do not need to submit amendments of the personnel bylaw to the attorney general since these are specifically exempted from such submission. [41:108C]

(2) zoning bylaws [40A:5]

For adoption of or amendments to the zoning bylaws, you will need to submit all of the items listed above under (1) general bylaws. However, the final vote under a zoning bylaw amendment must be at least 2/3rds rather than a majority. Your certificates of final vote must include the count in favor and opposed, or be stated as unanimously voted.

The following additional items must be included in your submission:

- ⇒ - **two** certified copies of the zoning map, not larger than 24" x 36" and preferably smaller with the proposed changes outlined in color and the article number noted. If, however, none of the amendments being submitted relate to changes in zoning districts, a map need not be submitted. (See sample zoning map at end of this section).
- ⇒ - a certified copy of the notice of the public hearing on the proposed changes held by the planning board, or by the selectmen if there is no planning board. (see 41:81A) The hearing notice must be posted in a conspicuous place in the town hall at least 14 days prior to the hearing. It must also be published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than 14 days prior to the hearing. The notice must include the time and place of the hearing and the subject matter to be heard, correlated to the article numbers under which they are to be voted. The full text of the articles does not need to be included in the notice, but the place where the full text and any related maps or plans may be seen must be stated. The notice must also include the name of the newspaper and the dates published. Obtain a copy of the hearing notice at the time it is posted and note the date of receipt and posting so that you may be sure that this requirement has been met and so that you may make a certified copy to include with your submission. Also, obtain a news clip of the hearing notice from both editions of the newspaper showing name of the paper and publication date. Include a copy of these in your submission to prove the publication requirement was met.
- ⇒ - a certified copy of the material referred to by reference in the published hearing notice, such as maps or plans of proposed zoning districts. If these were printed in the warrant, the certified copy of the appropriate warrant pages may cover this requirement.
- ⇒ - a certificate prepared and signed by the planning board, or the planning board clerk, that notice of the hearing was mailed to the Department of Community Affairs, the regional planning agency and the planning boards of all the abutting cities and towns. If your zoning bylaw requires the hearing notice to be mailed to any non-resident property owner who has filed such a request with the town clerk, the certificate should include a statement that this has been done.
- ⇒ - a certified copy of the planning board's written report on each zoning bylaw amendment signed by the members of the board. Include your statement as to whether or not the report was presented at town meeting and how the report was presented, orally or in writing. If the planning board reports are included in the warrant, a certified copy of the appropriate warrant pages may cover this requirement. (See sample report at end of section).
- ⇒ - If there was no written report, include a summary of the oral report made by the planning board at the meeting. Your summary may simply be that the planning board recommended approval of Article #. If the planning board made no written or oral report, include a statement to that effect.

Note: If 21 days have elapsed from the date of the hearing to the date on which the article was passed, no planning board report is required.

- ⇒ - your certificate as to the members of the planning board. Include your statement that the planning board members were duly elected and sworn at the time of the public hearing and at the time the amendments were voted. This information is available from your own election records and your records of oaths administered. (See sample certificate at end of this section)
- ⇒ - a copy of any additional statement explaining the bylaw or changes proposed which may also include explanatory maps or plans. These statements may have been included as part of the planning board reports or may have been prepared by town counsel or someone else and included in the warrant.

While it is the planning board's responsibility to comply with many of the procedural requirements related to zoning bylaw amendments, such as posting and publishing hearing notices, preparing the certificate of mailing notice and making reports at town meeting, you are required to prove to the attorney general that it has done so. Your timely gentle reminder to the planning board would not be out of order.

(3) historic district by laws [40c:3,4]

The adoption of, or amendment to, historic district bylaws must also be submitted to the attorney general for approval and this submission must include several items: certified copies of the preliminary report; evidence that the report was submitted to the Mass Historical Commission and planning board; notice of the public hearing; final report including committee's recommendations; map of proposed district and proposed bylaw.

Since there are over 100 towns which have adopted historic district bylaws, their submission has not been covered in detail in this manual. It is suggested that you refer to the material related to bylaw submissions prepared by the attorney general's office, amended 1991, which you may have in your files, or contact his office directly for assistance, if you are not sure of the requirements. Also the Massachusetts Historical Commission should be contacted if you are interested in creating a local historic district - they can assist in answering your questions and they have a guidebook for the creation of them.

b. publishing/posting bylaws [40:32]

After you have received notification from the attorney general of his approval of bylaw amendments, they must be published prior to becoming effective. There are three methods by which this may be done, but you are required to use only one of the three. Your bylaws or charter may specify which of the methods you must use.

(1) newspaper publication

A copy of each amendment to the bylaws may be published at least twice in a newspaper of general circulation in your town. The two publications must be at least one week apart.

If you use this method, it is suggested that you retain in your files a clipping of each newspaper publication showing the name of the paper and the date as proof that you have complied with the law.

(2) pamphlet or bulletin

A copy of each amendment may be put together in a pamphlet or bulletin. This pamphlet may consist of stapled photocopies of the certificates of final vote under each article.

If the town is divided into precincts the pamphlet must be posted in at least one public place in each precinct. In all towns, the pamphlet must be posted in at least five public places.

If you use this method, it is suggested that you prepare a statement that the bylaw amendment has been posted, including the date and places of posting. Have the person who did the posting sign the statement and retain it in your files. This will provide a record that you have complied with the law. (See sample at end of this chapter).

(3) delivery to each household

A copy of each amendment may be delivered to each occupied dwelling or apartment in the town. If this method is used, you do not need to publish in a newspaper or post a bylaw pamphlet. In this case, the law provides that affidavits of the persons delivering the copies, filed with the town clerk, shall be conclusive evidence that proper notice was given. You should obtain and file these affidavits.

Regardless of which of the above specific methods of publication you use, you should include in the publication a statement notifying the public of the appeal periods and other requirements for making claims of invalidity of the amendments, and that copies of the bylaws may be examined or obtained at your office. You may also include the date of the planning board hearing on zoning bylaw amendments. (See sample notice at end of this chapter)

If the attorney general did not take action on your bylaw submission within the 90 day time period, add a note to this effect on your pamphlet or newspaper publication. Start counting the 90 days from the date of receipt by the attorney general which will appear on the return receipt from your mailing to him. You might wish to contact the attorney general's office a few days prior to the expiration of the 90 day period to see if he is planning to send his approval.

Also make a record of the fact that the bylaws have become effective by reason of the failure of the attorney general to act within the 90 days. This record can be a statement to that effect signed by you and placed in your files.

c. effective date

Bylaw amendments become effective on the following dates:

(1) general bylaws - on the date of the second newspaper publication, the date of posting the bylaw pamphlet, or the date of delivery to each household depending upon which of these methods you use for publications. [40:32]

(2) zoning bylaws - on the date on which the bylaw or amendment was adopted by the town meeting, provided that the bylaw or amendment was subsequently approved by the attorney general and published, posted or delivered. That is, on the date of publication, posting or delivery the effective date is retroactive to the date town meeting voted. [40A:5]

(3) historic districts bylaws - after the bylaw or amendment has been approved by the attorney general, published, and a copy of the historic district map has been filed with the town clerk and recorded in the Registry of Deeds. [40C:3]

d. transmittal of copies of bylaws

After a bylaw or amendment has become effective and the appeal period has expired, a copy of the latest zoning bylaw must be transmitted to the Department of Housing & Community Affairs, 100 Cambridge Street - 18th Fl., Boston, MA 02108 [40A:5]

A copy of the latest effective historic district bylaw must be transmitted, together with a copy of the historic district map, the annual report of the historic district map, the annual report of the historic district commission and a roster of the HDC membership to the Massachusetts Historical Commission, 220 Morrissey Boulevard, Boston, MA 02125 [40C:15]

In addition, the various town boards and committees which may be affected by a particular bylaw will appreciate being furnished with a copy after it becomes effective. The planning board and the board of appeals will need a copy of any zoning bylaw amendments.

e. permanent records

Bylaws and their amendments, including the approval or disapproval of the attorney general, are permanent records of the town and therefore should be carefully kept and preserved. (State retention schedule, #2.46)

It is suggested that you keep a copy of the back-up material submitted to the attorney general and your proof of compliance with publication requirements together with the bylaw amendments.

f. updating and publishing bylaws

Since the town clerk is responsible for obtaining attorney general approval of all bylaw amendments and is the custodian of bylaw records, many clerks also prepare and provide updated bylaws and, from time to time, publish bylaw booklets. However, in some towns, compiling bylaw booklets is the responsibility of the building commission or department, the planning board or some other official.

The General Laws specify that a town may publish, distribute or sell compilations of zoning bylaws and amendments certified by the town clerk and effective as of a specified date. [40:32B] Under this section of the General Laws, the town clerk may be the person who is to arrange for the distribution and sale of bylaws and the price is not to exceed the estimated cost of preparation, publication, distribution and sale.

Between reprints of the bylaw booklets, the bylaws should be kept up to date. This may be done in several ways and the method used may depend to a large extent upon the time and money available to the town clerk, or to the person who is responsible for updating bylaws. You may simply make extra copies of the bylaw vote certificates, noting on them the date of attorney general approval and the effective date. Include a set of these vote certificates with each bylaw booklet.

Or, you may prepare the text of each amended bylaw section, incorporating the amendment within the text. Note the effective date of each section and distribute a set of these new sections with each bylaw booklet. Be sure that the section of the bylaw is clearly identified.

If your bylaws are printed in loose leaf form, you may prepare a new page including the new wording of the sections appearing on it and substitute it for the old page. The new pages can be substituted for old pages where necessary in the printed bylaws, or handed out as a package with the appropriate instructions for substituting pages. If you note at the top of each new page the date it was prepared, you will know which pages include the amendments of any given year. Or, you might prepare each set of new pages on colored paper, a different color for each year or meeting.

g. printing bylaw booklets [40:5(6), 32B; 40A:4]

Towns may appropriate money for printing and publishing town records, including bylaws. [40:5(6)] If you are responsible for printing bylaws, you will need to initiate the request for funds at such times as a new printing is needed, either by including funds in your budget or by submitting a warrant article.

Generally, bylaw booklets contain the general bylaws and the zoning bylaws, although the zoning bylaws are sometimes printed in a separate booklet as more requests will usually be received for zoning bylaws alone than for the entire bylaws.

If your town is divided into different types of zoning districts the zoning map must be prepared showing the districts and this map must be part of the zoning bylaw. If more than four sheets are used for the zoning map, an index map must be included. [40A:4]

Zoning maps may also identify historical or architectural districts for which special permits or certificates may be required, certified historic landmarks or places, land publicly owned, designated as wetlands or subject to wetlands regulations, land subject to conservation or preservation restrictions, etc. [40:32B]

Bylaw booklets may also include traffic rules and orders even though these may have been adopted by vote of the selectmen and not as a bylaw, subdivision control regulations adopted by the planning board, public health and other land use control and environmental quality laws and orders, etc. [40:32B]

If your town does not have a written charter, you may include for reference at the end of the bylaw booklet a listing of the special acts and sections of the General Laws accepted by your town. (See 43B:12)

3. Town Meeting Proceedings

The town meeting proceedings are the minutes of town meeting and are the record required to be made and kept by the town clerk. Since the proceedings are very important permanent records, archival quality minute book paper should be used. They should also be bound in a durable binding. [state retention schedule, #2.69]

The details of what is included and the particular format used is largely a matter of the personal preference of the town clerk and may depend somewhat upon the custom of your town and the money and staff available to you. There are, however, certain items which should be included in the proceedings to provide an adequate record of the meeting.

Include sufficient statements to prove that the meeting was legally called, convened and conducted its business and that the voters were legally notified of the meeting. (see items under Section E2)

Also include the exact text of all motions and amendments to motions which were voted by the meeting and the vote as declared by the moderator. Include at least the article number for each vote related to an article.

If you hold the annual town election under Article 1 of the warrant, the election results, including the names of all candidates, the votes received by each and the blanks cast for each office should be included. Many town clerks include the annual town election results even though the election is held separately from the annual business meeting.

At the end of the proceedings, add your attestation as follows:

A true copy, attest:

Your signature

Town Clerk

You may wish to include the following in the proceedings:

- ◆ the text of the article as it appeared in the warrant, or a summary of its purpose - the motion voted under an article is sometimes different from the wording of the article itself and having both in the proceedings avoids the necessity of using two separate documents for reference.
- ◆ announcements made by the moderator which pertain to the conduct of the meeting, particularly if a new procedure was instituted, such as a requirement for written motions or a time limit on speeches
- ◆ points of order allowed by the moderator and his rulings on them, particularly if related to new procedures or if his ruling is different from previous customary practices
- ◆ that a required committee report was presented and the text of the report - the various committee reports may or may not be filed in your office, and if not, they may be lost after several years.
- ◆ the name of the person making motions, amendments or reports - you may include a summary of the voter's reasons for proposing an amendment, but extreme care should be used in summarizing any such statements to be sure that they accurately reflect the voter's position
- ◆ a subject index - preparing an index may take considerable time, but it will save you many hours later in answering questions and finding particular votes
- ◆ whatever else you believe to be of importance to establish an historic record of town meetings or to give necessary information to town officials and citizens

The town meeting proceedings must be an accurate record of what actually happened at the meeting. Your record of the meeting cannot be attacked in court and cannot be corrected except by you while you hold office as town clerk. Corrections of a town meeting proceedings should be made only after you have obtained substantial evidence that you have made an error, not simply at the request or insistence of an individual or town official.

Before you start preparing your first town meeting proceedings, it is suggested that you read over the proceedings of several of your predecessors to get an idea of the language and format used by former clerks in your town. However, it will be entirely up to you to decide whether to continue the tradition of former clerks or to develop your own style. **The General Laws require only that you record all votes passed at town meeting. [41:15]**

4. Cross-Indexed Card File of Town Meeting Actions

Many town clerks have developed a cross-indexed card file of town meeting actions primarily because of the large number of requests regularly received for information relating to those actions. Unless you have been in office for many years and have an usually good memory, many hours can be spent searching through past proceedings trying to answer such questions. [see sample index cards at end of this chapter.]

II. PROPRIETORS' MEETINGS

A. GENERAL

The town clerk does not generally become involved in proprietors' meetings as the proprietors themselves call and conduct their own meetings under the provisions of the General Laws. However, the proprietors of private ways and bridges, but no other proprietors, may request the town clerk to issue a warrant calling a proprietors' meeting. [84:12]

B. PROCEDURE [84:12]

1. Request for the Meeting

There must be four or more proprietors and rightful occupants of a private way or bridge and at least three of them must make application in writing. The application may be made to the clerk of the district court, a justice of the peace, or to the clerk of the town in which the private way or bridge is located.

2. Warrant

Upon receipt of a written application, you may issue a warrant to call a proprietors' meeting. **Note:** This section permits, but does not require, you to issue a warrant. The warrant must state the time, place and purpose of the meeting. It is suggested that you follow the format used in the call of the town meeting warrant.

3. Posting the Warrant

The warrant is required to be posted in at least one public place in the town in which the private way or bridge is located. Additional postings are not required but may be advisable depending upon the particular circumstances. A warrant should be posted in locations likely to be seen by the proprietors.

The warrant must be posted seven days at least before the time appointed for the meeting.

The General Laws do not specify who must post the warrant. Presumably it can be posted either by the town clerk or by a constable as requested by the town clerk. It is suggested that a formal return of service, similar to that appearing at the end of a town meeting warrant, be attached and signed.

After issuing the warrant, the town clerk has no further duties with respect to the proprietors' meeting.

III. OPEN MEETING LAW

A. GENERAL

The open meeting law is the name generally used to refer to Chapter 39, sections 23A, 23B and 23C of the General Laws. These sections regulate the meetings of town boards and committees, regional school district committees and other regional or district governmental bodies. Meetings are required to be open to the public except under certain specified circumstances when an executive session or closed meeting is allowed. The law also has specific provisions with respect to notices of meeting.

Under the open meeting law, town clerks have two specific duties to perform, one with respect to meeting notices and the other with respect to providing copies of the law to members of town boards and committees. The enforcement of the open meeting law on the local level is with the local District Attorney. If you have any procedural questions regarding the conduct of meetings it is your local D.A.

B. MEETING NOTICES [39:23B]

1. Regular and Special Meetings

A notice of every meeting of a governmental body must be filed with the town clerk. The notice must state the date, time and place of the meeting. The notice, or a copy of it, must be posted, at least 48 hours prior to the meeting, in the town clerk's office or on the principal official bulletin board of the town. In calculating the 48 hour period prior to a meeting, Saturdays should be included, but Sundays and legal holidays should be excluded. For example, a notice for a meeting to be held on Monday at 8 P.M. must be posted on the preceding Friday, not later than 8 P.M. Saturday would be included in the calculation even though your office may not be open for business on that day.

2. Emergency Meetings

The filing and posting requirements for meeting notices do not apply to emergency meetings. Emergency is defined in 39:23A as "a sudden, generally unexpected occurrence or set of circumstances demanding immediate action." For example, a meeting of the board of health to take action with respect to a matter endangering the public health due to a sudden flooding of an area, would be considered an emergency meeting. A meeting simply called in a hurry to take action prior to the expiration of a deadline would not qualify as an emergency meeting.

3. Executive Session Meeting

No executive session (a meeting closed to the public) may be held until the governmental body has convened in an open session for which notice has been given and a majority of its members have voted to go into executive session. The procedures to be followed and the purposes for which an executive session may be held are specified in 39:23B.

Since an open meeting is required prior to voting to convene an executive session, you should receive, file and post a notice of the meeting as you would for a regular meeting. The intent to convene an executive session is not required to be stated in the meeting notice, although it usually is.

4. Blanket Notice

It is fairly common practice to post a notice covering all the boards, committees and commissions which have regularly scheduled meetings. Such a notice would be in a form similar to the following:

REGULAR MEETINGS OF TOWN BOARDS, COMMITTEES & COMMISSION

| | | | |
|---------------------|-------------|----------------------|----------|
| Aging, Council on | Flynn Bldg. | 1st Monday | 10:00 AM |
| Assessors, Board of | Town Hall | 1st & 3rd Mondays | 8:00 PM |
| Conservation Comm. | Flynn Bldg. | 2nd & 4th Wednesdays | 8:00 PM |
| Finance Committee | Flynn Bldg. | 1st & 4th Thursdays | 8:00 PM |

If this form is used for all regularly scheduled meetings, you should be sure that it is kept up to date and that you have filed a copy of each revision.

A board or committee should file with you a notice of cancellation of any regularly scheduled meeting and should file a separate notice of any special meeting not covered by the general listing.

Terms such as alternate Wednesdays should be avoided on a blanket notice as these do not give the public enough information to be certain of the dates of the meetings in any given month.

Before recommending to your boards or committees that the blanket notice be used for compliance with the open meeting law, it is suggested that you check with your town counsel. In many towns, the blanket notice is used to provide general information to the public rather than for compliance with the law and the blanket notice has not yet been tested in court in connection with a complaint against a board or committee.

5. Receiving and Filing Notices

Ordinarily, the secretary or chairman of a town board or committee should either mail or deliver to you in person the notice of the meeting. If the notice is delivered, it is suggested that you ask the person delivering it to be certain it is handed to you or to one of your staff members rather than being left on an unattended desk or counter where it might be lost or misplaced.

If timing is short prior to the deadline for filing and posting, you may accept a notice by telephone for a board or committee. In this case, you would type the notice and post it. It is suggested that you add to the notice the following: "Per telephone call from (name) on (date)."

The secretary of a regional school district committee is required to file a notice of committee meetings with the clerk of each city or town within the district. The officer calling a meeting of a regional or district governmental body, such as a fire district, must file a notice of the meeting with the clerk of each city or town within the region or district. Usually, you will receive these notices in the mail.

Time stamp each notice as soon as it is received. If you do not have a time stamp, note on the notice the date and time received and add your initials. Make a copy of the notice for posting. You may request that the boards and committees provide you with two copies of each notice to save you the time and work of making a copy.

You should keep on file each notice of a meeting that you receive. You may be asked, either by the public or by a board or committee, to show that the notice requirements of the open meeting law have been met. Since the Supreme Judicial or Superior Court may invalidate any action of a board or committee taken at a meeting if the open meeting law has been violated, it is particularly important that your file of meeting notices is properly maintained.

The specific arrangement of your file will depend upon the number of notices you ordinarily receive during the course of a year. If you receive a very large number of notices, arranging them

alphabetically by name of the board or committee and in order by meeting date under each board or committee, will make it easy to find the notice of a particular meeting. If you receive a relatively small number of notices, arranging them in order by receipt date or meeting date will be sufficient.

You are required to keep notices of meeting for one year if no litigation is pending. [state retention schedule #2.59]. If litigation is pending, notices should be kept for a longer period, at least until the litigation has been completed. Also you should not destroy them if there is an outstanding public records request for a notice.

6. Posting Meeting Notices

All notices of meetings, or cancellations of meetings, must be posted either in the town clerk's office, or on the principal official bulletin board of the town.

The town clerk is specifically required to post only those notices received from the secretary of a regional school district or from the officer of a regional or district governmental body. Technically, each board or committee of the town is responsible for posting a notice of its meetings. However, many town clerks take care of posting the notices particularly if they are posted in the clerk's office rather than on a principal official bulletin board of the town.

With respect to notices you or your staff member personally post, note on the file copy the date of posting. This will provide proof that the notice was not only filed but also posted in case a question of compliance with the notice requirements of the open meeting law is raised at a later time.

Each meeting notice should remain posted on the bulletin board until after the meeting to which it relates has taken place. You need not keep the copy of the notice which was posted as you will have the original notice in your files.

If you post notices in your office, you should periodically clear the bulletin board of notices no longer required. The town clerk also often takes care of clearing the principal official bulletin board of the town, but this is not a required duty.

C. PROVIDING COPIES OF OPEN MEETING LAW [39:23B]

The town clerk is required to furnish a copy of the open meeting law to each person appointed or elected to a governmental body upon his being qualified. A person is qualified by taking the oath to faithfully perform his duties as a member of a board or committee.

You are technically required to furnish a copy of section 23B only. However, sections 23A and 23C are directly related to meetings of boards and committees and would be helpful to the members. You may also include a copy of 66:5A which relates to records to be kept by boards and committees under the open meeting law.

Since many, if not most, of the board and committee members will come to you to take the oath, a convenient method of distributing the open meeting law is to give it to each individual to whom you administer the oath. However, you will have to mail, or otherwise distribute, a copy to any committee member who is sworn in elsewhere.

You are also required to obtain a signed acknowledgment from the board or committee member that he has been furnished with a copy of the open meeting law. A simple form may be made up for this acknowledgment as follows:

TO: Town Clerk

DATE:

This is to acknowledge that I have received a copy of Chapter 39, Sections 23A, 23B, and 23C of the General Laws, the open meeting law.

Signature

Printed Name

Board/Committee

This signed acknowledgment should be kept on file in your office as proof that you have complied with this provision of the law. Keep the acknowledgment as long as the person who signed it remains on the board or committee.

A convenient method to use to keep track of copies furnished and received is an index card file arranged alphabetically by committee name or by individual's name. (This can also be done by adding a field relative to receipt of acknowledgment on an appointments database and reports created in either way).

A card could be arranged in the following form:

| | |
|-------------------------|---------------------|
| OPEN MEETING LAW | |
| NAME: _____ | |
| ADDRESS: _____ | |
| Date Sent: _____ | Receipt Ret'd _____ |
| COMMITTEE: _____ | |
| Appointed: _____ | |

Or you may provide a column in your appointment or (swear-in) book in which to record this information along with the record of appointments.

You should be sure to revise the copies of the open meeting law to include any amendments as they are passed by the General Court. You do not need to send an updated copy to each individual to whom you have already furnished the open meeting law. However, the chairman of each board or committee should receive information concerning any new provisions.

The definition of a governmental body appears under 39:23A as follows: "every board, commission, committee or subcommittee of any district, city, region or town, however elected, appointed or otherwise constituted, and the governing board of any local housing, redevelopment or similar authority." This broad definition covers almost every board or committee in existence in a town including study committees, advisory committees and subcommittees appointed by a town board or committee. Therefore, as a general rule, you should furnish a copy of the open meeting law to all members of any and all committees of the town. However, members of the police or fire forces, elected officials such as the treasurer and tax collector, who are not members of a board or committee and therefore would not be holding a meeting, would not need to be furnished with a copy of the law.

If you are in doubt as to whether or not you are required to furnish a copy of the law to a member of a particular committee, such as an ad hoc committee, informal study committee or a regional or district committee, it is suggested that you furnish the copy and get the acknowledgment unless your town counsel advises you that it is not necessary.

You should also become familiar with the provisions of the open meeting law yourself as you will undoubtedly be asked many questions, by both the public and by committee members, about the requirements for open meetings and for notices of meetings. However, questions concerning whether or not a particular subject may properly be discussed and decided in executive session should be referred to town counsel. **NEVER** attempt to answer these questions yourself.

SAMPLE FORMS

SAMPLE WARRANT CLOSING

And you are required to serve this warrant by posting attested printed copies thereof at the Town Hall and such other places as the Selectmen deem appropriate, but not less than three in each precinct, and not less than a total of twelve in the Town at least seven (fourteen) days before the time appointed for such meeting.

Hereof fail not and make due return of this warrant by your doing thereon to the Town Clerk, at or before the time of the meeting aforesaid.

Given under our hands this third day of March, one thousand nine hundred and ninety-eight.

Signature _____

Signature _____

Signature _____

SELECTMEN OF [TOWN]

SAMPLE CONSTABLE’S OR OFFICER’S RETURN OF SERVICE

Town:
County, ss.

Date:

On the date above written, I have served this warrant by posting attested printed copies thereof at the Town Hall and such other places as the Selectmen deem appropriate, but not less than three in each precinct, and not less than a total of twelve in the town. [Specific places of posting may be listed.]

Signature _____

Constable, Town of [Name]

FORM FOR PETITION TO CALL A SPECIAL TOWN MEETING - is available from the State
Secretary

SAMPLE QUORUM CERTIFICATE

This is to certify that the quorum for the Annual [Special] Town meeting called for April 3, 19__ is
____(number of) registered voters of the town, that number being __% of the total number of voters
as required by Article____, Section __ of the Town Bylaws [Town Charter].

TOWN SEAL

Town Clerk & Clerk to Board of Registrars

SAMPLE VOTE TO DISPENSE WITH READING CALL OF MEETING, ETC.

UNANIMOUSLY VOTED: To dispense with the reading of the call of the meeting and the officers' return of service and to waive [or dispense with] the reading of the separate articles of the Warrant.

=====

SAMPLE CERTIFICATE OF MAILING WARRANT

(Do on Letterhead Paper)

Date: _____

This is to certify that on March 14, 19__, a copy of the Warrant for the Annual Town Meeting to be held on April 3, 19__ was mailed to each household [town meeting member] in the Town in accordance with Article ____, Section __ of the Town Bylaws (Town Charter).

TOWN SEAL

Town Clerk

=====

CERTIFIED COPY OF VOTE

[On letterhead or plain paper]

At a legal meeting of the qualified voters of the **TOWN OF** _____, held on _____, 19____, the following business was transacted under Article _____.

AMENDMENT VOTED: To amend by striking out in the last sentence under Section _____, the words “_____”.

AMENDMENT VOTED: To amend following the words “_____” by adding “_____”.

VOTED: That the town amend Article _____, Section _____ of the bylaws, entitled, “_____” by deleting Section _____ and substituting therefor a new Section _____ as set forth in Article _____ of the warrant for this meeting, except striking out in the last sentence under Section _____ the words “_____” and adding the words “_____”.

In favor: _____ votes: Opposed: _____ votes

TOWN SEAL

A true copy, Attest:

Your signature
Your name typed, Town Clerk

NOTE: Since the text of the new bylaw section is not included in the vote shown above, a copy of the article should be attached to the certificate when it is issued so that the person receiving it will have the full text of what was voted.

VERIFICATION OF ATTENDANCE OF TOWN MEETING

Date: _____

TO WHOM IT MAY CONCERN:

This is to verify that _____
(name)
was in attendance at the _____
(annual/special)
Town Meeting held _____ to _____
(time) (time)
on _____ at the _____.
(date) (place)

The purpose of this meeting was to receive a decision
on the articles from the town's registered voters.

Town Clerk

(TOWN SEAL)

DA-82 LOAN AUTHORIZATION REPORT FORM

Town/District: _____

INFORMATION CONCERNING ANNUAL/SPECIAL MEETING CALLED FOR _____
_____, 19__.

Article _____ passed on _____, 19__ authorizing a loan of \$ _____
for _____

ATTESTED COPY OF WARRANT:

Posted: Date: _____ Places* _____

Published in newspaper: Date(s): _____

Warrant or notice mailed: Date _____

To whom: _____

Additional Notification Requirements: _____ Were these met? _____

VOTE COUNT (Unanimous OR Actual Vote Count): _____

PLEASE ATTACH CERTIFIED COPY OF THE VOTE AS PASSED
PLEASE ALSO ATTACH RESULTS OF DEBT EXCLUSION VOTE, IF ANY

SPECIAL REQUIREMENTS FOR ADJOURNED SESSION:

Warrant or notice of adjournment:

Posted: Date _____ Places* _____

Published: Date(s) _____ Mailed: Date _____

Additional Requirements _____ Were they met? _____

QUORUM:

Number or percentage required: _____ Was quorum present? _____

Finance/Advisory Committee meeting posted: Date _____

If vote subject to referendum, were requirements met? _____

Is litigation pending which would affect the validity of this vote? _____

I hereby certify that this information is correct
to the best of my knowledge,

Town or District Clerk

*If Places are Specified by By-Law or Vote, list actual places posted.

Debt Section, Division of Local Services, P.O. Box 9655, Boston, MA 102114-9655
Tel: (617) 727-2300 ext. 509 or 510 Fax: (617) 727-643\

REGULATIONS FOR RECORDING AT REGISTRIES OF DEEDS

- ⇒ 1. Plan sizes shall be a minimum of 8 1/2" x 11" and a maximum of 24" x 36".
- ⇒ 2. Plans being presented for recording shall be on linen or polyester film, single matte with a thickness of .004 mils, and must have an opacity so as to allow consistent diazo and microfilm reproduction.
- ⇒ 3. All plans shall be prepared using compatible ink with excellent cohesiveness which will produce a permanent bond and result in a plan with long term durability.
- ⇒ 4. Linen or polyester reproductions shall be accepted for recording provided they contain original signatures and comply with the other requirements for the recording of plans.
- ⇒ 5. Each plan shall have 3/4" borders.
- ⇒ 6. The minimum letter size on the plans presented for recording shall be 1/8".
- ⇒ 7. Each plan presented for recording shall include a graphic scale.
- ⇒ 8. Each plan shall have an area reserved to receive Planning Board recitation or contain a surveyor's certification as per Chapter 380, Acts of 1966.
- ⇒ 9. Each plan shall have a 3 1/2" square reserved for Registry use.
- ⇒ 10. Each plan must contain a certification clause signed by the preparer stating that he/she has conformed with the rules and regulations of the Registers of Deeds in preparing the plan.

SAMPLE CERTIFICATE OF COMPLIANCE WITH BYLAWS

[Letterhead Paper]

Date: _____

I, hereby certify that on _____ 19____, notice of the Annual Town Meeting of _____ 19____, was given to the citizens of the town by posting printed attested copies of the Official Warrant, stating the time and place of the meeting and the subjects to be acted upon thereat, by a duly elected and sworn Constable of the town (or officer designated by the Selectmen) in compliance with Article____, Section____of the Town Bylaws.

I hereby further certify that a quorum was present at the Annual Town Meeting of _____, 19____, and at all adjourned sessions thereof at which action was taken under articles appearing in the Warrant for said meeting.

I hereby further certify that under Article____, Section____, of the Town Bylaws a quorum consists of _____registered voters of the Town.

I hereby further certify that the requirements of Article____, Section____of the Town Bylaws relative to adjourned sessions of the Annual Town Meeting were complied with.

[TOWN SEAL]

Your signature
Town Clerk

SAMPLE TOWN CLERK'S CERTIFICATE RE PLANNING BOARD MEMBERS

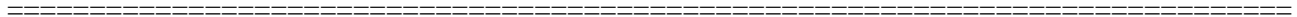
[Letterhead Paper]

Date: _____

I, hereby certify that the persons, with the exception of [name], whose signatures appear on the Planning Board Report submitted herewith re Article____, were duly elected and sworn members of the Planning Board at the time of the Public Hearing on _____, 19____, and that the persons whose signatures appear on the Report, including [name] were duly elected/appointed and sworn members of the Planning Board during all sessions of the _____Annual Town Meeting.

[TOWN SEAL]

Your signature
Town Clerk



SAMPLE STATEMENT OF POSTING BYLAW AMENDMENTS

Date: _____

On the date above written, I have posted copies of the bylaw amendments passed at the _____Annual Town Meeting and approved by the Attorney General of Massachusetts on _____,19____, at the following public places in the town: _____

Signature of person who posted

SAMPLE NOTICE RE CLAIMS OF INVALIDITY OF BYLAWS

[Letterhead Paper]

NOTICE

Massachusetts General Laws, Chapter 40, Section 32 as amended, requires that the foregoing publication include the following information:

Claims of invalidity of the foregoing amendments to the Zoning Bylaws, by reason of any defects in the procedure of adoption, may only be made within ninety days after the 2nd publication of Zoning Bylaw changes, said date being (insert date).

Copies of amendments to the Bylaws may be examined and obtained at the office of the Town Clerk, __Main St., Town, Massachusetts.

Reference is further made to Massachusetts General Laws, Chapter 40A, Section 5, as amended, which provides that no claim of invalidity of a Zoning Bylaw arising out of any possible defect in the procedure of adoption shall be made in any legal proceeding unless within one hundred and twenty days after adoption of said Bylaws, legal action is commenced and a notice specifying the identity of the Court, the parties, the invalidity claimed, the date of filing, together with a copy of the petition or complaint is filed with the Town Clerk, said notice to be filed within seven days after the commencement of the action or actions.

Your signature
Town Clerk

[If applicable, the following statement can be added to the notice: “The foregoing bylaw amendments take effect by reason of the failure of the Attorney General to take action thereon within 90 days from (insert date), the date of receipt by him of bylaw amendments submitted to him for such action.”]

[The above wording applies to bylaw amendments published in a newspaper. Appropriate wording changes should be made if you post the bylaw amendments.]

NOTE: The last paragraph of the notice referring to 40A:5 may be omitted provided that 90 days after the 2nd publication, the posting or delivery is also at least 120 days after the date on which the amendments were voted by town meeting.

ARTICLES REQUIRING MORE THAN A MAJORITY VOTE (2/3rds unless noted)

| SUBJECT | GEN. LAW - CHAPTER/SECTION |
|---|---|
| Annuities, allowances & pensions | 32:85-97 |
| Appropriations, debts & finances | |
| - for celebration of town's settlement | 40:5(27), (27A) |
| - stabilization fund | 40:5B |
| - indemnify tax collector or treasurer | 41:43A |
| - authorize debt, unless otherwise provided by special act (except temporary loan in anticipation of revenue) | 44:2 |
| - incur debt within debt limit | 44:7 |
| - incur debt outside debt limit | 44:8 |
| - abandon project for which loan authorized | 44:20 |
| - pay unpaid bills | 44:64 4/5ths at annual meeting; 9/10ths at special meeting |
| Bylaws | |
| - adopt or amend zoning bylaws | 40A:5 |
| - adopt or amend historic district bylaws | 40C:3 |
| - accept historic district act | 40C:16 |
| Land | |
| - purchase, lease or take by eminent domain for municipal purposes | 40:14 |
| - abandon land or easements | 40:15 |
| - transfer custody of land (except parks) | 40:15A |
| - purchase land for public domain, town forest or water supply | 45:19 |
| Lease/purchase municipal equipment | 40:4 |
| Light/gas plant or CATV | 164:36, 41 |
| Official map, to adopt a change which varies from plan approved by planning board | 41:81F |
| Public way, acceptance if not on approved subdivision plan | 41:81Y |

NOTE: The above list includes those subjects which are likely to appear on a town meeting warrant but does not include all subjects for which more than a majority vote is required by sections of the General Laws.

TOWN BUSINESS

I. TOWN SEAL

A. HISTORY

While many towns in Massachusetts designed and adopted official town seals fairly early in their existence, the first statutory requirement that a town do so appeared under Chapter 389 of the Acts of 1898. The official seal was to be provided for the use of the town clerk and was to include the name of the town, the date of incorporation and a general design approved by the selectmen. The town clerk was required under this Act to furnish copies of birth, death or marriage records “under the official seal” of the town.

The requirement that a town adopt an official seal was further specified by Chapter 256 of the Acts of 1899. The Act required every town not already having a seal to adopt one within one year. The method of adopting the seal was to be specified by town meeting vote and the seal “shall be in the custody of the town clerk.” The use of the seal was expanded so that “any paper or document emanating from any officer or board of a town shall, whenever it seems necessary or desirable, be attested with the town seal.”

In 1902, under Chapter 25, section 28 of the Revised Laws, the provisions relating to the town seal were somewhat changed to read as follows:

Each town shall have a seal, established at a meeting called for that purpose, which shall be in the custody of the town clerk. Papers or documents issued from any office or board of the town may be attested therewith.

These provisions now appear as the first two sentences of Chapter 40, section 47 with the first sentence slightly modified to read: Each town shall have a seal, established at town meeting, to be kept by the town clerk.

B. CUSTODY OF THE TOWN SEAL

There is no question, under the wording of both past and present law, that the town clerk has custody of the town seal which is used to impress a raised seal on official town papers, records or documents and therefore, the town clerk is the person who must authorize its use.

However, the law is not so specific with respect to custody of the printed or facsimile town seal and who authorizes its use. In some towns, the town clerk has such custody and authority by tradition and practice. In other towns, the bylaws specify that the town clerk has custody of or authority over the use of the printed or facsimile town seal. An example of such a bylaw is:

The town seal, or any reproduction or facsimile thereof, shall not be used, unless authorized by law, without the written authorization of the town clerk.

C. CARE AND USE OF TOWN SEAL

1. The Raised Seal

As the impressed raised town seal on any paper signifies that such a paper is an authentic and official one issued by a town officer, board or committee, the seal used for this purpose should be guarded carefully. The seal should be kept under lock when your office is closed. When your office is open, it should be placed in a location inaccessible to unauthorized persons. Your employees should be carefully instructed in the proper use of the town seal and its use strictly regulated.

Generally, the raised town seal is used on papers which need to be certified as true copies of official records. In a town clerk's office, the most common of these would be copies of birth, death and marriage records, copies of town meeting votes, copies of board of appeals decisions, and copies of documents or papers which are required to be filed in your office under sections of the General Laws or your town bylaws. The raised seal would also be used on a certificate prepared by you from your official records, such as a residence certificate or voter registration certificate.

From time to time, you will receive requests from other town officers, boards or committees for the use of the raised seal. These requests should be carefully processed as other officers, boards or committees of the town do not always understand the significance of affixing the raised seal.

Clearly, official papers or documents issued by town officers or boards, or certified copies of these, may have the raised town seal affixed. Certificates prepared and attested to by another town officer or by the clerk of a town board or committee may also have the raised seal affixed. It is also often required on contracts signed by the selectmen or another town board on behalf of the town but it would not be used on regular correspondence or memos.

2. Printed or Facsimile Seal

The most common use of the printed seal is on letterhead paper used by town officers, boards or committees. It is often used on town publications, such as the Annual Town Report, town meeting warrants and special reports prepared and issued by various town boards or committees. Many towns place the town seal on town vehicles, on plaques prepared under the auspices of the town historical commission for placement in or on town buildings, in public parks or at historic sites. These are all appropriate uses of the printed or facsimile seal.

The decision, under other circumstances, as to whether or not to authorize the use of the printed or facsimile town seal is not always easy or clear cut and considerable thought should be given before authorization is granted. It should be remembered when making such a decision that any publication or item which bears the town seal will be considered by the public as having an official character or as having been sponsored by the town.

Requests from private organizations such as the local historical society, parent-teachers associations, civic groups, or employee collective bargaining units, etc. should generally not be approved. Even though these groups may be engaged in activities which benefit the town, their use of the town seal might lead the public to believe that the activity or publication had the official sanction of the town which is not usually the case.

Usually a copy of the printed town seal will be provided to individuals who are engaged in historical research or making a collection of seals for their own enjoyment or to school children, particularly if it is being used in connection with a school project.

Widespread opinion, among lawyers and others, is that private individuals may obtain and reproduce a printed copy of the town seal as long as there is no intent on the part of the individual to represent himself or the item on which the seal may appear as being official.

Many clerks decide the question of whether or not to provide a copy of the printed town seal on the basis of whether or not the individual requesting it is making such a request for personal profit. As a practical matter, complete control over the printed town seal is extremely difficult since whenever you send out a letter using your town letter head you will be sending out a copy of the seal and there is no guarantee that the person to whom the letter is sent will not reproduce the seal.

3. Penalty for Unauthorized Use of the Town Seal [268:35]

Even though you cannot completely control the use of the printed seal, you can strictly control the use of the raised seal and there is a penalty of not more than \$50.00 on any person who uses the town seal without being “duly authorized.” This penalty applies to anyone who prints, stamps, engraves or affixes (or causes this to be done) to any paper or other article, a representation of a seal of a town, with intent to give to such paper or article an official character it does not possess.

II. OATHS

A. HISTORICAL

The town clerk has been empowered to administer the oath of office to town officers since 1757 when Chapter 26 of the Province Laws was passed. Section 3 of that chapter stated:

That in the absence of a justice of the peace, the clerk of any town...in this province, be and he is hereby fully empowered to administer the oaths by law required to be administered, to any officer chosen in such town...; and the said clerk shall make a record thereof in the town...books.

Section 3 also required that whenever any town officer was sworn in before a justice of the peace, the justice was to transmit to the town clerk a “certificate of the officers by him sworn which shall be registered in the town...books by their respective clerks.”

The requirement that the town clerk administer the oath of office to all town officers who apply to him to be sworn and that the oath be recorded now appears in Chapter 41, Section 15 of the General Laws. The requirement that a justice of the peace return to the town clerk a certificate of administering the oath of office to town officers now appears in Chapter 41, Section 16 of the General Laws.

B. TYPES OF OATHS

1. The Faithful Performance of Duties (OATH OF OFFICE) [41:15, 107]

The oath you will be administering most frequently is that required of all town officers, elected and appointed, that they will faithfully perform their duties. [41:15] The following are sample oaths which may be used for this purpose.

Do you solemnly swear that you will faithfully and impartially discharge and perform all the duties incumbent upon you as (name of office) in accordance with the bylaws of the town and the laws of the commonwealth?

or

A shorter form of this oath could be as follows:

Do you solemnly swear that you will faithfully perform the duties of the office to which you have been elected (or appointed)?

(See 4:7(21) for definition of oath and 4:7(33) for definition of swear as applied to public officers).

Some town clerks add the words “so help you God” at the end of the oath although this is not necessary to make the oath valid.

An elected town clerk must be sworn into office by either the moderator or a justice of the peace. [41:107].

The town moderator must be sworn into office by the town clerk using the above oath. Other town officers elected to the positions listed in 41:1, must be sworn into office either by the moderator or by the town clerk. [41:107]

All elected and appointed members of a board or commission of the town and every elected or appointed town officer must, before entering upon his official duties, be sworn to the faithful performance thereof. Election officers and assistant registrars are included in those officers who must be sworn. [41:107] However, town officers elected to positions NOT listed in 41:1 and appointed officials may be sworn in by the town clerk, a justice of the peace, or a notary public. [222:1]

Elected officers of a district which includes two or more towns may be sworn in by the clerk of the town in which the officer resides. [41:107]

In many towns, immediately following the announcement of the results of the election of town officers, the town clerk swears in the moderator who in turn swears in all other elected officers present at the time.

2. Assessors' Oath [41:29]

In addition to taking the oath to faithfully perform his duties, an assessor must take the oath required by 41:29. The following form may be used for this oath.

I (name of assessor) having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town of (name of town) for the year (or years) ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess; that I will neither overvalue nor undervalue any property subject to taxation and that I will faithfully perform all the duties of said office.

Signature of Assessor

Subscribed and sworn to before me.

Town Clerk

Date:_____

This signed oath should be kept on file so that there will be proof that the assessor has complied with the law in this respect. Failure of an assessor to take this oath before entering upon the performance of his duties, may result in this being fined not more than \$50.00

3. Surrender of Records by Retiring Officer [66:14]

Whoever has custody of any public records shall, upon the expiration of his term of office or employment, deliver to his successor all records which he is not authorized by law to retain. He shall make an oath before the town clerk that he has delivered the records and the town clerk shall make a record of such oath.

The following form may be used for this oath:

I solemnly swear that I have delivered to my successor in office all of the records which I am not authorized by law to retain.

Signature of retired officer

Office held

Subscribed and sworn to before me,

Town Clerk

Date: _____

4. Other Oaths

As town clerk, you are empowered to administer the oath of office only to town officers, or district officers who reside in your town. However, you will be administering a variety of other oaths in connection with your regular duties. For example, an oath is required in connection with filing intentions of marriage and in conjunction with voting by absent ballot in your office. These oaths are covered under the specific sections of this manual dealing with these subjects.

5. Signing Under Penalties of Perjury [4:6(6); 268;1A]

Wherever any writing is required to be sworn to, the oath may be dispensed with if the writing is verified or signed under the penalties of perjury. [4:6(6); 268:1A] See affidavit of registration [51:36], and printed marriage intention forms. Signing under the penalties of perjury can be substituted for the oath only in cases in which the statement to be sworn to can be put in writing, and therefore would not be substituted for an oath of office which is verbal only.

C. PROCEDURE FOR ADMINISTERING OATHS

1. Proof of Election or Appointment

Prior to administering an oath to elected or appointed town officers, be certain that you have proof of the election or appointment of that officer.

Your election record is proof with respect to elected town officers. You should have a written, signed notification from an appointing authority that an individual has been appointed prior to administering an oath to appointed officers.

In some towns, the appointing authority, such as a board of selectmen or moderator, prepare appointment slips. If a signed appointment slip is presented showing a current date, it may be taken as sufficient proof that an individual has been officially appointed.

If someone is waiting at your office to be sworn in but the notification has not yet reached you and the individual has forgotten his appointment slip, you may confirm the appointment by telephoning the appointing authority. However, you should be sure that the written notice of appointment is sent to you as soon as possible (See sample appointment slip at end of this chapter).

2. Administering the Oath

There are at least two methods regularly employed in administering an oath. You may state the oath aloud to the person required to take it in the form of a question and the person taking the oath would simply

answer “yes” or “I do.” This is not the preferred method, and it is suggested by the Supervisor of Public Records, that all persons taking an oath do so by stating it aloud as prescribed in the following paragraph.

You may also state the oath aloud a phrase at a time and have the person taking the oath repeat each phrase after you. IN this case you would proceed as follows:

| | |
|-------------|----------------------|
| town clerk: | “I, state your name” |
| person: | “I, John J. Jones” |
| town clerk: | “do solemnly swear” |
| person: | “do solemnly swear” |

Continue saying and having the person repeat each phrase until the entire oath is said and repeated. You should be careful not to include so many words in each phrase that the person taking the oath will have difficulty in remembering all of them when he repeats the phrase.

In either case, unless prevented from doing so by physical disability, you and the person taking the oath should stand and raise your right hands.

D. RECORDING OATHS

1. Oath of Office

You are required to make and keep a record of the oath of office taken by town officials. A record book should be set up for this purpose and a convenient form is a loose leaf notebook having a separate page for each office, board or committee. These pages can be arranged in alphabetical order by the title of the office or board. You should record at least the following information:

- Name of the individual elected or appointed
 - the date of the election or appointment
 - by whom appointed: selectmen, moderator, etc.
 - the term of office
 - the date on which the officer was sworn
- the initials of the person who administered the oath, ; if by a justice of the peace the notation “JP”; if by a notary public the notation “NP.”

SAMPLE FORM FOR RECORD BOOK

Permanent Building Committee

Est. ATM 3/6/57. Art. 16 - 7 members; appointed
3 by Sel., 2 by Mod., 2 by Pl. Brd., 1 by Sch. Comm. - 3 year term

| NAME | ELECTED OR APPOINTED | | TERM OF OFFICE | | SWORN | | REMARKS |
|------------------|----------------------|--------|----------------|------|----------|----|-----------|
| | By | Date | Yrs | End | Date | By | |
| | ----- | | | | | | |
| Jones, John J. | Sel. | 5/7/81 | 3 | 1984 | 11/30/81 | HB | Chm 81,83 |
| Smith, Robert T. | Sel. | 5/7/81 | 3 | 1984 | 09/05/81 | BS | Clerk 81 |

Additional information may be included such as the officer's address and a notation as to which member of a board or committee is chairman, clerk, etc.

When an individual's term expires, draw a line through the name. Enter the name and appropriate information for the person who is appointed to the next term just below the last name on the page. In this way, it is easy to tell at a glance which individuals are currently in office and you will also have the history of membership on the board or committee.

It is also helpful if you add at the top of the page information concerning the formation of the committee or board, such as the date and article number of the town meeting which established a committee, the number of members, the appointing authority. If it is a board or committee which is established under a General Law section, a reference to that section may be noted. The text of the town meeting vote or general law section may be typed on the back of the page and will provide an easy reference.

2. Surrender of Records

You are also required to make and keep a record of the oath of an officer surrendering the records to his successor in office. This record may be made on a separate page in the book you use to record oaths of office.

SAMPLE FORM FOR RECORD BOOK

(Surrender of Records)

| NAME | OFFICE HELD | SWORN IN | | REMARKS |
|------------------|---------------|----------|----|----------|
| | | DATE | BY | |
| Sarah B. Smith | Tax Collector | 03/26/83 | HB | Retired |
| Harry R. Johnson | Treasurer | 01/10/84 | HB | Resigned |

3. Permanent Record

Regardless of the method you use to record the appointment or election of town officers and the administration of the oaths, these records must be kept permanently. [state retention schedule #2.93 (oath of office); #2.94 (surrender of records)].

E. FILING OATHS

1. Assessors Oath

This oath does not need to be permanently recorded, but you should keep the written signed oath on file at least until the assessor's term of office has expired. These oaths should be kept under some security as they constitute proof that the assessor has taken the required oath.

F. NOTICE TO TOWN OFFICIALS AND EMPLOYEES

While it is not required that a town clerk notify town officers or employees that oaths must be taken or placed on file, many clerks do this as a courtesy.

It is particularly important that all elected officials take the required oath of office to faithfully perform their duties. An elected official is not qualified to take any official action until after he has taken the oath of office. In addition, his predecessor is still legally in office until this oath has been administered.

It is also particularly important that members of certain boards which have quasi-judicial powers, such as the board of appeals or the conservation commission take the oath of office. If litigation results from some action taken by such a board, the case may be lost if all board members involved in the action have not taken the required oath. Also, you will probably be called upon to certify the membership of the board and whether or not each board member had been sworn.

Be sure to record the administration of the oath to all elected officials as soon as possible after each town election. Contact any elected official who has not been sworn.

Check your record book periodically during the year and notify any appointed officer who has not yet taken the required oath.

G. AFFIRMATIONS

An affirmation may be substituted in any case where it is permitted by law. [4:7(21), or 4:7(33)]. Some persons will object to swearing as it is prohibited by some religious organizations. If this is the case, simply substitute the word "affirm" for the word "swear" in the oath. Note that the word "affirm" is specifically provided in the loyalty oath wording given in the text in 264:14. Affirm is also included in the text of the affidavit of registration in 51:36 and the oath used for a challenged voter in 54:85.

III. NOTICE OF APPOINTMENTS/ELECTIONS

A. GENERAL

In addition to making and keeping a record of the appointment and oath of all town officers and committee members [41:15], the town clerk has further responsibilities in notifying appropriate state and county agencies of the election or appointment of town officials.

These notices should include the name of the person appointed or elected and his official address. In addition, include the date of election or appointment, the date on which you administered the oath of office, and the date on which his term expires.

B. FIRE CHIEF [148:10A]

The town clerk shall annually, not later than April 1st notify in writing the commissioner of public safety of the name and official address of the head of the fire department in the town, or in the fire district in which the town is located.

Address your notice to the Commissioner of Public Safety, 1010 Commonwealth Avenue, Boston, MA 02215.

C. INSPECTOR OF BUILDINGS [143:3]

The town clerk shall annually, not later than April 1st notify in writing the State Building Code Commission of the name and official address of each inspector of buildings, or building commissioner and each local inspector in the town.

Address your notice to the State Building Code Commission, John W. McCormack State Office Building, Room 1301, One Ashburton Place, Boston, MA 02108.

D. POLICE CHIEF [147:31]

The town clerk shall, within one week after the appointment, notify in writing the commissioner of public safety of the name of the person appointed police chief. If your town does not have a police chief, you must notify the commissioner, annually on October 1st, of the names of all the police officers and constables in your town. The penalty for neglecting or refusing to send such a notice is a fine of \$50.00.

Address your notice to: Ms. Marie Conlin, Municipal Police Training Committee Headquarters, 6 Adams St., Randolph, MA 02368 or email to: Marie.Conlin@state.ma.us, phone 781-437-0308.

E. AUDITOR [44:42]

Whenever a town causes an audit of its accounts or the accounts of separate departments to be made by a person of its own selection, the town clerk must immediately, upon the auditor's employment, file his name and address with the director of accounts. Ask the selectmen's office to send you a written statement of the name and address of the auditor or auditing firm employed and keep this statement in your files.

Address your notice to the Director of Accounts, Department of Revenue, P.O. Box 9655, Boston, MA 02114.

F. CONSTABLES [41:15]

The town clerk shall, within 7 days after the qualification of a constable, make a return of his name to the clerk of the courts and to the sheriff of the county. (Also see paragraph D. above).

This return may be in the form of a letter unless you receive a printed form from the clerk of court or sheriff of your county.

G. HOUSING OR REDEVELOPMENT AUTHORITY [121B:5]

As soon as possible, after the qualification of a member of a housing or redevelopment authority, the town clerk shall file a certificate of appointment or election with the Department of Community Affairs and a duplicate thereof with the state secretary. Whenever the membership of the authority is changed by appointment, election, resignation, or removal, a certificate showing the change of membership must also be sent.

This certificate may be in the form of a letter. Address one copy to the Department of Community Affairs, 100 Cambridge Street, Boston, MA 02202. Address the other copy to Office of the Secretary of State, Public Records Division/ Commissions Section, One Ashburton Place, Room 1703, Boston, MA 02108.

H. INDUSTRIAL DEVELOPMENT FINANCING AUTHORITY [40D:2,3]

As soon as possible after the qualification of the directors of an industrial development financing authority, the town clerk shall file a certified copy of the vote establishing the authority AND a certificate of appointment and qualification of the directors with the authority, with the Department of Commerce and Development, and with the state secretary. [40D:2]. Whenever the membership of the board of directors is changed by appointment, resignation or removal, a certificate to that effect must also be sent to the same places. [40D:3]

NOTE: If the change in membership is due to a director's removal for cause, the selectmen must deliver to the town clerk attested copies of the written charges against the director and of their findings thereon. These must be sent along with your certificate. (see 40D:4)

Chapter 40D makes no provision for an industrial development financing authority to become inactive even though the directors' terms may have expired and no new appointments made. However, an authority may be dissolved following a vote of town meeting and action by the Department of Commerce and Development. A certified copy of a vote to dissolve an authority should be sent to the department and to the state secretary. [40D:2]

Forward the appropriate certificates to the Department of Commerce and Development, 100 Cambridge Street, Boston, MA 02202 and to the Office of the Secretary of State, Corporations Division, One Ashburton Place, Room 1713, Boston, MA 02108.

I. DIRECTOR OF LOCAL OFFICE OF LANDS AND NATURAL RESOURCES [41:69G]

Forthwith after the appointment of a director of a local office of lands and natural resources, the town clerk shall send to the commissioner of environmental management a written notice of the appointment and the name and address of the director.

Address the notice to the Commission of Environmental Management, 100 Cambridge Street, 19th Fl., Boston, MA 02202.

J. ELECTED TOWN OFFICIALS [41:15]

The town clerk shall, immediately after every annual election, transmit to the state secretary a complete list of all town officers elected and qualified. In addition, the town clerk must notify the state secretary of any changes in elected town officials which may occur during the period between town elections.

Prior to the annual town election each year, you will receive a form from the state secretary to be used for notifying him of the persons elected. The completed and signed form should be returned to the office of the State Secretary, Elections Division, One Ashburton Place, Room 1705, Boston, MA 02108. Notices of changes in elected officials may be sent in the form of a letter.

IV. ASSISTANT TOWN CLERK

A. APPOINTMENT

As town clerk you may, but are not required, to appoint an assistant town clerk. The appointment must be made in writing and the assistant must be sworn to the faithful performance of his/her duties. The assistant town clerk need not be either a resident or voter in the town.

NOTE: Your charter or special act may specify that the assistant town clerk is to be appointed by the selectmen or by the town manager.

1. Record of Appointment

A record must be made in your office of the appointment of an assistant and the required administration of the oath. A convenient method for making the record is to record it in the same book you use to record all other appointments and oaths. [41:19] (see D. Recording Oaths).

2. Term of Office

The appointment may be made for a specified term, not longer than your own term of office. Before making a long-term appointment you may, if you wish, make the initial appointment for a period of a few months to be sure that the assistant will be able to perform the required duties.

3. Notification

Upon the notification of an assistant, you must prepare and file with the state secretary, a certificate of such appointment specifying the name of the assistant, the date of the appointment and the date of expiration of the term. Attached to, or at the bottom of this certificate, should be a statement signed by the assistant that he has entered upon the duties of the office. [41:19A] Forward the certificate to the Office of the Secretary of State, Public Records Division/ Commissions Section, One Ashburton Place, Room 1703, Boston, MA 02108.

You MAY also send a copy of the certificate with the assistant's signed statement to the director of accounts and to the state registrar of Vital Records and Statistics so that your assistant's signature will be on file in those two offices.

B. DUTIES

1. General

In your absence, except when a temporary clerk is appointed by the selectmen, your assistant has all of your statutory powers and may perform all of your duties, except those required at town meeting. (see 3 and 4 below). In addition, all of the penalties which apply to you in the performance of your official duties apply equally to your assistant while acting in your place. [41:19]

You should be sure that your assistant understands that his signature on any certificate, certified copy or official paper or document issued by your office has the same legal effect as your own and that he assumes the full legal responsibility for whatever is signed by him. You, of course, have the ultimate political responsibility for the actions of your assistant, or any other employee in your office, but your assistant must assume the legal responsibility for his/her own actions.

2. As Clerk to the Board of Registrars

If you act as clerk to the board of registrars, your assistant would also act as such in your absence, provided the equal representation of political parties on that board would not be affected. You may, for this reason, wish to consider appointing an assistant who is enrolled in the same political party as you. Party enrollment, however, would have no effect on your assistant's authority to fulfill your other duties in your absence. [41:19].

3. Town Meeting Duties

If you are absent from a town meeting, your assistant MAY NOT act in your place. The meeting must elect by ballot a temporary clerk for that meeting. A Town meeting may elect your assistant as temporary clerk, but your assistant could not act in your place at town meeting unless so elected. [41:14].

NOTE: Your charter or special act may provide otherwise.

4. Temporary Clerk

If you are absent or unable to perform your duties for a prolonged period of time, the selectmen may appoint a temporary clerk to perform all of your duties EXCEPT those at town meeting. The temporary clerk would have all of your powers and be subject to the applicable penalties. In this case, your assistant would not assume all of your duties, unless the selectmen appointed your assistant as temporary clerk. [41:14]

C. COMPENSATION AS ASSISTANT TOWN CLERK [41:19]

1. Town Having Under 5,000 Inhabitants

In towns having under 5,000 inhabitants, an assistant town clerk may not receive compensation from the town for services rendered as an assistant. You would be personally responsible for paying your assistant for services rendered in that capacity.

If you retain fees as part of or all of your salary, your assistant would be required to turn over to you any and all fees he/she collected. If your assistant is also a regular town employee, the town would pay him at the regular rate for that employment, but no additional compensation for additional duties or responsibilities as assistant town clerk.

2. Towns Having 5,000 or More Inhabitants

In towns having 5,000 or more inhabitants, the assistant town clerk may be compensated by the town for services rendered as assistant. The assistant shall not be subject to Chapter 31, civil service.

V. TOWN NOTES

A. GENERAL [44:24]

When a town votes to borrow money, otherwise than by the issue of bonds, the town treasurer shall make notes for the amount of the proposed loan, using one or more of the forms provided for this purpose by the director of accounts. The town clerk has duties related to the issuing of NOTES ONLY and does not become involved with issuing bonds.

The notes shall be signed by the treasurer. The selectmen, or a majority of them, shall countersign and approve each note in the presence of the town clerk.

The town clerk must sign on the face of the notes certifying that they were countersigned and approved by the selectmen in his presence and affix the town seal. The town clerk must also provide a certified copy of the vote authorizing the loan, a certificate stating that the person who signed the notes as treasurer was the duly authorized treasurer of the town when the signature was made, and that the persons whose signatures appear on the notes as selectmen were duly qualified as such when their signatures were made.

After the required notes and certificates have been properly made out and signed, they are forwarded by the town treasurer to the director of accounts for approval. (see Guide Sheet to follow).

The first time you sign the notes and certificates as town clerk, the director of accounts will send you a form on which to verify your signature. All you need do is sign the form and return it to the director.

An assistant town clerk, appointed and sworn under 41:19, has the authority to witness and sign notes in the absence of the town clerk. The director of accounts will also require a verification of the assistant's signature the first time the assistant acts in this capacity.

B. PREPARING THE FORMS

The town treasurer will provide you with all the required forms. There will be four different types of forms:

1. Notes

Notes are forms printed on bank note paper and are approximately 8.5" x 11" in size. The treasurer should have filled in ALL the blanks on the top half of the note and signed the note in the appropriate space. The rest of the form should be blank at the time you receive it.

In the center portion of the note, there are spaces for the selectmen to sign, your certificate that the note was countersigned and approved in your presence, the date of signing, your signature and the town seal. All of these spaces should be left blank until you meet with the selectmen and obtain their signatures.

The lower part of the form is to be dated and signed by the director of accounts.

You may receive one or more of these notes for any given loan depending upon the size of the loan and the number of lending institutions involved. There may be many separate notes all relating to the same loan. (see sample note at end of chapter).

2. The Note Stubs

The treasurer will give you the booklet containing unused note forms and the stubs which relate to the notes to be signed. This booklet will be approximately 11" x 17.5" in size.

On each of the stubs relating to notes to be signed, the treasurer should have entered all of the information required on the top half of each stub. He should also have entered the number of the note to which the stub relates and have signed the stub in the appropriate place.

The stub also contains spaces for the selectmen to enter their signatures and for you to sign certifying that the stub was signed in your presence. These spaces should be blank at the time you receive the booklet. (See sample stub at end of chapter)

3. Certificate of the Town Clerk

The treasurer will also provide you with the certificate of the town clerk. This is a white paper, with black printing, approximately 16.5" x 12.5" in size.

The treasurer should have entered at the top left of the certificate, the numbers of all notes to which the certificate relates. You will receive only one certificate regardless of the number of notes to be signed.

The treasurer should have entered all the information required under "Copy of Town Treasurer's Record" and signed under item number 11 on the left side of the certificate.

Below the treasurer's signature appears the spaces for the selectmen's signatures and your signature as witness.

You will need to fill out the right side of the certificate. Under "COPY OF VOTE AUTHORIZING LOAN," type a copy of the town meeting vote which specifically authorized the loan to which the notes relate. (see Section D hereafter for types of loans)

You must also fill out the certificate appearing directly under the town meeting vote by entering the numbers of the notes, and the name of your town in two places. Below this certificate appears a space for you to enter the date on which the notes were signed and your own signature.

You must also enter on the back of the “Certificate of the Town Clerk,” on the left side, an exact copy of the town meeting warrant article under which the vote authorizing the loan was taken. Type the article in the following form:

“Annual Town Meeting, April 3, 1984: Article 2.
To see if the town will vote (text of article as it appeared in the warrant).”

(See sample at end of chapter)

4. Request for Delivery of Certified Notes

The treasurer should provide you with a copy of the “Request for Delivery of Certified Notes” form. He will have entered the required information on the top half of the form and signed it. The selectmen should sign on the bottom half of the form. This form does not require the town clerk’s signature.

There are two references to chapters and sections of the General Laws appearing on this form. Chapter 44, section 24 is the only section which relates to town notes. Chapter 35, section 39B refers to county notes and you need not be concerned with it. (see sample at end of chapter).

C. WITNESSING AND SIGNING THE FORMS

1. Arrange a Meeting with the Selectmen

The treasurer should give you sufficient notice that he intends to borrow money so that you may arrange a mutually convenient time with the board of selectmen for the purpose of approving, signing and witnessing the notes and certificate.

The treasurer should provide you with the required notes and forms signed by him in sufficient time before the selectmen’s meeting so that you may enter the necessary information on the “Certificate of the Town Clerk.” However, if he does not, you may fill out your part of the certificate at a later time.

You should not date or sign any of the notes or certificates until AFTER the selectmen have approved and signed.

2. At the Selectmen’s Meeting

You should take with you to the selectmen’s meeting all the notes, the book containing unused notes and the stubs which relate to the notes which are going to be signed, the “Certificate of the Town Clerk,” and the “Request for Delivery of Certified Notes.”

As you will be certifying to the fact that the selectmen approved the notes in your presence, be sure that the selectmen take the vote to approve PRIOR to obtaining their signatures.

Before leaving the selectmen’s meeting you should check to be sure that each selectman has signed in all the required places on each note and related stub, on the certificate and on the request.

3. After the Selectmen’s Meeting

Date, sign, and affix the town seal on each note, date and sign each note stub and the certificate. Return all materials to the town treasurer.

NOTE: If it is impossible to get together with the selectmen in a formal meeting in time to meet the treasurer’s schedule, the selectmen may come to your office one at a time to sign the notes PROVIDED the borrowing has been approved by a vote at a prior selectmen’s meeting. Be sure that you have witnessed the signatures of at least a majority of the board of selectmen prior to signing the notes yourself.

D. TYPES OF LOANS FOR WHICH NOTES MAY BE ISSUED

1. Anticipation of Revenue [44:4]

Towns may, by a majority vote at town meeting, incur debt in the fiscal year in which the vote is taken and in the ensuing fiscal year for temporary loans in anticipation of the revenue of the fiscal year in which the debt is incurred. These loans may not exceed the total tax levy of the preceding fiscal year plus the net amount received from motor vehicle excise taxes and the amount received from the commonwealth for property taken, if any, during the preceding fiscal year.

Notes relating to this type of temporary loan are those which you will probably be asked to witness and sign most frequently. They are often called “tax anticipation notes” or “TANs.”

An article appears each year in the annual town meeting warrant asking the town to authorize the treasurer, with the approval of the selectmen, to borrow money from time to time in anticipation of revenue of the financial year beginning July 1, 19__, in accordance with the provisions of General Laws, Chapter 44, Section 4, and to issue a note or notes therefor, payable within one year, and to renew any note or notes as may be given for a period of less than one year in accordance with General Laws, Chapter 44, Section 17.

The exact wording of this article may vary somewhat from town to town, but it will be similar to the above.

This is the article which you should type on the back of the “Certificate of the Town Clerk” and the related vote should be typed on the front of the certificate in cases when notes are being issued during the year in anticipation of the tax revenue to be received.

2. Anticipation of Reimbursement [44:6, 6A, 8C]

a. land damages/highway expense [44:6]

A town may, by a majority vote at town meeting, incur debt for temporary loans for the payment of land damages, for a proportion of the general expense of altering grade crossings or for a proportion of the expense of construction of a highway or installing traffic control devices, in anticipation of reimbursement by the commonwealth or by the county. The reimbursement must first have been agreed upon by the commissioner of public works, or by the county commissioners, or the sums allotted for such reimbursement must have been certified as available.

b. grants by commonwealth [44:6A]

Notes may be issued in anticipation of reimbursement if a town has been allotted a grant by the commonwealth, or any agency or department thereof. Such grants may be for any purpose for which the town may incur debt that may be payable over a term of 5 years or longer and is required primarily to pay that portion of the expense for which reimbursement is to be received. The reimbursement must have been agreed upon by the commonwealth or its agency or department. The town treasurer must have the approval of the selectmen prior to issuing notes for this purpose. (see Chapter 236 of the Acts of 1984).

c. purchase of conservation or recreation land [44:8C]

Notes may be issued in anticipation of reimbursement by the commonwealth or by the United States if a town has appropriated money for the acquisition of land for conservation or recreation purposes. Reimbursement must have been agreed upon by the commonwealth or the United States or by both.

Notes issued under the provisions of 44:6, 6A and 8C may be for a period not to exceed 2 years.

3. Anticipation of Bond Issue [44:17]

The officer authorized by a town vote to issue bonds, notes or certificates of indebtedness, may issue notes for a temporary loan in anticipation of the money to be derived from the sale of such bonds, notes or certificates of indebtedness. These are bond anticipation notes or “BANs” and are very similar to tax anticipation notes. The vote to be entered on the town clerk’s certificate would be the vote authorizing the indebtedness by borrowing.

4. To Replace Lost Funds [44:8B]

The treasurer, if authorized by a town meeting vote, may issue notes to borrow such sums as may be necessary to replace the funds of a town which have been lost or are unavailable as a result of the insolvency, failure or liquidation of a bank or other depository wherein such funds have been deposited. These notes may be for a period of not more than eight years.

VI. ANNUAL TOWN REPORTS

A. GENERAL

Printed annual town reports have been published by towns at least since the first half of the 19th century even though the requirement that the selectmen do so has been in the law only since 1902. [Chapter 25, Section 29 of the Revised Laws]. The earliest printed annual town reports, signed by the selectmen, usually consisted of a single page listing the financial transactions of the preceding year.

The annual reports of the various boards, committees, and officers of the town were ordinarily given verbally at the annual town meeting. Some of these early committee reports have survived in handwritten form, but many have disappeared and all that remains is a reference in the town meeting proceedings that the committee gave its report and that it was accepted or rejected.

Today, towns still have, usually near the beginning of the annual town meeting warrant, an article “to hear, consider and accept the reports of the town boards, commissions, officers and committees...,” or some similar article. However, the article now usually refers to the reports as printed in the annual town report.

In most towns, the annual town report has grown considerably over the years from the one page financial documents of the early 1800s to a pamphlet of 100 or 200 or more pages. Many of the current annual town reports contain pictures of the boards or officers, or of events which happened during the year, and even color prints and covers are now seen in town reports.

The statutory responsibility for preparing and publishing the annual town report is now found in Chapter 40, Section 49 of the General Laws. While the board of selectmen is assigned this duty under the law, the town clerks in many towns have inherited the job by custom, by town meeting vote, or simply by delegation from the board of selectmen. Therefore, the subject is being covered in this manual.

B. CONTENTS

1. Reports Specifically Required Under 40:49

There are several reports specifically stated under 40:49 as being required to be included in the annual town report as follows:

- * Selectmen’s Report: The selectmen must include their own report. In addition, they may include such other reports as they consider expedient.

- * **School Committee Report:** The school committee shall annually make a detailed report of the condition of the public schools, containing such statements or suggestions relative thereto as it considers necessary or proper. [72:4]
- * **Regional School Committee:** A regional school committee is required to submit an annual report to each of the member towns, containing detailed financial statements...together with such additional information relating to the operation and maintenance of the school as may be deemed necessary by the district school committee or by the selectmen of any member town. [71:16]
- * **Town Treasurer:** The treasurer shall annually render a true account of all his receipts and disbursements and a report of his official acts. [41:35]
- * **Town Accountant:** The town accountant is required to prepare a statement of all funds received and expended and any changes in the amount of debt during the year, a list of indebtedness incurred and unpaid at the end of the financial year. [41:61]
- * In addition, unless it has been otherwise printed as a separate pamphlet or as the budget article in the annual town meeting warrant, the table of estimated appropriations showing amounts appropriated and expended the previous year, amounts appropriated for the current year and amounts expended during the first 6 months, and estimated amounts required for the next year, should be printed in the annual town report. [41:60] Usually this table appears in the warrant or as a separate pamphlet.
- * **Jury List:** Under 40:49, the jury “as required by Chapter 234” is one of the items to be included in the annual town report. However, 234:9 permits but no longer requires this list to be published. (See chapter 74 of the Acts of 1983) NOTE: Chapter 234A does not require the jury list to be published.

2. Reports Required by Various Other Sections of the General Laws to be Included in the Annual Town Report

- ◆ **Conservation Commission:** The conservation commission “shall file an annual report which shall be printed in the case of towns in the annual town report.” [40:8C]
- ◆ **Historical Commission:** The historical commission “shall file an annual report which shall be printed in the case of towns in the annual town report.” [40:8D]
- ◆ **Youth Commission:** The youth commission “shall file an annual report which shall be printed in the case of towns in the annual town report.” [40:8E]
- ◆ **Recycling Commission:** A recycling commission “shall file an annual report which shall be printed...in the town annual report.” [40:8H]
- ◆ **Energy Resources Commission:** An energy resources commission “shall file an annual report which shall be printed in the case of towns in the annual town report.” [40:8I]
- ◆ **Handicapped Commission:** The handicapped commission “shall file an annual report which shall be printed in the city or town annual report...” [40:8J] In some towns this commission is called the architectural barriers commission.
- ◆ **Report of Investigation:** If the selectmen have investigated a board, committee or officer of the town, the report of that investigation must be submitted to the town clerk and must be printed in the annual town report. [41:23B].

3. Reports Not Specifically Required by General Law to be Included in Annual Town Report

- There are several town boards or committees required to prepare an annual report but which the law does not specifically require be printed in the annual town report. However, in many towns these reports are included in the annual town report along with other boards' and committees' reports as a matter of long standing practice and economy.
- Library Trustees: The board of library trustees "shall make an annual report to the town of its receipts and expenditures and of the property in its custody, with a statement of any unexpended balance of money and of any gifts or bequests which it holds in behalf of the town, with its recommendations." [78:12]
- Park & Recreation Commission: The park and recreation commission "shall make reports of their respective doings and detailed statements of all receipts, expenditures and liabilities for the preceding financial year, in towns at the annual town meetings and at such other times as the town directs..." [45:9]
- Planning Board: The planning board shall report annually to the annual town meeting giving information regarding the condition of the town and any plans or proposals for its development and estimates of the cost thereof, and shall at the same time furnish a copy of its report to the Division of Community Services of the Department of Community Affairs. [41:71, 81C]
- Housing Authority: A housing authority must keep records of all receipts and expenditures and shall report annually to the board of selectmen in January as well as to the state auditor. [121B:29]
- Council on Aging: The council on aging shall submit an annual report to the town and shall send a copy thereof to the Department of Elder Affairs. [40:8B]
- Audit Report: Whenever an audit of the town's financial records is done by the director of accounts, a copy of the audit report shall be furnished to the town clerk who shall cause the same or a summary of its essential features to be published at the expense of the town. [44:40] A report shall also be furnished to the selectmen or prudential committee or commissioners respectively embodying the results of his findings with such suggestions as he may deem advisable for the proper administration of the finances of the town. If your town has a town auditor instead of a town accountant, he is required to make an annual report certifying to the facts found in the annual audit of the accounts of all town officers and committees entrusted with the receipt, custody, or expenditure of money and the accounts of the trustees of any property bequeathed or given in trust to the town. The auditors shall include in their annual reports a report of such auditing and investigation; and if they discover any fraud or irregularity they shall immediately report the same to the selectmen and town treasurer. They shall, at least once in each year, verify the cash balances of such trustees by actual count of the cash and by reconciliation of bank balances, and shall insert in their annual report their certificate under oath of the facts so found; provided however, that they need not so verify the cash balance by actual count of the cash if the trustee is a bank, banking association or trust company.
- Board of Cemetery Commissioners: The board of cemetery commissioners "shall annually make a written report to said town of its official acts, of the condition of the cemeteries, and render an account of its receipts and expenditures for the same and of the funds subject to its order." [114:26]
- Board of Water Commissioners: The board of water commissioners "shall annually, and as often as the town may require, render a report upon the condition of the works under their charge, and account for their doings, including an account of the receipts and expenditures." [41:69B]
- Superintendent of Public Works: The superintendent of public works shall keep full and complete records of the doings of his office and render to the board of public works as often as it may require a full report of all operations under his control and annually, make a synopsis of such report for publication. [41:69E]

- **Consumer Advisory Commission:** A consumer advisory commission shall submit an annual report to the town. It shall also send a copy thereof to the consumers' council of the commonwealth. [40:8F]
- **Inspector of Buildings and Board of Health:** Inspectors of buildings and boards of health shall annually, before June first, make a detailed report to their respective cities or towns of all their proceedings with respect to plumbing and gas fitting inspections, including rules and regulations related thereto and the appointment of local inspectors. [142:15]
- **Commissioners of Trust Funds:** The board of commissioners of trust funds shall keep a record of its doings, and at the close of each financial year shall make a report to the town, showing the total amounts of the funds, and their investments, receipts and disbursements on account of the same, setting forth in detail the sources of the receipts and the purposes of the expenditures. [41:47]

4. Reports Required by Bylaw or Charter or Vote of the Town

Often town bylaws governing a particular committee or votes of town meeting establishing a committee include a provision that an annual report be made, or that a committee report be included in the annual town report. Examples of these committees would be the finance (advisory) committee, earth removal board, personnel board, committee on government structure, capital expenditures committees or committees which have been established to study a particular issue or subject.

You should check your bylaws, charter or town meeting votes to be sure that you contact any committees which fall in this category.

5. Other Officers and Boards as Consider it Expedient to Make a Report. [40:49]

Chapter 40, Section 49 provides that, 'except as otherwise provided by vote or bylaw of the town' the selectmen must include the reports of "other officers and boards as consider it expedient to make a report." Usually all official boards, committees and officers of the town submit a report to be included in the annual town report and, if submitted, the selectmen are required to include it, unless a bylaw or vote requires otherwise. If the selectmen neglect or refuse to make the annual report, they shall severally forfeit fifty dollars.

These would include reports of the board of assessors, board of health, highway superintendent or surveyor, tree warden, tax collector, board of registrars, board of appeals, building/engineering department, veterans' agent, etc.

6. Town Clerk's Report

The town clerk's report is always included in the annual town report although this is not specifically required by a section of the General Laws. An annual town report would seem incomplete indeed without your report and usually your report consists of a relatively large number of pages. Often the town clerk includes a narrative report giving information on the accomplishments of the office for the past year although this is a matter of tradition and the personal preference of the town clerk.

A town clerk's report includes the town meeting proceedings. In some towns, the entire proceedings as prepared by the town clerk for the minute book are included in full. In other towns, a summary of the proceedings is included with a notation that the more detailed official town meeting proceedings are available at the town clerk's office and at the public library. The inclusion of the entire proceedings or only the summary is usually a matter of tradition and the money available for printing.

If a summary is prepared it usually includes only the votes under each article and resolution.

The results of the elections held during the prior year are also included in the town clerk's report. Generally the town meeting proceedings and election results are given in the order in which they occurred. For example, a January special town meeting, the annual town election, the annual town meeting, a September primary, a November state election, and a December special town meeting.

The full text of the warrants for elections and town meetings does not need to be included in the annual town report. (For further information on what is required to be included in town meeting proceedings and what may be included, see the section on town meetings elsewhere in this manual.)

In many towns, a listing of all the births, marriages and deaths which occurred in the town during the past year is also included in part of the town clerk's report. Care must be exercised in preparing these lists to be sure that the name of an illegitimate child or its parents' names are not printed in the listing of births and deaths. A town clerk is subject to a fine of \$100, paid to the mother of that child, for printing such information in a town report. [46:24] It has been suggested in recent years, by the Registry of Vital Records, that towns not print the vital records, you can print statistical totals, but not the names, etc. Unfortunately, in today's society, unscrupulous individuals have taken various records and used them for purposes for which they were not intended.

Also, on occasion you will be requested by the parties to a marriage that the record of the marriage not be published in the annual town report. Since there are no legal requirements that the vital records be included in the annual town report, you may comply with such requests as a matter of courtesy to the individuals. It is suggested that you note in pencil on the marriage certificate or in your record book "do not publish" (or some similar wording) to remind you that the particular record should not be included in the listing for the annual town report.

In addition, occasionally the parents of a baby who died within a short time after birth may ask that the birth and death record not be published. A note in pencil may also be made in the margin of these records as a reminder that they not be included in the annual town report.

If your town has been audited during the past year, you will need to publish a copy of the audit report, or a summary of it. This does not need to appear in the annual town report as part of the town clerk's report and might more logically be included in the financial section of the annual town report. However, it is the town clerk's responsibility to be sure that the audit report or summary is included.

C. FORMAT

The specific format of the annual town report varies considerably among towns and it usually has been developed by tradition over many years. A common arrangement is as follows:

- ⇒ title page
- ⇒ table of contents
- ⇒ memorial to deceased officials
- ⇒ page containing the "Town at a Glance"; population, area, miles of roads, tax rate, number of churches, recreation areas, hospitals, etc.
- ⇒ federal, state and county officers
- ⇒ town officers, elected and appointed
- ⇒ reports of all the town boards, committees and officers
- ⇒ index

In many towns, the reports of the various town boards, committees and officers are grouped by main general categories, such as:

- ⇒ Administrative: selectmen, registrars, personnel board, town counsel, moderator, etc.

- ⇒ Protection of Persons & Property: police & fire departments, dog officer, inspectors, planning board, conservation commission, board of appeals, etc.
- ⇒ Public Services: library, parks & recreation department, highways, trees, water, sewer, health, council on aging, youth commission, housing authority, veterans agent, etc.
- ⇒ Historical: historic districts commission, ancient records committee, etc.
- ⇒ Education: local school committee and superintendent, regional school committee and superintendent
- ⇒ Financial: town accountant, treasurer, tax collector, assessors

The particular reports which appear in the different general categories may differ in various towns as it is a matter of judgment which board falls under which category. Board of Health, for example, may be under protection of persons & property in one town, and under public services in another. This is really a matter for each town to determine and there is no particular requirement for any specific placement.

If you look back through your town’s annual town reports for the past decade or so, you will get a good idea of the tradition in your town for the placement of the various reports. The first year you are responsible for preparing an annual town report it might be wise to follow tradition in format. Or, if you wish to change the traditional format it might well save you a great deal of criticism later if you involve the other boards and committees and obtain a consensus.

Also criticism can be avoided if you take considerable care to be sure that you contact all the boards, committees and officers to ask them for their annual reports and to notify them of the requirements and deadlines. It should be kept in mind that the text of a report is strictly the prerogative of the particular board or committee which has submitted it. If editing is required due to space limitations, it is suggested that you ask the submitting board or committee to do its own editing rather than trying to do this yourself. Usually, boards and committees will be cooperative if they understand that there are severe limitations on space and money.

D. SCHEDULING

The schedule for the various steps involved in preparing and publishing the annual town report usually depends upon two time requirements. The first is contained in 40:49 of the General Laws in that the “Selectmen, before the annual town meeting shall...print the annual town report.” The other requirement may be found in your bylaws or charter, which may state that the annual report must be available to or delivered to the citizens of the town at least a certain number of days prior to the annual town meeting or annual election.

Be sure to check your bylaws or charter prior to establishing your schedule to determine the date on which the reports must be available or delivered. Start with this date and work backwards. Be sure that you allow extra days in your schedule to accommodate any difficulties in obtaining the board or committee reports, or any delays in printing schedule or delivery by the printer. It is suggested that you allow yourself at least a week’s leeway from the date of delivery by the printer to the date the reports must be available to citizens. If you are required to deliver reports to the citizens, a longer leeway time should be built into the schedule.

If your town meeting takes place at the end of March, a reasonable schedule for work to be done and for publication of the annual town report is as follows:

| <u>DEADLINE</u> | <u>WORK TO BE DONE, ITEM TO BE COMPLETED</u> |
|------------------|---|
| <u>October 1</u> | Send letter to all boards, committees and officers requesting them to submit reports. Include information on length of report, double or single space typing, signatures of committee members, deadline for submitting financial reports to the town accountant and narrative reports to the town clerk, etc. |

October 18 Advertise Bid Invitation: If the printing costs are expected to be \$2,000 or more, you must follow the public bidding procedure outlined in 40:4B. However, if your town has accepted 40:4G, you do not need to use the public bidding procedure unless the cost is expected to be \$4,000 or more. You must advertise in a newspaper of general circulation at least one week prior to date set for opening bids - date, time and place must be specified, etc. If you have not been involved in public bidding procedure, it would be wise to consult with your town counsel or other officer who can give you advice. (see sample advertisements and invitations at end of chapter).

November 7 Open Bids: This must be done at the time specified in the ad, in public and each person present at the opening is entitled to examine the bids submitted. You do not need to award the bids at the time they are opened. Award should be made at a formal selectmen's meeting, by formal vote since the selectmen have the statutory responsibility for publishing the annual town report.

November 19 Selectmen award bid and sign contract.

December 1 All boards, committees, and officers submit financial reports to town accountant (if required by your bylaws).

December 31 Send letter to all boards, committees, and officers who have not yet submitted reports. Remind them of deadline, January 10.

January 10 All narrative reports must be submitted with signatures of each member of the board or committee.

All financial reports submitted to town accountant will be forwarded by him for inclusion in town report (if required by bylaws).

February 11 Final copy and all art work, etc. to printer.

February 29 Printer to deliver finished report to town hall.

March 3-16 Delivery of report to each household (if required by bylaws). (Based upon requirement that reports must be delivered at least 10 days prior to annual meeting.)

March 31 Town election-town meeting.

(Note: You may want to add a deadline for proofreading the annual report particularly if you do not use photo-offset process)

E. PREPARATION AND PRODUCTION

1. Printing

There are several methods which can be used in printing the town report. One of these is to have the typewritten, or handwritten, copy of the entire report typeset by the printer with justified margins. Justified means that each line of type is exactly the same length and is usually the most expensive. A similar method is typeset but without justified margins which is somewhat less expensive than typeset-justified.

The principal advantage of these two methods is in the appearance of the finished product and in the availability of a variety of type faces. Titles and column headings can be set in type bolder and larger than the text.

A third method for printing is photo offset. If you use this process, you supply the printer with a clean typed copy of each page of the annual report. The printer might supply you with specially prepared master sheets on which you would type the text or you might type the text on ordinary paper. The printer would

photograph each page as typed, reduce the size where necessary and print the number of copies requested. Bolder, larger column headings are possible using this method, but would require some layout work which the printer ordinarily would be able to do. Photo-offset is usually the least expensive method to use.

Now in the 1990's, more towns are having departments produce their reports on their computers and submitting the final documents (including spreadsheets, graphs etc.) on computer disc. The discs are given to the printer and he sets up the Town Report. Artwork, graphs, illustrations and photographs can be included in the report no matter what method you use. You should consult with one or two printers for details on the process and requirements. Be sure that you understand clearly all the requirements and details so that you may include them in your specification and bid sheets, and ultimately in the contract between the vendor and the town. This saves a lot of misunderstandings.

2. Binding

There are also several kinds of bindings which can be used for an annual town report and costs will vary with the type of binding.

One of the common bindings is perfect bound. This means that the loose pages of the report are lined up and put together. Then the binding edge of the pages are dipped in glue and the cover stuck on and wrapped around to make the finished product. This type of binding is fairly durable, provided the pages are lined up evenly and are well glued to the cover. A more durable binding is provided if the pages are first stitched prior to having the binding glued on.

Another type of binding is the sidewire staples with wrap around cover. In this case the pages are stapled together along the left hand edge with two or three staples. The cover is then glued at the spine and folded over to provide the finished pamphlet.

A third type is the sidewire staple. In this case, the heavier cover stock is cut the same size as the pages. The printed cover is placed on top of the pages of text with another piece of cover stock on the bottom. Then the entire package is stapled at the sides with two or three staples. The edge of all the pages and the front and back cover show on the spine.

Another type of binding is a plastic or wire spiral along the left hand edge (Plastic is sometimes referred to as GBC). Prices for the various types of binding may vary considerably among printers.

Cover and paper stock also vary. The paper for an annual town report should be heavy enough so that the printing does not show through the paper from one side to the other. A 50 lb stock would be suitable. Cover stock can vary from about 65 lb to 90 lb stock. The heavier the stock usually the more expensive.

3. Size

The size of the annual town report varies from town to town and also depends upon tradition and upon budget.

F. DISTRIBUTION

1. Required

a. to the state library [40:49, 50]

The town clerk is required to send at least one copy of each annual town report to the State Library, State House, Boston, 02133 on or before the last day of May. Failure to send the report may result in the state withholding publications such as the advance sheets, the Acts and Resolves, etc. [40:50]

A town may by bylaw provide for the printing, within 90 days of the close of the fiscal year, such fiscal year reports as it deems suitable. The report would be printed as a separate pamphlet a copy of which you are required to send to the state library prior to November 1. [40:49]

b. to the director of accounts [41:60]

The town clerk is required to send a copy of the annual town report to the Director of Accounts, Department of Revenue, P.O. Box 7015, Boston, MA 02204. The time for sending the report is not specified in the law, but it should be sent shortly after it is available each year.

If the table of estimated appropriations has been published as a separate pamphlet, a copy must also be sent to the Director of Accounts.

c. by bylaw or charter

You should also check your bylaws or charter to determine whether or not there are any additional requirements for distribution of the annual town report or fiscal reports. In some towns, the bylaws require that the reports be delivered to each household in the town, or that they be made available to the citizens at town hall and at other specified places in the town, such as the public library.

2. Optional

In many towns, a mailing list for distribution of the annual town report has been developed over the years. Among those listed might be former citizens of the town, the Boston Public Library, Secretary of the Commonwealth, University of Massachusetts, Massachusetts Municipal Association, your state representative and state senator, and the Department of Community Affairs. These are not required by law. Often, the mailing list has been developed in response to requests for copies of the annual town report which have been received from various libraries, agencies or individuals.

In addition, the annual town report may be provided to the district court which has jurisdiction over the town, the county commissioners, banks which regularly do business with the town, utility companies serving the town, neighboring towns, and new residents. Do not send a copy to the editor of the Public Recorder, this procedure has been discontinued.

The specific distribution will depend upon the number of copies of the annual town report printed each year and upon the custom in your town.

G. PRESERVATION

While the annual town report is not specifically listed on either the town clerk's or selectmen's retention schedule prepared by the state supervisor of public records, at least one or two copies of each report should be set aside for permanent preservation. In some towns, the reports of several years are bound together in a permanent hard cover binding. Often, two sets are bound, one for use in the office and one for placement in the vault for secure storage.

VII. POSTING NOTICES, LISTS, ETC.

A. GENERAL

The first step to take with respect to any notice you receive which is required to be posted is to time stamp it. If you do not have a time stamp in your office, note directly on the notice the date and hour you received it and add your initials.

It is usually wise, and sometimes very important, that you make a record of the receipt and posting of notices so you can prove that you have complied with the law should the posted notice be accidentally

removed from the bulletin board and lost. This record may be a copy of the notice in your file which shows the date and time of receipt and the date of posting. Or, in cases in which keeping a file copy is not practical, such as for Civil Service exam notices, you may note the receipt and posting in a log book.

Notices may be required to be posted in public or conspicuous places in the town in addition to being posted in the town hall. In order to give as much exposure to the notices as possible, they should be placed in buildings or areas regularly visited by as many people as possible. Some good locations might be in your public library, post office or a meeting hall. Other possible locations, such as fire or police stations, may not be as regularly visited by large numbers of people, but they are public places. If no better location is available, posting notices at these locations will allow you to comply with the law. Privately owned buildings may be regularly visited by the public, but store owners usually have limited space available and may not be willing to have notices posted regularly.

Regardless of the location for posting notices, arrangements should be made with the official or person in charge of the building.

B. CIVIL SERVICE

1. Hearing Notices [31:4]

The state Civil Service Commission is required to hold a public hearing whenever it proposes a new rule or a change to an existing rule. Between the 30th and the 15th day prior to the hearing the commission must send a notice of the hearing to the clerk of every town.

The town clerk is responsible for posting the hearing notice at the town hall and at two other conspicuous places in the town.

You do not need to send a copy of the notice to the board of selectmen as the commission is required to do so. Although this is not required, you may wish to send a copy of the notice to the departments of the town which have employees under civil service.

2. Civil Service Examination Notices [31:18]

The administrator of the Department of Personnel Administration of the state civil service is required to send notices of civil service examinations to the town clerks.

The town clerk is required to post a copy of each notice received in the town hall and in other conspicuous places in the town. In towns with 2,500 or more residents, notices must be posted in at least five places. In towns with less than 2,500 residents, notices must be posted in at least two places. The posting at the town hall is considered one of the required places. You will usually receive enough copies of each notice to cover your posting requirements. However, sometimes you will receive only one copy of a particular notice. If you have access to a copy machine, you may make enough copies to meet the posting requirements for your town.

The notices must be posted at least three weeks prior to the final day for applications for the examination. If no final day for applications is stated on the notice, the administrator may give directions concerning the time for posting.

a. annual report

Under the provisions of 31:18, the administrator may require that you submit an annual report to him in which you will need to certify that all exam notices have been posted pursuant to the requirements of section 18. While this provision has been in the General Laws at least since 1978, the administrator has not yet required town clerks to submit such a report.

Since keeping a copy of each exam notice is impractical due to the large number received during the year, you may want to keep a log book to establish a record of posting in case a report is required in the future. Enter in the log book the following:

⇒ announcement (notice) number () appearing at the top of the notice

⇒ date of receipt

⇒ date of posting

⇒ places of posting (if you always post in the same locations, a general memo in the beginning of the log book listing the locations will be sufficient and this need not be noted for each posting.)

b. response entry form: (see sample form at back of this chapter)

Even though he has not required an annual report, the administrator initiated the response entry form procedure in April of 1983 “To ensure the provisions of this statute [31:18] are carried out.”

In each package of exam notices received, you will find a response entry form. The Department of Personnel Administration will have entered on the form the date the exam notices were mailed to you and the number of each notice.

Check the numbers entered on the form against the numbers on the exam notices and note any necessary corrections. At the bottom of the form, enter the date you received the notices and the name of your town. Sign the form and return it to the department at the address shown on the top of the form.

It is suggested that you make a copy of each completed response entry form, note on it the date of posting the related exams and place it in your files. This would provide your record of posting and you would not need to keep a log of receipt and posting. (see a. above)

c. open competitive examinations (see sample at end of chapter)

The type of examination notice you will receive most often is the open competitive examination. This title appears in large letters at the top of the notice.

The deadline for filing applications for this kind of exam appears at the top right hand corner of the notice. These notices should be posted as soon as possible after receipt, and must be posted at least three weeks prior to the deadline for applications. The notice should remain posted until after the deadline for application has passed.

In connection with these notices, you will also receive from time to time a notice that the deadline for filing an application for a particular exam has been extended. These notices should be posted in the same places as the exam notices so that the public will be informed of the extension for applications. The exam notices should be kept posted until the extended time has passed.

d. walk-in examinations (see sample at end of chapter)

You will also receive notices for walk-in examinations. As the title indicates, advance application for these examinations is not required. The examination is held on the date appearing on the notice under “EXAMINATION DATE:” and these notices should remain posted until after the specified examination date has passed.

e. open continuous examinations (see sample at end of chapter)

You will also receive notices of open continuous examinations. The title will appear at the top of the notice in large print. Applications for these examinations are received at any time and the examinations are given from time to time whenever the public convenience so requires.

The notices should be posted as soon as possible after receipt and should remain posted until you receive instructions that the examination is no longer continuous.

These notices may be accompanied by a memo giving special requirements for posting.

3. Fine for Failure to Post Notice [31:74]

Any person who willfully or negligently violates or conspires to violate any of the provisions of the civil service law and rules...or who refuses or neglects to comply with any provision of such civil service laws and rules, shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

NOTE: The penalty seems very severe for not posting notices. However, the last phrase of the section states that the penalty applies unless a different penalty is specifically provided in this chapter. The only other specific penalties in the chapter are in sections 69 and 71 neither of which relate to posting requirements. Former section 9 of chapter 31 provided a penalty of not more than \$25 on a city or town clerk who refused or willfully neglected to post notices. According to the chart showing the old sections and their location in the new sections of revised chapter 31, section 9 provisions are now in section 74. Therefore, it would appear the penalty of \$1,000 does apply to town clerks who refuse or neglect to post notices.

C. CONTRACTS [40:4b] (LIST OF VENDORS)

The name and address of every person whose contract or contracts with the town involve a cumulative cost in excess of \$2,000 during the fiscal year shall be posted in the office of the town clerk by the town accountant.

The town accountant (or town auditor if there is no town accountant) should prepare a list of all persons (or businesses) whose contracts with the town represent a cumulative cost of \$2,000 or more. The list may be prepared after the end of the fiscal year to include all those who had such contracts during the previous year. This list must be posted each year.

While there is no requirement that you retain in your files a copy of the list showing the date of receipt and the date of posting, it is suggested that you do so in case the posted copy is accidentally lost or removed from the bulletin board.

The list and copy do not need to be retained after the list for the next fiscal year is received and posted.

The contracts themselves do not need to be filed or posted by the town clerk as these are to be retained in the custody of the town accountant. [41:57].

The penalty for violations of 40:4B is a fine of not more than \$10,000 or imprisonment for not more than 3 years in a state prison, or imprisonment for not more than 2 1/2 years in a jail or house of correction, or both fine and imprisonment. In addition, conviction of a violation would make an individual incapable of holding any office of "honor, trust or profit."

While it is more likely that these severe penalties would be imposed for violations of the public bidding requirements contained in 40:4B rather than the posting requirements contained in the section, town clerks should be aware that the law makes no distinction between the two with respect to the penalties and they may be imposed on "whoever violates any provision of this section..."

D. EMPLOYMENT BULLETINS [149:167: 149:168]

The commissioner of labor and industries may furnish weekly bulletins to the clerks of all the towns showing the demand for employment, classified by occupations, and indicating where the employees are wanted.

If you receive such a bulleting from the commissioner, you are required to post it in one or more conspicuous places in the town.

The penalty for failure to post is a fine of not more than \$10.

E. POSTERS - FIREARMS LAWS [269:11]

The state secretary is required to publish annually several sections of the General Laws which relate to licenses required for carrying firearms, penalties for unlawful possession or carrying dangerous weapons or firearms [269:12B] and false reports relative to the location of explosives [269:14]. These laws are to be published in poster form and furnished to town clerks and to school superintendents. The last poster was printed in 1995, and there have been no further mailings, or requests for mailings since.

Upon receipt of these posters, the town clerk should display them. The law allows the town clerk to select the locations for displaying these posters and to determine the number which should be displayed based upon the population of the town.

F. LIST OF FEES [262:34, 46]

The town clerk shall always keep posted in a conspicuous and convenient place in his/her office a printed or written list of the fees for the items contained in 262:34.

If your town has not adopted a fee bylaw, posting a typed or photostatic copy of 262:34 will comply with the law provided it has been updated to include all recent amendments. If, however, your town has adopted a fee bylaw, the list of fees posted should be adjusted according to the bylaw.

While the list of the fees for only those items in 262:34 is required to be posted, many clerks post the fees for all items provided by or available at their office, including fishing, hunting and dog licenses, planning board regulations, maps, bylaws, street and voting lists, etc.

NOTE: The Massachusetts Town Clerks' Association has adopted a list of recommended fees for various items. Many towns have used this list as a guideline for the bylaw related to the town clerk's fees. (See sample list at end of chapter).

G. TENURE APPLICATION STATEMENTS [41:129, 131]

A person applying for tenure in an appointive town office [41:129] or a department head applying for tenure for a member of his department [41:131] shall file an application statement with the town clerk and deliver or send by certified mail, a copy of the application statement to each selectman.

If the board of selectmen approves the application, the town clerk, at least 120 days prior to the next town election, shall post a copy of the application statement and the selectmen's written approval on the town bulletin board, or such other place used for posting public notices within the town hall premises.

The selectmen shall then cause a question relative to granting tenure to be placed in the warrant for the next town election. The wording of the question is specified in the law.

H. MEETING NOTICES (OPEN MEETING LAW) [39:23a: 39:23b]

The item which is most frequently posted in towns is a notice of a meeting of the various boards and committees of the town. The requirement for posting these meeting notices appears in the open meeting law and is discussed under that section of this manual as the law contains additional duties which a town clerk must perform.

VIII. TRAFFIC RULES & ORDERS

A. GENERAL

Rules and orders for the regulation of carriages and vehicles used in the town may be adopted either by bylaw or by vote of the board of selectmen, and may provide for a penalty for violation. [40:22] [Ch. 329, Section 73A of Acts of 1980]. If your town has adopted “Traffic Rules & Orders” by bylaw rather than by vote of the selectmen, the provisions for submitting bylaw amendments to the Attorney General for approval would apply. (See this subject under town meetings elsewhere in the manual).

Regardless of the method of adoption, traffic rules & orders are subject to the provisions of several sections of the General Laws. Prior to becoming effective, they must be approved by the State Department of Public Works [85:2, 89:8, 89:9, 90:18] and must be published at least once in a newspaper published in the city, town or county. [40:22] In addition, regulations governing the speed of motor vehicles must be approved by the State Registrar of Motor Vehicles as well as the Department of Public Works. [90:18]

Traffic rules and orders may govern the following: signs, lights, traffic markings, parking meters (85:2); right turns at red lights (89:8); stop and yield signs (89:9); speed and use of vehicles on certain ways (90:18).

B. RESPONSIBILITY OF TOWN CLERK

1. Adoption by Bylaw

An article asking for the adoption or amendment of a traffic rule & order would be placed in the town meeting warrant by the board of selectmen. The article would be handled as any other regular bylaw amendment. (See the town meetings section of this manual)

2. Adoption by the Board of Selectmen

The selectmen may adopt or amend a traffic rule & order simply by a vote of the board. A copy of the vote, certified by the clerk to the board of selectmen, should be forwarded to you in order to establish a record of the vote in the town clerk’s office.

The selectmen’s office would then prepare the papers for submission to the Department of Public Works for approval of the new or amended Traffic Rule & Order. (See sample at end of chapter).

The papers, signed by the selectmen and, for stop signs, the DPW form signed by the chairman of the board of selectmen, should then be forwarded to the town clerk for attestation. The attestation by the town clerk does not relate to the vote of the selectmen, but to the genuineness of the selectmen’s signatures. (See 233:76) Attestation by the town clerk is required by the State Department of Public Works as a matter of policy/procedure.

After you have signed the form in the appropriate place, return all papers to the board of selectmen as that board is responsible for forwarding them to the State Department of Public Works - unless some other procedure has been agreed upon or established by custom.

After approval, the State Department of Public Works will forward the signed forms to the town clerk.

Forward a copy of the approval to the board of selectmen as it is that board's responsibility to publish the new or amended traffic rules & order. You should also notify the police department of an approved new or amended traffic rule & order so that the police will know what can be enforced.

3. Traffic Rules & Order Booklet

In some towns the town clerk periodically prepares and prints an updated traffic rules & orders booklet similar to the periodic publication of the bylaws, or the traffic rules and orders must be included in the regular printings of the bylaws booklets. This is not required by the General Laws, but it provides a convenient form with which to comply with requests for copies of the traffic rules & orders which you will receive from time to time.

It is also helpful if you include in the traffic rules & orders booklet, or at least in the typed copy on file in your office, an appendix page listing each amendment, the date of approval and the DPW permit number. You may also show the date of publication in the newspaper. The effective date of a specific provision is sometimes crucial in court cases relating to violations. (See sample at end of chapter).

4. Custody of Traffic Rules & Orders

As there is no specific provision in the General Laws for custody of the traffic rules & orders as adopted by the selectmen and approved by the DPW, they are under the custody of the town clerk, unless your town has an ordinance which specifies otherwise. [66:7] In any event, a copy of all rules and regulations made by town boards or officers in which a penalty is provided must be filed with the town clerk within 10 days after they take effect. [40:33]

If you are custodian under 66:7 or if the traffic rules and orders have been filed with you under 40:33, you may be required to furnish certified copies from time to time. On occasion, you will be asked to provide a copy of the rules & orders in effect as of a certain date relating to the specifics of a particular court case. Ordinarily, a certified copy of the rules and orders will satisfy the needs of lawyers and will be acceptable in court so that you usually will not need to appear in person to testify. (See 233:75, 76) If you are not custodian and do not have the traffic rules and orders on file, refer requests for certified copies to the selectmen's office.

Traffic rules & orders are a permanent record of the town whether adopted by bylaw or selectmen vote. (State retention schedule #2.46 (bylaw); #2.66 (Rules))

IX JUROR SELECTION

A. HISTORY

The concept of a trial by jury is a very old one, brought to this country from England by the colonists. It, of course, requires that some method be established for selecting jurors and the selection of jurors from among the inhabitants of each town dates back to the earliest days.

In 1736-37, the General Court passed Chapter 10, entitled "An Act for the Regular Appointment of Petit Jurors." Section 1 of the act required the selectmen of each town to make a list of the names of all the inhabitants of their respective towns, liable by law and qualified to serve on the petit jury, and to write on a separate ticket, or piece of paper, the name of each person appearing on such list. The tickets were to be kept by the town clerk, in a convenient box, under lock and key, with the names to be approved by the town at their annual meeting.

Section 2 of the act required that when the venire facias (writs requiring a sheriff to summon qualified citizens to act as jurors) were issued from either of the courts for the appointment of petit jurors, the constable receiving such venire was to notify the selectmen and town clerk who were to meet forthwith to agree upon a time to draw. The constable was required to warn the inhabitants of the time of drawing by posting a notice at

the usual place so that the inhabitants of the town might be present at the drawing. The town clerk, in the presence of the selectmen, or the major part of them, and of the inhabitants present, was to draw out of the box as many tickets as the venire commanding the return of petit jurors required. If the town clerk was absent one of the selectmen was to draw the tickets. The constable was required to notify and summon the persons whose names were drawn and to make a return thereof to the court issuing the venire. The persons, so returned, were obliged to attend the court under the penalty of law for juror's non-appearance. The town clerk was to register the persons whose names were drawn out from time to time, and those names were not to be put into the box again until after the expiration of two years from the time of registering them.

The provisions of these two sections of the 1736-37 act bear a striking resemblance to Chapter 234 of the General Laws under which many towns in the state currently select jurors. However, some changes in the provisions have been made during the past 247 years. Among them are the following. The selectmen's determination, after examination in person or by questionnaire, of the good moral character and sound judgment of prospective jurors has replaced the approval of town meeting. [234:4] In addition, 234:1 contains a list of persons exempted from jury service because of occupation or office held or because they are responsible for children under 15 years of age. Those over 70 years of age **may** elect not to have their names included in the list of prospective jurors.

Notice of meetings of the selectmen and town clerk for the purpose of drawing jurors are required to be posted in accordance with the open meeting law. [39:23B] However, if a town so votes, jurors may be drawn in open town meeting. [234:22]

The "tickets" on which a prospective juror's name must be written are called "ballots" in Chapter 234, but they must still be placed in a box to be kept by the town clerk. [234:7] There is no longer a requirement that the town clerk register the persons whose names are drawn, but either a selectman or the town clerk must enter the date of drawing on the ballot before returning it to the box. [234:21]

In 1977, partly because of a growing concern that the manner in which prospective juror lists were prepared resulted in juries not truly representing a cross-section of the population, the General Court passed Chapter 415 adding new Chapter 234A to the General Laws. The purposes of this act were stated in section 1 as follows:

- * to guarantee that each grand and trial jury is selected from a fair and randomly drawn cross-section of the population
- * to eliminate all statutory exemptions from the duty to perform grand and trial juror service
- * to eliminate all discretion in the qualification of prospective jurors
- * to eliminate or reduce the possibility of economic coercion of jurors by employers and to eliminate or reduce the possibility of economic penalty or hardship upon jurors
- * to implement the strict policy that juror service is a solemn public duty which every citizen must perform in accordance with this act
- * to spread the duty of juror service over the broadest possible base and thereby maximize the participation and education of the citizenry in the judicial branch
- * to impose the system of selecting and managing jurors, to improve the utilization of trial jurors in the juror pools, to authorize the use of modern data processing methods and equipment, and to make the entire system more accessible to the public
- * to determine the feasibility of this act for application in all counties of this commonwealth by enactment first in Middlesex County.

The act established the office of jury commissioner for Middlesex County within the judicial branch under the supervision and control of the supreme judicial court. The jury commissioner was required to promulgate regulations in furtherance of the governing procedures for the selection and management of all grand and trial jurors in the county. Responsibility for administering the new law on the local level was given to the board of selectmen. However, since the law called for a local resident list to be prepared each year from the most recent annual census list, town clerks, as clerks to the boards of registrars, became substantially involved.

Major changes in the juror selection process of particular interest to local officials involved the assignment of a number to each resident of the town 17 years old and older and a set of random numbers provided by the office of jury commissioner to select those residents whose name would be placed on the list of prospective jurors. The examination of prospective jurors by the selectmen was eliminated as was the long list of occupational exemptions appearing in 234:1.

Chapter 415 specifically authorized the use of data processing equipment and methods by the office of jury commissioner and local boards (234A:49) and required that cities and towns having a population over 25,000 prepare data processing records to be transmitted to the jury commissioner. [234A:8]

In 1980, the Bastarache case (Commonwealth v. Bastarache, 80 Mass A.S. 2465) highlighted the need for random selection of jurors. The opinion rendered in that case stated in part: The “key man” system (system required by Ch. 234, G.L.) contained the possibility of abuse...There is much to be said for the compilation of jury lists by a random process, one which allows for the exemption of persons defined by statute, but otherwise eliminates the consequences of selections based on subjective considerations...The use of random selection processes in the compilation of jury lists in the various cities and towns in the commonwealth should increase confidence in the jury system, enhance the appearance of fairness, and distribute more evenly the civic responsibility to serve on juries.

At the request of the court, the attorney general published a pamphlet in 1981 entitled “Suggested Guidelines of the Attorney General Francis X. Bellotti for the Compilation of Representative Jury Lists in Massachusetts.” These guidelines describe the procedures required for Middlesex County by Chapter 415 of the Acts of 1977 for numbering each resident and using a set of random numbers for selecting the names to be placed on the prospective juror list. The resources of the office of jury commissioner are available, without cost, to any community now operating under Chapter 234, G.L. The attorney general has also offered other suggestions and guidelines of interest to these communities.

After the operation of the Middlesex County system from 1979 through 1981 and the Bastarache case, Chapter 298 of the Acts of 1982 was passed by the General Court. This act struck out Chapter 234A inserted in 1977 and substituted a new Chapter 234A providing for the expansion of the Middlesex County system, with some changes in procedures, to other counties in the commonwealth when designated as “participating counties” by the supreme judicial court. All cities and towns in a “participating county” must comply with the provisions of Chapter 234A, rather than Chapter 234.

The office of jury commissioner for Middlesex County has become the office of jury commissioner for the commonwealth and is now a department within the judicial branch. It may, with the approval of the supreme judicial court, establish branch offices for all regions of the commonwealth. In addition, a jury management advisory committee has been established to assist and counsel the chief justice and the supreme judicial court and to perform direct supervision of the office of jury commissioner.

Under section 9 of Chapter 234A, “the board of selectmen, town manager or other executive head of a town **and** the town clerk, jointly and severally, shall have the duty of fulfilling all obligations imposed upon such town.” The duties and responsibilities of local officials are substantially the same as they were under the old Chapter 234A. Certain responsibilities may be delegated to the board of registrars or election commissioners by sending a letter signed by the chief executive of the town to the jury commissioners, but the

ultimate responsibility for compliance may not be delegated. Contact the jury commission if you have questions regarding public disclosure.

Essex, Hampden, Suffolk and Worcester County have been designated as participating counties and it is expected that within the next five years all counties will be operating under Chapter 234A.

At the request of the Massachusetts Town Clerks' Association in June of 1983, this section of the Town Clerk's Manual outlines the procedures to be followed under Chapter 234A, G.L. Town clerks should bear in mind that they should follow the procedures required by Chapter 234, G.L. unless their town is situated in a "participating county" as designated by the supreme judicial court.

Out of the 351 Cities and Towns in the Commonwealth, only six (6) do not provide the Jury List via the Central Voter Registry system. (Dec. 2006) They are: the City of Boston, the Towns of: Aquinnah, Raynham, Tyringham, Wenham and Worthington. If you are one of the communities listed above, the Rules and Procedures for preparing your jury list may be found in Chapter 234A, Sections 10, 11, 12, 13 and 14. Said chapter can be found via the Internet at <http://www.mass.gov/legis/laws/mgl234A>.

(Note: the above page was edited and the subsequent 3 plus pages were deleted in their entirety from the original document during the 2007 editing)

On or before September 1 each year, the office of jury commissioner will prepare a prospective juror list for each town, containing the names, addresses, dates of birth, and other related information for all randomly selected prospective jurors. The list will be in alphabetical order by name of prospective juror.

On or before October 1 each year, the office of jury commissioner will mail to the clerk of each city and town, two copies of the prospective juror list. This list will be a computer printout and the title will appear on the binder. It will contain the names of all residents in your town who may be summoned for jury service during the following year and must be made available for public inspection.

In some towns, the town clerk keeps both copies of the list in the Clerk's office. In other towns, the duplicate list is kept in the selectmen's office. At least one copy of the prospective juror list must be retained for at least 7 years. [state retention schedule #2.58B]

Chapter 234A does not require that the prospective juror list be printed in the annual town report.

B. INFORMATION

The following information is provided to assist you in answering some of the more frequent questions you will receive from the public. From time to time, the office of jury commissioner will provide you with a copy of forms, handbooks and other information sent to jurors. These will also provide a valuable reference for you.

Care should be taken in answering any questions from the public to be certain that accurate information is given and, if a summoned juror is requesting information, you should suggest that he directly contact the office of jury commissioner.

1. Who Must Serve as a Juror [234A:3,4]

Jury service is a duty which every person who qualifies under Chapter 234A must perform when selected. All persons have an equal opportunity to be considered for juror service. No person is exempted or excluded from serving as a grand or trial juror because of race, color, religion, sex, national origin, economic status or occupation. Physically handicapped persons must serve except where the court finds such service is not feasible. [234A:3]

A person is qualified to serve as a juror, whether or not he is registered to vote in any state or federal elections unless one of the grounds for disqualification applies [234A:4] and if on the date of receipt of the juror summons, he is

- * a United States citizen, and
- * a resident of the judicial district in which he is to serve, or
- * lives in that judicial district more than fifty percent of the time.

2. Grounds for Disqualification [234A:4]

A person is not required to serve as a juror if, on the date of receipt of the juror summons, he is:

- ◆ under the age of 18 years, or
- ◆ 70 years of age or older and indicates on the juror confirmation form that he elects not to serve, or
- ◆ not able to speak and understand the English language, or
- ◆ incapable, by reason of a physical or mental disability, of rendering satisfactory juror service. In this case, he must submit a letter from a registered physician or accredited Christian Science practitioner stating the nature of the disability and the physician's or practitioner's opinion that such disability prevents him from rendering satisfactory juror service, or
- ◆ solely responsible for the daily care of a permanently disabled person living in the same household and the performance of juror service would cause a substantial risk of injury to the health of the disabled person. In this case, he must submit a letter from a registered physician stating the name, address, and age of the disabled person, the nature of the daily care provided by the prospective juror, and the physician's opinion that the performance of juror service would cause a substantial risk of injury to the health of the disabled person, or
- ◆ outside the judicial district and does not intend to return at any time during the following year.

A person is also not required to serve as a juror if, on the date of receipt of the juror summons,

- ◆ he has been convicted of a felony within the past 7 years, is a defendant in a pending felony case, or is in the custody of a correctional institution, or
- ◆ he has served as a grand or trial juror in any state or federal court within the previous 3 years or he is currently scheduled to perform such service.

A person who has one of the grounds for disqualification should indicate it on the juror confirmation form he receives with his summons.

A person who does not have one of the grounds for disqualification, but who believes that juror service would be an extreme hardship, can be excused from service only by the court and he should contact the office of jury commissioner. [see 234A:39 and 66]

3. How Jurors are Selected [234A:16, 17, 18]

On or before October 1 each year, the Office of Jury Commissioner must prepare a master juror list containing the aggregate of all prospective juror lists of the cities and towns within the judicial district. This

master juror list must be randomly shuffled and stored as a data processing file on a magnetic tape or disk. [234A:16]

At least 12 weeks prior to the time when the services of grand or trial jurors are required, the clerk of each court requiring such jurors must send a letter of venire to the office of jury commissioner stating the number of jurors required, the judicial district, the beginning date, the length of the term of service and other necessary information. [234A:17] The office of jury commissioner then determines the number of jurors to be summoned from each judicial district [234A:18] and selects the jurors in sequence from the shuffled master juror list. [234A:16] The master juror list prepared in October is used to select jurors who will be serving during the next calendar year.

4. Material Sent to the Jurors Selected [234A:19, 20, 21, 22, 61]

At least 12 weeks prior to the commencement of any term of juror service, the office of jury commissioner must send to each juror the following:

- a summons, by first class mail. The summons states whether the service is that of a grand or a trial juror and includes information on when and where to report, the one year postponement to which trial jurors are entitled, and the consequences of failure to obey the summon. [234A:19]
- a confidential questionnaire, appearing on the back of the summons. The questionnaire includes the juror's and his spouse's personal information, his previous service as a juror, involvement in criminal litigations, relationship to a police department or law enforcement agency. [234A:22]
- a juror confirmation form, enclosed with the summons. The form allows the juror to insert a date to which he elects to postpone his service, declare that a hardship would be imposed if he were required to serve at the court to which he was summoned and indicate a more convenient jury-trial location, certify whether or not he is qualified to serve and to elect not to serve, if 70 years old or older. The form must be signed under the penalties of perjury. [234A:21]
- a notice of qualification for juror service, appearing on the back of the juror confirmation form. A summary of 234A:4 must be included. [234A:20]

Included with the summons is a postage paid envelope addressed to the office of jury commissioner for use by the juror in returning his confirmation form.

Not later than ten days prior to the term of service, the office of jury commissioner must also send to each trial juror selected a copy of the trial juror's handbook. This handbook notifies the juror of his impending service, informs him of the nature and extent of his duties, orients him to basic trial procedures, contains maps and directions and other practical information. [234A:62]

Not later than ten days prior to the term of a grand juror's service, the office of jury commissioner must send to each grand juror selected educational material and practical instructions to assist the juror in carrying out his duties and responsibilities. [234A:62]

5. Postponement of Juror Service [234A:27,34,36,39]

A trial juror has the right to one postponement of his term of juror service for not more than one year. To exercise this right, the juror must enter on the juror confirmation form the month, day and year and an alternate month, day and year to which the service is postponed. If the postponement date chosen is improper, unavailable or inconvenient, he will be assigned the alternate date unless that date is also improper, unavailable or inconvenient. In that case, the office of jury commissioner will assign a date reasonably close to that selected by the juror. [234A:34]

Not later than two weeks after the receipt of the juror confirmation form containing an election to postpone his service, the office of jury commissioner will send a notice to the juror by first class mail stating the date of the postponement and the juror must appear for service on that date without further summoning. [234A:36]

The office of jury commissioner is empowered, however, to summon jurors for service, without the right of postponement, in order to meet the urgent needs of the court. [234A:27]

Both the court and the office of jury commissioner have the authority to defer or advance any term of juror service upon a finding of hardship, inconvenience, or public necessity provided the juror recognizes his firm obligation to perform juror service on the new date. [234A:39]

6. Change of Location of Juror Service [234A:21,17,35,36]

The office of jury commissioner and the court have discretionary authority to permit a juror to perform his service at a different location within the judicial district upon a finding that hardship will be imposed upon the juror if he were to serve in the original location. [234A:35] If a juror wishes to transfer his service to a different location from the one to which he was summoned, he must indicate this on the juror confirmation form and state the preferred location. [234A:21]

Not later than two weeks after receipt of the juror confirmation form containing a request to transfer the location of services, the office of jury commissioner must send a notice to the juror stating whether or not the request has been allowed and the current location to which the juror has been assigned. The juror must appear at the location stated in this notice without further summoning. [234A:36]

NOTE: In the sample juror confirmation form in the back of this chapter item 2A is blank. The location to which a juror is summoned and information on transfer of location is entered by computer in this space before the form is sent to the juror. In some counties, there is only one court so that jurors in those counties do not have the option of changing locations.

The office of jury commissioner is empowered, however, to summon jurors for service without the opportunity to change the selection of the courthouse to which the juror has been assigned, in order to meet the urgent needs of the court. [234A:27]

7. Duties of Summoned Jurors [234A:22, 24, 25, 31, 62]

Within ten days after receipt, the juror must complete and sign the juror confirmation notice and return it to the office of jury commissioner in the envelope provided. If the juror is unable to complete and sign the form, he may authorize someone to do it on his behalf. If the form has been lost or destroyed, or there is insufficient time for him to return it by mail, the juror should telephone or appear in person at the office of jury commissioner to confirm his service. [234A:24]

If the office of jury commissioner has not received a completed and signed juror confirmation form by the eighth week preceding the term of service, a second summons and confirmation form will be sent by first class or registered mail, or served by a sheriff or constable. In this case, the juror must complete and sign the form and return it to the office of jury commissioner within five days of its receipt. [234A:25]

The juror must complete and sign his confidential questionnaire. [234A:22]

Each trial juror must read the trial juror's handbook before he reports for juror service. [234A:62]

Each juror must appear in the court to which he has been summoned on the first day of his term of service. He must bring with him and present to the officer in charge of jurors, his summons, his completed and signed confidential questionnaire, and any notice of postponement or location transfer he has received. [234A:31]

8. Term of Service [234A:39, 40, 41]

a. trial jurors

The term of service for a trial juror is one day, unless he is assigned to or impaneled on an incomplete trial when the term ends or unless the court orders otherwise. He may serve on more than one trial during his term, except that a juror who has participated in rendering a verdict shall not be required to participate in a second trial even though the juror may not have completed his first day of service at the time of commencement of the second trial. [234A:41]

Every trial juror must be prepared to serve three trial days. [234A:39] If a trial is expected to last more than three days, the trial judge will announce this fact to the jurors before the jury is impaneled and the judge may excuse a juror from performing service on an extended trial upon a finding of hardship, inconvenience or public necessity. Any juror so excused must otherwise complete his term of service. [234A:40]

Jurors in the jury pool awaiting assignment to a trial shall be discharged as early in the afternoon as possible after it has been determined that their services will not be needed. [234A:41]

b. grand jurors

The term of service for a grand juror is three months unless the court enlarges the term. [234A:41]

9. Standby Jurors [234A:30]

The office of jury commissioner or the court may impose a standby status condition on any trial or grand juror before or during his term of service. A standby juror must be prepared to serve on each day of his term of service, but should not appear for service unless he is directed to do so. A notice of standby status may be enclosed with the juror summons or may be sent separately. His term of service cannot be enlarged because of his standby status unless he has been impaneled on a case or unless ordered by the court.

10. Payment for Jury Service [234A:48-57]

a. first 3 days of service [234A:48, 49, 50]

A regularly employed juror must be paid his regular wages by his employer and a self-employed juror must compensate himself for the first three days, or part thereof, of juror service. Regular employment shall include part-time, temporary and casual employment as long as the employment hours of the juror reasonably may be determined by a schedule or by custom and practice established during the 3-month period preceding the term of service of such juror. [234A:48]

The court has the authority to excuse an employer from the duty of compensating a juror-employee or to excuse a self-employed juror from the duty of compensating himself upon a finding of extreme financial hardship. In this case, the commonwealth will pay the juror, but not over \$50 per day. [234A:49]

Each unemployed trial or grand juror upon application shall be reimbursed by the commonwealth for reasonable travel, child-care, and other necessary out-of-pocket expenses, except food, incurred during the first three days of juror service. The reimbursement shall not exceed \$50 per day of juror service. The application for reimbursement must be made by the juror prior to or during the judicial discretion hearings on the first morning of the term of service. [234A:50]

b. 4th and following days of service [234A:51-53,59]

The commonwealth will pay each trial juror \$50 per day for the 4th and following days of juror service, but there will be no reimbursement for travel or other expenses. [234A:51]

The pay for each grand juror will be determined by the court after a hearing with each juror. The court will consider information contained in a financial questionnaire completed by the grand juror, also other relevant information. [234A:52,53] The grand juror will receive, cumulatively from his employer and the commonwealth, an amount equal to the greater of the two following rates: \$50 per day or an amount not in excess of the regular daily wages plus daily travel expenses in excess of those ordinarily incurred by the juror, provided that the contribution of the commonwealth shall not exceed \$50 per day. [234A:53] A grand juror will be paid weekly. [234A:59]

c. special awards [234A:56]

The court has the authority to make special awards of compensation and reimbursement to any juror based on unusual circumstances. The court may provide for reasonable costs and expenses including food, lodging, transportation and amenities of sequestered jurors. It may make special arrangements for handicapped and elderly jurors or handicapped and elderly dependents of jurors, and may provide for the security, comfort or emergency medical services for jurors.

d. juror service certificate [234A:57,58]

Each juror will receive a juror service certificate in duplicate containing his name and address, where and when he served and the total compensation he received from the commonwealth. [234A:57] Each week, the office of jury commissioner shall mail juror certificates to those grand and trial jurors who have performed juror service during the previous week. A juror who seeks compensation from his employer for juror service shall present the employer's copy of the service certificate to his employer as soon as practical after its receipt. [234A:58]

11. Judicial Discretion Hearings [234A:66]

On the first morning of a juror's service, the court will hold a private hearing with each juror or employer of a juror who requests to be heard. The purpose of these hearings is to dispose of all urgent personal problems of jurors and employers as to possible excuses, postponements, limitations on the length of juror service, compensation, reimbursement, qualifications for juror service, or other condition of juror service.

If a juror wishes to be heard on any of the above subjects, he should inform the officer in charge of jurors when he presents his summons and other material on the morning of his first day of service.

12. Penalties [234A:19,22,61,71]

a. on town clerks and other officials

For causing a name to be inserted or deleted from any list wrongfully, or including wrongful data entry or altering of any data processing machine, set of instructions or programs which control data processing equipment for wrongful purposes - fine of not more than \$10,000 or imprisonment for not more than two years, or both. [234A:71]

b. on jurors

For willfully misrepresenting a material fact in the confidential questionnaire for the purpose of avoiding or securing service as a grand or trial juror - fine of not more than \$2,000. [234A:32]

For failure to obey the summons - fine of not more than \$2,000. [234A:19]

c. on employers

For failure to compensate an employee without having been excused from that duty by the court; for harassing, threatening, coercing an employee because he has received a juror summons, responds thereto and performs juror service; for imposing compulsory work assignment or other act which substantially interferes with the employee's availability for juror service - fine of not more than \$5,000. [234A:61] (see regulation no. 4 for information on night-shift work assignments during juror service - end of chapter)

X. BOOKS TO BE FURNISHED TO TOWNS BY STATE SECRETARY

A. GENERAL

Since 1836, under Chapter 2 of the Revised Statutes, the state secretary has been required to furnish "the several clerks of towns, for the use of such towns," copies of all laws promulgated by the General Court. Since that time other books and reports have been added to those required to be sent to town clerks by the state secretary.

In 1877, under Chapter 150 of the Acts of that year, in order to receive, or continue to receive the books from the state secretary, each town clerk was required "to file with the secretary of the commonwealth a certificate in writing, to the effect that the town has provided at its own expense a suitable bookcase for the preservation of the books to be received from the commonwealth." This is now contained in Chapter 5, Section 14 of the General Laws.

These books, reports and laws shall be in the custody of the town clerk, UNLESS the selectmen vote to designate some other person to have custody and control over them. [40:48]

These books should be kept in a suitable place, approved by the supervisor of public records, and arranged for the convenient use by town officers and the public. Failure to do so may result in a fine on the town of \$10.00 for each month's neglect. [40:48]

The books, reports and laws provide you with a valuable reference library and the more familiar you are with their contents the better able you will be to answer some of the many questions town clerks are regularly asked.

B. ACTS AND RESOLVES [5:2,3]

1. State Secretary Required to Print [5:2]

The state secretary shall, at the close of each regular session of the General Court, collate and cause to be printed in a single volume the following:

- the acts and resolves passed at such session
- amendments to the Constitution referred at such session to the next session, and all such amendments acted upon at such session to be submitted to the people at the next state election
- acts and resolves passed at a special session of the General Court
- in each year immediately following a state election, all constitutional amendments and proposed laws approved by the people at that election, together with the vote on each both in favor and opposed
- a table of changes in the General Laws and an index. The state secretary may, if he chooses, print this table and index as a separate volume, but usually it appears at the end of the Acts and Resolves volume.

2. The State Secretary is Required to Distribute to Town Clerks [5:3]

The secretary is required to distribute to each town clerk a copy of the bound Acts and Resolves. You will usually not receive the bound volume until some time toward the end of the year following that in which the Acts were passed. Therefore, you should keep the advance copy until you have received the bound volume. This satisfies the requirements of Chapter 5, sections 2 and 3.

3. Contents and Arrangement of Volume

a. the acts

The bills which are passed by the General Court each year are “The Acts” of that year. They may be amendments to existing sections of the General Laws, new chapters or sections of the General Laws, or special acts which relate only to a specific city or town. The acts are arranged in order by chapter number and in the order in which they were passed.

b. resolves

Resolves are not new laws or amendments of present laws but are generally actions of the General Court to establish or continue special study commissions on a variety of subjects. Resolves may also be passed for the purpose of discharging a moral obligation of the commonwealth to an individual or group of individuals.

c. constitutional amendments

Following the resolves, the text of amendments to the Massachusetts Constitution appears together with the text of the ballot question relating to such amendment and the tables of votes by counties and cities and towns within each county.

d. tables of changes

Following the constitutional amendments, appears the “Tables of Changes” in the General Laws. This section is arranged by General Law chapter and section number and shows each act passed amending the section since 1932 when the tercentenary edition of the General Laws was adopted. The tercentenary edition is the version of the General Laws under which we are currently operating.

e. index

A subject index appears at the end of the volume.

4. Using the Acts and Resolves

You will frequently be asked by other town officers, boards or committees to find or help them find, a particular act passed by the General Court. If you have the correct citation it would be in the form as follows: Chapter 269 of the Acts of 1975, specifying both the chapter number and the year. In this case, simply go to the volume for 1975 and look up Chapter 269. There may be two separate volumes covering some years.

If you have only a chapter number and the approximate years it does not take long to check several volumes around the year given. If you know the chapter and section of the General Laws which was amended by the act, you may be able to find it by looking at the “Table of Changes” in your most recent volume of the Acts and Resolves. Look up the chapter and section number of the General Laws in the table. You will see the acts which have amended that section cited in the following form: 1974, 489. This would be Chapter 489 of the Acts of 1974. There will also be a brief statement about the most recent act. Numbers higher than 282 will be for an act of a certain year rather than a general law as there are no General Law chapters higher than 282.

C. PAMPHLET EDITION OF THE LAWS [5:4]

The state secretary shall, at the close of each regular session of the General Court, publish in pamphlet form the Acts and Resolves and any amendments to the constitution passed during such session.

In past years, the state secretary provided several copies of the Acts and Resolves in a paper bound volume prior to forwarding the hard bound copies. However, these have not been forwarded in recent years.

D. ADVANCE COPIES OF ACTS AND RESOLVES [5:4]

The "Advance sheets" are mailed to every clerk at periodic intervals during the legislative session usually beginning in the early spring. On average, the state secretary sends out 5 to 8 issues per year depending on the number of Acts passed for that particular session. Each issue is at least 200 to 300 pages in length. The mailing of these "Advance Sheets" has generally been considered as having fulfilled the legal requirements of both the pamphlet and advance copy editions listed in C above and this section.

Many town clerks read through these advance sheets to determine if there are any of particular interest not only to their own offices, but to other officers and departments of the town. If acts of interest to other departments are found, the town clerk should make a copy and forward it to the appropriate department.

These advance sheets should be kept at least until you receive the bound volume of the Acts and Resolves for that year. A convenient method of keeping these is in a three-ring binder.

The advance sheets are not indexed so in order to look up a particular act, you will need to know the chapter number. However, there is a commercial legislative service which provides the text of the acts in pamphlet form and each pamphlet has a cumulative subject index. Seven or eight pamphlets are published each year.

If you have your own set of the General Laws and the service which keeps them updated with pocket parts, the same company will probably provide you with the pamphlets. Otherwise, check with your town counsel as he may either subscribe to the service and could make these pamphlets available to you, or he could tell you where to get the service yourself.

E. CUMULATIVE TABLES OF CHANGES IN GENERAL LAWS [5:4A]

The state secretary shall print from time to time during the session of the General Court a cumulative table of changes in the general statutes and shall mail or deliver one copy of each to town clerks among others.

A separate mailing to town clerks of these cumulative tables has not been done in recent years, but the table appears in the bound volume of the Acts and Resolves.

F. PUBLIC DOCUMENTS [5:6,7]

Public documents are the annual reports required to be submitted by permanent state departments, officers and commissions. These may be printed annually, subject to the approval of the commission on administration and finance.

One copy of each of the reports included in the public documents series shall be furnished by the state secretary to each town clerk who MAY APPLY FOR THEM. These public documents are to be preserved in a public place in the town. But, if the supervisor of public records reports to the state secretary that a town is unable to make suitable provision for the care and use of these documents, the state secretary may discontinue sending them to the town.

There are generally few, if any, requests by town officers or departments or by the public for reference to these public documents, so that you or your predecessor may not have requested that they be sent to your town. You may receive directly from a state department the annual report in pamphlet form, for example, “Annual Report of Vital Statistics” and “Annual Report of the State Secretary” regularly sent yearly to town clerks.

G. MANUAL OF THE GENERAL COURT [5:11]

The clerks of the two branches of the General Court shall, in every odd-numbered year, prepare a manual for the General Court. Copies of these shall be delivered to the state secretary for distribution to various officers, including city and town clerks by the end of each odd-numbered year.. The last two publications of this manual were in paperback.

The manual contains a considerable amount of information and should be kept in mind as a reference for questions dealing with the following: United States and Massachusetts Constitutions; seal of the commonwealth; oaths; state holidays; proclamations; congressional districts; current information on elected state officials; the counties; the cities and towns; city, town, county and commonwealth valuations; U.S. census population figures; voter registration figures; votes for federal officials and governor, President, U.S. senator, congressman; historical information; post offices in Massachusetts with zip codes; the names of the various county officers; the governor’s cabinet; and the rules of the General Court.

H. MASSACHUSETTS REPORTS [5:4]

The state secretary shall furnish to every town the reports of the decisions of the Supreme Judicial Court. These decisions are published in the Massachusetts Reports and are bound. These law books are sent out periodically along with the green bound Massachusetts Appeals Court Reports to each clerk.

You will find references to these volumes in the case notes which appear under each section in the Annotated General Laws. The case notes will contain a summary of that part of the decision which specifically relates to the General Law section. It is often helpful to read the entire case when a particular question cannot easily be answered by reading the section of the law.

The citation will be in the following form: 343 Mass 24. This will mean that the decision referred to will be found in the Massachusetts Reports, volume 343, on page 24.

XI. PROPRIETORS’ RECORDS

A. GENERAL

The term proprietors is generally thought to refer only to those individuals to whom an original town land grant was given. The records of these town proprietors may date back to the 1600’s or 1700’s. In most cases, town proprietors no longer exist as a body politic or legal entity. [66:5 & 7]

However, there are other proprietors specifically mentioned in the General Laws which may currently exist as follows:

- Proprietors of aqueduct companies [165:12-28]
- Proprietors of private ways & bridges [84:12-24]
- Proprietors of meeting houses(religious societies) [67:24]
- Proprietors of wharves & real estate held in common [119:1-17]

The records of town proprietors, proprietors of meeting houses or religious societies and proprietors of wharves and real estate held in common are of particular interest as a town clerk has specific duties under the General Laws related to these records.

B. DEPOSIT OF RECORDS WITH THE TOWN CLERK

1. Town Proprietors

The selectmen may cause copies to be made for their town of records of town proprietaries, proprietors of plantations, townships or common lands relative to land situated in their town. This provision applies whether the records are currently located within or without the commonwealth. [66:5] Every town clerk shall have the custody of all records of proprietors of towns, townships, plantations or common lands if the records relate to land within the town and the proprietors have ceased to be a body politic. [66:7]

Town Clerks of the older towns in Massachusetts will be likely to find among the ancient records volumes or papers called proprietors' records. These records are the minutes of the meetings of the proprietors who received the town grants and generally contain records of parcels of land granted by them to the various early settlers of the town.

Proprietors' records are permanent records of the town. [Retention Schedule #2.62]

2. Proprietors of Meeting Houses/Religious Societies

Chapter 67 contains provisions for the organization of religious societies and specifies that persons owning or proposing to build a house of public worship (proprietors of meeting houses) may organize themselves into a religious society and become a corporation. [67:24] If a religious society shall cease to hold meetings for a term of two years, the person having care of any records of the society shall deliver its records, except those essential to the control of property or trust funds, either to the custodian of a depository provided by the state organization of the particular denomination, or to the clerk of the town in which the society is situated. [66:16] This section applies to all religious societies whether or not they were formed by proprietors of meeting houses.

If the religious society resumes meetings, the state custodian or the town clerk shall deliver the records to a person duly authorized by the society. The town clerk is required to receive a written demand and a certification that the meetings are to be continued or that the society has been incorporated, prior to surrendering the records. [66:16] Said statement should be signed by an officer of the society or its agent and notarized. The Superior Court shall have jurisdiction in equity to enforce this section.

If you receive the records of a religious society, they become permanent records of the town [state retention schedule, #2.47], unless they are properly reclaimed by the society.

3. Proprietors of Wharves and Real Estate Held in Common

The proprietors of wharves and real estate held in common may vote to sell their estate and divide the proceeds. [179:14] After the final division of their common property, the proprietors MAY deposit their records with the clerk of the town where the land, or any part of it, lies. [179:15] Note that 179:15 permits but does not require the proprietors to deposit their records with the town clerk.

The proprietors shall pay a fee of \$5.00 for depositing their records [262:34 (28)] unless your town meeting has established a different fee. If deposited, these records must be retained permanently. [state retention schedule, #2.62]

C. ISSUING COPIES OF PROPRIETORS' AND RELIGIOUS SOCIETIES' RECORDS

The town clerk is specifically authorized to issue certified copies of the records deposited with him/her in accordance with B. above. Several sections of the General Laws apply.

1. Town Proprietors' Records [66:5,7]

Every town clerk shall have the custody of all records of proprietors of towns, townships, plantations or common lands, if the towns, townships, plantations or common lands to which such records relate, or the larger part thereof, are within his town and the proprietors have ceased to be a body politic. The state secretary, clerks of the county commissioners and city or town clerks shall respectively have the custody of all other public records of the commonwealth or of their respective counties, cities or towns, if no other disposition of such records is made by law or ordinance, and shall certify copies thereof. The fee for a certified copy is \$1.00 per page [262:34(28)] unless your town meeting has established a different fee. (*Edited 2007*).

2. Proprietors of Meeting Houses or Religious Society Records [66:16, 67:24]

Upon payment of the required fee, the town clerk may certify copies of records of religious societies which have been deposited with him. [66:16] The fee for a certified copy is \$1.00 per page [262:34(25)], unless your town meeting has established a different fee.

3. Proprietors of Wharves and Real Estate Held in Common [179:14,15]

The town clerk may make and certify copies from the records as the clerk of the proprietors might have done. [179:15] The fee for a certified copy is \$1.00 per page [262:34 (28)], unless your town meeting has established a different fee.

XII. MISCELLANEOUS TOWN BUSINESS

A. BURNT OR DANGEROUS BUILDINGS [139:1]

The selectmen may, after written notice to the owner of a burnt, dilapidated or dangerous building or other structure, or his authorized agent, or to the owner of a vacant parcel of land, and after a hearing, make and record an order adjudging it to be a nuisance to the neighborhood, or dangerous, and prescribing its disposition, alteration or regulation. The town clerk shall deliver a copy of the order to an officer qualified to serve civil process, who shall forthwith serve an attested copy thereof in the manner prescribed in section one hundred and twenty-four of chapter one hundred and eleven, and make return to said clerk of his actions. (*Edited 2007*)

B. MARKETS AND MARKET PLACES [40:10]

A town having a population of not less than 10,000 may provide and maintain one or more public markets with suitable buildings and grounds. If the town does not maintain a public market, 5 percent of the registered voters may petition to have such a public market. The voters must designate one or more streets or squares which are suitably situated and which have been approved by the state Department of Agriculture to be used by farms as public market places.

The petition shall be filed with the town clerk who shall determine whether it contains a sufficient number of signatures and whether such signatures are genuine. If there are sufficient genuine signatures, the town clerk shall so certify to the board of selectmen and notify the commissioner of agriculture that the petition has been filed and the date of filing. NOTE: Checking and certification of signatures in this case is the sole responsibility of the town clerk rather than the board of registrars.

The petition for a public market is a permanent record of the town. [State retention schedule #2.63]

C. VETERANS' AGENT [115:3]

The mayor of each city, except Boston, shall, and the selectmen of each town may, annually in April, appoint a veterans' agent to act for him or them in the disbursement of veterans' benefits by such city or town;

provided, however, that in each town having a part time veterans' agent, the town clerk shall receive applications and assist applicants for, veterans' benefits, and shall turn over said applications to the veterans' agent. Two or more contiguous towns may, by vote of the selectmen, appoint one person to serve as veterans' agent for such towns and may apportion the payment of compensation among such towns.

Every veterans' agent shall, from time after the original allowance of any claim for veterans' benefits, make such investigations of the necessities and qualifications of the claimant as to prevent the payment of any such benefits contrary to any provision of this chapter.

Every such agent shall, within three days after his receipt of an application from or in behalf of a civil war veteran, his wife or widow, for special care, under the provisions of section two, notify the commissioner thereof upon blank forms approved by him; upon his refusal or unreasonable neglect to give such notice, such agent shall be punished by a fine of twenty-five dollars.

Upon the request of any veteran, the veterans' agent for the city or town in which he resides shall record his discharge or release papers, without charge, in books kept by him for that purpose. Said agent shall keep an index of papers so recorded, and copies thereof, if attested by him, shall be admissible in evidence to the same extent and with the same effect as the originals. (*Edited 2007*)

D. ELECTRIC RAILROADS [162:8]

If the Department of Public Utilities grants a certificate that public necessity and convenience requires construction of an electric railroad, the directors of the railroad company may apply to the selectmen to fix the route of the railroad in the town. The selectmen must hold a public hearing after giving 14 days notice by publication in a newspaper published in the county.

In addition, at least 7 days before the hearing, the town clerk shall mail written notice of the time and place to the owners, as determined by the last preceding assessment for taxation, of real estate along the public ways or parts of ways upon which it is proposed to construct the railroad and to owners of private land upon which the route is to be fixed. The town clerk shall also make and deliver to the directors of the railroad company at the hearing, a certificate setting forth the fact that such notice was published and mailed and the certificate shall be conclusive evidence thereof.

Since the directors of the railroad company must file a copy of their maps and general profile with the selectmen, you will be able, with the assistance of your assessors, to determine the names and addresses of the owners to whom notice must be mailed. It is suggested that you keep in your files a copy of the certificate issued to the directors of the railroad company at the hearing.

E. DEED TO MUNICIPAL LIGHTING PLANT [164:42,43]

A town, which has voted to acquire a municipal lighting plant (see 164:34,36), may purchase a plant located within the town in existence at the time of the vote. [164:42]. If the town and the plant owner fail to agree, either may apply to the Department of Public Utilities for a determination of what property should be included and what price should be paid. Within 30 days after such determination, the owner shall notify the town of his acceptance and within a further period of 30 days, shall tender to the town clerk, a good and sufficient deed of conveyance. The deed shall then be placed in escrow pending the acceptance or rejection by vote of the town meeting. [164:43]

The General Laws do not specify how the tender is to be made or who is to hold the deed in escrow. If you are to hold the deed, it should be placed in a safe, vault or fireproof file. If you are not to hold the deed, it is suggested that you make a copy of it for your files. In either case, you should make a record that the deed was tendered including the date, the name of the person presenting it and the name of the company he represents and notify the selectmen and town counsel. You are not required to make a determination as to whether or not the deed presented is in proper form or is sufficient since that is a legal determination.

If this situation arises, it is suggested that you contact your town counsel for advice on specific procedures you should use.

F. GUARDIANS OF MINORS [201:2]

A minor, above the age of 14, may nominate his own guardian who, if approved by the court, shall be appointed accordingly. The nomination may be made before a justice of the peace, notary public or city or town clerk within the commonwealth who shall certify the fact to the probate court.

In this case, it is suggested that you contact the clerk of the probate court for your county for advice on procedures and the form of certificate before taking any action..

G. WARRANTS FOR EXPENDITURES [41:56]

The selectmen and all boards, committees, heads of department and officers authorized to expend money shall approve and transmit to the town accountant as often as once a month all bills, drafts, orders and payrolls, chargeable to their respective appropriations. The town accountant shall examine all such bills, drafts, orders and payrolls, and if found correct and approved, he shall draw a warrant upon the treasury for the payment of the same.

Before any money can be paid out of the treasury, the warrant must be approved and signed by the selectmen. If, however, there is a failure to elect or a vacancy in the office of selectman, the remaining selectman or selectmen, together with the town clerk, may approve and sign the warrant.

The town clerk should sign an expenditure warrant ONLY if there is a vacancy on the office of selectman due to a tie vote at an election, the death, resignation or retirement of a selectman. The town clerk's signature would not be needed if a majority of the board of selectmen is still in office since approval by a majority is sufficient under 41:56.

The town clerk should NOT sign an expenditure warrant if the selectmen are simply out of town or otherwise not available to sign.

SAMPLE APPOINTMENT SLIP

Town Seal

TOWN OF LARGETOWN

Selectmen's Office _____

_____ is hereby appointed

for said town of Largetown for a term _____

Selectmen of Largetown

_____, ss.

Date: _____

Then personally appeared the above named _____

and made oath that he would faithfully and impartially discharge all the duties of said office.

Before me _____

Town Clerk/Notary Public

TREASURER'S RECORD OF THE ISSUE OF NOTE NO _____
TOWN OF _____

Date of Town Meeting Authorizing Loan _____

Purpose of Loan _____

Total amount of Loan Authorized \$ _____

Amount of Previous Issues of this Loan \$ _____

Amount of this Note \$ _____

Date of Issue _____

Balance of this Loan Un-issued \$ _____

Payable to _____ or order

Payable to _____

Date this Note is Due _____

Rate of Interest _____

How Payable _____

(Annually, semi-annually or discounted)

Signed by _____

Town Treasurer

Counter-signed and Approved by:

*Selectmen
and a majority
thereof*

In the presence of _____ Town Clerk

=====

TREASURER'S MEMORANDUM

Forwarded to the Department of Revenue _____
(Date)

Received from the Department of Revenue _____
(Date)

Delivered to Purchaser _____
(Date)

This note was paid _____ from money of the town obtained by
(Date)

(State whether from taxation or other sources)

Date _____

_____ Treasurer

THE COMMONWEALTH OF MASSACHUSETTS

Note No. or Nos. _____

Denominated _____
Bor. Cap. OK _____

CERTIFICATE OF TOWN CLERK

Only one Certificate should be used to cover all notes issued on the same date for the same purpose. The Town Clerk will furnish below an exact copy of the vote authorizing the loan, as appearing in the Clerk's records, showing how the vote was passed, and, on the back of this sheet, a copy of the article in the warrant upon which the vote was based. The completed certificate is to be signed by the Clerk and given to the Treasurer, who must transmit the same, with the note or notes, to the Director of Accounts, Department of Revenue, Boston. (Chapter 44, Sections 23-27, General Laws.)

Copy of Town Treasurer's Record

Copy of Vote Authorizing Loan

- Town of _____
- 1. Date of Town Meeting Authorizing Loan _____
- 2. Purpose of Loan _____
- 3. Total Amount of Loan Authorized, \$ _____
- 4. Amount of Previous Issues of this Loan, \$ _____
- 5. Amount of this Issue \$ _____ Date of Issue _____
- 6. Balance of this Loan Un-issued, \$ _____
- 7. Payable to _____
- 8. Payable at the _____
- 9. Date this Issue is Due _____
- 10. Rate of Interest _____ % How Payable _____
- 11. Signed by _____ Town Treasurer

UNANIMOUSLY VOTED:

I CERTIFY that this is a true copy of the Town Treasurer's record of the issue of note(s) no.(s) _____ and a true copy of a vote passed at a meeting of the inhabitants of the Town of _____ Countersigned and Approved by: _____ duly warned as required by law, which authorized borrowing money as _____ aforesaid, as appears on the records of the town; that said vote is in full force and effect and has not been repealed or modified in any way by subsequent vote of said town; and that the person whose signature appears on said note as that of the treasurer of the Town of _____ was the duly authorized treasurer of said town at the date when said signature was made; and that the persons whose signatures appear upon said note as those of a majority of the selectmen were duly qualified selectmen of said town when such signatures were made. I also certify that the copy of the Selectmen and a majority thereof article in the warrant, as given on the back of this sheet, is a true copy of the same; and that said warrant was duly served as required by General Law and by by-law or vote of the town, as certified to by the constable's return on the warrant.

In the presence of _____
Town Clerk

Date: _____

Town Clerk

GUIDE SHEET FROM DIRECTOR OF ACCOUNTS

Both sides of each note and the clerk’s certificate should be completed before being signed and sent here for certification.

All items on the clerk’s certificate should be as nearly as possible the same as the corresponding item on the note, as the clerk’s certificate is our record of the loan.

Notes must be issued in serial order. If a note is spoiled it must be sent to this Bureau to be recorded and will be returned.

PURPOSE:

Inserted on Line 2 of Clerk’s Certificate; not on note.

AMOUNT:

Figures should be shown at upper right corner, and written out in body of note. Each note must be less than \$1,000,000.

DATE OF ISSUE:

Approximate date on which the treasurer needs the money. Notes may be certified not more than five days before the date of issue.

DATE OF COUNTERSIGNING:

The date the note was signed; need not be the same as the date of issue.

NAME OF BANK:

Unless a note is payable at a bank different from the purchaser, the name of the bank should be identical on both lines of the note and the clerk’s certificate.

If a note is sold to more than one bank the clerk’s certificate should be made out as follows:

| | | |
|----------------------------------|---------------|----------------|
| Line 7 - Payable to & at ##11-12 | First Bank \$ | _____ |
| | ##13-14 | Second Bank \$ |
| | | _____ |
| Line 8 - Payable at | ##15-16 | Third Bank \$ |
| | | _____ |

| | | | | |
|--------------------------|---------|---------|---------|---------|
| RATE OF INTEREST: | ##11-12 | _____ % | ##15-16 | _____ % |
| | ##13-14 | _____ % | | |

The premium (if any) should not appear on the note.

CERTIFICATION FEE:

See Schedule for amount. Check should be payable to “Director of Accounts.”

DELIVER CERTIFIED NOTES:

At the request of the treasurer, and with the approval of the appropriate officers, notes may be delivered or forwarded to the bank after certification; otherwise they must be returned to the treasurer. If you wish to have notes sent directly to the bank the “delivery form” or a letter with the necessary signatures should be enclosed. If there is more than one bank one delivery form should be made out as follows:

| | |
|---------|----------------------|
| ##11-12 | First Bank, Address |
| ##13-14 | Second Bank, Address |

ANTICIPATION REVENUE LOANS:

Before annual town meeting loans may be issued if the vote passed the previous year includes authorization for borrowing in the current year. If there is no vote, the amount is limited by Section 5, Chapter 44, General Laws. After town meeting the most recently passed applicable vote should be used.

The first loan of the year may be sent in without the “amount of loan authorized.” This amount will be sent with your fee receipt when it has been determined. This is the amount to be used throughout the calendar year.

SAMPLE

REQUEST FOR DELIVERY OF CERTIFIED NOTES

TO THE DIRECTOR OF ACCOUNTS:

Please forward after certification to bank(s):

NOTES Nos. _____ to _____

Nos. _____ to _____

Nos. _____ to _____

Treasurer

We, the undersigned (Selectmen
(Commissioners approve the above request of the
(Prudential Committee
Treasurer, in accordance with General Laws, Chapter 44, Section 24 or Chapter 35, Section 39B.

SAMPLES

INVITATION TO [OR REQUEST FOR] BIDS

[To be published in newspaper and mailed with specifications
to a number of interested printers]

TOWN OF -----

INVITATION TO BID

The (name of town) Board of Selectmen requests bids for the printing and binding of the Annual Town Report of _____. Sealed bids will be opened at the Selectmen’s Office, Town Hall on *Day, Month, Date, Year, at Time*. Specifications are available at the Town Clerk’s [Selectmen’s] Office, Town Hall from *Time to Time*., Monday through Friday. The Board of Selectmen reserves the right to reject any and all bids.

Selectmen of Town of _____

TOWN OF-----

REQUEST FOR BIDS

Bids are solicited for printing and binding _____ copies of the Town of _____, (year) Annual Town Report; said report to consist of approximately ____ pages, offset printed, 6 x 9 inches, 50 lb body stock, 90 lb cover stock, ___ of the copies to be spiral bound. Base bid - camera ready copy prepared by the town; alternate - if prepared by the bidder.

Detailed specifications and typical sample can be seen at the Town Clerk’s [Selectmen’s] Office, Town Hall.

Sealed bids in envelopes marked “Town Report Bid” will be received at the Town Clerk’s [Selectmen’s] Office, Town Hall, until *Time*., *Day, Month, Date, Year* and will be publicly opened and read at 8:00 p.m. same date.

The Board of Selectmen reserves the right to reject all bids or to accept other than the low bid if it deems such action is in the best interest of the town.

Selectmen of the Town of-----

Publish: (*Date of Publication*)

SAMPLE SPECIFICATIONS

LETTERHEAD PAPER

DATE: _____

SPECIFICATIONS FOR [NAME OF TOWN] TOWN REPORT (YEAR)

1. Bids are to be based on per page, unjustified type, approximately ___ pages.
2. Bids are to be based on ____ copies and _____ copies.
3. Sealed bids are due by *Time* on *Month, Date, Year* at the Town Clerk's Office/Selectmen's Office, Town Hall (*remainder of address*) and marked "Town Report Bid".
4. All sealed bids will be opened at *Time*. by the Board of Selectmen, Selectmen's Office, Town Hall, on *Month, Date, Year*.
5. The (*Name of Town*) Board of Selectmen reserve the right to reject any and all bids and to award the bid that they deem is in the best interest of the Town of (*Name of Town*).

SAMPLE SUBMISSION TO DPW - STOP SIGN

TRAFFIC RULES AND ORDERS OF THE TOWN OF _____, MASSACHUSETTS

STOP SIGNS

VOTED: That the Traffic Rules and Orders of the Town of _____, adopted by the Board of Selectmen on *Month, Date, Year*, and subsequent amendments thereto, be and are hereby further amended as follows:

By adding at the end of Section 8 in Article VII, OBEDIENCE TO ISOLATED STOP SIGNS, the following three locations:

Northbound on Union Avenue at Concord Road

Northbound on Rambling Road at Warren Road

Eastbound on Morse Road at Concrd Road.

SPEED REGULATIONS

VOTED: To adopt the following special speed regulation in accordance with the provisions of Chapter 90, Section 18 of the General Laws (Ter. Ed.) as amended:

The following speed limit is established at which motor vehicles may operate on Warren Road,

East bound and Westbound, between Lands End Lane and Clifford Road,
a distance of approximately 0.17 miles: twenty (20) miles per hour.

Date of passage: _____

BOARD OF SELECTMEN

Attest: _____

Town Clerk

FILING AND RECORDING

I. FILING, RECORDING, INDEXING

A. GENERAL

The filing, recording, organizing and indexing of a large variety of records, documents, and papers is an important part of a town clerk's duties. Records management, including information retrieval, is a major responsibility of the office. Your ability to serve the public and to fulfill your statutory responsibilities will be directly related to the care and precision with which you handle the many records in your office.

Your obligations related to the care and protection of records are generally covered in Chapter 66 of the General Laws. In addition, to assist municipal officials in carrying out their statutory duties with respect to the maintenance of records, the state supervisor of public records published in 1983 a "Municipal Records Management Manual" containing information on records organization, disposition including approved retention schedules, microfilming including Regulations on the Use of Microfilm 950 CMR 39.00, safety and security including state specifications for safes and vaults, and the conservation of records.

The town clerk's duties with respect to providing public access to records are covered not only in Chapter 66, Section 10 of the General Laws, but also in the Public Access Regulations 950 CMR 32.00 promulgated by the state supervisor of public records.

1. Filing vs Recording

There is no definition in the General Laws for the term "filing" or the term "recording" such as can be found in 4:7 for "oath," "swear," "public record," etc. which can be generally applied to the statutes requiring the filing or recording of a particular record. The General Laws section related to a specific type of document will specify whether it is to be filed or to be recorded and in some cases, will specify that it is to be recorded in a book kept for the purpose. However, in practice, the difference between filing and recording is not always clear and you may find documents which have simply been placed in a file in your office even though the applicable section of the General Laws requires that they be recorded in a book.

Black's Law Dictionary states the following with respect to filing:

'To file' a paper, on the part of a party, is to place it in the official custody of the clerk. 'To file,' on the part of the clerk, is to endorse upon the paper the date of its reception, and retain it in his office, subject to inspection by whomever it may concern... 'Filing' originally signified placing papers in order on a thread or wire for safe-keeping. In this country and at this day it means, agreeably to our practice, depositing them in due order in the proper office.¹

Black defines recording as follows:

To register or enroll; to write out on parchment or paper, or in a book, for the purpose of preservation and perpetual memory; to transcribe a document, or enter the history of an act or series of acts, in an official volume, for the purpose of giving notice of the same, of furnishing authentic evidence, and for preservation.²

The above definitions can generally be applied to the terms "filing" and "recording" currently appearing in the General Law sections related to a town clerk's duties. However, the requirement that a

¹ Black's Law Dictionary, 3rd Ed., s.v. "file."

² Ibid., s.v. "record."

document be recorded in a book does not necessarily mean that you must transcribe the information appearing in the document into a bound volume. 4:7(13) provides that:

“In books,” when used relative to the records of cities and towns, shall not prohibit the making of such records on separate leaves, if such leaves are bound in a permanent book upon the completion of a sufficient number of them to make an ordinary bound volume.

This provision would allow you to type the required information on an 8 1/2” x 11” piece of paper, or minute book paper if a permanent record is involved, and have the papers bound at a later time. Or, it would allow you to keep the document itself in a file folder until a sufficient number have been accumulated to warrant having them permanently bound. However, if the General Laws require that a particular type of document be recorded in a book kept for the purpose, the bound volume eventually produced should contain only that type of record or document.

2. Index [41:15]

If the law requires that a document be recorded by the town clerk, you must also make and keep an index. The index must include the following information:

- ⇒ the date of receipt of the document
- ⇒ the names of the parties appearing in the document
- ⇒ the book and page on which the document is recorded

If the law requires that a document be filed with the town clerk, you are not required to make and keep such an index, unless specifically required by the section of law related to that document. However, as a practical matter in many cases, an index will be needed to enable you to find a requested document easily, particularly if you have a large number of documents on file in your office.

Further, the Town Clerk shall administer the oaths of office to all town officers to be sworn, and shall make a record thereof and of the oaths of office taken before justices of the peace of which certificates are filed. Immediately after every annual election of town officers, the clerk shall transmit to the state secretary, a complete list of all town officers elected and qualified and any changes in such officers. Within seven days after the qualification of a constable, the clerk shall notify the courts and the sheriff of the county. Said records shall be open to public inspection.

3. Fees for Filing or Recording

Fees to be charged by the town clerk for many of the documents required to be filed or recorded are specified in the various clauses of Chapter 262, Section 34. These fees may be changed by the adoption by town meeting of a bylaw specifying the fees to be charged by a town clerk. Any municipal board or officer empowered to issue a license, permit, certificate or to render a service or perform work for a person or class of persons may fix a reasonable charge, provided the town meeting has accepted the provisions of Chapter 40, Section 22F of the MGL or by vote of the town council in towns without town meeting. In some cases, the fee to be charged is set by the section of the General Laws dealing with the type of document to be filed or recorded and these fees cannot usually be changed by town bylaw unless permitted by the general law section. The schedule of fees shall be posted in a conspicuous place in the clerk’s office.

(Above sections 2 and 3 were edited 2007).

If the fee is not specified in 262:34, your town bylaws, or in a specific section of the General Laws dealing with the particular document, it may be possible to establish the fee under 262:34(79) or 262:43. 262:34(79) provides a fee of \$1.00 per page for recording a document not specifically named in 262:34, or not specifically established by other sections of the General Laws. If the document contains more than two parties, an additional 25 cents per name may be charged for indexing each additional name.

262:43 provides that the fees for public officers for any official duty or service shall, except as otherwise provided, be at the rate prescribed in this chapter (Ch. 262) for like services. If no fee is specified in 262:34 or other sections of the General Laws for filing a document, the fee established for filing another type of document could be charged provided the services in each case are the same or similar.

The General Law provisions covering the many documents to be filed or recorded in a town clerk's office are discussed in Chapter 3 of this manual under the headings indicating the type of document. Whether the document is to be recorded, recorded in special books, or filed is specified. Whenever possible, the fee to be charged and suggestions on methods of filing, recording and indexing have been included.

B. DEFINITION OF RECORD AND PUBLIC RECORD [66:3; 4:7(26); Public Records Access Regulations 950 CMR 32.03]

Basic to your fulfilling your duties is an understanding of what is and what is not a record and, more particularly, what is and is not a public record. Generally a safe assumption is that whatever is in your office, except furniture, is a record and that, with very few exceptions, it is a public record.

A record is defined in 66:3 as "any written or printed book or paper, or any photograph, microphotograph, map or plan."

A public record is more specifically defined as follows:

'Public records' shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristic, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof,...unless such materials or data fall within the following exemptions...[4:7(26); Public Records Access Regulations 950 CMR 32.03]

There are 12 exemptions appearing in 4:7(26), the first of which is material or data "specifically or by necessary implication exempted from disclosure by statute." This exemption would cover impounded birth, marriage or death records [46:2A], or minutes of a properly called executive session meeting for as long as publication may defeat the lawful purpose of the executive session. [39:23B]

The other eleven exemptions relate to personnel rules, personnel and medical files, memoranda or letters relating to policy being developed by an agency, an employee's personal notebooks, investigatory materials, trade secrets provided to an agency upon a promise of confidentiality, proposals and bids prior to the time scheduled for opening them, appraisals of real property prior to the final agreement or conclusion of litigation, the names and addresses appearing on applications for licenses to carry firearms or firearm identification cards and the names and addresses on sales or transfer of firearms, test questions and health maintenance organization contracts. [4:7(26)]

Within each paragraph covering an exemption there are restrictions and limitations and it may not always be clear whether or not a particular record is included in the exemption. Therefore, caution should be exercised and in many cases, advice should be obtained, prior to making a determination that a particular record is not a public record. Note that 66:10(c) provides that in a court proceeding relative to access to public records, there shall be a presumption that the record sought is public and the burden shall be on the record custodian to prove the exemption. Also see the pamphlet "Access to Public Records, a Guide for Records Custodians" published by the Division of Public Records, Office of the State Secretary. You may also call with any questions - 617-727-2832.

C. CUSTODY OF RECORDS

1. General [66:6,13,17]

All public records shall be kept in the custody of the person having custody of similar records in the city or town to which they originally belonged. [66:17] If records are not in the custody of the appropriate official, that official is required to demand their return by the person who has them in his possession. [66:13,17] If the person who has possession of the records refuses to return them, the public official may make a complaint in the superior court. [66:13]

Town records are in the custody of the department, board, commission or office which generated them. The clerk of the department, board or office has the responsibility to enter the votes, orders or proceedings of the department in record books and has custody of those books. Every sole officer in charge of a department has custody of the records of that department. [66:6]

At the expiration of his term of office, the retiring official must transmit all records in his custody to his successor in office. He is also required to make an oath that he has delivered the records and this oath must be recorded in the office of the town clerk. [66:14] (See OATHS - Chapter 2 of this manual)

2. Records in custody of Town Clerk

As town clerk, you have custody of any record which is required under a section of the General Laws or by town bylaw or charter to be filed or recorded in your office whether the record was generated by another public agency, a private individual, or by a business. In addition, you have custody of records generated by you as part of your official duties, or generated by the board of registrars if you serve as clerk to that board.

Examples of some of the records in the custody of the town clerk are as follows:

- town meeting records [41:15]
-
- town census records and street listings [51:4,6], as clerk to board of registrars
-
- birth, death and marriage records [46:1]
-
- decisions of the board of appeals [40A:15]
-
- planning board records and decisions [41:81A, 81K-81GG]
-
- proprietor's records [66:7]
-
- church, parish or religious society records, if the organization has ceased to function [66:16]
-
- tax collector's records of taxes collected or abated dated prior to January 18, 1977 (see Chapter 451 of the Acts of 1976 which repealed 60:9); records of a tax collector who has retired, resigned or died turned over to the town clerk by the assessors [60:97]
-
- all other public records of the town, if no other disposition is made by law or bylaw [66:7]

Under the provisions of 66:7, the records of a town board or committee which has ceased to exist should be turned over to the town clerk for safekeeping, unless a specific section of the General Laws, your town bylaw or charter provides otherwise. For example, your town bylaws may require that a school building committee turn its records over to the school committee or that a capital expenditures committee turn its records over to the finance committee or town accountant. In addition, Chapter 658 of the Acts of 1967, section 80, provides that books, papers and records in the custody of the local department of transitional assistance (formerly welfare board) be transferred to the state department of transitional assistance (see 66:17A). There may be other sections of the General Laws specifically providing for the transfer of other town records.

3. Certifying Copies of Records

Generally, the clerk or officer of the department who has custody of the records must certify copies of records of that department. Even though it is likely that the town clerk has custody of more records than any other town official, he does not have custody of all town records. Whether or not you have legal custody of a town record will determine whether or not you may issue a certified copy of that record. For example, you as town clerk would not be entitled to certify a copy of the records of the town treasurer's department. You would also not be able to certify a copy of the board of health minutes even though those minutes were on file in your office for convenient public access.

NOTE: Issuing a certified copy of a record is different from providing access to a record or issuing a non-certified copy of a record and the definition of custodian appearing in Public Records Access Regulation, 950 CMR 32.03 and the requirements of 66:10 give the town clerk broader duties with respect to access and non-certified copies.

a. Certified copy issued by town clerk

You should provide a certified copy of any record LEGALLY in your custody upon request and upon payment of the appropriate fee. You will need to make a copy of the record on file either by some photographic process or by typing it. Then add your certification at the bottom or in some other convenient place. If you are certifying a record which contains more than one page, you need to add your certification only on the last page. Then staple all the pages together. Be sure that each page is numbered so that the person receiving the copy will know that he has the entire document requested. A good page numbering system to use is as follows: page 1 of 4 pages, page 2 of 4 pages, etc.

SAMPLE CERTIFICATIONS

This is to certify that this is a true copy of the decision of the Midtown Earth Removal Board filed in the office of the Town Clerk on *month, date, year*.

Month, date, year

*TOWN
SEAL*

Your signature.....
Town Clerk of Midtown

OR

A true copy, Attest:

Your Signature
Town Clerk of Midtown

*TOWN
SEAL*

Be sure that you affix the raised town seal to all certified copies you issue.

A rubber stamp may be made up for the simple certification shown in the second sample above. In addition, a facsimile signature may be included in such a rubber stamp. However, care should be taken that any rubber stamp containing your facsimile signature is not used without your specific authorization since it would have the same effect as your original signature on any certified copy.

NOTE: The term attested copy instead of certified copy is sometimes used in the General Laws. Either term refers to a copy which you have certified as a true copy.

b. Fees for certified copies

The fees to be charged by the town clerk for issuing a copy of many of the records on file in a town clerk’s office are established under 262:34 or other section of the General Laws, or, if permitted by a general law section, under your town bylaws. If not established by the General Laws, or your town bylaws, the fees for copies must be not more than the amount specified in Public Records Access Regulations 950 CMR 32.06.

In some towns the town clerk regularly charges an additional fee, usually \$3.00, for a copy of any record to which his certification has been added. In other towns, the fee charged for copies is the same whether or not the certification has been added.

In some cases, the General Laws specify the fee to be charged for certified or attested copies of records. For example, see 262:34 (25) and 262:34 (35). The public records access regulations make no distinction in its fee schedule between certified and non-certified copies of records. NOTE: The supervisor of public records has determined that a record custodian may not charge an additional fee for certifying a document when the requester has not asked for certification. Further, the custodian may not require a requester to accept only a certified copy. [SPR 82/152]

It is suggested that you contact your town counsel for advice if you wish to charge an additional fee for certified copies of records.

c. Attestation of genuineness of signature

From time to time you will probably be asked to certify a copy of a record not in your legal custody. Such requests are sometimes made by town counsel or another lawyer in connection with a court case and occasionally they are made by the public. In these cases, inform the requester that you cannot certify the copy of record as a true copy and he should obtain a certified copy from the clerk of the board which has legal custody of the record.

However, the requester may need your attestation with respect to the genuineness of the certifying officer’s signature and he has simply used the general term certification in his request. In this case, the requester should provide you with a copy of the record already certified by its legal custodian as a true copy. Under or near the certification, add your attestation and affix the town seal.

SAMPLE ATTESTATION

Attest: Your signature TOWN
 Town Clerk of Midtown SEAL

You do not need to be present to witness the signature of the certifying officer, but you should recognize the signature as genuine. It is likely that you will have a record or memo on file in your office which contains the signature and, if you are in doubt, you could compare signatures. If you are not sure that the signature is genuine, contact the official to verify that he actually signed the certification BEFORE you add your attestation.

D. CARE AND PRESERVATION OF RECORDS

1. Preparation of Records [66:3,4]

Written or printed public records must be entered or recorded on certain types of paper as specified in 66:3 and all photographs, microphotographs, maps and plans must be made of materials approved by the supervisor of public records. In addition standards established and approved by the supervisor must be met for

all inks, typewriter ribbons, stamping pads, carbon papers and photographic machines, devices or chemicals used in the preparation of PERMANENT public records. [66:4]

A listing of approved inks, ribbons, etc. and equipment may be obtained from the Supervisor of Public Records, 220 Morrissey Blvd., Boston, MA 02125. (Also see section E to follow and the microfilm regulations appearing in the Municipal Management Manual)

2. Storage of Records [66:11,12]

The proper preservation of town records depends to a large extent on proper storage facilities in addition to the care which is regularly used in handling the records. Town records must be kept in the rooms in which they are ordinarily used and be conveniently arranged. [66:12] When the records are not in use, they must be kept in fireproof rooms, vaults or safes. [66:11,12] The selectmen are required to provide rooms, safes or vaults in which the town records may be safely kept and these facilities must be furnished with fittings of non-combustible materials only. [66:11]

The importance of and the need for proper storage facilities is highlighted by an opinion of the attorney general which states that the duty of the selectmen to provide fireproof vaults for the storage of town records is not conditional upon action or appropriation of the town. The selectmen may incur the expense necessary for compliance with the law and the town is obliged to reimburse them. [2 Op AG 48] You may find this opinion very helpful in working with your board of selectmen and finance committee to improve your record storage space and facilities.

The Supervisor of Public Records has established performance specifications for safes and vaults. These standards complement and augment the Specifications for Safes and Vaults found in the Municipal Records Management Manual, and allow the town to employ value engineering in the construction of vault facilities. Copies of the standards are available from the Records Management Unit.

Safes must have the underwriters' laboratories "A" label approval in order to meet state specifications.

The specifications for vaults are more detailed and include a six-hour rating for all doors, required wall materials and thickness, roof and floor construction and waterproofing. In addition, all vaults constructed after January 1, 1975 must contain air conditioning equipment which will strictly regulate both temperature and humidity. Fluorescent lights cannot be used inside a vault unless they are enclosed by plastic ultra-violet filters since ultraviolet radiation speeds the deterioration of paper. All shelving must be on non-combustible material.

Even if no new equipment or vault space is contemplated in the near future, it is suggested that you inspect your storage space to determine whether or not it meets state standards. It is possible that some changes may be made to improve the facilities. Your town's facilities were surveyed by representatives of the state supervisor's office, records management team sometime between 1975 and 1982 and a copy of the report with recommendations will probably be on file in your office or in the selectmen's office.

Information on proper storage of town records is also available in the Municipal Records Management Manual and advice can be obtained by writing to Secretary of State, Supervisor of Public Records, Archives Division - Records Management Section, 220 Morrissey Boulevard, Boston, MA 02125 (617 727-4062)

3. Binding, Rebinding and Repairing Record Books [66:9]

Every person having custody of any public record books of the town, shall at the town's expense, have them properly and substantially bound. He shall, so far as practicable, have any books, which may have been left incomplete, made up and completed from the files and usual memoranda. He shall have fair and legible copies made of any books which are worn, mutilated or are becoming illegible, and cause them to be repaired, rebound or renovated.

If you have a book completed or copied, you must certify on oath that the book has been completed from files and usual memoranda or is a true copy of the original. Since an oath is required, you will need to have your certification notarized. The certification should be permanently attached to the book, preferably by writing or typing directly on a page bound into the book. Completed or copied books certified in this manner have the force of the original records.

An opinion of the attorney general states that the duty to have record books re-bound, repaired or renovated is imperative, that is, not to be avoided or evaded, whether or not an appropriation is made by the town and even if no such appropriation is made. [1 Op AG 484] In addition, 66:9 provides that you may place books in the custody of the state supervisor of public records who may have them rebound, repaired or renovated at the expense of the town. This opinion of the attorney general and provision of 66:9 may be very helpful to you in persuading the finance committee to approve your request for funds for binding, repairing or restoring your record books.

Information on conservation and restoration of records is included in the Municipal Records Management Manual. Additional information and advice is available from the state supervisor of public records.

If the record book to be repaired or restored is a very old one, you may wish to contact a professional records conservator. Contact a neighboring clerk if you are unaware of who services your particular area. If current records need to be bound or older records in good condition need to be rebound, the services of a reputable book binder would probably be adequate. In this case, however, you should discuss with the binder what measures he will take to insure the safety of the records while they are in his hands.

4. Retention and Destruction of Records [66:8]

The following are permanent records of the town which are specifically required by 66:8 to be preserved and safely kept:

- ⇒ every original paper belonging to the files of the town, bearing a date earlier than 1870
- ⇒ every book of registry or record, except books which the supervisor of public records determines may be destroyed
- ⇒ every town warrant
- ⇒ every deed to the town
- ⇒ every report of an agent, officer or committee relative to bridges, public ways, sewers or other municipal interests not required to be recorded in a book and not so recorded

Every other paper belonging to such files shall be kept for 7 years after the last original entry therein, unless there is a section of the General Laws specifying the length of time the record must be kept, or unless the record is included in retention schedules approved by the state supervisor of public records. In addition, 66:8 provides that “no such paper shall be destroyed without the written approval of the supervisor of records.” This written approval is a must, because in cases where a record is requested or subpoenaed the clerk will be able to produce written authorization from the State Archives to a court that the record was properly destroyed.

Approved retention schedules covering the records of most town officers and departments, including the town clerk’s office, have been included in the Municipal Records Manual in the section covering disposition. (You can request a copy of the Town Clerk’s disposition schedule from the State Archives Division) The retention schedule for town clerk’s records has not been included in this manual, but whenever possible the retention period specified and a reference to the state schedule number has been included in the text under each type of record.

In general, you will need to obtain written approval of the state supervisor of public records prior to disposing of almost all records and papers in your office, whether or not they are included in the state retention schedule. However, there are some papers or records which may be destroyed without prior written approval as follows:

- * items which have been designated with a star* on the state retention schedule provided the specific retention period has expired, such as ballots [#2.23 & #2.24], nomination papers [#2.33], etc.
- * worksheets used to prepare reports, rough drafts of reports, notes and calculations used to prepare budget submissions, etc.
- * catalogues, trade journals and other publications and papers received from organizations outside of town government which require no action and are not part of a case upon which action is taken
- * reproduction materials, such as stencils, masters or offset plates
- * shorthand notes or tape recordings which have been transcribed
- * tabulating cards used as an intermediary work record
- * inter-office memos sent for information only, such as notices of office hours, holiday schedules, etc.

To obtain approval for the disposal of records, you will need to send a letter to Secretary of State, Supervisor of Public Records, Archives Division - Records Management Section, 220 Morrissey Blvd., Boston, MA 02125. The letter should be sent in duplicate and include the retention schedule number of the record and the date or dates of the record. If the retention schedule requires that a record be kept until after completion of a satisfactory audit, also include the date on which the audit was completed.

In addition, include the estimated volume in cubic feet of the records for which approval is requested. To assist you in estimating the number of cubic feet, an equivalency chart has been included in the Municipal Record Management Manual under the section covering organization. This chart gives the number of cubic feet of a variety of sizes of file drawers and other records containers, and a general formula which can be used for containers not included in the chart.

Note that all papers and records regularly found in a town clerk's office have not been included in the state retention schedule, such as Massachusetts tax liens and releases, DPU hearing notices, notices of appointment, etc. Approval to dispose of these records may be requested and obtained by including them in your letter. Include the dates of the records and, if possible, an alternate source of the information contained in the record. Include a copy of any record which the supervisor might have difficulty in identifying, and if possible, give a General Law chapter and section number for reference.

E. MICROFILMING TOWN RECORDS [66:3,8a; 233:79a,7E; Regulations on Using Microfilm 950 CMR 39.00]

Provisions related to microfilming town records have been included in the General Laws for many years. Section 8A, added to chapter 66 in 1951, provides that certain records in the custody of the town clerk may be destroyed provided the original records have been microfilmed, the records are at least 20 years old and the written approval of the state supervisor of public records has been obtained. Such records include any index of instruments made under the provisions of 41:15, married women's business certificates which were required to be recorded under 209:11 until 1974, mortgages of personal property, bills of sale given for security and assignments of future earnings which were required to be recorded under 255:3 until the adoption of the Uniform Commercial Code in 1957. Records and indexes made under the provisions of similar statutes are also included. **Before any clerk undertakes a microfilming project he/she should contact the Records**

Management Unit - many of the microfilm sections of the law are changing rapidly and becoming outdated.

In addition, 66:8A provides that the micro-photograph of any such index or record so destroyed shall have the same force and effect as the original index from which the micro-photograph was made. 233:79A provides that copies of public records and records described in 66:5, 7 and 16, whether or not such copies are made by the photographic or microphotographic process, shall, when duly certified by the person in charge thereof, be admitted in evidence equally with the originals. Further, 233:79E provides that if, in the regular course of its business or activity, any department or agency of government, has recorded, copied or reproduced its records by microfilm, micro-card, or miniature photographic process, the original may be destroyed unless its preservation is required by law and such reproductions shall be admissible in evidence whether or not the original is in existence.

Interest in the use of microfilm has increased in recent years and microphotograph is now included as one of the items in the definition of record appearing in 66:3. In addition, the supervisor of public records has promulgated regulations on the use of microfilm by governmental agencies, 950 CMR 39.00, covering in detail specifications for the type of film, its preparation, storage and inspection. Considerable information on microfilming appears in the Municipal Records Management Manual including reasons for its use, format, selection of microfilming services, definition of terms used in microfilming, a list of published references, and the full text of the regulations 950 CMR 39.00.

1. Reasons for Microfilming.

While the full potential of microfilming can probably only be realized if it is combined with an overall records management program including regular file clean-out, planned records retirement and disposal, restoration and preservation, the use of a records retirement center and computer applications, there are many benefits to be derived from a separate microfilming program. The Municipal Records Management Manual gives six important reasons for microfilming town records; among them are security, space savings and improved access.

a. security

Keeping records safe from natural or man-made hazards or catastrophe is a major concern of a town clerk. Microfilming can assist in this effort, particularly if two copies of each film are obtained, one for use in the town and the other for storage in an off-site location such as a commercial repository designed for secure, long-term storage or a bank vault.

In determining whether or not a record should be microfilmed for security, the following should be considered:

- the extent to which its loss would delay restoration of town operations
- the extent to which its loss would delay the recovery of money with which to replace buildings, equipment, etc.
- the extent to which destruction of the record would jeopardize the general public interest
- the relative difficulty involved in replacing or reconstructing the record, if destroyed
- the historical value of the record itself or of the information contained in the record.
-

Records which might be considered as prime candidates for microfilming for security reasons are the town's ancient records, town meeting proceedings and warrants, births, death and marriage records,

official minutes of the various boards and committees of the town, particularly those with quasi-judicial powers such as the board of appeals. These are permanent records which would ordinarily be kept in a safe or vault and which would not be removed from such storage even after they have been microfilmed.

Other records to be considered for microfilming for security would not necessarily be required to be kept permanently but would contain information of sufficient importance to town operations so that their security should be guaranteed. Such records might include personnel files, town meeting action index card files, assessors' current work cards and notes, etc.

b. space savings

All town departments are faced with ever-increasing space problems created by the proliferation of records and papers. Trying to make space to store important records covering the span of years from your town's settlement to the present day sometimes seems to be an insurmountable obstacle. Out of sheer desperation, papers no longer needed for regular reference have sometimes been packed and placed either in a vault, even though they may not require the high security provided by such a facility, or have been tucked in a corner or basement where their security may be questionable. Microfilming can be of great assistance in solving this problem.

Some records which are seldom referred to after a year or so must be retained in hard copy either permanently or over a long period of time. By microfilming these records, the originals may be moved out of expensive and limited vault space and placed in a less expensive storage space without jeopardizing the information contained in the records. These records might be files related to bylaw amendments which have been approved by the attorney general including the back-up information to show compliance with procedural requirements, superseded road layouts, or payroll records, etc. The information contained in these records should be safely retained, but after filming, the records themselves might not need the high security provided by a vault.

The General Laws currently provide that certain permanent records may be disposed of after microfilming subject to the approval of the state supervisor of public records. Some of these are listed in 66:8A. In addition, 51:41 provides that original affidavits of registration, or microfilm copies thereof, shall be preserved. This provision would allow you to dispose of affidavits of registration of those voters who have been dropped from the current voting list once these affidavits have been filmed and approval has been obtained.

The Archives Division-Records Management Section creates policy on the subject of maintenance of permanent records in the major municipal departments, and have made distinctions between permanent and temporary records.

In any event, in order to get the most out of whatever microfilming funds you may be able to obtain, careful thought should be given to determine whether or not a particular record should be filmed. With new technology and computer scanners, and CD ROM storage available, there will, undoubtedly, come in time newer regulations that govern the technology that is appropriate.

c. improved access

The Records Management Unit has determined that certain records may be destroyed after having been properly microfilmed even though they may have permanent value. A listing of records which must be retained in hard copy is included with the microfilm section of the Records Management Manual.

M.G.L. Chapter 66:3 requires that a recording officer inspect the microfilm records at least once every three years and correct any fading or faulty records. If any deterioration is found among the microfilm, inspection must be made and a silver duplicate must be prepared to replace each deteriorating film. Specifications are governed by state specifications in 950 CMR 39.00 for the microfilming. The specifications

are technical and if you need advice, refer to the Municipal Records Management Manual and check in the Archives Division-Records Management Section.

F. ACCESS TO AND COPIES OF PUBLIC RECORDS[66:10; Public Records Access Regulations 950 CMR 32.00]

The requirements covering access to and obtaining copies of public records appear in Chapter 66, Section 10 of the General Laws and in the Public Records Access Regulations 950 CMR 32.00 promulgated by the state supervisor of public records. Familiarity with these requirements is essential to fulfilling your duties as town clerk.

1. Record Custodian Defined (Regulations 32.03)

As used in the regulations, custodian means the governmental officer or employee who in the normal course of his or her duties has access to or control of public records. Under this definition, the town clerk has broader duty than that of issuing certified copies or records required by law, bylaw or charter to be filed or recorded in his office. While you cannot certify a record not legally in your custody, you are required to allow public inspection and provide a noncertified copy of any public record in your office, whether or not it was required by law, bylaw or charter to be filed or recorded with you. For example, in some towns, the various town boards and committees regularly file copies of meeting minutes in the town clerk's office even though there is no requirement that they do so. The town clerk is required to allow inspection and provide noncertified copies of these records.

2. When Records May be Inspected [66:10(a), (b); Regulations 32.05(1), (2)]

The custodian of any public record must allow it to be inspected and examined by any person at reasonable times and without unreasonable delay. [66:10(a)]. The regulations provide that the custodian must allow a public record to be inspected and copied by any person during regular business hours. However, if the office does not have regular business hours, a notice must be posted in a conspicuous place listing the name, position, address and telephone number of the person to be contacted to obtain access to public records. [Regs. 32.05(1)]

In addition, the custodian is required to maintain procedures that will allow access to public records at reasonable times and without unreasonable delay and must comply with requests as soon as practicable and within 10 days. [66:10(b); Regs. 32.05(2)]

3. Form of Request [66:10(b); Regulations 32.05(3),(4),(5)]

There is no particular form for a request to examine or obtain copies of public records specified either in 66:10 or in the regulations. Under 66:10(b) a request may be delivered in hand to the office of the custodian or mailed via first class mail. This would seem to imply that requests must be in writing. However, the regulations specifically provide that requests for public records may be written or oral and a custodian shall not require written requests merely to delay production of the record. [Regs. 32.05(3)] The regulations recommend that the request be made in writing if there is substantial doubt as to whether the records requested are public or if an appeal is contemplated.

The person seeking access to a public record shall provide a reasonable description of the record so that the custodian can identify and locate it promptly, but the custodian must use his superior knowledge of his files to assist in promptly complying with the request. The person requesting the record cannot be made to make a personal inspection of the record prior to receiving a copy of it. [Regs. 32.05(4)] In addition, the custodian is prohibited from requiring that the requester disclose the reasons he is seeking access to or a copy of a public record and the custodian cannot require proof of the requester's identity prior to complying with requests for copies of public records. [Regs. 32.05(5)]

If you have filed or recorded a non-public record along with a public record, you must allow public inspection of that part which is a public record, provided it can be separated from that part which is not public. [66:10(a)] For example, if you record impounded birth records in the same book as those which are not impounded, you must allow inspection of a page in the record book which does not contain any impounded entries. In this case, you should be sure that the examiner does not turn to a page in the book containing an impounded record.

4. Examination of Records [66:10(a)]

Inspection of a public record must take place under the supervision of the record custodian. [66:10(a)] Such supervision is necessary to prevent the removal of a record from the room, altering, defacing or destroying the record, or changing the order of papers in a file. The procedures you establish for the examination of records will depend to a large extent upon the physical arrangements of your office, the location in which the records are kept, and your own judgment as to what may be necessary to protect the records.

It is recommended that you, or one of your employees, keep the record being examined and the person examining it in view at all times. Should the examiner start to do something which might damage the record, such as underlining or making other marks on a paper or in a book, he should be stopped immediately. Under no circumstances should an examiner be allowed to remove a record to examine it outside of your office area. Vigilance is strongly recommended as there have been instances in which an examiner has torn a page out of a record book or removed papers from a file and taken them with him when he left the office.

5. Copies of Records [66:10(a); Regulations 32.06]

A copy of a public record must be furnished to any person upon request and upon the payment of a reasonable fee. In addition, every person for whom a search of public records is made shall, at the direction of the record custodian, pay the actual expense of such research. [66:10(a)]

The fee to be charged for issuing a copy of many of the records on file in the town clerk's office is established under 262:34 or other sections of the General Laws, or, if permitted by a general laws section, under your town bylaws. The fee to be charged for a search of records may also have been established in this manner. If, however, the fee is not so established, it must not be more than the amount specified in the regulations [Regs. 32.06(1)] as follows:

- * for photocopies of a public record, not more than \$.20 per page
- * for copies of public records maintained on microfilm or microfiche, not more than \$.25 per page
- * for requests for noncomputerized public records - a pro-rated fee based on the hourly rate of the lowest paid employee capable of performing the task may be assessed for search time and segregation time expenses, as defined by 950 CMR 32.03. In addition, a per page copying fee under 950 CMR 32.06(1)(a) and 950 CMR 32.06(1)(b) may be assessed.
- * for computer printout copies of public records, not more than \$.50 per page
- * for search of computerized records, the actual cost incurred from the use of the computer time may be assessed
- * for copies of public records not susceptible to ordinary means of reproduction, the actual cost incurred in providing the copy may be assessed

NOTE: 262:34(65) which formerly permitted a town clerk to charge \$1.00 a page for a copy of a record not specifically listed in 262:34 was repealed by Chapter 1050 of the Acts of 1973 and may not now be used to

establish a fee. ALSO a town bylaw cannot establish a fee for a copy of a record UNLESS such a bylaw is specifically permitted by a section of the General Laws for that record. If in doubt about fees - it is suggested that you contact the Supervisor of Public Records.

If the costs are estimated to exceed \$10.00, the custodian must provide a written good faith estimated cost including costs for copying, searching the records, etc. [Regs. 32.06(2)] Actual cost of postage, if any, may be assessed and added to the copying costs. [Regs. 32.06(3)] However, a custodian may not charge a fee for mere public inspection of records, unless compliance with the request for inspection takes more than one-half hour. In that case, a fee under 950 CMR 32.06(1)(c) may be assessed.

6. Denial of Request by Custodian [Regulations 32.07; 32.08 (1)]

If you determine that a record which has been requested is NOT a public record, you must provide a written denial within 10 days of the receipt of the request. The denial must include the reasons for your denial and specifically include the exemption(s) appearing in 4:7(26) upon which the denial is based. If the exemption is based upon a specific section of the General Laws, such as 46:2A with respect to birth, marriage or death records, the statute must be cited. Failure to make a written response within 10 days to any request for access to public records shall be deemed a denial of the request.

In addition to the written denial, you must advise the person denied of his rights of appeal.

However, before issuing a denial of a request you may wish to seek an advisory opinion from the state supervisor of public records, particularly if you have some doubt as to the status of the record. On written request of a record custodian, the supervisor may issue an advisory opinion with respect to any question concerning the provisions of 4:7(26) or 66:10. [Regs. 32.07] Your written request should be addressed to Supervisor of Public Records, Room 1710, 220 Morrissey Blvd., Boston, MA 02125.

7. Appeals to Supervisor of Public Records [66:10; Regulations 32.08]

a. who may appeal [66:10(b); Regs. 32.08(2)]

Any person who has made a WRITTEN request for inspection or a copy of a record may petition the state supervisor of public records for a determination whether the record requested is public if the record custodian refuses or fails to comply with the request or fails to comply with ANY provision of regulations 950 CMR 32.00. An oral request may not be the basis for appeal.

b. when made [Regs. 32.08(2)]

The appeal must be made within 90 days of the date on which access was denied or on which the custodian failed to comply with a request or provision of the regulations. Note that failure of a record custodian to make a written response to a request for access is deemed a denial of the request. In this case, the appeal should be made within 100 days of the date access was requested since the custodian is allowed 10 days from that date to respond.

c. form of appeal [Regs. 32.08(2)]

No particular form for an appeal is specified either in 66:10 or in the regulations. However, the appeal must be in writing and must include a copy of the letter of request and, if available, a copy of the letter by which the custodian responded to the request.

d. investigation by supervisor [Regs. 32.08(3),(6),(7),(8)]

Within a reasonable time after receipt of the appeal, the supervisor must investigate the circumstances giving rise to the appeal. [Regs. 32.08(3)] He may require an inspection of the requested record(s) in private

during any investigation and may require the custodian to produce other records and information necessary to reach a determination. [32.08(6)] He may require a record custodian to compile an index of the requested records where numerous or lengthy records have been requested and the index must meet the requirements specified in the regulations. [32.08(7)]

At any time during the course of the investigation or proceedings, he may order a conference for the purpose of clarifying and simplifying the issues and expediting the investigation or proceedings. [32.08(8)]

e. hearings [Regs. 32.08(5)]

The supervisor may, but is not required, to conduct a hearing relative to the appeal and he may employ any administrative means available to resolve an appeal summarily.

f. records presumed public [Regs. 32.08(4)]

In all proceedings pursuant to the regulations, there shall be a presumption that the record sought is public.

g. decisions of supervisor [66:10(b); Regs. 32.08(3), 32.09]

Within a reasonable time after receipt of an appeal, the supervisor must render a written decision to the parties stating the reason or reasons for his decision. [Regs. 32.08(3)]

A custodian must promptly take the steps necessary to put an order of the supervisor into effect. The supervisor may notify the attorney general or appropriate district attorney of any failure by a custodian to comply with his order. [66:10(b); Regs. 32.09]

8. Judicial Appeals [66:10]

The administrative remedy of appealing to the supervisor shall not limit the availability of judicial remedies otherwise available to any person requesting a public record. If a record custodian refuses or fails to comply with a request for inspection or a copy of a public record, or fails to comply with an administrative order, the supreme judicial or superior court shall have jurisdiction to order compliance. [66:10(b)] In this case, the person wishing to appeal to the court should seek the advice of a lawyer.

In any court proceeding under 66:10(b) there shall be a presumption that the record sought is a public record and the burden shall be on the custodian to prove with specificity the exemption which applies. [66:10(c)] If a question relative to record access is taken to court, you should contact your town counsel.

G. PENALTIES

- ⇒ For unlawful possession of a public record, removing it from the room in which it is usually kept, or altering, defacing or destroying a public record: a fine of not less than \$10.00 nor more than \$500.00, or imprisonment for not more than 1 year, or both. [66:15]
- ⇒ on a public officer who refuses or neglects to perform a duty required under Chapter 66: fine of not more than \$20.00 for each month of neglect or refusal. [66:15]
- ⇒ on a custodian of a record who fails to demand that a public record be returned to its proper location, and on the person who fails to deliver the record upon demand: a fine of not more than \$20.00. [66:17]
- ⇒ on whoever, with intent to injure or defraud, falsely makes, alters, forges or counterfeits a public record, or a certificate or return or attestation of a town clerk or any other public officer: imprisonment in the state prison for not more than 10 years or in jail for not more than 2 years. [267:1]

H. ENFORCEMENT OF CHAPTER 66

- ⇒ to order custodian of records to use approved ink, typewriter ribbons, carbon paper, photographic machine (photocopying) printers, etc. used in making permanent public records: supreme judicial court upon petition by the state supervisor of public records. [66:4]
- ⇒ to order compliance with the provisions of law relative to public access: supreme judicial or superior court. [66:10(b)]
- ⇒ to compel a person unlawfully having a public record in his possession to deliver it to the record custodian: superior court upon complaint of record custodian. [66:13]
- ⇒ to require church or religious society which has not held religious meeting for 2 years to deliver records to the town clerk, and to require the town clerk to return records upon proper written demand: superior court. [66:16]
- ⇒ to order compliance with any provisions of Chapter 66 for maintaining public records: a justice of the supreme judicial or superior court upon complaint by the attorney general, district attorney, or three registered voters of the town. [66:17C]

II. VARIANCES, SPECIAL PERMITS, APPEALS

A. HISTORY

Town were first authorized to adopt zoning bylaws under Chapter 601 of the Acts of 1920, although these were not called zoning bylaws at that time. The town could be divided into districts or zones. The bylaws could restrict buildings to be used for particular purposes to specified parts of the town, and require them to conform to regulations provided in the bylaws. The act provided for the withholding of a permit for the construction, alteration, or use of any building if the building as constructed, altered or used would be in violation of any bylaw established under the act. The right of appeal by any person aggrieved by the refusal of a permit was also provided.

The provisions of the act were to be carried out in such a manner as would best promote the health, safety, convenience and welfare of the inhabitants, lessen the danger from fire, improve and beautify the town, harmonize with its natural development and assist the carrying out of any schemes for municipal improvement put forth by any municipal planning board or board of survey or other like authority.

By 1922, the provisions relating to zoning bylaws appear in Chapter 40, Section 25 through 30 of the General Laws. Under Chapter 133 of the Acts of 1924, the term board of appeals was used and a new section 27A was added to Chapter 40 specifying that the board could vary the application of the bylaw in specific cases “wherein its enforcement would involve practical difficulty or unnecessary hardship and wherein desirable relief may be granted without substantially derogating from the intent and purpose of such bylaw...but not otherwise.” These standards for granting a variance are very similar to those appearing in present 40A:10. A written petition for a variance was to be submitted to the board, a hearing required, and notice of the hearing published in a newspaper and sent to owners of property deemed by the board to be affected. The board was required to make a detailed record of its proceedings and immediately following the board’s final decision, the record was to be filed in the office of the town clerk. A notice of the decision had to be mailed to each party in interest. Any aggrieved person could appeal the board’s decision to the supreme judicial court within 15 days after the decision was filed.

In 1933, under Chapter 269 of the Acts of that year, the provisions of Chapter 40, section 25-30A were substantially revised and the term “municipal zoning laws” appeared in the title of the act. Several items, such as height, number of stories, size of buildings and structures, size and width of lots, etc. were added to those which could be restricted and regulated by bylaws and the purposes of zoning were expanded. Bylaws were

required to provide for a board of appeals which could be the existing board under the local building or planning bylaws. The board was to adopt rules for conducting its business and carrying out the purpose of 40:25-30A. The board had the power to hear and decide appeals where it was alleged by the applicant for a permit that there was error in any order or decision made by the administrative official to hear and decide requests for special permits, and to authorize a variance upon appeal with respect to a particular parcel of land. If the bylaws provided, the board could make special exceptions to the term of the bylaws “in harmony with their general purpose and intent,” subject to appropriate conditions and safeguards. These standards for making exceptions are very similar to the standards for issuing special permits in present 40A:9.

During the next twenty years, there were several amendments to Chapter 41, sections 25-30A. These included provisions for granting use variances and the regulation of the non-use of nonconforming buildings. Under Chapter 199 of the Acts of 1941, the bylaws could provide that notices of appeal must be filed with the town clerk.

In 1954, under Chapter 368 of the Acts of that year, the zoning law was revised by striking out section 25 - 30B of Chapter 40 and inserting in their place, a new Chapter 40A entitled “The Zoning Enabling Act.” Most of the provisions of 40:25-30B were retained in the new Chapter 40A, but there was a substantial rearrangement of these provisions. Other changes required a public hearing prior to granting a special permit, and notice of hearing and copies of decisions to be given to the planning board.

Between 1954 and 1975, there were a large number of amendments to Chapter 40A. Among other things, a copy of the board of appeals regulations was required to be filed with the town clerk as were notice of appeals. Specific time limits within which hearings must be held, decisions rendered and filed, and for taking appeals were established.

A second major revision to Chapter 40A was made in 1975 under Chapter 808 of the Acts of that year. This act not only rearranged the sections of Chapter 40A, but made a considerable number of substantive changes. The purposes of zoning, formerly appearing in 40A:2, were considerably broadened and were removed from the chapter. They now appear in section 2A of Chapter 808 itself.

New Chapter 40A provided for and defined a permit granting authority, a special permit granting authority and a zoning administrator. It specified what local officials were to be charged with the duty of enforcing the zoning bylaws and provided a penalty for violations. It included a number of uses for which a special permit could be issued, among them, multi-family residential uses, cluster and planned unit development. It also changed the time limits within which hearings must be held and decisions made. All variances and special permits granted were required to be recorded in the registry and the town clerk’s certificate with respect to appeals was required to be added to the copy of the decision prior to recording.

Towns were required to bring their existing zoning bylaws into conformity with the provisions of Chapter 808 by June 30, 1978. While the provisions of Chapter 40A have been amended since 1975, most are the same or substantially the same as in 1975.

The adoption of zoning bylaws by a town necessarily gives rise to the need to protect the citizen’s basic rights to use and enjoy his property by providing some modifications to their regulations, to allow some flexibility in their application and to establish a process for appealing the decisions made by the various officials and boards. The types of relief, the boards and officials empowered to grant such relief, the process for appealing decisions and the related duties of the town clerk appear in many of the sections of Chapter 40A, General Laws.

B. TYPES OF RELIEF [40a:6,9,9a,10] (ALSO see “Land Use Manager,” No. 7, Variance v. Special Permit, Executive Office of Communities and Development, Division of Community Services)

1. Variances [40A:10]

A. Variance is an authorization to use land, buildings or structures in a manner that is prohibited by the zoning bylaws. A variance may be granted if the strict or literal application of the bylaw would cause substantial hardship or would, in effect, confiscate property because of an inability to use it, if there would be no substantial detriment to the public good and if the intent or purpose of the zoning bylaw would not be nullified or substantially derogated.

Whether or not specifically provided in the zoning bylaws, petitions for variances from dimensional regulations, such as lot size, setback or yard requirements, must be heard and decided by the permit granting authority. In addition, zoning bylaws MAY provide for variances authorizing prohibited uses. Conditions, safeguards, and limitations of time and use may be imposed provided they are not based upon continued ownership of the land or structure. If the rights authorized by the variance are not exercised within one year of the date of the grant, they lapse and may be re-established only after notice and a new hearing. However, the permit granting authority may grant an extension of the time limit for a period not to exceed 6 months.

2. Special Permits [40A:9,9A]

A special permit is an authorization to use land, buildings or structures for a particular use specified in the zoning bylaws.

Zoning bylaws MUST provide for types of uses which shall only be permitted in districts upon the issuance of a special permit, often called “special use permit.” The uses must be in harmony with the general purpose and intent of the bylaw and general or specific guidelines for the issuance of special permits must be set forth in the bylaw. For example, listed in the bylaw as a permitted special permit use in an industrial district may be the following:

gasoline filling stations, provided a special permit
is obtained from the board of appeals in accordance
with the guidelines set forth in section V.B. of these bylaws.

Zoning bylaws MUST also provide for special permits for uses accessory to permitted uses in connection with scientific research and development or related production if the proposed accessory use does not substantially derogate from the public good.

In addition, zoning bylaws MAY provide that a special permit be issued to authorize increases in population density or use intensity, multi-family residential uses, cluster developments, etc. [40:9] and for adult book stores (40:9A). They may provide that commercial uses permitted in nonresidential zoning districts must be in conformity with a site plan approved by the board of appeals or a special permit granting authority in accordance with the procedures specified for granting special permits. In this case, applications for site plan approval would be treated the same as applications for special permits. (see 357 MASS 25) Special permits lapse within a period specified in the bylaw, but not more than two years, if substantial use or construction has not commenced.

3. Extension/Alteration of Pre-Existing Nonconforming Structures and Uses [40A:6]

A pre-existing nonconforming structure or use is one which was lawfully in existence or begun, or for which a building or special permit was issued PRIOR to the first publication of the notice of hearing on a zoning bylaw amendment which, if passed, would make the structure or use nonconforming. For example, a house built on a 20,000 square foot lot in residential district A in 1945 can continue to be used as a residence even though the lot size in residential district A was increased to 40,000 square feet in 1960.

The extension or alteration of pre-existing nonconforming structures or uses may be permitted upon a finding that it would not be substantially more detrimental to the neighborhood than the existing structure or use. Because the finding required to be made in these cases is different from the statutory findings required for a variance, the provisions of 40A:6 provide for a special permit. (see 388 Mass 42,51) The procedures

outlined in this manual related to special permits should be followed for applications and decisions concerning pre-existing nonconforming structures or uses.

4. Appeals [40A:8,13,15,17]

Several appeal procedures have been specified in Chapter 40A to protect basic rights in the event that officials operating under Chapter 40A and the zoning bylaws act arbitrarily, in violation of the law or bylaws, or fail to act. Depending upon the specific circumstances, appeals may be taken to the board of appeals, to the zoning administrator if one is authorized by bylaw, and to the courts.

C. OFFICIALS AND BOARDS

1. Town Clerk

The town clerk has two primary duties in relation to Chapter 40A and the functions of the board of appeals, zoning administrator and special permit granting authority. One is to receive, file and transmit documents and the other is to issue a variety of certificates and certified copies. Whenever a document is filed with the town clerk under Chapter 40A, it is particularly important that it be time stamped or the date and time of receipt be noted on it. Hearings must be held, decisions made and appeals taken within a specified time limit and, in many instances, that time is calculated from the date of filing with the town clerk.

It is also important that the town clerk become very familiar with the town's zoning bylaws. These bylaws will determine whether or not a zoning administrator is to be appointed, which board or boards will act as the special permit granting authority and the types of special permits each may grant, whether or not use variances can be granted, what official is to act as the zoning enforcement agent, etc. While the zoning bylaws must be consistent with the General Laws Chapter 40A, some variations in specific provisions are allowed and the town clerk must be familiar both the General Law provisions and the zoning bylaw provisions related specifically to his town.

All papers and documents, including plans and exhibits, related to Chapter 40A and filed with the town clerk are public records and while they do not need to be recorded in a special book, they must be safely and permanently kept. (See state retention schedules)

2. Zoning Board of Appeals/Board of Appeals

a. how established [40A:12]

A zoning bylaw **MUST** provide for a zoning board of appeals and unless a town charter provides otherwise, the method of appointment, number of members, term of office, etc. is specified in 40A:12. In many towns and in this manual, the zoning board of appeals is called simply the board of appeals.

Zoning bylaws **MAY** also provide for the appointment of associate members of the board of appeals who may be designated by the chairman to sit on the board in case of absence, inability to act, conflict of interest on the part of a board member, or until a vacancy in the board is filled.

b. powers of board of appeals [40A:14]

Under Chapter 40A, the board of appeals may act in several capacities:

- As permit granting authority [40A:1A, 8, 10, 15] Unless the zoning bylaw specifies that a zoning administrator is to be appointed, the board of appeals is the **ONLY** permit granting authority [40A:1A] and in that capacity, acts on variances [40A:10], and hears certain appeals [40A:8,15]

- As special permit granting authority [40A:1A,6,9,9A] The board of appeals may be designated under the zoning bylaws as the special permit granting authority. In that capacity, it may act on special permits [40A:9,9A] and on special permits related to pre-existing nonconforming structures and uses [40A:6]
- As agent to hear appeals from decisions of zoning administrator [40A:13,15] If a zoning administrator has been authorized by the zoning bylaw and appointed in accordance with 40A:13, his decisions may be appealed to the board of appeals. [40A:15]

c. rules for conducting business [40A:12]

The board of appeals must adopt rules for the conduct of its business which are consistent with the provisions of the zoning bylaws and Chapter 40A. If a zoning administrator has been appointed, the rules must set forth the fact of such appointment, the name of the person appointed, the powers and duties delegated to him and any limitations on those powers. If also acting as the special permit granting authority, the board of appeals must adopt rules in accordance with the provisions of 40A:9 and 9A.

A copy of the rules, and any amendments made from time to time, must be filed with the town clerk. While the General Laws do not specify when they must be filed, they should be filed as soon as possible after promulgation. Some town clerks file the rules and subsequent amendments together in a separate file in order by date of receipt. Other town clerks file them with other permanent records and index them. In any event, you should be certain that each copy of the rules provided to the public has been updated to include the amendments.

3. Zoning Administrator [40:13]

a. how established

Zoning bylaws MAY authorize the appointment of a zoning administrator. Unless otherwise provided by town charter, the zoning administrator is appointed by the board of appeals subject to confirmation by the board of selectmen. The board of appeals may delegate some of its powers and duties to the zoning administrator.

The zoning administrator should not be confused with the zoning enforcement agent required by 40A:7 since the functions are quite different. The person who is to act as enforcement agent is designated by the zoning bylaws and as such, he has no duties with respect to granting variances, special permits, or hearing appeals.

b. powers of zoning administrator

The zoning administrator may fulfill several different functions depending upon the delegation of authority from the board of appeals and the specifications of the zoning bylaws.

- ◇ as permit granting authority [40A:1A, 8, 10, 15] The zoning administrator may be designated as a permit granting authority [40A:1A]. In that capacity, he may act on variances [40A:10], and may hear certain appeals [40A:8,15]. His duties and limitations of power must be included in the rules of the board of appeals.
- ◇ as special permit granting authority [40A:1A,6,9,9A] The zoning bylaws may designate the zoning administrator as a special permit granting authority [40A:1A]. In that capacity he may issue special permits as authorized by the bylaw [40A:9,9A] and may issue special permits for the extension or alteration of pre-existing nonconforming structures or uses. [40A:6]

c. rules for conducting business

40A:13 does not require that the zoning administrator adopt rules for the conduct of his business, presumably because his powers and duties must be specified in the rules of the board of appeals. [40A:12] However, 40A:9,9A require that a special permit granting authority adopt rules relative to the issuance of special permits. Therefore, if the zoning administrator is acting as a special permit granting authority, he must adopt rules with respect to special permits and file them with the town clerk. [see 4 c.]

4. Special Permit Granting Authority

a. how established [40A:1A,9]

Zoning bylaws MUST provide for a special granting authority to issue special permits [40A:9] and may designate any of the following to act as such: board of selectmen, board of appeals, planning board, zoning administrator. [40A:1A] The bylaws may designate more than one special permit granting authority specifying certain classes of special permit to be issued by each designated authority. [40A:9] For example, the planning board may be designated as the special permit granting authority for multi-family residential uses, cluster and planned unit developments and the board of appeals as the special permit granting authority for all other special permits.

b. powers of special permit granting authority [40A:6,9,9A]

The powers of a special permit granting authority are limited to acting on special permits [40A:9, 9A] and on special permits for pre-existing nonconforming structures and uses. [40A:6] It cannot act on variances or hear appeals.

NOTE: The board of appeals (or zoning administrator) may act on variances and hear appeals, but do so as permit granting authority.

c. rules for conducting business [40A:9]

A special permit granting authority must adopt and, from time to time, amend rules relative to the issuance of special permits. The rules must prescribe the size, form, contents, type and number of copies of plans and specifications and the procedure for submission of applications and approval of permits.

A copy of these rules and any amendments must be filed with the town clerk. If the board of appeals is also a special permit granting authority, you may receive only one set of rules covering variances, special permits and appeals. If, however, there is a separate special permit granting authority, you should receive for filing two sets of rules, one from the board of appeals and another from the special permit granting authority.

D. PROCEDURES

1. Variances, Special Permits, Pre-existing nonconforming structures/uses

a. board of appeals

The procedure related to actions taken by the board of appeals are the same whether acting as permit granting authority or as special permit granting authority, EXCEPT for the time limit within which decisions on special permits must be made. In Chapter 40A, the term “petition” is often used when referring to variances and the term “application” is often used when referring to special permits. For simplification, only the term “application” will be used in the following.

NOTE: An application for a variance may be made directly to the permit granting authority when it is obvious that the proposed dimensions or uses are prohibited by the zoning bylaws. The applicant does not need to apply to the inspector of buildings for a building permit first. If, however, he has applied for and been refused a building permit, he may appeal that decision to the permit granting authority and request a variance or other appropriate relief.

(1) application

- * **FORM:** The law does not specify a particular form for applications. However, many boards of appeals devise a specific form to be used for variances and a different form for special permits. Instructions for completing and submitting applications are often included with the forms.
- * In some towns, the board of appeals supplies forms and instructions to the town clerk who gives them out to the public upon request. If you are in doubt about which form the applicant requires, contact the board of appeals - you should not try to make the determination yourself. It is likely that an application submitted on the wrong form will be rejected by the board and the time lost due to a resubmission may be of significance to the applicant.
- * **WHO MAY APPLY:** An application may be submitted by a person, such as the owner, his agent or attorney, who has a legal interest in the property, by a person who has an enforceable contract to purchase the property, by a person who has a fiduciary interest in the property such as a real estate broker.
- * **TO WHOM SUBMITTED [40A:15]:** All applications for action to be taken by the board of appeals must be submitted to the town clerk. You should accept all applications presented since it is the responsibility of the board of appeals to determine whether or not an application has been submitted by a proper person and has been properly completed.
- * **TRANSMITTAL TO BOARD OF APPEALS [40A:15]:** As soon as possible after receipt of an application 40A:15 states that the petitioner must transmit the copies to the Zoning Board of Appeals. In many cases, applications are accompanied by plans or exhibits and these must also be transmitted. Since plans are often difficult to copy using regular office copy equipment, the board of appeals may require in its rules that two or more copies of all applications and plans be submitted. If so, time stamp or note the date and time of receipt on each copy. If not, time stamp the application and plans and then make the copy for transmittal.
- * You may want to discuss the transmittal process with the board of appeals to insure an efficient and safe method. It is particularly important that you promptly transmit applications and any material received with them. While the time limit for holding the hearing is calculated from the date of transmittal, the time limit for the board to make its decision is based upon the date the application was filed with the town clerk. A delayed transmittal may cause difficult scheduling problems for your board of appeals.
- * **NOTE:** In some towns, applications are first submitted by the applicant to the board of appeals in duplicate or triplicate. The board's secretary examines them to be sure they are in proper order and then brings them to the town clerk who time stamps each copy, keeping one for the file and returning the others to the secretary.
- * In other towns, the applicant submits one copy of the application to the town clerk and the applicant then submits a second copy to the board of appeals. In this case, the applicant would be acting as the transmittal agent for the town clerk and the applicant should submit his application to the board of appeals immediately after submitting the copy to the town clerk. In this case, the date of transmittal would be the date of submission to the town clerk.
- * **FILING APPLICATIONS:** You must keep all applications, including related plans and exhibits, on file in your office. Some town clerks file applications alphabetically by name of applicant. Others file them in order by date of receipt or by map and parcel number of the party involved and prepare an alphabetical index. Since names change on properties over the years, filing by address or map and lot keeps all filings for a property together. How you file them will depend to some extent on the number of applications you regularly receive. In any event, you will probably receive requests from the public to examine applications and you should be able to easily find the one requested.

(2) notice of hearing [40A:11]

It is the responsibility of the board of appeals to comply with the notice requirements specified in 40A:11 with respect to publication, mailing copies to individuals and officials and posting. These requirements apply to all public hearings held by the board of appeals.

However, since the town clerk is often responsible for the town's official bulletin board or has hearing and meeting notices posted in his office, he should be aware that the hearing notice must be posted not less than 14 days before the day of the hearing. In addition, to comply with the open meeting law [39:23B], a copy of the hearing notice must be filed with the town clerk. The notice posted and filed may be a copy of the legal ad prepared by the board of appeals for publication in the newspaper. These notices may be kept in your regular meeting notice file. With each application and plan etc., you should have a copy of the notice of the hearing, so that your file is complete.

(3) hearing [40A:15,16]

The board of appeals must hold a public hearing on each application received within 65 days from the date of transmittal. The date of transmittal will ordinarily be the same date the application was submitted (clocked in). However, if an application was submitted just before your office closing time, it may not be transmitted until the following day and the later date determines the deadline for the hearing. In any event, it is suggested that you note the date of transmittal as well as the submission date on the application you file. [40A:15]. Most clerks utilize the time stamp.

EXCEPTIONS:

rejected applications: An application may be rejected as incomplete or improper by the board of appeals. In this case, if the application is re-submitted, the date of transmittal of the re-submission determines the deadline for holding the hearing. It is suggested that you ask your board of appeals to notify you in writing of any rejections if it does not already do so. Attach the rejection to the application in your files. If the application was rejected only because the appropriate fee was not included, a second identical application does not need to be submitted. To keep the record clear, time stamp the application in your file again to show the date of resubmission and enter under the new date the word "resubmitted."

withdrawn application [40A:16]: An application may be withdrawn by the applicant without prejudice prior to the publication of the hearing notice. In this case, no hearing will take place [40A:16]. Ask the board of appeals to notify you in writing of any withdrawals and attach the notice to the application in your files. It may also be withdrawn without prejudice after the publication of the notice with the approval of the special permit granting authority.

(4) decisions of board of appeals [40A:6, 9, 9A, 11,15]

when made [40A:6,9,9A15]: A decision related to a special permit must be made within 90 days following the PUBLIC HEARING. [40A:6,9,9A] A permit to enlarge or extend a pre-existing nonconforming structure or use is considered a special category of special permits, and the deadline for making the related decision is the same.

NOTE: In addition, the board must also file a copy of its decision with the town clerk within this 90 day period.

All other decisions must be made within 100 days after the date the application was FILED with the town clerk. Note: that the time within which the decision must be made starts with the date of filing (time stamping), NOT the date of transmittal, if different. [40A:15]

copy of decision [41A:11]: Upon the GRANTING of a variance or special permit, or any extension, modification, or renewal thereof, a copy of the decision and all plans referred to in the decision must be filed by the board of appeals with the town clerk and with the Planning Board. The copy of decision

must contain the name and address of the owner, identify the land affected, set forth compliance with the statutory requirements, and certify that the decision and plans have been properly filed. It should contain the signatures of the board or be certified by the clerk to the board of appeals.

A copy of the decision must also be sent by the board of appeals to the owner and to the applicant if different from the owner.

If the plans referred to in the decision are the same as those which accompanied the application, you would already have these on file and the board of appeals would not need to send another copy for filing.

notice of decision [40A:15]: The board of appeals must file a notice of ANY decision, either granting or denying the application, with the town clerk within 14 days after the decision was made.

The notice must specify that appeals, if any, shall be made pursuant to section 17 and shall be filed within 20 days after the date the notice was filed in the office of the town clerk. The board must also send a copy of the notice to the applicant, the parties in interest (see 40A:11) and to every person present at the hearing who requested such a notice.

NOTE: The board of appeals may combine the information required by 40A:11 and that required by 40A:15 so that only one document is distributed and filed for each case.

detailed record of hearing [40A:15]: The board of appeals must file with the town clerk a detailed record of its proceedings and its official actions with respect to each hearing within 14 days after the decision was made. The detailed record must indicate the vote of each member and set forth clearly the reason or reasons for the board's decision. The detailed record you receive should be signed by the members of the board or certified by the clerk to the board.

While the town clerk is not responsible for determining whether or not an application has been granted by the board, you will undoubtedly receive many requests for such information. Note that at least 4 members of a 5-member board and all members of a 3-member board must vote in favor of granting the application or it is denied. If the vote is not clear in the record, refer questions to the board of appeals.

filing copy/notice of decision and detailed record of hearing: In some towns, the board of appeals files with the town clerk only a copy of the detailed record of hearing consisting of several pages. In this case, the information required by 40A:11 to appear in the copy of decision and the statement in the notice of decision concerning appeals should be included somewhere in the text.

In other towns, the board of appeals prepares and files with the town clerk a separate one-page copy or notice of decision containing the information required by 40A:11 and the statement concerning appeals required by 40A:15. A separate detailed record of hearing is also filed. In this case, time stamp both the copy/notice of decision and the detailed record of hearing and staple them together before filing.

The General Laws neither specify the method of filing nor require that these papers be recorded in a special book. They may be filed with the applications and plans to which they relate or filed separately. Some town clerks file them alphabetically by name of owner or applicant or in order by date of receipt. Others file them according to the location of the property involved, either by street name or by map and parcel number.

If you have a large number of decisions on file in your office, you will probably need a cross index card file in order to locate a requested decision quickly. Note that, particularly with respect to variances and special permits granted, you may have several on file related to a particular property each having a different owner's name. You are likely to receive a request for a copy of ALL decisions on file related to that property but providing you with only the name of the most recent owner. It is essential that you provide complete information in response to these requests even though some of the variances or special permits may have been granted many years ago.

effective date-town clerk certificate [40A:11]: No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certificate of the town clerk with respect to appeals is recorded in the Registry of Deeds for the county and district in which the land is located. The fee for recording must be paid by the owner or applicant.

In some towns, the board of appeals will collect the recording fee from the applicant and then assume responsibility for having the decision recorded in the registry. In this case, the board's clerk or secretary will probably request the certificate from you. In other towns, the applicant is required to take care of recording in the registry and he will request your certificate.

The town clerk's certificate must state that 20 days have elapsed after the copy of decision was filed and that no notice of appeal has been filed. Or, if a notice of appeal was filed, the certificate must state that the appeal has been dismissed or denied.

SAMPLE CERTIFICATE - NO APPEAL

I hereby certify that a copy of the decision of the Board of Appeals of the Town of _____ related to the application of _____ for a variance/special permit was filed in this office on (date) and that no notice of appeal was filed during the twenty (20) days next after that date.

(Town Seal)

Your Signature
Town Clerk

Date: _____

Before issuing your certificate, carefully check the date on which you received the copy of decision to be certain that the appeal period has expired. Consider the date on which you received the decision as zero and the next day as 1. For example, if you received the decision on February 14, 1998, the appeal period expired on March 5, 1998 and your certificate may be issued on or after March 6th. If you received the decision on March 27, 1998, the 20th day following was April 16th, a holiday, so the appeal period expired on April 17th and the certificate may be issued on or after April 18th.

NOTE: The date on which you received and filed the copy/notice of decision determines the appeal period, not the date on which you received the detailed record of hearing, if different.

SAMPLE CERTIFICATE - DECISION APPEALED

I hereby certify that a copy of the decision of the Board of Appeals of the Town of _____ related to the application of (name) for a variance/special permit was received and filed in this office on (date), that a notice of appeal to the (name of court) together with a copy of the complaint was received and filed on (date) and that such appeal was dismissed/denied on (date).

(Town Seal)

Your signature
Town Clerk

Date: _____

Before issuing the certificate for a decision which has been appealed, obtain a CERTIFIED copy of the court decision as proof that the appeal has been dismissed or denied. The person requesting the certificate should provide the copy of court decision. It is suggested that you keep the certified copy of court decision in your file with the board of appeals decision to which it relates making a copy for the applicant, if requested.

Your certificate may be typed directly on a copy of the decision, either one made from the copy in your files or provided by the board's secretary or clerk. It may also be typed directly on a copy of the decision provided by

the applicant but you should check carefully to be sure it is exactly the same as the decision you have on file. If the board of appeals files only the detailed record with you, enter your certificate on the page showing the decision.

certified copies: From time to time, you will be asked to issue a copy, certified as a true copy, of records on file in your office related to board of appeals decisions. Such a certified copy may be issued at any time after receipt. If an appeal is to be taken, a copy of the decision, certified by the town clerk and showing the date of filing, will be needed prior to the expiration of the appeal period since it must be attached to the complaint filed in the court.

b. zoning administrator

The procedures related to actions taken by the zoning administrator are the same whether acting as permit granting authority or as special permit granting authority. The details of procedure outlined in D.1.a. Board of Appeals in paragraphs (1) and (2) will apply and the term zoning administrator may be substituted in the text for the term board of appeals. The following also apply to actions taken by the zoning administrator.

(1) hearing [40A:11,13]

A public hearing must be held by the zoning administrator before he makes a decision. 40A:13 does not specify when the hearing must be held. However, in order to comply with the notice requirements of 40A:11 and the requirements for issuing a decision in 40A:13, the hearing must be held between the 15th and 35th day after the application was filed with the town clerk.

(2) decisions of zoning administrator [40A:13]

when made [40A:13]: The zoning administrator must not only make his decision but also must issue it within 35 days after the application was filed with the town clerk. This time limit applies to all applications.

copy of decision [40A:11,13]: The requirements of 40A:11 apply to a zoning administrator as well as the board of appeals. In addition, 40A:13 requires that a copy of ALL decisions of the zoning administrator, whether to grant or to deny an application, must be filed with the town clerk.

notice of decision: 40A:13 does NOT require that the zoning administrator file a notice of decision with the town clerk within 14 days after the decision was made. However, the powers and duties of the zoning administrator must be set forth in the rules adopted by the board of appeals under 40A:12 and these rules may specify the procedures to be used by the zoning administrator in this respect.

detailed record of hearing: 40A:13 does NOT require that the zoning administrator file a detailed record of hearing with the town clerk within 14 days after the decision was made. However, the rules adopted by the board of appeals may specify the procedures to be used by the zoning administrator in this respect.

NOTE: The zoning administrator may file only one document with the town clerk and include in that document all the information required in a copy/notice and detailed record filed by the board of appeals.

effective date - town clerk's certificate [40A:11]: The information given and procedures outlined under D.1.a. board of appeals, effective date - town clerk certificate on prior pages apply with the following exceptions:

- ◇ the appeal period is 30 days after the zoning administrator's decision is filed with the town clerk instead of 20 days

- ◇ an appeal from the zoning administrator's decision is taken to the board of appeals, NOT to a court. Therefore, the sample certificate to be used if an appeal is filed, and the information related to obtaining a certified copy of the court decision do NOT apply.

c. special permit granting authority (if different from board of appeals or zoning administrator)

A special permit granting authority may take action only on applications for special permits, including the extension or alteration of pre-existing nonconforming structures or uses, but NOT on applications for variances. The detailed procedures outlined in D.1.a. Board of Appeals, (1) form and who may apply and (2) notice of hearing apply.

The following also apply to actions taken by the special permit granting authority if it is NOT the board of appeals or zoning administrator.

(1) application [40A:9A]

The applicant must file his application, including any plans and exhibits, with BOTH the special permit granting authority and the town clerk. The town clerk does not transmit a copy of applications to the special permit granting authority.

NOTE: Zoning bylaws may provide that applications for special permits also be submitted to and reviewed by town boards or agencies, such as the Board of Health, Planning Board, town engineers, or Conservation Commission. Recommendations of these boards or agencies are not required to be sent to the town clerk, but, if received, they may be filed with the related applications. [40A:11]

(2) hearing [40A:9,9A]

Within 65 days after the application is filed with it, the special permit granting authority must hold a public hearing. Note that the 65 day period starts with the date of filing with the authority, not the date of filing with the town clerk, if different.

exceptions:

application rejected: An application may be rejected as incomplete or improper by the special permit granting authority. In this case, if the application is resubmitted, the date of filing the resubmission with the authority determines the date of the hearing. It is suggested that you ask the special permit granting authority to notify you in writing if an application has been rejected, if it does not already do so. Attach the rejection notice to the application in your files.

application withdrawn: An application may be withdrawn by the applicant without prejudice prior to the publication of the hearing notice. In this case, no hearing will take place. [40A:16] Ask the special permit granting authority to notify you in writing of the withdrawal of an application, if it does not already do so, and attach the notice to the application in your files.

(3) decisions of special permit granting authority

when made [40A:9,9A] A decision related to a special permit must be made within 90 days following the public hearing. NOTE: In addition, the special permit granting authority must also file a copy of its decision with the town clerk within this 90 day period.

copy of decision [40A:11] The requirements of 40A:11 apply to the special permit granting authority as well as to the board of appeals. However, you will not receive any copies of decisions from the special permit granting authority related to variance since it does not act on them.

40A:11 provides that “upon the granting of a special permit,” the special permit granting authority must file a copy of the decision and all plans referred to in it with the town clerk. However, a copy of ALL decisions, either granting or denying an application for a special permit, must be filed with the town clerk in order to limit the period during which appeals may be taken. In addition, the copy of decision must be filed within 90 days after the hearing was held. (see 423 NE2d 1009)

While the town clerk is not responsible for determining whether or not an application has been granted by the authority, you will undoubtedly receive many requests for such information. Note that a two-thirds vote of boards with more than 5 members, a vote of at least 4 members of a 5-member board, and a unanimous vote of a 3-member board is required for granting a special permit. If the vote is not clear in the copy of decision filed with you, refer questions to the special permit granting authority.

notice of decision: 40A:9 and 9A do not require that a special permit granting authority (if other than the board of appeals) file a notice of its decision with the town clerk within 14 days after the decision was made. However, special permit granting authorities often do file such notices within the 14 days.

detailed record of hearing: 40A:9 and 9A do not require that a special permit granting authority (if other than the board of appeals) file a detailed record of its hearing with the town clerk within 14 days after the decision was made. However, special permit granting authorities often do file such detailed records within the 14 days and include the information and certificate required by 40A:11. In this case, a separate copy of decision is usually not filed.

NOTE: Under the provisions of 40A:15, the board of appeals, whether acting as a permit granting authority or as a special permit granting authority IS required to file a notice of decision and a detailed record of hearing within 14 days after the decision was made.

effective date-town clerk certificate: [40A:11] The procedures outlined under D.1.a. apply.

2. Appeals [40A:8, 13, 15,17]

a. from decisions of an administrative official [40A:8,15]

(1) who may appeal [40A:8]

An appeal may be taken by any person aggrieved by his inability to obtain a permit or enforcement action from any administrative officer acting under the provisions of Chapter 40A. In addition, an order or decision of the inspector of buildings or other administrative official, in violation of Chapter 40A or of the zoning bylaw may be appealed by an aggrieved person, including an officer or board of the town or an abutting town, or by the regional planning agency.

(2) to whom appeal is taken [40A:8]

Appeals under 40A:8 are taken to the permit granting authority, either the board of appeals or if one is authorized by the zoning bylaw, to the zoning administrator. Note that if an appeal is taken to the zoning administrator, a 3-step appeal process is possible, first to the zoning administrator, then to the board of appeals (40A:13,15), and ultimately to the court (40A:17).

(3) notice of appeal [40A:15]

form: A particular form for the notice of appeal is not specified in the law. The board of appeals or the zoning administrator may have devised a form for this purpose and may request that the town clerk provide them to the public. However, the law DOES specify that the notice state the grounds upon which the appeal is being taken.

filing notice: The appellant must file the notice of appeal with the town clerk within 30 days after the date on which the order or decision was made. If the official failed to act within a period specified in the law or the zoning bylaw, the notice of appeal must be filed within 30 days after the expiration of that period.

Since an order, decision or refusal to act by an administrative official is not required by Chapter 40A to be filed with the town clerk, you may not know the date on which the appeal period begins or expires unless a filing is required by your town bylaws or unless administrative officials make a practice of filing their orders, etc. with you. You also may not know whether or not the administrative official has failed to act. However, such knowledge is not critical to the performance of your duties and you should accept and file all notices of appeal presented to you. These notices of appeal may be filed with a copy of the order or decision if you have one.

transmittal of notices [40A:15]: The petitioner shall file a notice of appeal specifying the grounds thereof, with the city or town clerk, and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith BY THE PETITIONER with the officer or board whose order or decision is being appealed, and to the permit granting authority, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the board of appeals or zoning administrator all documents and papers constituting the record of the case in which the appeal is taken.

(4) procedures

After you have transmitted the notice of appeal, the procedures to be followed are the same as those outlined under D.1.a. board of appeals, (2) through (4) except (4) copy of decision and effective date-town clerk certificate, if the board of appeals is the permit granting authority hearing the appeal. If the zoning administrator is the permit granting authority hearing the appeal, follow the procedures outlined under a.(2) and b.(1) and (2) except effective date-town clerk's certificate.

b. from decisions of the zoning administrator [40A:13,15]

(1) who may appeal [40A:13]

An appeal may be taken by any person aggrieved by a decision of the zoning administrator, whether or not a party to the proceedings, or by any municipal officer or board. An appeal may also be taken if the zoning administrator fails to act within 35 days from the date an application was filed with him.

(2) to whom appealed[40a:13]

An appeal from a decision of the zoning administrator, or because of his failure to act, must be taken to the board of appeals. Note that in this case, a two-step appeal process is possible, first to the board of appeals [40A:13] and then to the court [40A:17].

(3) notice of appeal [40A:13,15]

form [40A:15]: The law does not specify a particular form for this notice of appeal but the board of appeals may have devised a form for the purpose and may request that the town clerk keep a supply on hand for distribution to the public. However, the law DOES specify that the notice must state the grounds upon which the appeal is being taken.

filing the notice [40A:13]: The appellant must file the notice of appeal with the town clerk within 30 days after the zoning administrator's decision was filed with you. If the decision granted a variance or special permit, you may be asked to add your certificate with respect to appeals for recording in the registry. If you attach the notice of appeal to the decision in your file, you will be aware that such a certificate cannot be issued.

If a failure to act is being appealed, the notice of appeal must be filed with the town clerk within 65 days after the date the application was filed with the zoning administrator (35 days plus the 30 day appeal period).

transmittal of notices of appeal [40A:15]: Upon receipt of a notice of appeal, the town clerk must forthwith transmit a copy of it to the zoning administrator AND to the board of appeals. If the appeal relates to the decision of an administrative officer, also transmit a copy of the notice to that officer.

(4) procedures

After you have transmitted the notice of appeal, the procedures required to be followed are the same as those outlined under D.1.a. board of appeals (2) through (4) if the appeal relates to a variance or special permit. If the appeal relates to the decision of an administrative officer [40A:8], (4) copy of decision and effective date - town clerk certificate would not apply.

c. judicial appeals [40A:17]

(1) who may appeal

An appeal may be taken by any person, whether or not previously a party to the proceedings, aggrieved by a decision or failure to act of the board of appeals or of a special permit granting authority (other than a zoning administrator). An appeal may also be taken by a municipal officer or board.

(2) to whom appealed

Appeals may be taken to the superior court, land court or district court having jurisdiction in the county or district in which the land is situated, except in Hampden County where an appeal may be taken to the superior court or to the housing court. Note that if the zoning administrator is acting as a special permit granting authority, an appeal from his decision must be taken to the board of appeals, not to a court.

(3) notice of appeal and complaint

form You will not have any forms for notice of appeal or complaint since both of these are prepared by the lawyer representing the person taking the appeal. The notice is very often a cover letter accompanying a copy of the complaint. It usually states that an appeal has been taken, the date the action commenced, the name of the court and the decision being appealed.

The form of the complaint is determined by the court to which the appeal is taken. It alleges that the decision exceeds the authority of the board or special permit granting authority, includes any pertinent facts and asks that the decision be annulled. The complaint is usually several pages long.

You should not try to answer any questions concerning the form of notice or the complaint since the person taking an appeal to court will need to consult a lawyer.

filing: Notice of appeal AND a copy of the complaint must be filed with the town clerk within 20 days after the decision of the board of appeals or special permit granting authority was filed with you.

NOTE: If an appeal, variance or special permit was deemed granted by reason of failure to act, you will probably not have a copy of the decision on file in your office. Case law with respect to appeals in cases of failure to act is confusing and a party, other than a municipal board, may be able to appeal later than 20 days following the deadline for action in the event the board of appeals or special permit granting authority eventually files a copy of its decision. (see 13 MA App. Ct. 103 and 17 MA App. Ct. 480).

A copy of the decision being appealed, certified as a true copy by the town clerk and showing the date it was filed with you, must be attached to the complaint being filed in the court. This attachment may

be a certified copy of the decision only, but is usually a certified copy of the detailed record. Although it is not necessary since you already have a copy of the decision on file, it is usually attached to the copy of the complaint you receive for filing.

Some town clerks file notices of appeal and complaints in a separate file folder noting that an appeal has been filed on the copy of the decision or on the index card. Others attach the notices of appeal and complaint to the copy of decision in the file and make the appropriate entry on the index card. How you file these notices and complaints will depend to some extent upon how many are regularly received. In any event, you will need to check your records carefully whenever you are asked to add your certificate with respect to appeals to a decision for recording in the registry.

transmittal of notices and complaints: 40A:17 requires that the person taking the appeal send a notice of appeal and a copy of the complaint to all defendants including the members of the board of appeals or the special permit granting authority whose decision is being appealed within 14 days after the complaint was filed in court. The town clerk is not required by 40A:17 to transmit a copy of the notice or complaint.

However, your board of appeals or special permit granting authority and town counsel may wish to receive these showing the date they were filed with you. If so, transmit the copies as requested and note on your file copy the date of transmittal and to whom transmitted.

requests for information or copies: You may receive requests for information concerning whether or not an appeal has been filed. These may be answered and copies of notice of appeal and complaints may be provided upon request. However, any questions related to the progress of an appeal or its outcome should be referred to town counsel, unless you have obtained a certified copy of the court's decision.

3. Failure to Act [40A:9,9A,13,15]

a. board of appeals

(1) variances and appeals [40A:15]

If the board of appeals fails to act (make its decision) on an appeal, variance application or petition within 100 days AFTER THE DATE OF FILING WITH THE TOWN CLERK, then it shall be deemed to have been granted, subject to judicial appeal. Note that the 100 day period is calculated from the date of filing with the Town Clerk, not the date of transmittal to the Board of Appeals. The required time limits for a public hearing and said action may be extended by written agreement between the applicant and the Board of Appeals. A copy of this agreement shall be filed in the office of the town clerk.

(2) special permits [40A:9]

If the board of appeals fails to take final action on a special permit application within 90 days after the HEARING, the request for a special permit shall be deemed to have been granted, subject to judicial appeal. In this case, final action includes the filing of a copy of the decision with the town clerk, so that if the board fails to file its decision within 90 days after its hearing, the special permit is deemed to have been granted even though the board makes its decision prior to the expiration of that period. (see 423 NE2nd 1009). The required time limits for a public hearing and said action may be extended by written agreement between the applicant and the Board of Appeals. A copy of this agreement shall be filed in the office of the town clerk.

b. zoning administrator [40A:13]

If the zoning administrator fails to issue a decision on any appeal or application for a variance or special permit filed with him within 35 days after the date of filing, it shall be deemed to have been denied and shall be subject to appeal to the board of appeals.

c. special permit granting authority [40A]

If the special permit granting authority fails to take final action on an application for a special permit within 90 days after the public hearing, the special permit is deemed to have been GRANTED. The authority must not only make its decision, but also file a copy of that decision with the town clerk within the 90 day period.

d. town clerk's certificate

Unlike the subdivision control law [41:81K-81GG] which provides for the issuance by the town clerk of a certificate of failure to act, the zoning act [40A:1-17] specifies no such procedures. Since a failure to act by the board of appeals or a special permit granting authority (if other than the zoning administrator) is deemed a grant of the relief requested and since a granted variance or special permit must be recorded in the registry to become effective, you may receive requests for a certificate of failure to act in these cases. You may also receive a request for such a certificate from a person wishing to appeal to the court.

NOTE: It is unlikely that you would receive a request for a certificate of failure to act with respect to the zoning administrator since his failure results in a denial of the application and no certificate would be needed for an appeal to the board of appeals or for recording in the registry.

Because of the lack of specific provisions and the apparent inconsistencies in the zoning act and court cases related to failures to act, it is recommended that you NOT issue any certificates of failure to act without discussing the facts of each case with your town counsel. The following is given only as a suggestion to be discussed with him and applies only to cases in which the appeal, variance or special permit has been granted by failure to act.

(1) expiration of time for action

On the application in your files, enter the date on which the time for action has expired using the following examples.

variances and appeals: If an appeal or variance application was filed with you on March 9, 1998, enter "time for making decision expired May 23, 1998 (75 days after filing) and time for filing decision expired June 6, 1998 (14 days after May 23rd)."

special permits: If a special permit hearing was held on March 9, 1998, then the deadline for filing the decision is June 7, 1998" (90 days after hearing).

NOTE: If no special permit hearing was held, the time for final action would expire on the 155th day after the application was filed. (This is calculated as follows: the special permit granting authority must hold a hearing within 65 days and the decision must be filed within 90 days of the hearing).

(2) issue certificate of failure to act

On or after the day following the expiration date, issue a certificate stating the date the appeal or variance was filed with you, or if for a special permit, the date the application was submitted to the special permit granting authority (if other than the board of appeals) and the date of the hearing. Also state that the board of appeals or the special permit granting authority failed to take action within the prescribed time and that due to such failure the appeal or application is deemed granted.

SAMPLE CERTIFICATE - VARIANCES/APPEALS

I hereby certify that no notice of decision on the variance application/appeal filed in this office on (date) by (name of applicant/appellant) has been received within 14 days after the 75 days next after the date of filing. In accordance with M.G.L. Chapter 40A, the variance/appeal is deemed granted due to the failure of the Board of Appeals to act and file such notice within said period.

TOWN SEAL

Your signature
Town Clerk

Date: _____

Using the example under (1) above, this certificate could be issued on or after June 7, 1998.

SAMPLE CERTIFICATE - SPECIAL PERMITS

I hereby certify that no notice of decision on the special permit application submitted by (name of applicant) to (name of authority), the special permit granting authority of the Town of (name), on (date of submission) was received within 90 days next after the public hearing held on (date of hearing). In accordance with M.G.L. Chapter 40A, the special permit is deemed granted due to the failure of the special permit granting authority to take final action within said 90 days.

TOWN SEAL

Your signature
Town Clerk

Date: _____

Using the example under (1) above, this certificate could be issued on or after June 8, 1998.

The date of submission in the sample certificate above is the date the application was submitted to a special permit granting authority other than the board of appeals, not the date of filing with the town clerk, if different. If, however, the special permit granting authority is the board of appeals, the date of filing the application with the town clerk should be used. You will be able to determine the date of the hearing from the hearing notice on file with you.

The certificate shown in the samples above would be needed prior to the expiration of the appeal period by a person wishing to take an appeal to the court.

NOTE: It is suggested that you contact the board of appeals or special permit granting authority if the deadline is approaching and no copy of decision has been filed with you. You may be able to avoid having to issue a certificate of failure to act.

(3) issue certificate of appeal period

After the expiration of the 20 day period, certify on a copy of a certificate prepared under (2) above that the appeal period has expired without a notice of appeal being filed or, if a notice of appeal was filed, that the appeal was dismissed or denied. Note that you should obtain a certified copy of the court decision dismissing or denying an appeal if one was taken.

NOTE: Case law with respect to appeals in cases of failure to act is confused and a party, other than a municipal board, may be able to appeal later than 20 days following the deadline for action in the event the board of appeals or special permit granting authority eventually filed a copy of its decision. (see 13 Mass. App. Ct. 103 and 17 Mass. App. Ct. 480)

SAMPLE CERTIFICATE - NO APPEAL

I hereby certify that no notice of appeal was received by this office during the 20 days next after the appeal/variance/special permit was deemed granted on (date) as shown on the above certificate.

TOWN SEAL

Your Signature

Town clerk

Date: _____

Using the examples above in (1), the appeal period certificate could be issued on or after June 27, 1998 for a variance or an appeal, and on or after June 28, 1998 for a special permit.

SAMPLE CERTIFICATE - APPEAL FILED

I hereby certify that the appeal/variance/special permit was deemed granted on (date) as shown in the above certificate and that a notice of appeal to the (name of court) together with a copy of the complaint was received and filed in this office on (date) and that such appeal was dismissed/denied on (date).

TOWN SEAL

Your signature

Town Clerk

Date: _____

Both the certificate of failure to act and the appeal period certificate will be needed by a person wishing to record a variance or special permit in the registry of deeds.

It is suggested that you file a copy of any of these certificates issued and that you enter on the appropriate index card and application that the variance or special permit was granted due to a failure to act.

Regional Planning – The purpose of this chapter (40B) is to permit a city or town to plan jointly with cities or towns to promote with the greatest efficiency and economy the co-ordinated and orderly development of the areas within their jurisdiction and the general welfare and prosperity of their citizens.

Powers and duties; reports (40B – Section 5) A planning commission established hereunder shall make careful studies of the resources, problems, possibilities and needs of its district and, on the basis of such studies, shall prepare a comprehensive plan of development or a schematic study plan of such district or of such part or parts thereof as the commission may deem necessary and in such plans shall make such recommendations for the physical, social, governmental or economic improvement of the district as in their opinion will be in the best interest of the inhabitants of the district. Such plans and recommendations shall concern, among other things, the general use of the district, including land use, principal highways and expressways, bridges, airports, public utilities, public facilities, parks, recreational areas, public institutions and such other matters as in the opinion of said commission will be beneficial to the district and will promote with the greatest efficiency and economy the coordinated development of the district and the general welfare and prosperity of its people. Before the adoption of any such regional plan or a portion thereof, the district planning commission shall hold at least one public hearing thereon, notice of the time, place and subject of which shall be given. Written notice of such hearing shall be given to each planning board, board of selectmen, and city council. Notice of the time, place and subject of the hearing shall be published at least once in a newspaper having substantial circulation in the region at least ten days before such hearing. Adoption of such plan or portion thereof shall be by a majority vote of the representatives of the district planning commission. Such plan may be amended from time to time in the same manner as hereinbefore provided. **A copy of the plan adopted by the commission or any amendments thereto signed by the chairman shall be filed with the town clerk of each member municipality not more than thirty days after commission action. Such plan or portion of a plan, shall be a public record. Such district planning commission shall also assist the planning boards of the several cities and towns within the area of its**

jurisdiction in applying any district plans and recommendations so adopted to the local board's area of jurisdiction.

III. PLANNING - SUBDIVISION CONTROL LAW

A. HISTORY

Under chapter 191 of the Acts of 1907, towns were authorized to establish a board of survey and the selectmen constituted such a board. After acceptance of the act in a town, any person or corporation desiring to lay out, locate or construct any street or way, had to submit to the board of survey suitable plans prepared in accordance with its rules and regulations. After holding a hearing, the board could approve the plan or could alter it by changing the proposed location or width and grades of such street or way. The approved plan, showing alterations if any were made, had to be signed by the board and filed with the town clerk. Authorization for a board of survey to disapprove a plan did not appear in the legislation. General law provisions related to boards of survey now appear in 41:73-81.

Chapter 494 of the Acts of 1913 required that every town having a population over 10,000 establish a planning board to make careful studies of the resources, possibilities and needs of the town and to make plans for the development of the municipality with special references to the proper housing of its people. In 1914, under Chapter 283 of the Acts of that year, towns having a population under 10,000 were permitted to establish such a Planning Board. A Planning Board established under the provisions of these acts, now appearing in 41:70 of the General Laws, had no powers or duties with respect to streets and ways.

Chapter 211 of the Acts of 1936, entitled "An Act Providing an Improved Method of Municipal Planning" incorporated new sections 81A through 81J into Chapter 41 of the General Laws providing for a new type of planning board to be established and for the regulation of subdivisions. Chapter 211 prohibited the establishment, after December 31, 1936, of a planning board under 41:70 or of a board of survey under 41:73. It allowed such planning boards and boards of survey established by special act to remain in existence only until such time as the town established a planning board under 41:81A.

Any town was permitted and every town, not having a planning board, was required upon attaining a population of 10,000, to establish a planning board under 41:81A. These planning boards had powers and duties similar to the old section 70 planning boards. They were required to make master or study plans showing, among other things, existing and desirable proposed public ways, street grades, public places, bridges and tunnels and could have additional powers with respect to subdivision control.

The 1936 Act added 41:81F to the General Laws providing that

Every person making a subdivision in any...town having a planning board established under section 81A, or in any other....town which has a board of survey, however established, and accepts the provisions of this section and the four following sections (81F through 81J), shall submit to such planning board or board of survey...for approval a plat of such subdivision and said board shall receive and pass upon such plat.

The board had to adopt rules and regulations governing the submission and approval of subdivision plats and make a detailed record of its proceedings. It could require a performance guarantee for the construction of the ways and utilities. After holding the required hearing, the board could approve, modify and approve, or disapprove the plat. If the board approved or modified and approved a plat, it was required to make a written endorsement on it. In any event, the board was required to file a certificate of its action with the town clerk.

If the board failed to take final action within 45 days after submission, the plat was deemed approved and the town clerk was required to issue a certificate stating the date of submission of the plat for approval and the fact that the planning board failed to take final action within the 45 day time limit.

Decisions of the board could be appealed to the superior court within 15 days after the decision was recorded, or within 15 days after the expiration of the 45 day time limit if the board failed to act. Neither the endorsement of the board could be made nor the town clerk's certificate of failure to act be issued until after the expiration of the appeal period.

Chapter 340 of the Acts of 1947 made several changes in the 1936 law. Among other changes, it increased the number of section governing subdivisions to eleven, 41:81K through 81U, and separated the provisions of old section 81F into two sections, 81L and 81U.

Under 41:81L, a planning board established under 41:81A had the subdivision control powers provided by sections 81K through 81U and no acceptance of these sections by the town was required. However, section 81U provided that in towns which did not have a section 81A planning board, but had a board of survey however established, the board of survey would have subdivision control powers only if the town accepted the provisions of sections 81K through 81U, or corresponding sections of earlier law.

The 1947 act also added a provision to allow the submission of a preliminary plan showing the subdivision in a general way and to allow the planning board to give its temporary approval, with or without modifications. The planning board also acquired, under a new section 81N, the power to modify, amend or rescind its approval of a subdivision plat, either on its own motion or on petition of a person interested.

In 1953, under chapter 674 of that year, the laws governing subdivisions were substantially revised. The number of sections was increased to 23, 41:81K through 81GG. These sections were specifically named "The Subdivision Control Law" under 41:81K and definitions of the many terms used in this law were included in 41:81L.

41:81N provided that the subdivision control law shall be in effect in every town which, prior to January 1, 1954, established a planning board under section 81A, or had a board of selectmen acting as such a planning board. It was also in effect in those towns which did not have a planning board established under section 81A, but which, prior to January 1, 1954, had a board of survey and had accepted corresponding earlier provisions of the subdivision control law.

Under 41:81EE, any board having subdivision control powers as of January 1, 1954, was required to transmit, within 60 days thereafter, to the register of deeds and to the recorder of the land court a copy of its rules and regulations and a statement stating that, in the opinion of such board, the subdivision control law is in effect in the town. A copy, certified by the town clerk, of the vote of town meeting under which the law went into effect, or a reference to any special act under which subdivision control was established, also had to be transmitted.

NOTE: Under the 1947 act, the town clerk was required to notify the register of deeds that a planning board had been established under section 81A. If this notice was also sent to the recorder of the land court and included the date the planning board was established, the Subdivision Control Act would be in effect in the town even though the statement and certified copy of the vote was not transmitted in 1954. A copy of the rules and regulations had to be transmitted, however.

41:81N also provided that the subdivision control law was also in effect in any town which, after January 1, 1954, established a planning board under section 81A UNLESS the town voted at the same time NOT to accept its provisions. Such a town could vote to accept the subdivision control law at a later time and in that event, the planning board must transmit a statement stating that the subdivision control law is in effect together with a copy certified by the town clerk, of the vote accepting the law. In addition, under 41:81Q a true copy of the planning board rules and regulations governing subdivision had to be filed with the town clerk and a copy, certified by the town clerk, had to be transmitted to the register and recorder. These provisions are in effect in current law and still appear in 41:81N and 41:81Q.

The 1953 act also required that the planning board consult with the board of health within 10 days after the submission of a definitive subdivision plan and provided for the submission of plans by a person who believes that his plan does not require approval under the subdivision control law.

Although the subdivision control law has been amended since 1953, most of the provisions are still the same. However, an amendment in 1960 increased the time limit for final action on a definitive plan from 45 days to 60 days and a 1963 amendment made the provisions of a performance guarantee by a developer a mandatory requirement.

The 1953 act stated for the first time the purposes of subdivision control and these purposes are still found in 41:81M. Among other things, the purpose of subdivision control is to protect the safety, convenience, and welfare of the inhabitants of the cities and towns by regulating the laying out and construction of ways which provide access to the lots within subdivisions. Thus, although the subdivision control legislation has gone through several changes since 1907, the basic purpose has remained, to regulate the construction of ways which are not public ways. The subdivision control law remains where it was placed by the 1953 act, under Chapter 41, sections 81K through 81GG.

The town clerk has important duties in connection with the provisions of the subdivision control law. Not only must he record or file notices, certificates, and other papers, but he must also, under certain circumstances, issue certificates which allow plans to be recorded in the registry of deeds and subdivisions subsequently to be developed.

It is particularly important that all notices, forms, plans, certificates of action, rules and regulations, and any other papers related to the subdivision control law be time stamped or the date and time of receipt noted and that they be conveniently filed to provide easy access. In some cases, the date of filing with the town clerk determines the time period within which action must be taken and certificates issued.

B. WHEN IN EFFECT [41:81I,81N]

You can generally assume that the subdivision control law is in effect in your town if there is currently a board which reviews and acts on plans of subdivisions showing lots proposed for development. This board may be one of the following:

⇒ a planning board established under 41:81A

⇒ or

⇒ a board of selectmen authorized by a town meeting vote to act as a planning board under 41:81A. NOTE in this case, as soon as the town population reaches 10,000, a planning board must be established. [41:81A, last sentence]

⇒ or

⇒ a board of survey, established either prior to December 31, 1936 under 41:73 or by special act, provided the town has accepted the subdivision control law or corresponding sections of earlier laws

⇒ or

⇒ a board having subdivision control powers under a special act relating to your town. (see definition of planning board in 41:81L)

If the subdivision control law is not currently in effect in your town, it may become effective if one of the following occurs:

a planning board is established under the provisions of 41:81A UNLESS the town votes at that time not to accept the subdivision control law

or

the town has a board of survey and accepts the subdivision control law

In this case, the law will not become effective until the board notifies the register of deeds and the recorder of the land court that the town has accepted the provisions of the subdivision control law and that the board has adopted its rules and regulations as provided in 41:81Q. In addition, the board must furnish the register and recorder with a copy, certified by the town clerk, of the vote under which the town accepted the law and a copy of its rules and regulations, also certified by the town clerk.

While the board having subdivision control powers may not be called a planning board in your town, the term planning board will be used in this manual for simplification.

C. RULES AND REGULATIONS [41:81q]

The planning board must adopt rules and regulations governing the submission and approval of plans. These regulations must be consistent with the subdivision control law and with the town's bylaws. The details of what may be prescribed in the regulations are given in 41:81Q.

1. Notice and Hearing

It is the responsibility of the planning board to comply with the requirements of 41:81Q with respect to publication and posting notices and holding hearings prior to adopting or amending subdivision control rules and regulations. However, since the town clerk is often responsible for the town's official bulletin board or has hearing and meeting notices posted in his office, he should be aware of the notice requirements.

Notice must be published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication not less than 14 days before the day of the hearing. If there is no such newspaper, the notice must be posted in a conspicuous place in the town hall not less than 14 days before the day of the hearing.

In addition, in order to comply with the Open Meeting Law, a copy of the hearing notice must be filed with the town clerk. [39:23B] The hearing notice posted and filed may be a copy of the legal advertisement prepared by the planning board for publication.

2. Filing Rules and Regulations

A true copy of the rules and regulations, together with their most recent amendments, must be kept on file and available for inspection in the office of the planning board and in the office of the town clerk.

It is suggested that the copy of the rules and regulations and any subsequent amendments on file in your office be either signed by the planning board members or certified as a true copy by the board's clerk. The signatures or certification will show that you have filed a TRUE copy as required by 41:81Q.

Both the rules and regulations and any amendments are permanent records of the town and should be safely kept. (State retention schedule #2.101)

3. Transmitting a Copy of Rules and Regulations

No rules or regulation or an amendment thereto, adopted after January 1, 1954 becomes effective until after a copy, certified by the town clerk, has been transmitted to the register of deeds and to the recorder of the

land court. The planning board is responsible for transmitting the copies. However, you will need to add your certification to two copies and provide them to the board for transmittal.

4. Providing Copies of Rules and Regulations to the Public

The rules and regulations and their amendments are public records. They must be available for inspection [41:81Q] and a copy must be provided upon request and the payment of the appropriate fee. [66:10; Public Records Access Regulations 950 CMR 32.05, 32.06] Since these records are required by law to be filed with the town clerk, you may issue certified copies if requested.

In many towns, the planning board will provide the town clerk with a supply of printed copies of the rules and regulations together with the various forms required for submitting the different kinds of plans. If not, you may make copies from your file copy to distribute. In either case, be sure that each copy you provide to the public has been updated to include all recent amendments.

D. DIVISION OF LAND - PLANS

When a parcel of land is divided into two or more separate lots in a town in which the subdivision control law is in effect, the owner must comply with the requirements of the subdivision control law if he wishes to develop the lots. The development may be for residential, industrial or business uses. The specific procedures to be followed will depend upon whether or not the division constitutes a subdivision under the definition appearing in 41:81L.

1. Subdivision

A subdivision is the division of a parcel of land into two or more lots when a way or ways must be constructed to provide access to some or all of the lots. In this case, the owner must prepare a definitive subdivision plan showing the lots, existing and proposed ways and other features as required by the planning board rules and regulation. [41:81O]

If the owner wishes, he may also prepare a preliminary subdivision plan to allow an informal discussion of the proposal and to determine what recommendations the planning board and board of health may have. This allows necessary or appropriate changes to be made prior to the preparation of the definitive plan. [41:81S]

2. Non-Subdivision

A parcel of land divided into two or more lots is NOT considered a subdivision, within the meaning of the subdivision control law, if every lot has required frontage on:

- ⇒ a public way, or
- ⇒ a way which the town clerk certifies is maintained and used as a public way, or
- ⇒ a way shown on a plan previously approved and endorsed definitive subdivision plan, or
- ⇒ a way in existence when the subdivision control law became effective having, in the opinion of the planning board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic and for the installation of municipal services.

The frontage on each lot must be at least the distance required by the current zoning bylaw, or at least 20 feet if the zoning bylaw does not specify a required frontage.

Conveyances or other instruments adding to or taking from, or changing the size and shape of the lots, shall not constitute a subdivision provided that no lot is left without the required frontage. In addition, if a

parcel of land on which two or more buildings were standing at the time the subdivision control law went into effect is divided into separate lots and one of the buildings remains standing on each lot, the division of land does not constitute a subdivision. (definition of subdivision in 41:81L)

In these cases, the owner would prepare a plan showing the lots proposed for development and the existing public ways. Such plans may be called non-sub plans, form A plans, or approval not required (ANR) plans, depending upon the custom in your town. In this manual, the term non-sub plan will be used.

NOTE: In connection with non-sub plans, you may be asked to certify that a road is a public way, or is maintained AND used as a public way. You will need to refer to your road records and records of appropriations for maintenance of roads.

You may need to obtain assistance from your town engineer or town counsel. Before including in your certificate that a road is used as a public way, you should be sure that you have, among your official records, some evidence to substantiate such use. Such a certificate cannot be used based upon personal knowledge alone. (See HIGHWAYS, TOWN WAYS, PRIVATE WAYS ELSEWHERE IN THIS MANUAL)

In addition, you may be asked to determine the date on which the subdivision control law became effective in your town. You will need to refer to town meeting records for votes establishing the board of survey or planning board and accepting the subdivision control law. You will also need to refer to any records you may have showing that the necessary statements and certificates were transmitted to the register of deeds and recorder of the land court. It is suggested that you not issue any certificates or statements with respect to the effective date of the subdivision control law, except certified copies of town meeting votes, without consulting with your town counsel.

E. PROCEDURES

1. Submission of Plans (41:810, 81P, 81SZ, 81T, 81U)

The applicant, who may be the land owner, his agent, representative or assignee, is responsible for being certain that plans are properly submitted. A non-sub plan must be submitted to the planning board. [41:81P, 81T] A preliminary or definitive subdivision plan must be submitted to the planning board and to the board of health. [41:81S, 81T, 81U]

The planning board rules and regulations may require that subdivision plans be submitted to other board or officers such as the fire chief, the highway superintendent, the conservation commission or town engineer. However, the rules and regulations cannot require that plans be submitted to these boards or officers prior to the submission to the planning board.

There is no requirement in the General Laws that a copy of the plans be filed with the town clerk. However, the rules and regulations may require such a filing, particularly if the planning board has appointed the town clerk as custodian of its plans and records as provided in 41:81A. You will need to become familiar with the provisions of the rules and regulations in this respect. In addition, some applicants regularly file a copy of the plan with the town clerk whether this is required or not. If you receive a plan, it may be filed with the notice of submission of plan.

There is usually no need for you to forward a copy of the plan to the planning board, or to the board of health of a subdivision plan, since a copy must be submitted to them by the applicant. However, the General Laws provide that the applicant may, if he wishes, submit a plan to the planning board by sending it registered (certified) mail in care of the town clerk. [41:810] He may also submit his plan to the planning board by hand delivery to the town clerk, requesting that it be given to the planning board. (see 4 Mass App 842) In these cases, you should check the material received to find the notice of submission of plan, unless you received this notice separately. You must also forward the plan to the planning board.

NOTE: If the applicant submits his plan by one of these methods, the date of submission is the date of mailing or date of hand delivery, and the time period within which action must be taken begins on that date. (see 41:810, last paragraph and case note, 4 Mass App 842) It is suggested that you time stamp and keep the envelope or at least a copy of the post mark and time stamp to file with the notice of plan submission and enter the following directly on the notice:

Plan delivered by registered (certified mail), postmarked _____.
date

OR

Plan submitted by hand delivery to town clerk on _____
date

2. Notice of Submission of Plan [41:81S, 81T]

Any person submitting a non-sub plan, a preliminary or definitive subdivision plan, must give written notice to the town clerk that he has submitted such plan.

a. information required [41:81T]

The notice must include at least the following information:

- * the date the plan was submitted
- * the name and address of the land owner
- * a description of the land with sufficient information for it to be identified

All the facts included in the notice should be taken as true, unless you have definite contradictory information, such as a written statement signed by the planning board giving a date of submission different from that shown in the notice. If you are in doubt as to the truth of the information in the notice, contact the planning board and/or town counsel.

b. form of notice

The general laws do not specify a particular form to be used for the notice. It may be simply a letter from the applicant to the town clerk. However, the planning board rules and regulations may specify that a particular form be completed, signed and submitted with the plan and that a copy of the form must be filed with the town clerk. This form may be considered the required notice provided it clearly states the date on which the plan was submitted. If not, ask the applicant to give you a separate written notice.

c. how delivered - receipt [41:81T]

The written notice may be either hand delivered by the applicant or his agent to your office, or it may be sent by registered (certified) mail.

If the notice is hand delivered, you must provide a written receipt only if requested. However, many town clerks issue a receipt to the person presenting the notice whether he requests it or not. The receipt may be handwritten using the receipt forms you regularly use in your office. In this case, include enough information so that it is clear to what plans the receipt refers. Or, you may provide a time stamped copy of the notice as the receipt.

If the notice is sent by registered or certified mail, ordinarily a return receipt will be attached to the envelope. This receipt should be signed by you or someone employed by you for return to the applicant by the

postal service. It is suggested that you time stamp and keep the envelope in your files as well as the notice since, under certain circumstances, the date of mailing is the date of submission of the plan.

d. when delivered

The General Laws do not require that the notice be delivered or mailed to the town clerk on the same date as the plan was submitted. Since the notice must state that the applicant HAS submitted such a plan, the notice to the town clerk should NOT be delivered BEFORE the plan has actually been submitted. However, it may be delivered on the same date or on a date after submission.

NOTE: In "Land Use Manager, No. 5," the Office of Local Assistance, Executive Office of Communities and Development has recommended that the planning board require an original notice or application and two copies of a non-sub plan, 3 copies if a preliminary definitive subdivision plan. The planning board should time stamp all copies and keep the original for its files. Two copies should be delivered immediately by the applicant to the town clerk. The town clerk would time stamp or note the date and time of delivery on both copies, keeping one for the file and returning the other to the applicant as a receipt. In the case of a preliminary or definitive subdivision plan, the third copy of the notice would be given to the board of health by the applicant. In this way, the date of submission of the plan to the planning board and to the board of health and the date the notice was given to the town clerk would be the same. You may want to discuss this procedure with your planning board.

e. filing notice of submission of plan - index

The General Laws do not specify that notices of submission of plans be recorded, nor do they specify how notices should be filed. However, 41:81U requires that the certificate of planning board action related to a definitive subdivision plan must be recorded in a book kept for the purpose and you may record in the same book the date of receipt of the notice, the date the plan was submitted and sufficient information to identify the plan to which the notice relates. Before filing it, enter on the notice the book and page where recorded.

The method of filing should allow you to locate a particular notice easily when information is requested and will depend to some extent upon how many notices you regularly receive. Notices may be filed by date of receipt, by map and parcel number, alphabetically by name or owners or name of the existing public way shown on the plan. Notices related to preliminary and definitive subdivision plans may be filed alphabetically by the name of the subdivision.

If you have on file and regularly receive a large number of notices, you will probably need some sort of cross index in order to find a particular notice quickly. For example, if you file notices by map and parcel number, you may need an index card file arranged alphabetically by name of owner or developer, or by the name of the subdivision. Note that an index is required for certificates of action by the planning board on definitive subdivision plans since those certificates must be recorded. (41:15)

Notices of submission of non-sub plans may be filed separately from those for preliminary and definitive subdivision plans. However, notice of submission of a preliminary plan and the notice for a related definitive subdivision plan subsequently submitted should be filed together.

Notices of submission of plans must be permanently kept. (state retention schedule #2.97 for non-sub and definitive plans; #2.100 for preliminary plans).

f. forwarding a copy of notice to planning board.

While it is not required by the General Laws, it may be helpful to the planning board if you forward a copy of the notice showing the date and time of receipt. This will keep the planning board informed that the applicant has complied with the notice requirements and the date of compliance. It is suggested that you discuss the procedure with the planning board.

3. Board Action/Reports - Notice or Certificate to Town Clerk

The planning board is required to take action within a specified time limit after each plan is submitted to it. The type of action and the time allowed will depend upon the kind of plan submitted. Under certain circumstances, a notice or certificate of action must be filed by the board with the town clerk.

The board of health or health officer, and other town boards or officers if required by the rules and regulations, must review and report on preliminary and definitive subdivision plans. Under certain circumstances, a report must be filed with the town clerk.

a. non-sub plan [41:81P]

After submission of a non-sub plan, the planning board must make a determination as to whether or not the plan constitutes a subdivision requiring approval under the subdivision control law. The planning board is not required to hold a public hearing prior to making its determination and the board of health is not required to make a report.

(1) approval under subdivision control law not required

If the planning board determines that approval of the plan under the subdivision control law is NOT required, it must place its endorsement on the plan.

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| <p>SAMPLE ENDORSEMENT</p> <p>Planning Board approval under the subdivision control law not required:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Large town Planning Board</p> <p>DATE: _____</p> |
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The endorsement must be signed by a majority of the members of the board unless the board has voted to authorize one person to endorse plans and has sent the name of that person and a statement of authorization signed by a majority of the board to the register of deeds and to the recorder of the land court. After endorsement, the planning board must deliver the plan to the applicant.

While the planning board is not required to notify the town clerk of its determination or endorsement of the plan, such a procedure would allow the public to ascertain more easily what action the planning board took.

(2) approval under subdivision control law is required

If the planning board determines that the plan shows a subdivision and therefore DOES require approval under the subdivision control law, it must within 21 days of the plan's submittal, give written notice of its determination to the town clerk and to the applicant.

EXAMPLE: If the non-sub plan was submitted to the Planning Board on January 25, it must make its determination AND file the notice with the town clerk on or before February 15th.

The planning board is not required by 41:81P to state its reasons for determination in the notice, but it sometimes does.

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| <p>SAMPLE NOTICE (Planning board letterhead or form)</p> <p>Date: _____</p> <p>To the Town Clerk:</p> <p>This is to notify you that the planning board has determined that the plan entitled “Plan of Land in Largetown, MA, November 14, 1998, Linus T. Transit, Civil Engineer,” showing 4 lots on the north side of Front Street. owned by Joseph Smallacres, and submitted on January 25, 1998 is a subdivision and approval under the subdivision control law is required.</p> <p>PLAN #98-10</p> <p>_____ Trudy R. Truecopy, Clerk</p> |
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The General Laws do not require that this notice be recorded in a special book, but it may be so recorded. If recorded, enter the book and page directly on the notice and then file it with the notice of submission of the plan and any other related papers you have received. Also, note on the appropriate index card, the date of receipt of the notice and that the plan requires subdivision approval.

The notice of determination must be kept permanently. [state retention schedule #2.102]

The planning board’s determination may be appealed, and the appeal date may be entered directly on the notice. (see section 6. Failure of Planning Board to Take Appropriate Action - for procedures if planning board fails to make its determination or fails to file the required notice with the town clerk within the time limit)

b. preliminary subdivision plan [41:81S]

Within 45 days after the submission of a preliminary plan, both the planning board and the board of health must notify the applicant and the town clerk of the action each took. The notice must be sent by certified mail. No public hearing is required.

NOTE: Although 41:81S requires that the notice be sent to both the applicant and the town clerk by certified mail, the town clerk in many, if not most towns, receives these notices from a board member or the board secretary by hand delivery. You may want to discuss this procedure with your town counsel.

Each board may approve the plan, approve it with modifications suggested by the board or the applicant, or disapprove it. The notice must specify what action was taken and in the case of disapproval, the board must state its reasons in detail.

File the notice of board action with the notice of submission of the plan and any other related papers you have received. You may record the notice, but are not required to do so. Note on the appropriate index card, the date of receipt of the notice and what action each board took.

This notice of board action must be kept permanently. [state retention schedule #2.99]

The appeals procedures provided under 41:81BB do NOT apply to preliminary subdivision plans. In addition, there are no procedures specified in the General Laws in the event the planning board and/or the board of health fail to act or fail to notify the town clerk of action within the 45 day time limit. (see case note under 41:81S, 347 Mass 330)

c. definitive subdivision plan [41:81U, 71V]

A definitive subdivision plan is required to be submitted to the planning board and a copy must be filed with the board of health. Each board must take action within a specified time period after the submittal or filing.

(1) board of health action [41:81U]

The board of health shall, within 45 days after the plan is filed, report to the planning board in writing its approval or disapproval of the plan. If the plan is disapproved, the board must make specific findings as to which areas cannot be used for building sites without injury to public health and include these findings in its report. Where possible, the board must make recommendations for adjustments in the plan.

The board must send a copy of its report to the applicant, but there is no general law requirement that a copy be filed with the town clerk. However, the planning board rules and regulations may require that a copy be filed with the town clerk and in many towns, the board of health sends a copy to the town clerk whether required or not. If you receive a copy of the report, file it with other papers you have received related to the subdivision and make the appropriate entries in the index card file if one is maintained.

Failure of the board of health to report to the planning board within the 45 day time limit, shall be deemed its approval of the plan.

(2) reports of other town boards or officers

The general laws do not require reports by other town boards or officers. However, the planning board rules and regulations may require such reports and require that they be filed with the town clerk. In some towns, the reports are filed with the town clerk whether required or not.

If you receive such a report, file it with the other papers you have received related to the subdivision and make the appropriate entries in the index card file if one is maintained.

(3) planning board action [41:81T, 81U, 81V]

(a) notice and hearing [41:81T]

Before action can be taken by the planning board on a definitive subdivision plan, it must hold a public hearing. It is the responsibility of the planning board to schedule and hold hearings and to comply with the notice requirements specified in 41:81T. However, since the town clerk is often responsible for the town's official bulletin board or has hearing and meeting notices posted in his office, he should be aware of the requirements.

Notice, including the time and place of the hearing and the subject matter, must be given by advertisement in a newspaper of general circulation in the town once in each of two successive weeks. The first publication must be not less than 14 days before the day of the hearing. If, however, there is no newspaper in the town, the notice must be posted in a conspicuous place in the town hall for a period of not less than 14 days before the day of the meeting. The notice must also be sent to the applicant and to all owners of land abutting the land shown on the plan.

In addition, in order to comply with the open meeting law, the notice must be filed with the town clerk. [39:23B] The hearing notice posted and filed may be a copy of the legal ad prepared by the planning board for publication.

(b) planning board decision [41:81U]

After the public hearing and after the report of the board of health has been received (or 45 days elapsed without a report), the planning board must approve the plan, unless it does not comply with the subdivision control law, the planning board rules and regulations or with the recommendations of the board of health. In that case, the planning board must either modify and approve the plan, or disapprove it. If the plan is disapproved, the planning board must state in detail wherein the plan does not conform to the rules and regulations or to the recommendations of the board of health.

Final action must be taken by the planning board within 90 days after the submission of the plan.

(c) certificate of action [41:81U]

The planning board must, within 45 days after the submission of the plan, file a certificate of its action with the town clerk. The certificate may be a letter or a special form prepared by the planning board and should include the following information:

- the date action was taken
- the kind of action taken (approval, approval with modification, or disapproval)
- if plan is disapproved, the reasons for disapproval
- the name of the land owner
- the name of the subdivision
- sufficient information so that you can identify the subdivision, particularly if its name has been changed between the time of submission and the final action.

The certificate should be signed by the planning board members or certified by the planning board clerk and you must record it in a book kept for the purpose. Enter the book and page where recorded directly on the certificate and file it with other papers you have received related to the subdivision. Note on the appropriate index card, the date of receipt, the name of applicant/owner and of the subdivision, the action taken by the planning board and the book and page number where recorded. [41:15].

(d) extension of time limits [41:81U]

At the written request of the applicant, the applicant and the planning board may agree to extend the time limit within which final action must be taken. If so, the planning board must file a notice of such extension with the town clerk. File this notice with other papers you have received related to the subdivision and make the appropriate entry in the index card file.

(e) security for construction of ways and installation of municipal services [41:81U]

Before endorsing its approval on an approved subdivision plan, the planning board MUST require that the construction of ways and the installation of municipal services be secured by a bond, a deposit of money, a covenant or by an agreement. These documents are usually kept on file by the planning board or

town treasurer and the town clerk need not be involved with them unless required by the rules and regulations or unless the clerk has been appointed custodian of the planning board records.

However the general laws do specify the town clerk's duties with respect to release of the security. Upon completion of the construction of ways and installation of municipal services, the applicant must send a written statement to the town clerk and to the planning board that the work has been completed in accordance with the planning board rules and regulations. The statement must include the applicant's address and must be sent by registered (certified) mail.

If the planning board determines that the work has been properly completed, it must release the town's interest and return the security to the applicant. If, on the other hand, the planning board determines that the work has not been properly completed, it must send a notice by registered (certified) mail to the applicant AND to the town clerk giving the details wherein the work fails to comply with the rules and regulations. This notice must be sent within 45 days after the applicant's statement was filed with the town clerk.

File the applicant's statement and the planning board's notice with other papers related to the subdivision, and make appropriate entries in the record book and on the index card. (see 6. Failure of Planning Board to Take Appropriate Action for procedures if planning board does not return or file notice)

(f) planning board endorsement - deliver of plan [41:81V]

The planning board must endorse its written approval on an approved definitive subdivision plan.

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| <p>SAMPLE ENDORSEMENT</p> <p>Approved by the Largetown planning board subject to its rules and regulations, as amended to this date, and the covenant to be recorded herewith.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Largetown Planning Board</p> <p>Date approved: _____</p> <p>Date signed: _____</p> |
|--|

Usually the planning board requires that this endorsement be printed by the applicant's engineer directly on the original linen or mylar plan.

After signing the endorsement, the planning board must deliver the plan to the applicant.

4. Modification, Amendment or Rescission of Approval [41:81W]

A planning board, on its own motion or on the petition of any person interested, shall have power to modify, amend or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan. All of the provisions of the subdivision control law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan which has been changed under this section.

No modification, amendment or rescission of the approval of a plan of a subdivision or changes in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon; provided, however, that nothing herein shall be deemed to prohibit such modification, amendment or rescission when there has been a sale to a single grantee of either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the planning board.

So far as unregistered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect until (1) the plan as originally approved, or a copy thereof, and a certified copy of the vote of the planning board making such modification, amendment rescission or change, and any additional plan referred to in such vote, have been recorded, (2) an endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded, and (3) such vote is indexed in the grantor index under the names of the owners of record of the land affected. So far as registered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect, until such modification, amendment or change has been verified by the land court pursuant to chapter one hundred and eighty-five, and in case of rescission, or modification, amendment or change not so verified, until ordered by the court pursuant to section one hundred and eighty-five.

5. Appeals [41:81BB]

a. who may appeal and to whom/notice of appeal

Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by a decision of a board of appeals under section eighty-one Y, or by any decision of a planning board concerning a plan of a subdivision of land, or by the failure of such a board to take final action concerning such a plan within the required time, may appeal to the superior court for the county in which said land is situated or to the land court pursuant to the provisions of clause (k) of section one of chapter one hundred and eighty-five; provided, that such appeal is entered within twenty days after such decision has been recorded in the office of the city or town clerk or within twenty days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as to be received within such twenty days. The court shall hear all pertinent evidence and determine the facts, and upon the facts so determined, shall annul such decision if found to exceed the authority of such board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

A city or town may provide any municipal officer or board with legal counsel for appealing, as provided in this section, a decision of a board of appeals or a planning board and for taking such other subsequent action as parties in other equity cases are permitted to take.

Cost shall not be allowed against the planning board or board of appeals unless it shall appear that such board acted with gross negligence or in bad faith.

The court shall require nonmunicipal appellants to post a surety or cash bond in a sum of not less than two thousand nor more than fifteen thousand dollars to secure the payment of any costs incurred by the appellee as a result of the appeal of a decision approving a subdivision if it appears to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

All issues in any proceeding under this section may be advanced for speedy trial over other civil actions and proceedings.

(1) form of notice

The General Laws do not specify the form to be used for a notice of an appeal. However, the notice must be in writing and must include enough information so that you will be able to determine what is being appealed. The following should be included:

- * name of the appellant
- * the location of the property shown on the plan
- * the title of the plan and if a definitive plan, the name of the subdivision
- * the decision being appealed and the date the decision was made

(2) filing notice of appeal

The appellant must file the notice of appeal with the town clerk within 20 days after the notice or certificate of action by the planning board was filed. Or, if the planning board failed either to take action or to file the notice or certificate of action with the town clerk, the notice of appeal must be filed within 20 days after the deadline for taking action, or for filing the certificates.

EXAMPLES:

- ⇒ If the notice or certificate of action was filed by the planning board in your office on January 25, 1998, the notice of appeal must be filed on or before February 14th.
- ⇒ If the planning board failed to act on a non-sub plan submitted on January 25, 1998, the notice of appeal must be filed on or before February 28th. (14 days after the date of submission of the plan plus the 20 day appeal period)
- ⇒ If the planning board failed to act on a definitive subdivision plan submitted on January 25, 1998, the notice of appeal must be filed on or before April 17th. (60 days after the date of submission of the plan plus the 20 day appeal period with 3 days added because two deadlines fell on Sunday and the final deadline fell on a holiday)

Since you will be asked from time to time, with respect to appeals, to add your certification to plans to be recorded in the registry of deeds or to be filed with the land court, correctly calculating the appeal period's expiration date will be critical to the performance of your duties.

NOTE: Unlike appeals from a decision of the board of appeals, a copy of the complaint is not required to be filed with the town clerk.

You may record the notice of appeal, but are not required to do so. It is suggested that you enter the date of receipt of the appeal notice in the margin of the record book next to the entry related to the certificate of action on the plan, on the planning board notice of action in your file, and on the appropriate index card. That the action has been appealed will then be immediately apparent to you when you refer to your record book or file.

file the notice of appeal with the other papers you have received related to the plan. These notices must be kept permanently. [state retention schedule #2.95]

(3) transmitting a copy of appeal notice

41:81BB does not require that you transmit a copy of the notice of appeal to anyone. However, both the planning board and the town counsel should be informed upon receipt of such a notice and

sending a copy showing the date and time of receipt is a convenient method to use. Enter on the notice the date and to whom it was transmitted.

(4) requests for information related to appeals

You may receive requests for information concerning whether or not an appeal has been taken. These questions may be answered and a copy of the notice and other related papers on file may be issued. However, any questions concerning the progress of an appeal or its outcome should be referred to your town counsel unless you have obtained a certified copy of the court's decision.

6. Failure of Planning Board to Take Appropriate Action [41:81P, 81U,81V]

In the event that the planning board fails to take appropriate action, or fails to file a notice or certificate of its action with the town clerk within the prescribed time limit after the submission of a plan, the town clerk must issue a certificate. In each case, you will need to check your records carefully to be certain of the date on which the time limit expired. It is suggested that you keep a copy of each certificate you issue and file it with the other papers related to the plan.

NOTE: If the planning board has taken action but has not yet filed its notice or certificate with you and the deadline is approaching, it is suggested that you contact the board and remind it to file. You may avoid having to issue a certificate of failure to act.

a. non-sub plans [41:81P]

If the planning board fails to take action on a non-sub plan, or fails to give written notice to the town clerk and to the applicant that the plan requires subdivision approval, within 14 days after the submission of the plan, it shall be deemed to have determined that approval is not required. Under these circumstances, the planning board must endorse the plan forthwith and deliver it to the applicant. If, however, the board fails to do so, the town clerk must issue a certificate and deliver the plan.

NOTE: In cases related to non-sub plans, the General Laws do not require that you wait until after the appeal period has expired before issuing a certificate of failure to act and it may be issued upon request at any time after the 14 day time limit has expired. However, it is suggested that before issuing a certificate, you contact the planning board to determine whether or not it intends to endorse the plan.

b. definitive subdivision plan [41:81U, 81V]

If the planning board fails to take final action, or fails to file a certificate of its action with the town clerk, within 60 days after the submission of a definitive subdivision plan, the plan shall be deemed to have been approved.

NOTE: If an extension of the time was agreed upon and a notice of the extension was filed with the town clerk, the plan would not be deemed to have been approved until after the expiration of the extended period.

In this case, the planning board would not endorse the plan and the town clerk is required to issue a certificate. [41:81U] However, the certificate cannot be issued until AFTER the 20 day appeal period has expired, or, if an appeal has been taken, until AFTER you have received a certificate copy of the court records showing that the approval has become final. [41:81V] After issuing the certificate, you must deliver the plan to the applicant.

c. release/return of security [41:81U]

If the planning board fails to release and return the security given for the construction of ways and installation of municipal services in a subdivision, or, if the planning board fails to notify the town clerk and the applicant of non-compliance with its rules and regulations, within 45 days after the applicant's

statement of completion was filed, the town clerk must issue a certificate. This certificate must be duly acknowledged before a notary public.

7. Recording Plans [41:81X]

It is the applicant's responsibility to have his plan recorded in the registry of deeds or, if the plan relates to registered land, filed with the recorder of the land court. Only non-sub plans determined not to require approval under the subdivision control law and approved definitive subdivision plans, but not preliminary subdivision plans, may be recorded or filed. Under certain circumstances, the town clerk is required to sign a certificate so that the plan may be accepted for recording.

Usually the applicant will have his engineer print the town clerk's certificate directly on the original linen or mylar plan and bring it in for your signature. In this case, check the wording of the certificate carefully to be sure it substantially complies with the wording shown in the samples. Sometimes the engineer will ask you to supply him with the appropriate wording for the certificate.

In addition, carefully check each plan presented to you to be sure that you examine the correct notices or certificates in your files to determine if the time limits have expired.

You will probably be asked to sign the linen or mylar using a felt-tipped pen having black ink. Ball-point pens are not suitable.

41:81X also allows the town clerk to issue a separate certificate. In this case, the certificate must be recorded by the applicant and a reference must be printed on the plan. Type the certificate on your regular letterhead paper and add the town seal.

a. non-sub plans

The town clerk is required to sign a certificate on a non-sub plan or issue a separate certificate to be recorded with the plan, ONLY if the planning board fails to endorse the plan. The town clerk's certificate with respect to appeals is NOT required by 41:81X prior to recording an endorsed non-sub plan.

b. approved definitive subdivision plan

A town clerk's certificate with respect to appeals IS required for recording all approved definitive subdivision plans, whether approved by action of the planning board, or deemed approved by reason of the planning board's failure to act or failure to file a certificate of its action with the town clerk. In most, if not all cases, the town clerk's certificate will be printed on the linen or mylar.

SAMPLE CERTIFICATE - NO APPEAL

This is to certify that no notice of appeal was received during the 20 days next after receipt and recording on (date) of notice from the planning board of the approval of the within plan.

Date: _____

+ _____

Town Clerk

SAMPLE CERTIFICATE - APPEAL TAKEN

This is to certify that a notice of appeal was filed on (date) and that a certified copy of the records of the (name of county) superior court indicating that approval by the planning board of the within plan has become final was received on (date).

Date: _____

Town Clerk

NOTE: If you do not have a certified copy of the court record on file, ask the person presenting the plan to obtain one for you BEFORE you sign this certificate.

The planning board's endorsement will usually appear printed on the plan, but this will usually not have been signed by the board at the time you are asked to sign the appeal certificate. 41:81V prohibits the planning board from signing its endorsement until after the appeal period has expired or, if an appeal was taken, until after the court's final decision has been made.

If the plan has been approved by reason of the failure of the planning board to act, or the failure to file a certificate of its action with the town clerk, an additional certificate will be required. This certificate and the appeal certificate may be combined as shown in the sample.

c. plans to be recorded within 6 months of endorsement

A definitive subdivision plan must be recorded within 6 months of the date of the planning board endorsement, or within 6 months of the date of the town clerk's certificate of failure to act. If the six month period has expired, a further certificate is required for recording.

SAMPLE CERTIFICATE

This is to certify that approval of the within plan has not been modified, amended or rescinded nor has the plan changed since the original approved plan was endorsed by the planning board on (date).

Date: _____

Town Clerk (or planning board)

This certificate is usually signed by the planning board. However, 41:81X provides that it may be signed either by the planning board or by the town clerk. It must be signed unless the records of the planning board or of the town clerk show that approval has been modified, amended or rescinded or the plan has been changed. The plan must then be recorded within 30 days of the date of this certificate.

It is suggested that you NOT sign one of these certificates without first consulting with the planning board.

F. BOARD OF APPEALS FOR SUBDIVISIONS [41:81y,81z,81aa,81bb]

1. Establishment of a Board of Appeals Required [41:81Z]

A town in which the subdivision control law is in effect shall, by bylaw, provide for a board of appeals for subdivisions. This board of appeals may be the existing board of appeals established under the local building or zoning bylaw, (see VARIANCES, PERMITS, APPEALS elsewhere in this manual).

The board of appeals for subdivisions is appointed by the board of selectmen and must have at least three members. Associate members may also be appointed. If the zoning board of appeals is to act as the subdivision board of appeals, it must be appointed by the selectmen to act in both capacities.

2. Duties of Board of Appeals [41:81Y, 81AA]

The board may, by majority vote, issue a permit for the erection of a building if the provisions of the subdivision control law relative to the issuance of such a permit would entail practical difficulty or unnecessary hardship, and if the circumstances of the case do not require that the building be related to a way shown on a subdivision plan. [41:81Y]

3. Notice and hearing [41:81AA]

Before issuing a building permit, the board must hold a public hearing. The requirements for publishing and posting notices of these hearings are the same as for hearings by the planning board related to definitive subdivision plans.

The hearing notice posted and filed may be a copy of the legal ad prepared by the board for publication and it may be filed in the regular meeting/hearing notice file.

4. Decisions of Board of Appeals [41:81AA]

No time limit within which the board must make a decision on a building permit is specified in 41:81AA. However, the board must make a detailed record of its proceedings including the following:

- the vote of each member upon each question
- if a member is absent or fails to vote, this must be indicated
- the reason or reasons for its decision

A copy of this detailed record must immediately be filed with the town clerk. It is a public record and must be permanently kept. [state retention schedule #2.148]

Upon receipt of a record, file it in the same way you file other decisions and records of the board of appeals. A separate file may be used if the board of appeals for subdivisions is not the board of appeals established under the zoning bylaw.

NOTE: There are no provisions in the subdivision control law governing the board's failure to take action or to file the detailed record of its proceedings with the town clerk. A town clerk has no authority to issue a certificate of failure to act in these cases.

5. Appeals [41:81BB]

The decisions of the board of appeals for subdivision may be appealed using the same procedures as those outlined for appeals from decision of the planning board. The notice of appeal must be filed with the town clerk and kept permanently. [state retention schedule #2.145 }

IV PROFESSIONAL REGISTRATIONS AND LICENSES

A. GENERAL [112:8; 112:21; 112:70,71; 112:87HHH]

Physicians, podiatrists and optometrists must present a certificate of registration for recording in your office prior to opening an office for practice within your town. An electrologist must have his license recorded in your office.

The fee for recording the certificate or license is \$1.00 [262:34(24)(57)(58); 112:87HHH] unless your town meeting has established a different fee.

The form on which you record these licenses or registrations may be disposed of following discontinuance of practice in your town. However, a permanent record of the certificate must be retained. Therefore, it may be easier to keep the forms themselves rather than to record the information in a permanent record book. [state retention schedule #2.111,#2.112, #2.113, #2.114]

B. PHYSICIAN'S REGISTRATION [112:8]

The certificate of registration must be recorded on blanks approved by the state Board of Registration in Medicine and must contain the physician's name, his certificate number, the address of the office, and the date of recording.

Forms for recording a physician's certificate of registration are available commercially. If you wish, you may make up your own forms, as long as you include the required information.

Have the physician fill out and sign the top half of the form shown in the sample below. Check the number entered on the form with the certificate of registration presented by the physician to be sure they agree. Then complete the bottom half of the form and sign it.

Chapter 93 of the Acts of 1989, approved May 23, 1989, amends M.G.L. chapter 112, Section 8. This amendment provides that town clerks should no longer forward physician registration statements to the Board

of Registration in Medicine of the Commonwealth of Massachusetts by striking out the fourth sentence. If you have any questions regarding this amendment please contact the Counsel to the Board at 617-727-3086.

The penalty for your refusal or neglect to record a physician's certificate of registration is a fine of not less than \$5.00 nor more than \$10.00. The penalty on the physician for refusing or neglecting to have his certificate recorded in a fine of not less than \$5.00 or more than \$100.00. (example of possible form below)

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| <p>SAMPLE FORM</p> <p><u>Physician's Certificate Record Form</u></p> <p>THE COMMONWEALTH OF MASSACHUSETTS</p> <p style="text-align: center;">_____ OF _____</p> <p>I, the undersigned herewith present certificate No. _____ for record by the clerk of the City/Town of _____, Massachusetts</p> <p>I intend to conduct the practice of medicine in the City/Town of _____.</p> <p>My office or usual place of business is _____.</p> <p>The required fee of one dollar is herewith tendered.</p> <p style="text-align: center;">_____ 19____. Signed: _____</p> <p style="text-align: center;">Physicians must not write below this line</p> <hr/> <p style="text-align: center;">_____ MA _____ 19____</p> <p>In accordance with the provision of section eight of chapter 112 of the General Laws, I hereby certify that Dr. _____ has this day exhibited certificate No. _____ issued under authority of the laws of the Commonwealth of Massachusetts and has paid the required fee of one dollar.</p> <p style="text-align: center;">_____ Clerk of the Town of _____</p> |
|--|

C. PODIATRIST'S REGISTRATION [112:21]

A podiatrist must inform you that he is the person designated in the certificate and you must record his name, address, the date and the number of his certificate.

You may use the physician's registration form for a podiatrist by crossing out the word "medicine" and inserting the word "podiatry" in the third line and changing the General Laws section reference on the bottom half of the form, or you may make up your own form.

D. OPTOMETRIST'S REGISTRATION [112:70, 71]

Forms for recording an optometrist's certificate of registration are available commercially and are almost identical to the forms for physicians. Or, you may make up a form yourself.

If the optometrist moves his principal office from one city or town to another within the commonwealth, he must obtain from the town clerk who has recorded his certificate of registration, a certified copy of the record which he must then file with the clerk of his new city or town. [112:70]

If, the state board revokes or suspends an optometrist's certificate, it must notify the clerk of the town in which he had his principal office and the clerk must record the revocation or suspension on the record of the original certificate. [112:71]

E. ELECTROLOGIST'S REGISTRATION [112:87HHH]

You may use a form similar to that used for recording a physician's certificate except that you would use the term "license" instead of "certificate" on the form, use the term "electrolysis" instead of "medicine," and change the reference to the General Laws.

If the electrologist moves his principal office to another town, he must obtain a certified copy of record of his license and file it with the clerk of the town to which he has moved.

There is no requirement that a copy of the record be forwarded to the state Board of Registration of Electrologists.

F. ARCHITECTS [112:60H]

There is no requirement that architects have their certificates of registration recorded with a town clerk. However, if the state Board of Registration of Architects revokes, suspends or annuls an architect's certificate, it must notify the clerk of the city or town where such architect has his principal place of business.

The General Laws do not specify what is to be done with the notice. It is suggested that you time stamp it and place it in your files. This notice of revocation, suspension or annulment is not included in the State retention schedule. It would appear, however, that a permanent record of the notice should be kept.

V. BUSINESS CERTIFICATES [110:5,6; 227:5A]

A. GENERAL

The primary purpose of filing a business certificate is to protect consumers or creditors by identifying the names and addresses of the owners of the business. The filing of a business certificate does not protect a business name as does a corporate filing or a trademark registration. A business certificate filing is commonly called a "d/b/a" (doing business as).

The filing of a business certificate may be used in connection with a court case to show when a business name was first used in a community and to enjoin another business from using an identical or similar name. However, it is suggested that you refer any individual needing information on the legal protection of a business name either to the State Secretary's Office, Corporations Division, 617-727-9640, or to his own lawyer. Also, see pamphlet "What's in a Business Name" published by the Corporations Division and available from the state bookstore if there is a sufficient supply.

You may find in your business certificate file, some Married Woman's Business Certificates and a record book in which Married Women's Business Certificates have been recorded. These were required prior to 1974 but this provision of the General Laws [209:10, 11] was repealed under chapter 174, section 4 of the Acts of 1974. Married women now file a regular business certificate.

B. ORIGINAL FILING [110:5]

Any person conducting a business, individually or as a partnership, in the commonwealth under any title or name other than his real name, must file a business certificate with the clerk of each city or town in which the business has an office. If a corporation is operating a business in a name, other than the incorporated name, they too need to file.

The certificate must include the full name and residence of each person conducting the business; the place, including street and number, where the business is conducted; and the title under which the business is conducted. The certificate must be signed under oath by each person conducting the business, certifying that the statements contained in the certificate are true. The certificate may be signed in the presence of any of the following: the town clerk, the assistant town clerk, a person designated by the town clerk, or a person authorized to take oaths, such as a notary public or a justice of the peace.

You may request any person wishing to file a business certificate to produce evidence of his identity. The certificate should be accepted for filing even though he refuses or fails to produce such evidence, but you should make a note of this fact on the certificate.

If more than one person is conducting the business, they are not required to appear together in your office to make out or sign the certificate. However, if they appear on different days separately, the date on which each took the oath and signed the certificate should be noted next to the name. The certificate cannot be considered filed until after all individuals conducting the business have taken the oath and signed.

Certificates may be completed, signed and notarized outside of your office and mailed to you. On occasion, you may receive a separate form from each individual involved in a particular business. These may be accepted and filed provided the name and address of each person involved appears on all the forms related to the business and the business name and address is the same on all forms. Time stamp each form. Also, each form must be signed and notarized. Attach all the forms relating to the business together prior to filing. The date of receipt of the last form is the date of filing for that business. a certificate issued in accordance with this section shall be in force and effect for fours from the date of issue. Said certificate shall be renewed every four years as long as said business is operating. Unless renewed, the certificate will lapse.

Copies of such certificates shall be available at the address of said business and shall be furnished on request during regular business hours to any person who has purchased goods or services from said business.

FEES: The fee for filing a business certificate is \$1.00 [262:34(20)] unless your town meeting has set a different fee. The fee for issuing a certified copy is \$.50 [262:34(22)] unless your town meeting has set a different fee.

C. AMENDMENTS, DISCONTINUANCES, ETC. [110:5]

If a business is discontinued, or if the information related to the business or the individuals conducting the business changes after the original filing, a statement of discontinuance or of the new information must be filed with the clerk of each city or town in which the original business certificate was filed.

If several individuals are conducting the business and one withdraws or retires, the person withdrawing or retiring should file the form. If an individual, who has filed a business certificate, dies, the administrator or executor of his estate may file the discontinuance.

110:5 does not specifically cover the situation in which an individual wishes to change a business name. In this case, it is suggested that you have him file a discontinuance of the old business and file a new business certificate under the new business name.

The law also does not specifically cover the situation in which a partner withdraws from the business and a new partner enters the business. It is suggested that you handle this situation by having all original partners file a discontinuance of the business. Those partners who are remaining in the business together with the new partner would then file a new business certificate.

FEE: The fee for filing a discontinuance or amendment [262:34(21)], or for issuing a certified copy [262:34(22)] is \$.50 unless your town meeting has set a different fee.

D. FILING AND INDEXING [110:5]

The General Laws do not specify the manner in which business certificates, amendments or discontinuance must be filed, nor do they have to be recorded in a special book. Therefore, the certificates may be filed in any manner which you find convenient.

However the General Laws do specify that an index, including the pertinent facts must be maintained. Also included in the index must be a reference to any statement of discontinuance, retirement or withdrawal from the business, change of location of the business or change of residence of a person conducting the business.

If you file the business certificates together with any discontinuances and amendments, in alphabetical order by the name of the business and establish an index card file arranged alphabetically by the name of the person conducting the business, you will comply with the requirements of the General Laws and have easy access to the information.

On occasion you may receive requests for the names and other information for all business certificates filed during this year. In order to answer this kind of question quickly, a card may be made up showing each certificate in the order in which filed, or the entries may be made in a notebook or record book.

E. EXEMPTIONS [110:6]

The following are exempted from filing a business certificate with the town clerk:

- ◇ corporation doing business under its true corporate name which is required to file records and reports with the state secretary, corporations division
- ◇ partnership doing business under a title which includes the true surname of any partner
- ◇ association which has complied with 159:5 & 6 related to common carriers whose agents must file information with the state treasurer
- ◇ partnership, joint stock company or association conducted under a written instrument or declaration of trust, provided that the names of the trustees, with a reference to the instrument or declaration of trust, have been filed on a business certificate

F. PENALTIES [110:5]

The penalties for a violation of 110:5 are a fine of not more than \$300 for each month during which such violation continues.

G. RETENTION PERIOD

Business certificates, discontinuances and amendments are all records that must be kept for five (5) years. They are no longer permanent records.

H. NON-RESIDENTS IN BUSINESS [227:5A]

Those who are not residents of Massachusetts but who are doing business in the commonwealth (except those covered by 117:5) shall file a certificate with the clerk of each city or town where he does business. Place the original certificate of the non-resident businessman on file in your office along with the business certificates received under 110:5. The required information is the same as that required on business certificates under 110:5.

In addition, the non-resident in business must also include on his certificate a statement appointing the clerk with whom he files the certificate, or his successor in office, as his true and lawful agent upon whom all

lawful processes may be served in any action arising out of the business. Even if the businessman fails to specifically appoint an agent and does business in the commonwealth, service of process may be made upon the clerk of any city or town in which the business is conducted.

If you should be served with a process (a summons), time stamp it or note the date and time of receipt and attach it to the related business certificate in your files. Note its receipt on the appropriate index and reference cards.

The fee for filing a non-resident businessman's certificate is not specified in the law. It would probably be the same as the fee for business certificates filed under 110:5, unless your town counsel advises otherwise.

These certificates are not included in the state retention schedule but it would probably be wise to have it kept for 5 years, the same as a business certificate.

VI. TOWN OFFICIALS

The town clerk is responsible for filing and recording notices of appointments and resignations of town officials as well as administering the oath of office. Upon receipt, time stamp or note the date and hour of receipt on each notice or resignation. These should be kept on file for at least one year following the expiration of the term of office or the effective date of a resignation.

All appointments and resignations must be permanently recorded. [state retention schedule 2.61; 2.65] Some town clerks record these in an appointment record book. Others enter the necessary information at the end of the town meeting proceedings.

There are additional specific provisions of the General Laws related to the appointment, resignation and removal of town officials as follows:

A. Keeper of the Lockup [40:34,35]

Each town containing more than 5,000 inhabitants shall, and any town may, maintain a secure and convenient lockup to which persons arrested without a warrant may be committed. [40:34] The selectmen of each town shall annually, by a writing recorded with the town clerk, appoint a keeper of the lockup. [40:35]

B. Temporary Town Officials [41:40]

The selectmen may, in writing and signed by them, appoint a person as a temporary treasurer, collector, accountant, auditor, tree warden, highway surveyor, or road commissioner if the office is vacant, or if the officer cannot fulfill his duties because of absence or disability. The appointment must be filed with the town clerk.

C. Firewards [48:1]

The selectmen may annually, in March or April, appoint firewards. The fireward must file his acceptance or refusal of the office within seven days of being notified of appointment by the selectmen. If the fireward does not file with the town clerk, he shall forfeit \$10.00, unless excused by the selectmen.

D. Resignations of Town Officials [41:109]

Resignations of all town officials, elected or appointed, must be filed with the town clerk prior to becoming effective. The person resigning may specify in his resignation an effective date later than the date of filing, however, if he does not, the effective date is the date on which you received it in your office.

Time stamp and note on the resignation the effective date and add your signature. Send a copy to the selectmen, the appointing authority if this is some official other than the selectmen, and to each remaining member, if any of the board or committee from which the person resigned. You may make up a form to use as a notice of resignation.

E. Removal of Tenured Fire Chief [48:58]

The selectmen may remove a tenured chief of the fire department for just cause and for reasons specifically assigned by them. The selectmen must first give a copy of such reasons to the chief and allow him a reasonable time to answer them in writing. A copy of the reasons, notice and answers, and the order of removal, shall be filed with the town clerk. These papers are not included in the state retention schedule.

VII. HIGHWAYS, TOWN WAYS, PRIVATE WAYS

A. GENERAL

You may have several different kinds of roads in your town, among them state highways, county highways, town ways, private ways laid out for the use of the public, and private ways not open for public use. Determining the specific status of each road in town may be neither easy nor clear. Therefore, a careful search of your road records should be made, and possibly reviewed by your town counsel or town engineer, prior to issuing any statements concerning the status of a particular road. In some cases, especially with respect to the older roads, you may only be able to state what kind of a record you have, but not make any determination that the record shows a road to be a town way, private way or a highway leaving that determination to the person who requested the statement.

You may find among your older records, bound volumes, or parts of volumes, which contain handwritten records of roads laid out by the selectmen or by other agencies such as road commissioners, or the county commissioners. In reading the descriptions of these roads, you may or may not be able to determine that the road described is one that currently exists. Even if you are fairly certain that the road currently exists, the specific location and boundaries may have been changed somewhat from those described in the record. Searching out the alterations made from time to time on the older roads may be rather difficult, unless you happen to be fortunate enough to have inherited from a predecessor a well organized index to all your road records.

The following information will cover state highways, county highways, town ways and private ways laid out for public use since a town clerk may have records and files concerning all these types of roads. These records and files are of considerable importance to the town and should be safely and permanently kept. [state retention schedule #2.110]

B. STATE HIGHWAYS [81:4,5,6,7C,12]

The county commissioners or selectmen may petition the state Department of Public Works to lay out a new way, or to take charge of an existing way. [81.4] If the DPW determines, after notice and hearing, that the public necessity and convenience require that the way should be laid out or taken charge of by the commonwealth, it shall file in the office of the clerk of each town where the way is situated, a copy of the plan showing the location of the portion lying in the town and a copy of the certificate that it has laid out and taken charge of the way in accordance with the plan. Once this procedure has been completed, the way shall be a state highway and it shall be constructed or taken charge of by the state Department of Public Works. [81.5]

1. Limited Access Highway [81:7C]

The state Department of Public Works may also lay out a limited access highway using the same procedure as is used for laying out a state highway.

2. Alteration of State Highway [81:6]

Each time the DPW alters an existing state highway, it must file a copy of the plan or location as altered in the office of the town clerk.

3. Discontinuance of State Highway [81:12]

The state DPW may, with the concurrence of the county commissioners, discontinue as a state highway a way or a section of a way laid out and constructed under the provision of 81:5. The DPW must file in the office of the town clerk, a certified copy of the plan showing the discontinued way and a certificate that it has been discontinued. After being discontinued by the DPW, the way becomes a town way.

4. Abandonment of Highway Land [81:12]

The state DPW may also abandon land or rights in land which may have been taken or acquired by it, by filing with the town clerk a certified copy of the plan showing the land abandoned and a certificate that it has abandoned the land.

If you receive a plan and certificate relating to a layout, alteration or discontinuance of a state highway, or relating to the abandonment of state land, time stamp them and file alphabetically by the name of the street or road in your town. You are not required to record them in a special book. Send to the selectmen or road commissioners a copy of the certificate with a note that the plan was received.

C. COUNTY HIGHWAYS [82:1,2,3,5,8,11]

The county commissioners may lay out, alter, relocate and discontinue highways, or order specific repairs thereon in the manner herein provided, unless other provision is made by law. Sections one to thirteen, inclusive, shall apply to city councils or aldermen when authorized by city charters to lay out, alter, relocate and discontinue highways and to order specific repairs thereon, so far as applicable, and any hearing under any provision of said sections required to be held before a city council or board of aldermen so authorized may be held before a duly authorized committee thereof.

Notwithstanding any other provision of this chapter, no municipality shall layout, alter, relocate or discontinue an existing way at its point of connection, or within five hundred yards of its point of connection, with an adjoining municipality which excludes motor vehicle traffic from the way until and unless (a) the city, town or county initiating such layout, alteration, relocation or discontinuance gives written notice of such action to the chief executive officer of abutting city, town, or county into which the said way extends, and (b) a public hearing is held by the city, town or county initiating such layout, alteration, relocation or discontinuance, public notice of which must be published for each of the two weeks preceding such hearing in a newspaper of general circulation in the abutting city, town or county into which the said way extends, and (c) the chief executive officer of such abutting city, town or county concurs in writing, in such layout, alteration, relocation or discontinuance. If within ninety days of the date of such hearing required by this section there is no concurrence by the abutting city, town or county into which the said way extends, the initiating city, town or county may make a written request to the commissioner of the state department of highways to approve of the said layout, alteration, relocation or discontinuance. If the said commissioner so approves, the said layout, alteration, relocation or discontinuance shall take effect and be valid without the concurrence of the abutting city, town or county into which the said way extends.

(Above text effective January 30, 2007)

A city or town may, without complying with the foregoing provisions of this section, exercise the authority granted to it by section thirty-two A.

County commissioners, councils of governments, or other duly authorized councils, committees or boards, in this chapter called county commissioners, in their respective jurisdictions may lay out, alter, relocate, order specific repairs, discontinue and discontinue maintenance of county highways or roads in the manner herein provided, unless other provision is made by law. A council of governments shall have the

authority to designate the powers of the council with relation to county roads to a sub group of the council, duly constituted under its charter. In counties abolished under chapter 34B or by section 567 of chapter 151 of the acts of 1996 where no council of governments exists, the designated regional planning agency shall create a regional adjudicatory board, comprised of 4 members of the regional planning agency advisory board and the district highway director of the department of highways or his designee, to act as county commissioners under this chapter. County roads in Berkshire county shall be exempt from the foregoing provisions and shall be subject to section 364 of chapter 159 of the Acts of 2000. County commissioners may enter into agreements with any petitioner to indemnify themselves from payment of damages or other claims related to this chapter.

The commissioners must view the area or hold a hearing. Notice of the view or hearing including the time and place and a copy of the written petition, if any, must be served upon the clerk of every town in which a new highway, alteration, repair or discontinuance is proposed or petitioned for. [82:3] There is no provision under 82:3 for filing a copy of the plan with the town clerk. A second hearing may be required if an interested person objects. Notice of the second hearing must also be served upon the town clerk. [82:5]

Since the term served upon the clerk is used in the law, you may have the notice of a view or hearing delivered to you in person by a deputy sheriff, time stamp it and make two copies. Send one copy of the notice to the official or officials in charge of roads in your town and post the other. File the original notice with other papers related to the road in question.

After the hearing(s) have taken place and the county commissioners have determined the manner in which a new highway shall be laid out, or an existing one altered, relocated or repaired, they must transmit to the clerk of each town in which the highway lies, a description and plan of the location and bounds within the town. [82:8]

When you receive the plan and description, time stamp each. If the plan relates to an existing road, it may be filed under the name of the road. If, however, it relates to a new road which has not yet been named, you may hold it in the front of the file until the road is named. In addition, a number may be assigned to each plan such as 82-1, 82-2, etc. denoting the year in which the plan was received and the number of the plan.

The description must be recorded within ten days of receipt in a book kept for that purpose. [82:8] A road record book may be in several different forms. In some towns, the descriptions are copied by hand into a bound record book, carrying on the tradition of the older road record books. Other towns simply type up the description and place it into a loose leaf book which is later permanently bound. Or, the descriptions themselves may be kept together until a sufficient number are on hand to have them permanently bound.

An index can be prepared which would provide a reference to the plan on file for each description. It may be helpful to note on the description the plan number assigned, and also to note on the plan the book and page where the description can be found.

D. TOWN WAYS - PRIVATE WAYS

1. Laid Out by Local Officials [82:21,23,32]

Town ways are those which have been laid out by the selectmen, or other local official who has jurisdiction over roads. The fact that they have been laid out by local officials is what distinguishes them from county highways, county roads, or other public ways. [82:21 Case Notes, 139 Mass 290] Town ways must begin and end within the boundaries of the town.

The selectmen (or other local official in charge of roads) may also lay out, relocate or alter private ways for the use of one or more of the inhabitants of the town. The public must be allowed to use private ways laid out under the statutory provisions of 82:21. However, such private ways differ from town ways in that the land damages may be ordered to be paid by the persons specifically benefiting by the laying out and the town is not obligated to keep these private ways in the same kind of repair and condition as town ways. [313 Mass 799, 784] These private ways are private in name only, but are, in all other respects, public.

After the selectmen (or other local official in charge of roads) lay out, alter or relocate a town way or a private way, the boundaries and measurements of the way must be filed in the office of the town clerk. This filing must take place not less than 7 days prior to the acceptance of the action by town meeting. If you should receive it less than 7 days prior to the town meeting at which it is to be accepted, the town meeting cannot take valid action on its acceptance. [82:23] In computing the deadline for filing, count back 7 days from the date the town meeting is to begin, not from the date of an adjourned session at which the vote on the acceptance of a road is expected to be taken.

The selectmen or road commissioners must file with the town clerk a description of the location and bounds of a town way or private way which is laid out, relocated or altered by them. The town clerk must record this description within 10 days in a book kept for that purpose. [82:32] All papers and plans received relative to laying out, altering or relocating town or private ways should be time stamped or the date and time of receipt noted on them.

The board or officers of a city or town having charge of a public way may, after holding a public hearing, notice of which shall be sent by registered mail, return receipt requested, to all property owners abutting an affected road and notice of which shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting in a conspicuous place in the office of the city or town clerk for a period of not less than fourteen days before the day of the hearing, upon finding that a city or town way or public way has become abandoned and unused for ordinary travel and that the common convenience and necessity no longer requires said town way or public way to be maintained in a condition reasonably safe and convenient for travel, shall declare that the city or town shall no longer be bound to keep such way or public way in repair and upon filing of such declaration with the city or town clerk such declaration shall take effect, provided that sufficient notice to warn the public against entering thereon is posted at both ends of such way or public way, or portions thereof. (*Text effective January 30, 2007 – from Section 32A*)

Upon petition in writing of the board or officers of a city or town in which a county highway is located, the county commissioners, whenever common convenience necessity no longer require such way to be maintained in a condition reasonably safe and convenient for public travel, after giving notice in the manner prescribed in section 3, and after viewing the premises and hearing the interested parties in the manner prescribed in section 4 may adjudicate that the town shall no longer be bound to keep the way in repair, and thereupon the adjudication shall take effect; provided, that sufficient notice to warn the public that the way is no longer maintained is posted at both ends of the way, or portions thereof.

Town ways and private ways laid out for the use of one or more inhabitants may be discontinued by vote of the town meeting under a warrant article. [82:21]

2. Laid Out by County Commissioners [82:1,2,3,8,11,26,27,32]

The county commissioners may become involved in laying out, altering, relocating, discontinuing, or repairing town and private ways by several procedures.

a) They may lay out, alter, relocate or discontinue a road which begins and ends in a town upon their own initiative [82:1], or upon a written petition [82:2]

b) They may relocate or order specific repairs on a way within the town whether it was laid out by authority of the town or otherwise, if an application is made by a town, or by 5 inhabitants of the town. [82:11]

In these cases, the county commissioners are required to cause a notice of the time and place of a view or hearing to be served upon the town clerk at least 15 days before the hearing. [82:3] After the required hearing and the commissioners have made their determination, they must file with the town clerk, a description and plan of the location and bounds of the way involved. The town clerk must record the description, within 10 days of receipt, in a book kept for that purpose. [82:8] Chapter 82, Sec. 26 and 27 was repealed in 1985.

3. Betterment Assessments [80:7,10]

If a local board refuses to abate a betterment assessment (an assessment made in connection with the layout of a private way, for example) the aggrieved person may take an appeal either to the Superior Court [80:7] or to the county commissioners. [80:10]

If he files an appeal with the Superior Court, a summons may be served upon the town clerk, the treasurer, a selectman, an assessor, etc. Usually service is made upon the town clerk. (see 80:9 and 223:37)

If he files an appeal with the county commissioners, he must within 10 days thereafter, give written notice to the town. The notice may be given by mailing a copy of the appeal by registered mail to the board which made the assessment or to the town clerk. [80:10] Note that these notices are usually sent to the board which made the assessment rather than to the town clerk so you may not receive any or have any in your files.

If you receive such a notice or summons, time stamp it and forward a copy showing the time and date received to the board which made the assessment and to town counsel. Note on the original notice the date and to whom it was forwarded, then file it.

4. County Commissioners and Local Officials Acting Concurrently [82:3, 17, 18, 21, 22, 23]

Selectmen or road commissioners may act concurrently with the county commissioners with respect to petitions for altering, relocating or making specific repairs on a county highway within the town limits. The proceeding of the town officials in this case is the same as in the laying out of highways and town ways. [82:17]

The layout, relocation or alteration, with the boundaries and measurements, must be filed with the town clerk at least seven days prior to the town meeting at which it is accepted. [82:23] Also the requirements for notice to owners of land must be complied with by the selectmen and road commissioners. [82:22]

Within two weeks after final action has been taken relative to the alteration or relocation of a highway, or to making specific repairs, the town clerk shall send a certified copy of the record of such final action to the county commissioners. The county commissioners must enter it upon their records. [82:18]

As used in section 18, final action refers to the final step in the process. In the case of the alteration or relocation of a highway, the final action is the acceptance of the selectmen's layout by town meeting. (see 82:230) In the case of specific repairs, the final action is the order adopted by the selectmen. (see 82:21)

Any action taken under 82:17 may be appealed to the county commissioners. The county commissioners are required to hold a public hearing and to serve a notice of the hearing upon the town clerk. (see 82:3)

If you receive such a notice, time stamp it and send a copy showing the date and time of receipt, to the selectmen or other local official responsible for roads. File the notice in the file related to the road in question, and post a copy of it.

E. TOWN CLERK'S CERTIFICATE RE PUBLIC WAYS [233:79f]

The certificate of a town clerk in the case of a town way, that a particular way is a public way as a matter of record shall be admissible as prima facie evidence that such a way is a public way. [233:79F]

You may be asked, from time to time, to furnish a certificate that a particular street or road in your town is a public way. Whether or not a particular road or street is a public way is a matter of considerable importance. Since there are so many different kinds of ways in most towns, considerable care should be taken in checking your records to determine the specific status of a given road or street.

The issuance of a public way certificate by the town clerk under 233:79F relates only to TOWN WAYS, not to private ways, county highways or state highways. Therefore, you need to be certain that the way for which you are issuing a certificate is, in fact, a town way.

If you have a copy of the selectmen's or road commissioner's layout, description and a plan on file, a town meeting vote accepting that layout AND a copy of the order of taking showing that the order has been recorded in the Registry of Deeds for your county or a recorded deed to the land within the boundaries of the way, the street or road to which these papers relate is a town way, PROVIDED there has been no subsequent town meeting action, or action by the county commissioners, discontinuing the way. (see 82:24; 79:3; 80A:3)

You would be able to check your own town meeting records to determine whether or not any town meeting action discontinuing a town way has taken place. [82:21] Note, however, that the selectmen (or other officials in charge of ways in the town) may, WITHOUT town meeting action, declare that a town or public way shall no longer be maintained by the town if it has become abandoned and unused for ordinary travel. In this case, notice of the required hearing must be posted in the town clerk's office at least 14 days before the day of the hearing and the selectmen's declaration must be filed with the town clerk before it becomes effective. If you are asked for a public way certificate related to such a way, check with your town counsel. [82:32A, Chapter 136 of the Acts of 1983].

You may or may not have a record of action to discontinue a way taken by the county commissioners. The county commissioners may take such action upon the application of an aggrieved person under 82:30. Even though the county commissioners are required to notify the town clerk of a view or hearing to take place relative to the requested discontinuance [82:3], there is no requirement that they file a copy of their decision with the town clerk. If you have a notice of a view or hearing on file relating to a road for which a public way certificate has been requested, check your records further or contact the county commissioners to determine whether or not the road has been discontinued. If you are sure that a particular street or road is a town way, you may issue a certificate in the following form:

SAMPLE PUBLIC WAY CERTIFICATE

| | |
|--|--------------------|
| [Letterhead Paper] | |
| Date _____ | |
| This is to certify that the records of this office show that First Street in the town of [name] is a public way. | |
| <i>TOWN SEAL</i> | _____ Signature |
| Typed name, Town Clerk | |

In some cases, the records you have will not clearly establish a road as a town way if, for example, you cannot find a record of the order of taking having been recorded in the Registry of Deeds and you are in some doubt as to whether or not all the procedural steps have been taken.

In addition, you may have some difficulty in determining the status of some of the older roads in town. You may not find any plans and the descriptions often make it difficult to determine exactly where the street or road is located at the present time. If you have doubts about the status of a particular road or street, consult your town counsel or town engineer prior to issuing a certificate. You may be able to state in your certificate only specifically what records you have and leave the determination of whether or not the street or road is, in fact, a public way up to a lawyer or to the courts.

SAMPLE CERTIFICATES - STATUS NOT CLEAR

| | |
|--------------------|--|
| [Letterhead Paper] | |
| Date: _____ | |

This is to certify that the records of this office show that the selectmen's layout, including a description and plan, of First Street in the Town of (name) was filed in this office on (date) and that the annual town meeting of (date) voted to accept the selectmen's layout of First Street under Article (#) of the warrant for that meeting.

TOWN SEAL

Signature

Typed name, Town Clerk

[Letterhead Paper]

Date: _____

This is to certify that the records of this office show that First Street appears as a public way on the official map of the Town of (name) as adopted under Article # of the annual town meeting of (date) and amended under Article (#) of the annual town meeting of (date).

TOWN SEAL

Signature
Typed name, Town Clerk

F. CHANGE OF NAME OF STREETS AND ROADS

1. Public Ways or Parks [85:3]

The name of a public way, place or section, or the name of a public park may be changed by the officer or board having jurisdiction of it. However, if the name which is being changed has been in use for 25 years or more, there is a right of appeal from the action to the state Department of Public Works, provided the appeal is taken within 30 days after the name is changed. The appeal must be taken by 25 inhabitants of the town requesting reversal of the action.

The state Department of Public Works must then file a notice of the filing of the petition in the office of the town clerk. A hearing must be held and the Department of Public Works must approve the name change.

If you receive a notice of such a petition from the state DPW, time stamp it and send a copy to the officer or board having jurisdiction over the way, place or park. If the notice relates to a road, file the original with other records for that road. These notices must be kept for at least one year following the hearing. [state retention schedule #2.107]

2. Ways Open for Public Use, But Not Public Ways [85:3B]

If a way which is open for public use but has not become a public way is known by a name identical or similar to another way in the town and, in the opinion of the board of survey or the board of selectmen, this leads to confusion, the board may change the name. A public hearing is required, after which the board may order the name to be changed.

A copy of the order changing the name of the way must be filed in the town clerk's office. The copy of the order must be signed by the chairman of the board of survey or the board of selectmen.

If you receive such a change of name order, time stamp it and file it with the records of the way involved. You may need to cross reference the order by the former name and the new name of the way, to make it clear in the future what happened to this way.

G. STREET RAILWAYS [161:73]

If a bridge over which a company is authorized to lay and use tracks is being altered, rebuilt or repaired, the selectmen may grant a temporary location for the extension of tracks in a public way in the town so that the service provided by the transportation company will not be interrupted. The location shall not be valid unless the selectmen file with the town clerk a certificate that the granting of the location is consistent with the public interest.

If you receive such a certificate, time stamp it and notify the transportation company that the certificate has been filed. The company is required, within 30 days of the filing of the certificate, to file a written acceptance of the location with the board of selectmen.

H. MAIN DRAINS AND SEWERS [83:1,2]

A town may lay out, construct, maintain and operate a system of common sewers and main drains in public or private ways for a part or the whole of the town. [83:1]

Plans and descriptions of all main drains and common sewers belonging to the town, with a true record of the charges of making and repairing the drains and sewers and of all assessments therefor, shall be kept in the office of the town clerk, or in such other office of the town as the town may determine by ordinance or bylaw. [83:2]

I. CLAIMS FOR INJURY DUE TO DEFECTS IN WAYS [84:15,18,19,20]

A person, who sustains either bodily injury or damage to his property because of a defect in a way, may under certain circumstances recover damages from the town. [84:15] A person claiming damages must, within 30 days of the damage, give notice to the town or to the person obliged by law to keep the way in repair, of his name, place of residence, the time, place and cause of the injury or damage. The place of residence must include the street and number, if any, as well as the city or town. [84:18] The notice must be in writing and signed by the person injured or by someone on his behalf and may be given to a selectman, the town clerk or the town treasurer. [84:19]

If you receive such a notice, time stamp it, then forward a copy to the town counsel and to the official in charge of keeping town roads in repair. It is important that you notify the appropriate town officials since they must, within 5 days of your receipt of the notice, notify the person injured of any omissions. If they do not notify the injured person, omissions cannot be used in defense of the case. [84:20] Place the notice on file in your office. Notices of this type must be kept on file for at least 4 years. However, if litigation is pending, they must be kept longer. Prior to removing such notices from your file, check with your town counsel to determine whether or not litigation is pending. [state retention schedule #2.109]

VIII. PUBLIC UTILITIES

The granting of locations in a town by the selectmen for the placement of utility poles dates back to the mid 1800's and these decisions were to be recorded in the records of the town. Under Chapter 509 of the Acts of 1911, the town clerk was given the responsibility for recording these decisions and now has such responsibility relative to locations for poles, wires, conduits and gas pipes granted by the selectmen and, in several instances granted by agencies of the state government as well. The town clerk now must also file condensed returns of public utility companies showing their business and financial condition.

A. POLE, WIRE AND CONDUIT LOCATIONS (ELECTRICITY)

1. General

Companies incorporated for the transmission of intelligence by electricity may construct lines for such transmission upon, along, under and across the public ways. [166:21] The company must present a written petition to the selectmen of the town in which the proposed construction is to take place and the selectmen must then hold a public hearing prior to the granting of permission. The selectmen must specify the locations for the poles or conduits, the number of wires or cables which may be attached and the height to which the wires or cables may run. The selectmen may grant to two or more companies joint or identical locations for poles or conduits to be used in common. [166:22]

The selectmen may, without a public hearing, permit an increase in the number of wires or cables, direct an alteration in the location of poles or conduits or in the height of wires or cables, and may order the transfer of a pole or conduit location to another company. They may also authorize a company to attach its wires to existing poles or place them in existing conduits.

Each petition presented to the selectmen should be accompanied by a plan showing the exact location of the proposed poles or conduits.

The decision, or order, of the selectmen must be transmitted to the town clerk for recording. Usually the selectmen also send a copy of the plan, although this is not required.

2. Recording the Pole, Wire or Conduit Locations

a. pole location record book

The town clerk is required to record the locations in books kept exclusively therefor. [166:22]

You may find among your older records, pole location books in which the orders of the selectmen are entered by hand. The plans which accompanied each order may have been pasted in the book or they may have been filed separately. In about 1946, printed forms began to be used for the selectmen's orders relative to pole or conduit locations and there are several varieties of these forms in use at the present time. These forms cover orders for locations for poles, conduits, guy wires and anchors, and joint use by two companies.

Prior to receipt by your office, each form must be completed by the board of selectmen. The form requires the signature of either the chairman of the board of selectmen, or a majority of the members of the board. Be sure that each form you receive has been properly completed and signed. The town clerk's certificate appears at the bottom of most of the forms. However, sometimes the form for a conduit location has both the selectmen's certificate and the town clerk's certificate on the back.

Enter in the town clerk's certificate, the name of your town and the date on which the selectmen adopted the order, the book and page number on which you record the order and sign the certificate.

Methods used to record these orders vary among towns. Bound pole location record books are available commercially. The information from the forms may be entered by hand in these bound record books or the forms pasted onto a page in the bound book.

The use of a commercially available or permanently bound book is not required, provided you keep the pole location orders separate from other records. You may paste the forms on the pages of a scrap book, or keep each form in a loose leaf binder in the order in which you received them. Assign a number to each form in consecutive order, this number will serve as the page required to be entered on the form. Assign a volume number to the scrap book or loose leaf binder. When you have a sufficient number of forms in the scrap book or loose leaf binder they should be permanently bound. This will provide the book kept exclusively for pole location orders. (see 4:7(13) for definition of term 'in books')

NOTE: When deciding how to record pole location orders, keep in mind that these are permanent records of the town and that many pastes and glues tend to deteriorate and discolor over a long period of time.

b. index

Under 41:15 you are required to keep an index of pole location orders. If you are using a commercially available book, you will probably find pages in the front of the book which have letter tabs. To index the book, enter the street names appearing in the pole location orders under the appropriate letters and add the page number on which the order is recorded. If you use a loose leaf binder, an index may be typed on

a separate sheet of paper and inserted in the front of the notebook prior to binding. You may also use a card file as an index.

The index of each volume should contain at least the street name and page number. On the index card, the date received and the volume number should also be added. You may include additional information such as the type of order, the specific location of the poles, etc., if you wish.

c. plans

The plans which accompany each pole location order must be kept. However, because of their bulk, it is somewhat difficult to keep them in the pole location book. They may be kept in files separately from the form but, for reference, note on each plan the book and page on which the form is recorded.

If the form relates to more than one street and only one plan is provided with the form, file the plan under one of the streets named. Enter a cross-reference in the file for each other street indicating the location of the form itself by book and page, and the name of the street under which the plan is filed.

d. returns to the company which requested the pole location

If the selectmen provide you with two copies of the pole location order, or more copies if the order relates to more than one company, fill out and sign the town clerk's certificate on each copy. Send a copy of the order to each company involved along with your bill for the required fee. If the selectmen have provided only one copy of the location form, make a certified copy to be sent to each company involved.

e. fees

The company, or companies which submitted the petition to the selectmen for the pole location are required to pay the recording fee.

Unless your town meeting has established a different fee, the amount is \$3.00 plus \$.50 for each street named in the order. [262:34(62)] For example, if only one street is named, the total fee would be \$3.50. If two streets are named, the total fee would be \$4.00.

Fees and billing practices vary among towns. A survey of town clerks shows that pole location fees range from \$0 to \$50 per pole location with most towns charging \$40. If two companies are involved, some clerks split the fee, others charge each company the whole fee.

f. permanent records

The records of pole locations, both the forms and the plans, are permanent records of the town and should be safely kept. [state retention schedule #2.104]

3. Notice of Removal or Abandonment

If a pole is transferred to a new location and the selectmen order its removal, the utility company must remove the pole within a reasonable time. [166:22 case notes, 234 NE2d 746]

From time to time, you may receive a notice from the utility company that a pole has been removed or that a location has been abandoned. This notice will be signed by a representative of the utility company, not by the selectmen. It should be recorded in the pole location record book and indexed.

B. ORDERS FROM STATE AGENCIES

1. The Department of Public Utilities [166:28] [164:70, 70A]

a. electric power companies [166:28]

If a transmission line goes through more than one town, and the selectmen refuse or neglect to grant locations in their town, the company may petition the state department of public utilities. In this case, you would receive the pole or conduit location order from the state DPU. Any such orders received from the DPU should be recorded as you would record an order received from the selectmen.

A certified, or attested copy of the order, showing the book and page where it has been recorded, should be forwarded to the company or companies who petitioned. The fee for recording one of these orders is \$5.00 [262:34(31)] and the fee for providing the attested copy to the company is \$1.00 per page [262:34(32)], unless your town meeting has voted to establish a different fee. Both the recording fee and the fee for an attested copy must be paid by the utility company.

These orders are also permanent records of the town and must be safely kept. [state retention schedule #2.103]

b. gas companies [164:70,70A]

A gas company may, with the written consent of the selectmen, dig up and open the ground in any of the streets, lands and highways of the town. The written consent of the selectmen is not required to be filed with or recorded by the town clerk. [164:70]

If, however, a gas pipe line must go through one or more towns to connect the termini of the mains and the selectmen of one of the towns neglect or refuse to give written consent, the gas company may petition the DPU. The DPU may issue an order granting a location for the gas company to lay its mains in the town and must send an attested copy of its order to the clerk of the town in which the gas mains are to be placed. The clerk is to record the order and to issue certified copies upon request.

The fee for recording the DPU order is \$5.00 [262:34(34)] and the fee for issuing a certified copy of the order is \$1.00 per page [262:34 (35)], unless your town meeting has voted a different fee.

These orders are permanent records of the town and must be safely kept. [state retention schedule #2.105]

2. The Commissioner of Environmental Management [132:34A]

The commissioner may grant a location for telephone, telegraph or electric light or power transmission lines, or pipe lines for natural gas over, across or under state forest lands. Prior to granting these locations, the DPU must order that the locations are required by public necessity and convenience and the commissioner must within 14 days of his decision file a copy of his grant and a copy of the DPU order with the clerk of the town where the location is granted. The DPU must file with the town clerk, any order altering or revoking a location. These grants and orders may be recorded by the town clerk in the same manner as other pole and conduit locations.

Since these grants and orders will be received directly from the DPU, there is no filing or recording fee. The town clerk is not required to send a copy to the utility company.

These grants and orders are a permanent record of the town and must be safely kept. [state retention schedule #2.106]

3. Metropolitan District Commission

The MDC may grant locations for poles, wires, cables, or pipes for the transmission of electricity or gas. [92:43] Within 14 days after making an order granting the location, the MDC must deposit a copy of such order in the office of the clerk of the city or town where the location is granted. [92:46] The clerk shall

receive and record the same upon payment of \$5.00 [262:34(36)], unless your town meeting has voted to establish a different fee. The fee must be paid by the company to which the location is granted.

The general laws do not specify that these orders must be recorded in a book kept exclusively therefor, but they may be conveniently recorded along with the other pole locations you have. While these orders are not included in the state retention schedule, they should probably be kept permanently.

C. SALE OR TRANSFER OF ELECTRIC OR TELEPHONE PROPERTY [166:15B]

The sale or transfer of electric or telephone property may include the transfer of the pole or conduit locations on which the property has been constructed. If so, the locations shall be validated and confirmed in the corporation which purchased the property if that corporation files with the clerk of each city or town in which the locations are situated, a certificate of such sale or transfer including a list of the locations.

Every such certificate and list shall be recorded by the town clerk and kept with the records of original locations for poles, wires and conduits.

No fee for recording or for issuing certified copies of the certificate or list is specified in this section of the General Laws. However, since the certificate must be recorded, 262:34(79) would apply. The recording fee is \$1.00 per page with an additional fee of \$.25 per name for indexing if it contains the names of more than two parties, unless your town meeting has established a different fee.

These records are not included in the state retention schedule. However, since they are to be kept with the original locations for poles, wires and conduits, they logically would be permanently kept.

D. EMINENT DOMAIN TAKINGS.

1. Electric or Natural Gas Pipe Line Companies [164:72,75C]

An electric company [164:72] or natural gas pipe line company [164:75C] may petition the Department of Public Utilities for the right to exercise the power or eminent domain. A map or plan showing the location must accompany the petition. An electric company but not a gas company is required to forward a copy of the petition to each city and town through which the line is to pass.

The DPU must hold a public hearing in one or more of the towns through which the line will pass and may then issue an order authorizing the company to take lands, rights of way or easements by eminent domain. The DPU must transmit a certified copy of its order to the company and to the clerk of each town through which the line will pass.

The General Laws do not specify that this order be recorded by the town clerk and since it will be received directly from the DPU, there is no recording or filing fee. This order is not included in the state retention schedule but it would seem to be an important document which should be permanently kept.

2. Oil Pipeline Company [164:69S]

An oil pipeline company may exercise the power of eminent domain by petitioning the Energy Facilities Siting Board. The same procedures are followed with the council as with the DPU (see above).

E. CONDENSED RETURNS [164:84A, 166:12A]

Gas and electric companies and manufacturing companies and persons engaged in the manufacture and sale or distribution and sale of gas or electricity [164:84A] and telephone and telegraph companies [166:12A] must file annually with the town clerk a condensed return showing the business and financial condition of the company. The condensed returns shall be open to public inspection during office hours. You

are required to keep condensed returns of gas, electric and telephone companies on file in your office for at least 6 years. [state retention schedule #2.50]

F. OVERHEAD UTILITY WIRES - BYLAWS

Towns may adopt ordinances or bylaws prohibiting the new installation or construction of overhead wires and associated structures for the transmission of electricity. [166:22C] Such bylaws may also require progressive removal of poles, overhead wires and associated structures and may require a utility company to install customer's service facilities. [166:22D]

1. Procedure for Accepting Bylaw

a. preliminary study [166:22B]

The planning board, or the board of selectmen if there is no planning board, or a committee appointed and designated for the purpose, may conduct a preliminary study of a program to prohibit new installation or construction and/or to require the removal of poles, overhead wires and associated structures within the town.

b. hearing [166:22B]

Following the preliminary study the board may, by resolution, call a public hearing to ascertain whether the public safety, health, convenience or welfare should be advanced by such a program. The resolution must designate the time and place of the hearing.

c. notice of hearing [166:22F]

When the planning board, board of selectmen or committee calls a public hearing, the town clerk shall publish a copy of the resolution in a newspaper of general circulation in the municipality at least once, not more than 15 days nor less than 5 days, prior to the hearing.

d. report [166:22B]

After the hearing, the board or committee shall make a report of its findings, conclusions and recommendations which shall be filed with the records of the town meeting. Since the town clerk is responsible for making and keeping the town meeting records, a copy of the report should be forwarded to you. The report, or copy of it, should be included in your town meeting proceedings record book and would therefore become a permanent record of the town. (see state retention schedule, #2.69)

e. adoption [166:22C, 22D]

After the report has been filed, a town may adopt a bylaw or ordinance to forbid new installations or require the removal of existing installations, etc. The planning board, board of selectmen or committee which filed the report would submit an article to the town meeting warrant asking for the adoption of such a bylaw and this article would be handled as any other regular bylaw amendment. (see the town meeting section of this manual)

f. notice of adoption of bylaw [166:22f]

Within 30 days after the adoption of the bylaw, the town clerk must mail a copy of the bylaw as adopted to all utilities known to have poles and overhead wires or associated overhead structures affected by the bylaw.

In addition, a copy of the bylaw must be mailed to all persons known to own real property served by the poles and overhead wires. The bylaw should be mailed to each person who owns real estate in the town including vacant land. (ask your board of assessors or tax collector for assistance)

g. approval by state department of public utilities [166:27]

If the bylaw affects the erection, maintenance or operation of a line for the transmission of electricity from a point in your town through or to a point in another city or town, approval of the Department of Public Utilities is required prior to the bylaw's taking effect. Submit a copy of the bylaw as adopted and a certified copy of the town meeting vote to the DPU and request its approval.

In addition, this bylaw would have to be submitted to the Attorney General for his approval.

h. effective date [166:22N]

The bylaw shall become effective on the first day of January next following a date nine months after the date of its enactment. For example, if the bylaw were adopted at a town meeting completed ON or BEFORE the last day of March 1998, the bylaw would become effective on January 1, 1999. However, if the bylaw were adopted at a town meeting completed AFTER the last day of March 1998, the bylaw would not become effective until January 1, 2000. The bylaw would also, under certain circumstances, have to have been approved by the DPU prior to becoming effective. (see paragraph g above)

IX. CEMETERIES

A. GENERAL

Every town must provide at least one suitable burial place for the interment of persons dying within the town limits. [114:10] Public cemeteries may be under the control of the selectmen, a board of cemetery commissions appointed by the selectmen [41:21; 114:27], a superintendent of cemeteries appointed by the selectmen, or an elected board of cemetery commissioners [114:22]

The officers responsible for the public cemetery may issue deeds to lots within the cemetery and the town clerk must record these deeds along with other information related to public cemetery lots.

There may also be one or more additional cemeteries in your town under the control of a private cemetery corporation. In this case, the cemetery corporation is responsible for caring for the cemetery and for keeping all books and records, including records of deeds to cemetery lots. [114:3]

There may also be one or more additional cemeteries in your town under the control of a private cemetery corporation. In this case, the cemetery corporation is responsible for caring for the cemetery and for keeping all books and records, including records of deeds to cemetery lots. [114:3] If the private cemetery is not being properly cared for by the corporation, the town may assume that responsibility and appropriate money for care. [114:16,18]

B. RECORDING CEMETERY DEEDS AND PERPETUAL CARE PAYMENTS [114:19,24]

1. Deeds [114:24]

Deeds to public cemetery lots, issued by the officers in charge of the cemetery, must be recorded by the town clerk in books kept for the purpose. [114:24] The fee for recording a cemetery deed is \$1.00 [262:34 (78)], unless the fee has been changed by your town meeting. The cemetery deed record books must be open to public inspection.

The General Laws do not specify who is responsible for having the deed recorded in the office of the town clerk, whether it should be the officer who issued the deed or the person who purchased the lot and

received the deed. In order to be sure that the deed is recorded, a convenient method to use is to have the officer responsible for issuing the deed collect the recording fee, note this on the deed, and then forward a copy to your office for recording.

2. Perpetual Care Fund Records [114:19,, 20]

A town may accept money, usually paid by the purchase of the cemetery lot, for the purpose of preservation, care, improvement or embellishment of the burial lot. This money is commonly called perpetual care funds. This money is to be entered on the town treasurer's books and held in accordance with town bylaws relative to cemeteries.

Upon receipt of perpetual care funds, the town treasurer is required to notify the town clerk who is then required to record the receipt of perpetual care funds in the margin of his records of said lots. Record the date of receipt and the amount of money received. [114:19] In some towns, perpetual care for cemetery lots must be accepted at town meeting under a warrant article. In this case, you may want to include the meeting date and the article number in your record book as well as the other required information.

Individuals who own burial lots may deposit money for perpetual care with the state treasurer rather than with the town treasurer. In this case, the state treasurer is required to inform the town clerk who must record the receipt of the funds in the cemetery record book. [114:20]

3. Cemetery Record Book

The General Laws do not specify the exact type of record book which must be kept, but it is a permanent record of the town [state retention schedule #2.53] and therefore, consideration should be given to its durability. A relatively inexpensive bound account book, available from a commercial stationer, may be used. These may be printed with columns, or you may simply draw in the columns to fit your own format.

Each cemetery record book should have a volume number and the pages should be numbered.

4. Index [41:15]

You are required to maintain an index to the cemetery record book and this index must contain the following information: date of receipt (date of recording of the deed), names of the parties involved, and book and page on which the information is recorded in your cemetery record book.

Other information may be included and may be of value as a quick reference so that you would be able to answer most questions by looking at the index rather than having to get out the book.

The index may be a card file - or you could create an index on a database as well.

Information to be included:

- Name
- Book and Page
- Deed #
- Cemetery name
- Lot # and Section
- Number of graves
- Date deed issued
- Date deed recorded
- Comments: - Perpetual Care and amounts etc.

C. INHERITANCE OF CEMETERY LOTS [114:29,30]

The General Laws specify the rights of inheritance of the various relatives of a deceased owner of a cemetery lot. If, by inheritance, two or more persons are entitled to the possession, care and control of a public cemetery lot, they shall designate in writing to the cemetery commissioners, if any, or to the town clerk which of them shall represent the lot. [114:29]

If you receive such a written designation, record the name of the person designated in your cemetery record book next to the record of the original deed. Proof of the relationship of the designated person to the deceased to show the right of inheritance is not required in the General Laws but you (or the cemetery commissioners) may wish to have some such proof before recording the name designated.

If the heirs fail to designate one of themselves to represent the lot, the cemetery commissioners, if any, or the board of health shall designate one of the heirs to do so. Obviously, this designation will take place only if the cemetery commissions or the board of health know the names of those who have inherited the lot. [114:29]

The cemetery commissioners or the board of health must hold a hearing prior to designating one of the heirs to represent the lot, and you should wait until after that hearing to record the name of the person designated. [114:30]

D. CEMETERY RULES AND REGULATIONS [114:15, 23]

Towns may appropriate money for enclosing any cemetery lawfully provided by them or for constructing paths and avenues and embellishing cemetery grounds and may establish rules relative thereto, [114:15] The rules may be established by the selectmen [114:15] or by the board of cemetery commissioners. [114:23]

Cemetery rules often regulate the height and placement of shrubs, types of monuments, fees for the purchase of lots and opening graves, etc. and include the town clerk's duties with respect to recording deeds and perpetual care payments. Usually a copy of the rules is placed on file with the town clerk although this is not required unless they contain a penalty for violation. (see 40:33)

X. ACTIONS AND CLAIMS AGAINST THE TOWN

A. GENERAL [223:37]

In an action against the town, service shall be made upon the treasurer. If no treasurer is found service shall be made upon the town clerk or upon one of the selectmen or assessors.

Although the deputy sheriff or the constable has several town officers upon whom he may make service in connection with an action against the town, he very often chooses the town clerk. Service consists of having the deputy sheriff or constable hand you a copy of a writ, summons, or other paper which he has attested as a true copy. He may ask for your name and then make an entry on the original paper of the date and time he handed it to you.

Simply accept the paper, time stamp it, or note the date and time of receipt. Since you are accepting the paper on behalf of the town, make copies and send one to each of the following: selectmen, town counsel, and each town officer named in the paper or the department involved in the action. This should be done even though the deputy sheriff or constable may have also served each individual since the copy you provide will show when the paper was received by the town. Note on the paper to whom you sent it and the date sent.

Keep the original paper you received in your files. If you have a large number of these, you may need to prepare an index.

B. ACTIONS FOR LABOR [149:28]

A person to whom a debt is due for labor performed in constructing a public building, sewer, drain, water works or other public works owned by the town shall have a right of action against the town to recover the debt. Within 30 days after he ceases to perform the labor, he must file with the town clerk a written statement of the amount of debt owed to him and the names of the persons for whom and by whose employment the labor was performed. This written statement must be made under oath, that is, sworn to before a notary public or other officer authorized to administer oaths.

Time stamp the statement, or note the date and time of receipt. It is suggested that you make copies and send one to each of the following: selectmen, town counsel, building committee (if any), and the particular department involved in the public works. Then place the statement in your files and index it.

Unless your town meeting has established a different fee, the fee for filing such a statement is \$1.00 [262:34 (61)]

These statements should be retained in your files for at least 7 years. However, if litigation is pending, they must be retained longer. [state retention schedule #2.21] The court will not automatically send you a copy of the final action taken under a case, so you will probably need to check with your town counsel to determine whether or not litigation is pending.

C. ACTIONS AGAINST RAILROADS OR STREET RAILWAYS [159:98,99]

1. For Materials [159:98]

A person may preserve his right of action against a railroad or a street railway for materials furnished by filing in the office of the town clerk of the town where the materials are to be furnished, a written notice of his intention to claim such a right. This notice of intention must be filed before the person begins to furnish the materials.

If he subsequently wishes to proceed with an action, he must also file, within 30 days after furnishing the materials, a statement of the amount of debt and the name of the person for whom the materials was furnished. The written statement must be made under oath.

The fee for filing the notice of intention is \$1.00 [262:34(59)] and the fee for filing the statement is \$1.00 per page [262:34(60)] unless your town meeting has voted a different fee.

2. For Labor [159:99]

A person may preserve his right of action for labor performed by filing with the town clerk, within 30 days after ceasing to perform the labor, a written notarized statement of the amount of the debt due him and the name of the person for whom and by whose employment the labor was performed.

The fee for filing the statement is \$1.00 per page [262:34(60)] unless your town meeting has voted a different fee.

The notice of intention and statement of debt should be kept on file in your office for at least 7 years. However, if litigation is pending, they must be kept longer. [state retention schedule #2.22] Check with your town counsel prior to removing a notice of statement from the file.

D. CLAIMS FOR INJURY DUE TO DEFECTS IN WAYS

See HIGHWAYS, TOWN WAYS, PRIVATE WAYS section of this manual.

XI. TAX LIENS

A. FEDERAL TAX LIENS [255:39B]

Notices of liens on personal property for taxes payable to the United States, certificates discharging such liens and certificates releasing specific property from such liens may be filed with the town clerk in the town in which the taxpayer is a resident, or in which he has a place of business.

1. Notices of Liens

Upon receipt of a notice of a lien, time stamp it and file either in alphabetical order by the name of the taxpayer, or in the order in which it is received. However, if you file the notices in the order in which received, you must maintain an index arranged alphabetically by name showing the name and address of the taxpayer, the serial number of the notice, the date of its receipt and the amount of tax with interest, penalties and costs. Filing alphabetically by name of taxpayer will save you considerable time.

If the notice relates to an individual doing business in your town rather than to a town resident, you may want to cross file by the name of the business. This can be done by typing the name of the business at the top of a piece of paper, and adding the name of the taxpayer for reference. The paper would then be filed in the appropriate place under the business name in the alphabetical file.

You will receive along with the notice of the lien, two slips of paper which should accompany your bill to the IRS for the payment of the \$3.00 filing fee. Send the bill and both copies of the slip to Internal Revenue Service, 90 Church St., New York, N.Y. 10007, Att: Fiscal Management Officer, North Atlantic Region.

2. Discharges/Releases

When you receive a certificate of discharge of the lien, or a certificate releasing specific property from the lien, time stamp it and securely attach it to the original notice of lien.

If you maintain an alphabetical index, you must enter a notation in the index of the filing of the discharge or release including the date of receipt next to the original entry.

You will also receive two slips which will serve as your bill to the IRS for payment of the \$3.00 required filing fee. Send both copies of the slip to the address given under NOTICE OF LIENS above.

3. Retention Period

Federal tax liens, certificates of discharge and release, must be kept on file in your office for at least 1 year following discharge of the lien. [state retention schedule #2.55]

B. STATE TAX LIENS [62C:50]

1. Notices of Liens

If any person liable to pay any state tax neglects or refuses to pay the same after demand, the commonwealth may place a lien on his real and personal property. The lien shall continue until the liability for the amount assessed is satisfied, but it shall, in any event, terminate not later than 6 years from the date it was created.

The state tax liens which may be filed in your office relate to residents of your town or individuals doing business in your town. Upon receipt of a state tax lien, time stamp and file it. Usually a representative from the state will personally bring into the office two copies of the lien, one for your files and one on which you note your receipt and return to him.

2. Waivers/Releases

The Commissioner of Revenue may issue a waiver or a release of any state tax lien. If you receive such a waiver or release, time stamp it and attach it to the original lien to which it relates.

State tax liens, with any waivers and releases received, may be filed in alphabetical order by name along with the federal tax liens you have on file. There is no filing fee for state tax liens, waivers or releases.

3. Retention Period

A retention period for state tax liens is not included in the state retention schedule. However, you will be able to obtain permission for disposal of these liens one year after they have been waived or released.

C. STATE TAX LIENS - SALE OR TRANSFER OF CORPORATIONS [62C:51]

Under certain circumstances the Commissioner of Revenue, or the State Tax Commission may waive a tax lien on assets of a corporation being sold or transferred. The waiver must be in writing and it may be recorded with the clerk of the city or town in which the corporation has its office or with the register of deeds. You are not required to record these waivers in a special book.

The town clerk shall receive and record the waiver upon payment of the fee prescribed by law. Since 62C:51 does not prescribe the amount of the fee, 262:34(79) applies and the fee is \$1.00 per page with an additional fee of \$.25 per name for indexing if it contains the names of more than two parties, unless your town meeting has established a different fee.

D. MUNICIPAL TAX LIENS

You may receive a request from time to time for a municipal tax lien certificate. These must be prepared and issued by the tax collector, so refer any requests to him/her.

XII CONFLICT OF INTEREST

A. ACTIVITIES OF SPECIAL MUNICIPAL EMPLOYEES

1. Certificate of Need by Department Head [268a:17,18]

A present or former special municipal employee may aid or assist another person for compensation in the performance of work under a contract with or for the benefit of the city or town, provided that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the city or town clerk. The certification shall be open to public inspection.

If you receive such a certification, time stamp it and place it in your files. This certificate should be kept for at least 7 years or until after the termination of employment, whichever date is later. [state retention schedule #2.60]

B. DISCLOSURE STATEMENTS [268A:19, 20,24]

1. Elected Municipal Employee [268A:19]

A municipal employee who participates as such an employee in a particular matter in which he, his partners or close relatives have a financial interest is subject to a penalty of not more than \$3,000 or imprisonment for not more than 2 years, or both.

However, it shall not be a violation of 268A:19 if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official files, with the town clerk, a statement making full disclosure of financial interest.

2. All Municipal Employees [268A:20]

A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, and in which the city or town is an interested party, is subject to a penalty of not more than \$3,000.00 or imprisonment for not more than 2 years, or both. However, 268A:20 provides certain exemptions as follows:

a. regular municipal employee

Under certain circumstances specified in 268A:20, a regular municipal employee is exempt if he files with the city or town clerk a statement making full disclosure of his interest and the interest of his immediate family.

If the contract is for personal services the employee's statement must also include that the services will be provided outside normal working hours, that the services are not required as part of his regular duties and that he is compensated for not more than 500 hours during a calendar year.

In addition, the head of the contracting agency must also file with the city or town clerk a written certification that no employee of the agency is available to perform the services and the board of selectmen must approve the employee's exemption.

If the contract is for personal services in a part time, call or volunteer capacity with the police, fire, rescue, or ambulance department of a city or town with a population of less than 35,000 inhabitants, a disclosure statement does not need to be filed. However, the head of the contracting agency must make and file with the clerk of the town a written certification that no employee of the agency is available to perform such services as part of his regular duties and the board of selectmen must approve the employee's exemption.

b. special municipal employees

A special municipal employee is exempt if he does not participate in or have any official responsibility for any of the activities of the contracting agency **AND** he files with the town clerk a statement making full disclosure of his interest and the interests of his immediate family.

A special municipal employee is also exempt if he files with the town clerk a statement making full disclosure of his interest and the interest of his immediate family in the contract, if the board of selectmen approve the exemption.

If you receive such a disclosure statement from an employee or a certification from the head of a contracting agency, time stamp it and place it in your files. Disclosure statements and certifications are open to public inspection [268A:24] and should be kept on file in your office for 7 years or until after the employee's termination, whichever date is later. [state retention schedule #2.51]

C. OPINIONS OF TOWN COUNSEL [268A:22]

Any municipal employee, special or regular, shall be entitled to the opinion of town counsel upon any question of conflict of interest relating to the duties, responsibilities and interests of such employees. All requests for opinions shall be made in confidence and are not open to public inspection. Town counsel shall file his opinion in writing with the town clerk and the OPINION shall be a public record.

If you receive an opinion of town counsel, time stamp it and place it in your files. These opinions are not included in the state retention schedule. However, they should probably be kept for the same period as disclosure statements.

NOTE: You should never, under any circumstances, attempt to answer a question as to whether or not any conduct, activity or procedure is or might be in violation of the conflict of interest law. Refer all questions to your town counsel.

D. SUSPENSION OF EMPLOYEES [268A:25]

If an employee or officer of the town is suspended because he is under indictment for misconduct, written notice of the suspension shall be hand delivered, or sent by registered mail to the suspended person and his attorney. A copy of the suspension notice together with the affidavit that it was properly delivered to the employee, shall be filed with the town clerk.

If you receive such a notice of suspension and affidavit, time stamp it and place it in your files. These notices are not included in the state retention schedule. However, they should probably be kept for the same period as disclosure statements.

E. PROVIDING COPIES OF THE LAW [268A:23]

Section 23 of Chapter 268A sets forth standards of conduct for all municipal employees. Upon qualification for office following an appointment or election to a municipal agency, such elected or appointed person shall be furnished by the town clerk with a copy of this section. (see Chapter 409 of the Acts of 1983) Each person to whom a copy is furnished shall sign a written acknowledgment that he has been provided with such a copy.

You should furnish a copy of 268A:23 to and obtain an acknowledgment from all elected and appointed officials who must take the oath of office, whether or not they receive compensation. See OPEN MEETING LAW for procedures, etc. which may be adapted for use in fulfilling your duties with respect to 268A: 23.

You are not required to furnish a copy of the law to those elected and appointed officials who took the oath of office prior to January 7, 1984, the effective date of Chapter 409 of the Acts of 1983. You are also not required to furnish a copy of the law to all town employees. (see State Ethics Commission, Conflict of Interest Opinion, No. EC-c01-84-75, June 19, 1984)

If you are in doubt as to whether or not to furnish a copy of the law to a particular person, it is suggested that you do so unless your town counsel advises you otherwise.

XIII. UNIFORM COMMERCIAL CODE

A. HISTORY

The provisions for having a mortgage of personal property, or chattel mortgage, recorded by the town clerk, were first incorporated into Massachusetts law by Chapter 157 of the Acts of 1832. These early mortgage records were handwritten in bound volumes and you may find some of them among your town's older records. Throughout the years there were many additions and revisions to this original law.

In 1940, a comprehensive study and the preparation of a uniform code related to commercial transactions was sponsored by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. The stated purposes of this work were "(a) to simplify, clarify and modernize the law governing commercial transactions; (b) to permit continued expansion of commercial practices through customer usage and agreement of parties; (c) to make uniform the law among the various jurisdictions." It was

not until 1957 that the project was finally completed and the “Uniform Commercial Code - 1957 Official Edition” was published.

That same year, under Chapter 765 of the Acts of 1957, the Massachusetts General Court adopted the code substantially as it had been published bringing together in Chapter 106 of the General Laws, the many sections governing commercial law.

While Chapter 106, the Massachusetts Uniform Commercial Code, consists of three entire volumes of the General Laws, the provisions related to a town clerk’s duties now appear on in sections 9-401 through 9-409.

B. FINANCING STATEMENTS

NOTE: The following section is in for informational purposes ONLY. We no longer file UCC statements in the Town Clerk’s offices. On June 29, 2001, Acting Governor Jane Swift signed into law Chapter 26 of the Acts of 2001 entitled “An Act Amending the Uniform Commercial Code covering Provisions Dealing with Secured Transactions.” This law carried an emergency preamble and became effective on July 1, 2001.

Section 52 of that Act specified the fees to be paid by the State Secretary to the Town Clerks. Percentage allocations shall be based upon the fee collection information for calendar year 1998 provided to the State Secretary by each city or town. Allocations to be distributed by the State Secretary from time to time, “but no less frequently than annually and commencing no later than September 30, 2002.”

Currently, UCC’s are filed ONLY with the Secretary of State, Corporate Division. No filings were accepted in a Town Clerk’s office after June 30, 2001.

1. General

Under the Uniform Commercial Code, Chapter 106, G.L., a financing statement is filed to perfect a security interest. It provides information so that creditors can determine the true status of a debtor’s affairs. (see 106:9-102) It also provides the public with a notice that the debtor does not have full title to the property covered by the statement.

2. Where to File [106:9-501]

Section 9-501 (a) Filing offices. Except as otherwise provided in subsection (b), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

- (a) the office designated for the filing or recording of a record of a mortgage on the related real property, if:
 - (1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:
 - (A) the collateral is as-extracted collateral or timber to be cut; or
 - (B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or
 - (2) the office of the State Secretary, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures of a transmitting utility is the office of the state secretary. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

(c) Filing office for fixtures. The office designated for the filing or recording of a record of a mortgage on the related real property shall, in the case of land which has not been registered pursuant to chapter 185, be the

office of the register of deeds within which the real property is located. The office designated for the filing or recording of a record of a mortgages on the related real property shall, in the case of land which has been registered pursuant to said chapter 185, be the office of the registry district of the land court within which the real property is located.

6. Pre-Uniform Commercial Code filings [state retention schedule #2.19]

All records of mortgages of personal property or chattel mortgages dated prior to 1920 are PERMANENT records. Those dated 1920 - 1958 may be disposed of after use. However, the state supervisor of Public Records recommends that these be microfilmed or transferred to a library or historical society instead of being destroyed.

Note that, since item #2.19 is not starred on the state schedule, you will need to obtain approval of the state supervisor prior to disposing of the records dated 1920 - 1958.

XIV. MISCELLANEOUS RECORDINGS AND FILINGS

A. ASSIGNMENT OF WAGES [154:1,2,3,5,6]

1. General

An assignment includes every instrument purporting to transfer an interest in or an authority to collect the future wages or salary of a person. [154:1]

No assignment of or order for wages or salary to be earned in the future shall be valid against an employer of the person making the assignment or order unless and until

- * it is accepted in writing by the employer
- * the written acceptance of the employer has been endorsed on or attached to the assignment or order
- * it is substantially in the form prescribed by 154:5
- * the written consent of his wife is attached, if the assignment is made by a married man. [154:2,3]

2. Assignments to Secure Loans [154:2]

If it is made to secure a loan of less than \$3,000, the assignment or order and the acceptance of the employer must be filed and recorded by the clerk of the town where the person making the assignment resides, or if he is not a resident of the commonwealth, in the town in which he is employed. However, the clerk is specifically prohibited from recording such an assignment unless it states that \$10 per week, as earned, of the wages or salary is exempt from the assignment or order.

An assignment made under 154:2 shall not be valid for a period exceeding one year.

3. Assignments to Secure Debts [154:3]

Other assignments of ,or orders for, future wages shall be made ONLY to secure a debt contracted prior to, or simultaneously with, the execution of the assignment or order and shall not be valid for a period exceeding two years. The assignment or order must state the date of its execution, the money or the value of goods actually furnished and the rate of interest, if any, to be paid, and must be signed by the assignor in person and not by an attorney. [154:3]

In addition, the assignment or order must state that three fourths of the weekly earnings or wages of the assignor shall at all times be exempt. [154:3]

154:3 does not specifically require that these assignments or orders be filed or recorded by the town clerk. However, you may receive some of these assignments since 154:6 provides that no assignment of future earnings shall be valid against a trust process, unless the assignment has been recorded in the office of the clerk of the town where the assignor resides.

4. Standard Form of Assignment [154:5]

The standard form to be used for assignments under 154:2 and 154:3 is shown further in this section. For assignments made under 154:2, clauses (1) and (4) would be used. For assignments under 154:3, clauses (2) and (3) would be used.

5. Fee

The fee for recording an assignment of or order for wages is \$1.00 [262:34(2)], unless your town meeting has established a different fee.

6. Permanent Record

The assignment must be recorded permanently but since there is no requirement that it be recorded in a book kept exclusively for that purpose, it may be easier to keep the assignment itself. [state retention schedule #2.3]

| STANDARD FORM OF ASSIGNMENT | |
|--|--|
| Know All Men by These Presents: | |
| That I, _____ of _____ in the county of _____, for a valuable consideration, to me paid by _____, of _____, the receipt whereof I do hereby acknowledge, do hereby assign and transfer to said _____ all claims and demands, not exempt by law (which I now have, and all which within a period of _____ from the date hereof I may and shall have against my present employer, and against any person whose employ I shall hereafter enter, (for all sums of money due and) for all sums of money and demands which, at any time within said period may and shall become due to me, for services as _____. To have and to hold the same to the said _____, his executors, administrators and assigns, to secure a debt. | |
| (1) Of _____ dollars (with interest thereon from _____, at the rate of _____ per cent per annum), for money (or goods) actually furnished by the assignee amounting to _____ dollars. | |
| (2) Contracted prior to the execution of this assignment (or contracted simultaneously with the execution of this assignment). | |
| (3) Three fourths of the weekly earnings or wages, which are _____ dollars, are exempt from this assignment. | |
| (4) Ten dollars per week, as earned, is exempt from this assignment. | |
| IN WITNESS WHEREOF, I have set my hand this _____ day of _____. | |
| Signed and delivered, in presence of _____ h. _____ m. _____ _____ M. Received and entered in the records of assignment of wages in clerk's office of the _____ of _____ book _____ page _____. | |
| _____ Clerk | |

B. ASSIGNMENT FOR BENEFIT OF CREDITORS [203:41]

The acts of a trustee to whom a debtor has made an assignment for the benefit of creditors shall be valid, even though there may be subsequent insolvency proceedings, provided the trustee has, among other things, deposited a copy of the assignment with the clerk of the city or town where the principal business of the debtor is carried on.

The clerk must file and index the copy of the assignment.

The fee for filing is \$2.00 [262:34(2)] unless your town meeting has established a different fee.

The copy of the assignment must be kept on file in your office for 7 years following the dissolution of the trust. [state retention schedule #2.1]

C. CLOSING OUT SALES [93:28A, 28D]

At least 3 days prior to holding a closing out, going out of business or liquidation sale, a person must file the following with the Attorney General AND with the town clerk in the town in which the business is located: (see 92:28A for definition of person and the types of sales covered by the section)

⇒ A complete and detailed inventory, signed by the owner under the penalties of perjury, including a list of all items to be included in the sale. The list must include the goods actually in the place of business at the opening of the sale and a description of the name or kinds of goods and the quantity of each. Any goods which have been purchased during a 60 days period prior to filing the inventory must be listed separately, even if they have been listed previously.

⇒ A good and sufficient bond, conditioned upon compliance with section 28A and payable to the town, in the penal sum of \$1,000, with sureties approved by the board of selectmen, or by a justice of the district court which has jurisdiction in the town where the sale is to take place.

The inventory, bond and statements required to be attached are public records and open for public inspection.

The fee for filing an inventory is \$1.00 per page [262:34(69)], unless your town meeting has established a different fee. A separate fee for filing the bond is not specified.

The final date of the sale must be no more than 60 days from the opening date and the inventory and bond must be kept in your files until the expiration of 3 years from the final date of the sale [93:28A; state retention schedule #2.57]

After three years, the bond may be surrendered to the owner upon his request, or to one of the sureties listed on the bond. If, however, you have reason to believe that there is pending legal action related to the bond, you must retain it until the final disposition of the action.

No person shall conduct a removal or termination sale if he has conducted a removal sale within two years of the subsequent sale at the same location, or if he has conducted a termination sale within 2 years anywhere in the state.

If you become aware that a person is holding a closing out, going out of business or liquidation sale, you may notify the person of the filing requirements. If he does not comply within a time specified in your notice, turn the matter over to the board of selectmen for enforcement.

The penalties for violation of the provisions of section 28A are a fine of not more than \$100 or by imprisonment for not more than 30 days, or both. Each day on which the sale is conducted in violation of any of the provisions shall constitute a separate offense. [93:28D]

D. DECLARATION OF TRUST [182:2]

The trustees of an association or trust shall file a copy of the written instrument of declaration of trust creating it with the state secretary AND with the clerk of every city or town where the association or trust has a usual place of business.

The trustees shall also, within 30 days after the adoption of any amendment to the instrument or declaration of trust, file a copy of the amendment with the state secretary AND with the clerk.

The fee for filing these papers is \$5.00 [262:34(75)] unless your town meeting has established a different fee.

Declarations of Trust must be kept permanently on file in your office [state retention schedule #2.52].

E. LABOR DISPUTES [150:5, 9]

If a controversy exists between an employer and his employees (in private business or industry), either or both may submit their controversy to a local board of conciliation and arbitration composed of three members mutually agreed upon or to the State Board of Conciliation and Arbitration. After a hearing, the local board must file a full copy of its decision and the state board must file a short statement of its decision with the clerk of the town where the controversy arose.

If you receive such a report, time stamp it and place the decision in your files.

F. MERGERS [156:46A, 46F, 156b:83(e), 84]

A corporation which results from the merger of one or more corporations or from the merger of a trust or association with a corporation must file articles of amendment with the state secretary. Within 20 days thereafter, the corporation must file a copy of the articles, certified by the state secretary, with the town clerk of every town where the original association or trust had a usual place of business. [156:46A]

Instead of filing the certified copy of the articles of amendment, the corporation may file with the town clerk a certificate issued by the state secretary evidencing the filing with him of the articles of amendment. [156:46F]

A corporation covered by Chapter 156B which results from the merger of an association or trust with a corporation must file a copy of the articles of merger or consolidation with the state secretary. A copy of the articles must be filed with the town clerk in the town in which the association or trust has its principal place of business [156B:83(e)]

Instead of filing the copy of the articles, the corporation may file a certificate issued by the state secretary evidencing the filing and approval of articles of merger or consolidation. [156B:84]

Upon the payment of a fee of ten dollars, the state secretary shall issue a certificate in such form as he shall prescribe evidencing the filing and approval of articles of consolidation or merger in his office pursuant to sections seventy-eight, seventy-nine, eighty-two or eighty-three. [156B:84]

The papers required to be filed under 156:46A or 156B:83(e) are not included in the state retention schedule.

G. SCHOOL BUS CONTRACTS [40:4]

A school committee may make contracts for furnishing transportation of school children. However, no such contract shall be made for the use of a school bus (as defined in Chapter 90) unless a certificate of an insurance company or surety company shall have first been filed with the Registry of Motor Vehicles and a copy of the certificate has been filed with the town clerk.

If, however, the bus or motor vehicles used for transporting the school children have been licensed under chapter 159A and security is required under 159A:6, the insurance certificate does not need to be filed.

No fee for filing the certificate is specified in the General Laws.

These certificates are not included in the state retention schedule. They probably should be kept on file in your office for 7 years after the expiration of the contract, if no litigation is pending.

H. CARE & PROTECTION OF TOWN PROPERTY [40:5(1),(38); 60:50A]

Towns may appropriate money for insurance coverage on town property. [40:5(1)] If the selectmen file with the town clerk a certificate, approved by the Commissioner of Revenue, stating that the town's interests have not been reasonably protected, the town may appropriate money for additional insurance protection or for the preservation, care and maintenance of real estate held by purchases or by takings for non-payment of taxes. [40:5(38)] If the certificate has been filed, the tax collector may demand that the owner of record of real estate taken for non-payment of taxes take necessary action to care for and maintain or protect it by insurance. [60:50A]

The certificate is not included in the state retention schedule. It is suggested that you check with your town counsel to determine how long such certificates should be kept.

I. DISTRICT PLANNING [40B:5]

Under Chapter 40B, towns may join together and form regional planning districts. The planning district shall have a district planning commission and a copy of any comprehensive plan and amendments thereto adopted by the planning commission must be filed with the town clerk of each member town not more than 30 days after adoption. [40B:5]

These comprehensive plans, and any amendments, should be kept permanently although they are not included in the state retention schedule.

J. TOWN BOUNDARIES [42:2,10]

1. Perambulation of Town Bounds [42:2]

Once in every 5 years, the selectmen or their designees are required to locate the town boundaries and to renew the marks on them. This procedure is usually referred to as the perambulation of the town bounds.

The selectmen's proceedings must be recorded with the town clerk and with the board of selectmen. The proceedings must be written and signed by the selectmen under the penalty of perjury setting forth which boundary marks were located and those which were not located. The law does not specify that the perambulation of town bounds be recorded in a book kept for the purpose so it may be recorded by simply keeping it in a file. However, it should be indexed and is a permanent record of the town. [see state retention schedule for selectmen's records #9.23]

A copy of the record shall be sent, by registered letter, to the town clerk and board of selectmen of any contiguous town. Usually the selectmen send the record, but this duty may be delegated to the town clerk since the law does not specify who is to do it.

See 42:1 for boundaries of towns bordering on the open sea or in tide waters between adjacent coastal towns. See 42:5 for boundaries of towns bordering on another state.

2. Removing, Obliterating or covering Town Boundary [42:10]

No person shall remove, obliterate or cover up any monument designating the boundary line of a town. However, the county commissioners, after receiving a written application, may grant permission to remove, cover up or obliterate a boundary. They must make provision for preserving the exact location of the original boundary by causing proper witness marks to be set up.

The commissioners shall cause a full description and designation of the witness marks or monuments to be recorded in the office of the town clerk of all contiguous towns. The law does not specify how the description and designation is to be recorded, so it may simply be placed in a file and safely kept. However, it should be indexed and is a permanent record of the town. (see state retention schedule for selectmen's records #9.22)

K. FENCES [49:6]

When a dispute arises concerning a partition fence which is required to be built or maintained by each party, either party may apply to the fence viewers. The fence viewers then hold a hearing and may assign, in writing, to each of the parties his share of the fence and may direct the time within which each party shall erect or repair his share.

The assignment of the fence viewers shall be binding after it is recorded in the office of the town clerk. The law does not specify that it must be recorded in a book kept for the purpose.

The fee for recording is \$1.00 [262:34(33)] unless your town meeting has established a different fee.

The record of the assignment must be kept permanently. [state retention schedule #2.2]

L. IMPOUNDED BEASTS [49:29, 35, 36]

If a person is injured in his land by horses, mules, asses, neat cattle, sheep, goats or swine, he may recover his damages in an action against the owner or by distraining the beasts and having them impounded. [49:29]

If the owner or keeper of the beasts is dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable determined by two disinterested persons. These two persons shall be appointed and sworn by a justice of the peace or the town clerk. [49:35]

If the amount for which the beasts have been impounded and detained is not paid within 14 days after a notice of impoundment has been given or published [49:33,34], the person who impounded them shall apply to a justice of the peace or to the town clerk. Upon receipt of the required fee of \$.50 [262:34(23)] unless your town meeting has established a different fee, the justice or town clerk shall issue a warrant to two disinterested persons. These persons shall be appointed and sworn by the justice or clerk and shall determine the amount due from the owner of the beasts for damages, costs and expenses including fees and reasonable costs for services. [49:36]

In either case, make a record of the purpose for which the appointments were made, the names of the person appointed and that they were sworn to faithfully perform their duties.

M. BONDS

There are 4 types of bonds which must be filed with the town clerk. In each case, the bond should be time stamped or the date and hour of filing noted on it before it is placed in the file. Each bond must be kept in your files for at least 4 years from the expiration date. It must be kept longer if litigation is pending. Contact your town counsel to determine the status of a bond prior to removing it from the files. [state retention schedule #2.4, blasting bond; #2.5, constable's bond; #2.6, fireworks bond; #2.8, shooting gallery bond]

1. Blasting Bonds [148:19]

The selectmen may grant a permit to use an explosive for blasting of rock or other substances. However, before a permit can be issued, a bond must be filed by the applicant with the town clerk. Sureties on the bond must be approved by the town treasurer and the amount of the bond, not to exceed \$10,000, must be

determined by the selectmen or by the state fire marshall. The bond is to cover the risk of damage that might ensue from the blasting or from keeping the explosives.

If you receive such a bond, check to be sure that the town treasurer has approved the sureties. If not, the treasurer should do so before you accept it for filing. Also be sure that the amount shown on the bond is that determined by the selectmen, or the maximum amount.

Note that the selectmen or the state fire marshall, may determine that a single and blanket bond, in a sum not exceeding \$15,000 may be filed to cover the risk of damage from all blasting operations under the permit issued or under future permits. Inform the selectmen when you receive the bond since the permit cannot be issued by them until the bond is properly on file in your office.

The fee for filing is \$1.00 [262:34 (15)] unless your town meeting has established a different fee and it is to be collected by the town clerk at the time of filing the bond.

2. Constable's Bonds [41:92,93]

Constables are not required to file a bond unless they wish to serve writs and other processes within the town. The sureties on the bond must be approved by the selectmen and the bond filed with the town clerk.

If you receive such a bond, check to be sure that the selectmen have approved the sureties. If not, the selectmen should do so before you accept it for filing.

Since the constable is a town official, there is no fee for filing his bond.

3. Fireworks Bonds

a. storage or manufacture

No person shall store or manufacture fireworks except as permitted by the regulations of the Board of Fire Prevention Regulations, until he has filed with the town clerk a bond, running to the town treasurer with sureties approved by the treasurer, in a sum not less than \$10,000 to be determined by the selectmen with the approval of the state fire marshall. The bond is to cover any loss, damage or injury resulting from the storage or manufacture of the fireworks.

When you receive such a bond, check to be sure that the sureties have been approved by the treasurer and that the amount shown on the bond is that determined by the selectmen.

b. fireworks displays [148:42]

A person who wishes to display or exhibit fireworks must file a bond with the state treasurer. The term person in this section of the General Laws refers to municipal corporations as well as individuals.

Refer those who wish to display fireworks to the state treasurer's office, or to the state fire marshall for information on filing the bond.

4. Shooting Gallery Bonds [140:56A]

The selectmen, or other licensing authority in the town, may grant a license to conduct a shooting gallery upon such terms and conditions as they deem proper. However, before the license can be granted, the applicant must file a bond with the town clerk. Sureties on the bond must be approved by the town treasurer and the amount of the bond, not to exceed \$5,000, must be determined by the selectmen. The bond is to pay for loss, damage, or injury resulting from the operation of the gallery.

If you receive such a bond, check to be sure the town treasurer has approved the sureties and that the amount of the bond is either that determined by the selectmen or the maximum. Notify the selectmen that you have received and filed the bond.

Licenses for shooting galleries expire on May 1st following the date of issue and may be renewed.

The fee for licenses and renewals is to be established by town meeting with a specified maximum of \$10 for the original license and \$5 for a renewal. No separate fee for filing the bond with the town clerk is specified either in 140:56A or in 262:34. However, it could probably be the same as that charged for filing blasting or fireworks bonds, unless your town counsel advises otherwise. [262:43]

N. AIRPORTS

If two or more municipalities vote to establish and operate an airport as a joint enterprise, the director of accounts in the department of corporations and taxation shall cause an annual audit to be made of the accounts of the joint enterprise and upon completion of such audit, copies shall be sent to the treasurer of the joint enterprise and to the mayor, selectmen and city or town clerk of each participating municipality.

This audit report is not included in the state retention schedule, but it should probably be retained permanently as is the audit report of town accounts under #2.67.

O. COMMON LANDING PLACE [88:14,15,17,19]

In every city or town where the tide ebbs and flows there shall be provided on a tidal shore thereof a least one common landing place. Upon petition of ten or more voters, the selectmen may lay out additional common landing places and alter the same or those already existing. In any city or town where a common landing place exists or where a layout or alteration is made in accordance with the provisions of this section, the city council or board of selectmen shall file a plan and a description of such common landing place or layout or alteration with the city clerk or town clerk at least 7 days prior to the town meeting at which it is to be accepted. [88:14]

If the selectmen fail to accept a common landing place or the town fails to accept it, a person may appeal to the county commissioners, who may lay out suitable common landing places and may direct the layout of such landing places to be recorded by the clerk of the town. [88:15]

A town, at a meeting called for the purpose, may discontinue any common landing place. Any resident of the town or an adjoining town aggrieved by the discontinuance may appeal to the county commissioners. The commissioners must hold a hearing and give notice of the hearing to the clerk of the town in which the landing place is located and to the clerks of every adjoining town, at least thirty days prior to the hearing. [88:17]

P. HERRINGS & ALEWIVES [158:15]

Before making any purchase of real estate or taking any other action, a corporation organized for the purpose of opening outlets, canals, sluiceways, or ditches for the introduction and propagation of herrings and alewives, must obtain written authority from the selectmen of the town in which its works are to be located. Within thirty days after obtaining the authority, the corporation shall file a copy of it, certified by the Town Clerk, in the office of the Secretary of the Commonwealth.

Before the clerk can issue the certified copy, the clerk must obtain a formal copy of the selectmen's vote granting authority to the corporation.

Q. EXCLUSION FROM APPLICATION OF PESTICIDES [Regulation 333 CMR 10.03, Pesticide Bureau, Massachusetts Department of Food & Agriculture]

Section (22) (formerly section (21A) of the regulation 333 CMR 10.03 promulgated by the Pesticide bureau of the Department of Food & Agriculture and effective as of May 26, 1983) provides in part that:

No intentional application of pesticides shall be made to private property which has been designated for exclusion from such application by a person living on or legally in control of said property.

The regulation further provides that designation for exclusion may be made by supplying the clerk of the town in which the land lies with a certified letter including the following information:

- ◇ the name of the person requesting exclusion
- ◇ the address of the property to be excluded
- ◇ the telephone number, if any
- ◇ the names of all abutters to the property to be excluded
- ◇ the spraying programs from which exclusion is requested

The letter may be sent to the town clerk by certified mail or may be delivered in person. Letters filed prior to March 1st of a given year will exclude designated property from spraying from April 1st of that year through March 31st of the following year.

Areas designated in the letter will be excluded from aerial or ground application of pesticides or both, depending upon the specific request, and whether done by a public agency or a private contractor. If exclusion from aerial application is requested, the person making the request must clearly mark the boundaries of the excluded property by helium filled balloons or by other marking methods approved by the department. The balloons or other marking devices are to be provided by the contracting entity. If exclusion from ground application is requested, the person making the request must clearly mark the boundaries of the excluded property by paper plates or other appropriate means. The plates must be placed every 50 feet along the boundaries.

Requests for exclusion shall NOT be honored if:

- the commission of public health has certified that the application is to be made to protect the public health, or
- the commissioner of environmental management has certified that the application is necessary to contain an infestation of a recently introduced pest, or
- the commissioner of food & agriculture has certified that the application is necessary to contain an infestation of a pest which is a significant threat to agriculture

If you receive a letter designating property to be excluded from pesticide application, time stamp it or note the date and time of receipt on it and place it in your files. While it is not required by the regulations, some town clerks forward a copy of each letter to the superintendent of insect pest control, mosquito control agency, board of health, conservation commission and other boards or officials involved or concerned with pesticide applications. It is suggested that you discuss procedures with the appropriate officials or boards in your town.

In any event, the letters of request should be available for inspection by both private and public agencies engaged in pesticide programs in your town so that they will be aware of the areas to be excluded from spraying.

Although not required, you may prepare a form and make it available for use by those wishing to designate their property for exclusion.

Requests for exclusion from pesticide applications are not included in the state retention schedule, but they should be kept at least until after March 31st of the year in which they expire. For example, a request filed before March 1, 1999 should be kept until after March 31, 2000.

R. ATTACHMENT OF BULKY GOODS [223:50,51]

Chapter 223:Section 51 was Repealed in 2001, 26, Sec. 44.

S. REGISTRATION OF STALLIONS

Chapter 140: Section 176. The owner or keeper of a stallion for breeding purposes shall, before advertising the service thereof, file a certificate of the name, color, age, size and pedigree, as fully as obtainable, of said stallion, and of the name of the person by whom he was bred, with the clerk of the city or town where said stallion is owned or kept, who shall, upon payment of the fee provided by clause (72) of section thirty-four of chapter two hundred and sixty-two, record the same in a book to be kept for that purpose. Whoever neglects to make and file such certificate shall recover no compensation for the services of his stallion, and whoever knowingly and willfully makes a false certificate shall be punished by a fine of one hundred dollars.

The fee for filing and recording such a certificate is \$.50 [262:34(72)], unless your town has established a different fee. The certificate must be kept on file for the duration of the breeding period and must be permanently recorded. [State retention schedule #2.91]

T. POND MEASUREMENT

Chapter 131 Section 46 states that the Department of Environmental Protection shall, upon request and at the expense of a person claiming to be interested in a pond, cause a measurement of the pond to be made, which shall be recorded in the office of the Clerk of each city and town within the limits of which any part of such pond is situated; and no arm or branch shall be included as a part of such pond unless such arm or branch is at least fifty feet in width and normally one foot in depth..

U. WILDLIFE SANCTUARIES [131:9]

If the director of fisheries and wildlife establishes a wildlife sanctuary and a great pond or any part thereof or any seashore is included within the territory, a copy of the order of establishment shall be filed in the office of the clerk of each city and town bordering upon the pond or seashore. There is no filing fee. Retention is permanent.

V. REGISTERING BEVERAGE CONTAINERS, DAIRY PRODUCT CANS, GARMENTS AND LINENS [110:17,21,25a]

The following may register their articles by filing in the office of the clerk of the city or town where their principal places of businesses are located and by paying the fee provided in chapter 262, Section 34 of the Massachusetts General Laws: persons who manufacture, bottle or sell beverages in vessels with their name and the word "registered" branded, engraved, blown or otherwise produced thereon or on boxes; persons engaged in buying, selling, or dealing in milk or cream in cans or who use cans, tubs, or cabinets in the sale, transportation or storage of frozen desserts and/or frozen dessert mix, with their name and the word "registered" produced in a permanent manner in or upon such cans, tubs, or cabinets; and persons engaged in the business of supplying or furnishing for hire or compensation on a rental or lease basis clean laundered garments, towels, aprons, bed linen, or table linen who use their name and the word "registered" on such articles or supplies. Unless otherwise established by the town the fee is \$1.00, but no more than \$5.00 [262:34(63,64)].

The descriptions of rented garments and linens must be recorded permanently. [state retention schedule #2.68A] The other descriptions are not included in the state retention schedule, but should probably also be recorded permanently.

W. POLITICAL COMMITTEES [52:2,4,5,6]

For full information please see the Elections Manual from the Secretary of the Commonwealth. Each political party shall, at the presidential primaries, elect a town committee whose members shall hold office for a period of 4 years ending on the 30th day following the next presidential primary and until their successors have organized. [52:2] Within 40 days after the election of its members, the town committee must meet and organize by choosing a chairman, secretary, treasurer, and such other officers as it may decide to elect. At this meeting, the committee may add to its elected members as long as the total number of members does not exceed the number determined under 52:9. The town committee may appoint associate members at any meeting. [52:4]

The secretary of the town committee shall, within 10 days after its organization, file with the town clerk a list of the officers and members of the committee including the officer's addresses. The secretary must also, within 10 days after their appointment, file a list of associate members. [52:5] If there is a change in the officers, members or associate members, the secretary must file a statement of such change. [52:6]

There is no fee for filing these lists. They must be kept on file in your office for at least 4 years. [state retention schedule #2.36]

X. LIENS ON VESSELS [255:14,14A,15]

The person to whom money is due for construction, launching, repairs or storage of a vessel shall have a lien upon the vessel, her tackle, apparel and furniture to secure the payment of the debt. The lien shall continue until the debt is satisfied. [255:14,14A]

However, such a lien shall be dissolved 30 days after the vessel departs from the port at which she was when the debt was contracted, unless the person claiming the lien files a statement, within that 30 day period, with the clerk of the city or town where the vessel was prior to departure. The statement must be signed and sworn to by the person claiming the lien or by a person in his behalf, giving a true account of the demand claimed to be due him, with all just credits, the name of the person with whom the contract was made, the name of the owner of the vessel, if known, and the name of the vessel or a description thereof sufficient for identification. The statement shall be recorded by the clerk in a book kept by him for that purpose. [255:15]

The fee for recording such a statement is \$1.00 per page, but not less than \$3.00 [262:34(55)], unless your town meeting has established a different fee.

These statements must be kept for 7 years. However, if litigation is pending, they must be kept longer, [state retention schedule #2.69A]

Y. HORSE AND DOG RACING LICENSES [128A:3]

A license issued by the state racing commission to conduct a horse or dog racing meeting must be recorded in the office of the clerk of the city or town in which such racing meeting is held or conducted not less than 5 days before the first day of the meeting, or forthwith upon issuance if the license is issued within 5 days before the first meeting.

Every license for horse or dog racing shall be recorded in the office of the clerk of the city or town in which the racing meeting is held or conducted at a time not less than 5 days before the first day of the meeting or forthwith upon the issuance of the license if the same shall be issued after that time. After the license is so recorded, a duly certified copy thereof shall forthwith be conspicuously displayed and shall be kept so

displayed continuously during the racing meeting in the principal business office at the race track where the meeting is held and at all reasonable times shall be exhibited to any person requesting to see the same.

Since the fee for recording the license is not specified in 128A:3, it is \$1.00 per page with an additional fee of \$.25 per name for indexing if it contains the names of more than two parties [262:34(79)], unless your town meeting has established a different fee.

The record of a horse or dog racing license is not included in the state retention schedule. However, it should probably be kept permanently since most of the licenses listed in the schedule are required to be recorded permanently.

Z. HISTORIC DISTRICT COMMISSION

1. CERTIFICATES AND DETERMINATIONS [40C:6,10(d),10(f)]

Historic district bylaws may provide that no building or structure within an historic district shall be constructed or altered in any way that affects the exterior architectural features unless the historic district commission shall first have a certificate of appropriateness, of non-applicability or of hardship with respect to such construction or alteration. In addition, a building or structure within the district may not be demolished or removed without a certificate issued by the commission. [40C:6] Each certificate shall be dated and signed by the chairman, vice chairman, secretary or other person designated by the commission. [40C:10(d)]

The historic district commission shall file with the town clerk and with any department of the town having authority to issue building permits, a copy or notice of all certificates issued and of all determinations of disapproval. [40C:10(f)]

These certificates and determinations are not included in the state retention schedule, but should probably be kept permanently.

2. REVIEW FINDING [40C:12]

An historic district bylaw may provide for a review procedure whereby any applicant aggrieved by a determination of the historic district commission may, upon written request, obtain a review of that determination by a person or persons of competence and experience designated by a regional planning agency.

The findings of the person(s) making the review shall be filed with the town clerk within 45 days after the request for such review was made.

These findings are not included in the state retention schedule, but should probably be kept permanently.

3. MAP OF HISTORIC DISTRICT BOUNDARIES [40c:3]

No bylaw creating an historic district or changing the boundaries of a district shall become effective until a map or maps setting forth the boundaries thereof, has been filed with the town clerk and has been recorded in the registry of deeds for the county or district in which the town is located.

Historic district maps are not included in the state retention schedule but should probably be kept permanently as part of the historic district bylaw.

4. RULES & REGULATIONS [40C:10(e)]

An historic district commission shall file a copy of its rules and regulations with the town clerk.

While these rules and regulations are not specifically listed in the state retention schedule, they should probably be kept permanently under item #2.66.

AA. RULES & REGULATIONS

A copy of all rules or regulations made by town boards or officers for which a penalty is provided by law shall be filed with the town clerk within 10 days after they take effect. [40:33] In addition, some town boards are required to file rules or regulations regardless of whether or not a penalty is provided.

Examples of some of the boards which must file are as follows:

1. Penalty Provided by Law

- board of health: 111:31
- earth removal board: 40:12(17)
- board of selectmen: rules for common landing places, 88:19 - NOTE: Traffic rules & orders may provide for penalties. [40:22] If they do, they should be filed with the town clerk.
- conservation commission: 40:8C - Regulations MAY prescribe penalties not exceeding \$100 for any violation. If they provide such penalties, they should be filed with the town clerk.

2. Penalty Not provided by Law

- planning board (or other board having subdivision control powers): subdivision control regulations, 41:81Q
- zoning board of appeals: 40A:12
- special permit granting authorities: 40A:9,9A
- historic district commission: 40C:10(e)

Generally, procedural regulations other than those listed above under 2., such as the selectmen's regulations for conducting their meetings, are not required to be filed with the town clerk. However, this kind of regulations is often filed to provide a central location for the public to obtain access to the information.

Rules or regulations must be kept permanently. [state retention schedule #2.66, all town boards and officers; #2.101, subdivision control; #2.147, zoning board of appeals; #2.148, board of appeals for subdivisions]

BB. BOARD OF SURVEY [41:73-81]

Prior to January 1, 1937, a board of survey could have been established in a town by acceptance of 41:73, or by acceptance of corresponding sections of earlier laws (see Chapter 191 of the Acts of 1907 and Chapter 190 of the Acts of 1916). If a board of survey was established by such acceptance and has continued in existence, the selectmen shall constitute such a board at the present time.

A board of survey could also have been established by special act and, in this case, the provisions of the act would determine how the board is constituted.

The establishment of a board of survey by acceptance of general law sections has been prohibited since December 31, 1936 (see Chapter 211 of the Acts of 1936) and all boards of survey, established either by

acceptance or by special act, cease to exist in a town which establishes a planning board under 41:81A at the time the members of that board take office. (see 41:81B)

At the present time, the powers and duties of a board of survey and the related duties of the town clerk will depend upon whether or not the board has subdivision control powers under 41:81K-81GG or corresponding provisions of earlier law or under the special act.

1. Board of Survey with Subdivision Control Powers

If the board of survey has subdivision control powers, its powers and duties and the related duties of the town clerk are outlined in PLANNING-SUBDIVISION CONTROL LAW elsewhere in this manual.

2. Board of Survey Without Subdivision Control Powers

If the board of survey does not have subdivision control powers, its powers and duties and the related town clerk's duties appear in 41:73-81 and are covered in the following:

NOTE: The board of survey must have, within 60 days after January 1, 1954, transmitted to the register of deeds of the county or district in which the town is situated and to the land court, a statement that there is a board of survey in the town, and that, in the opinion of the board, the town has not accepted the subdivision control law and a copy, certified by the town clerk, of the vote accepting 41:73 or corresponding provisions of earlier laws, or a reference to the special act under which the board was established. The powers and duties of the board are suspended until the statement has been recorded by the registry. [41:73, 41:78]

a. Powers of board of survey

(1) plan submitted with petition: [41:74]

Upon receipt of a plan showing a private way to be opened for public use and a petition for its approval, the board may approve the plan as submitted or may alter and approve it, and determine where the ways shall be located and the width and grade thereof. There is no provision in the law for a board of survey to disapprove such a plan.

The board may prescribe rules and regulations governing the manner in which plans are submitted, but it is not required to file these rules and regulations with the town clerk.

(2) plan made by board of survey [41:75]

The board may, from time to time, cause plans to be prepared of such territory and sections of land as it or the planning board may deem necessary, showing the location of such ways as the public interest may or will require. The plans must show clearly the direction, width and grades of each way.

(3) substitute plan: [41:76]

The board may, from time to time, make new plans to be substituted for those approved under 41:74 or made under 41:75 or it may make changes in such plans.

b. Public hearing

(1) when held:

In each case under a. above, the board must hold a public hearing prior to taking action. [41:74, 75, 76] In addition, a plan under a.(2) above requires two separate hearings to be held, one before causing the plan to be made and a second after the plan has been made but before it is endorsed and filed. In this case, the plan must be open to public inspection for one month after the first advertisement of the hearing. [41:75]

(2) notice of hearing [41:74; 39:23B]

The board must give notice of the hearing by publication in a newspaper in circulation in the town once in each of two successive weeks. The last publication must be at least two days before the hearing. [41:74]

NOTE: Under a.(2) above, the hearing schedule must also allow for the one month public inspection of the plan.

In order to comply with the open meeting law, the hearing notice must also be posted in the town clerk's office or on the principal bulletin board of the town and filed with the town clerk at least 48 hours before the hearing. [39:23B] (see OPEN MEETING LAW elsewhere in this manual)

c. action by board of survey

In each case, the board of survey must approve, or modify and approve the plan. If the plan is modified, the modifications must be shown on the plan. [41:74,75] While there is no provision for a board to disapprove a plan, it may change a plan already approved, filed and recorded or substitute a new one. [41:76] Each plan must be signed by the board, or some other officer designated by it.

The General Laws do not specify a time limit after the hearing within which the board must take action on a plan.

d. filing plan with the town clerk

In each case, after the board has taken action and signed the plan, it must be filed with the town clerk. When you receive such a plan, time stamp it or enter the date and hour of receipt on it. Note that since 41:74 specifies that the filing officer "shall attest thereon the date of filing," you should be sure to add your signature on the plan under the date of receipt.

The General Laws do not specify how these plans are to be filed and you are not required to record them. However, they are permanent records of the town and should be safely kept. [state retention schedule #2.108]

e. recording plans in registry of deeds [41:78]

The General Laws do not specify who is to record plans in the registry of deeds. They do specify that a plan cannot be recorded unless there is endorsed thereon, a certificate of the board of survey, or other proper officer designated by it, that all laws applicable to such plan have been complied with.

At the present time the town clerk's only duty with respect to recording plans in the registry is to notify the registrar of deeds of the name of the officer designated by the board of survey to approve plans. A notice should be sent each time a new designation is made. Prior to sending the notice, you should obtain from the board of survey, a certified copy of its vote designating the person, and keep this vote certificate in your files.

NOTE: The requirement appearing in 41:78 that the town clerk notify the register of deeds of the acceptance of 41:73 or corresponding provisions of earlier laws or of a special act establishing the board of survey, should have been fulfilled within 60 days after January 1, 1954. (see 41:73)

f. effect of approved plans [41:77]

No public way shown on a plan filed under sections 74, 75 or 76 shall be laid out, located anew, altered or widened, and no such way, whether already or subsequently laid out, shall be constructed by any

public authority except in accordance with the plan duly attested and recorded in the registry of deeds. If any person opens for public travel a private way, the location, direction, width or grades of which have not been approved by the board of survey, the town is prohibited from doing any construction or repairs on the way, or placing any public sewer, drain or water pipe in the way, except to lay a trunk sewer, drain, water or gas main if required by engineering necessities to accommodate another territory.

CC. TAX COLLECTOR'S RECORDS [60:97]

If a collector of taxes ceases to hold office for any reason, all his accounts, records and papers, including his warrant, which relate to the assessment and collection of taxes in his town must be audited by a competent accountant. Immediately following the audit, all such records must be deposited with the assessors. The assessors must then turn over to the succeeding tax collector the list of uncollected taxes together with their warrant covering the uncollected accounts. All the remaining accounts, records and papers must be turned over by the assessors to the town clerk. The town clerk is required to keep these records permanently. [state retention schedule #2.49]

NOTE: The town clerk will also have received records directly from a tax collector in office prior to 1977 under the provisions of 60:9 which was repealed by Chapter 451 of the Acts of 1976. These records must also be kept permanently. [state retention schedule #2.49]

4. LICENSES AND PERMITS

I. RAFFLE & BAZAAR PERMITS [271:7A]

A. GENERAL

Under 271:7A, the town clerk is responsible for receiving and processing applications and for issuing permits for raffles and bazaars. The town clerk is also responsible for being certain that the organization applying for the permit is one which qualifies, the stated uses to which the proceeds will be applied and that the application itself complies with all provisions of the law.

If the organization violates any provisions of 271:7A, the town clerk is responsible for revoking a permit and being certain that a new permit is not issued to the same organization for a period of 3 years from the date of violation.

If the organization also holds a beano permit, or if the activity is conducted in a location where beano is also conducted the casino functions held under the raffle and bazaar permit are controlled by regulations of the state lottery commission and that commission is responsible for enforcing its regulations.

A raffle is defined in 271:7A as an arrangement for raising money by the sale of tickets, certain among which, as determined by chance after the sale, entitle the holder to prizes. The law does not specify a form in which the tickets must be printed.

A bazaar is defined in 271:7A as a place maintained by the sponsoring organization for disposal by means of chance of one or both of the following types of prizes: (1) merchandise of any value, (2) cash awards, not to exceed \$25 each.

NOTE: The attorney general has promulgated regulations, 940 CMR 12.00 governing raffles in which the value of the prize or prizes exceeds \$10,000 or in which the ticket price exceeds \$10. He has also promulgated regulations governing bazaars, 940 CMR 13.00. The conduct of raffles and bazaars must comply with these regulations as well as with 271:7A. It is suggested that you obtain a copy of these regulations from the department of the Attorney General, One Ashburton Place, Boston, MA 02108, and make them available to those to whom you issue raffle and bazaar permits.

A casino function, such as a Las Vegas Night or a Monte Carlo night would be permitted as a form of bazaar under the raffle & bazaar permit. If the organization also holds a beano permit, the casino functions would be controlled by the regulations of the state lottery commission, 961 CMR 4.00. Additional games would be allowed including craps, blackjack, roulette, big six, money wheel, check-a-luck, under and over seven, and beat the dealer. The organization may also conduct other games of chance if specifically approved in writing by the director of the state lottery commission. Copies of the regulations are available from the State Lottery Commission, P.O. Box 800, Braintree, MA 02184.

A raffle & bazaar permit does NOT entitle the holder to conduct the games of beano, bingo, or other similar games. In order to hold these games, your town must have voted to authorize beano by voting in favor of a beano question on the annual town election ballot in 1971, 1975, or placed on the ballot by petition in 1979 or later. [Chapter 486 of the Acts of 1971] In addition, an application for a beano license must have been approved by the selectmen and a license issued by the state lottery commission. [10:38]

An organization wishing to apply for a beano license should be referred to the board of selectmen.

Reference should also be made to the June 2005 Attorney General's Advisory on Poker Tournaments for information regarding the legalities of Texas Hold'em Poker Tournaments.

B. ORGANIZATIONS QUALIFIED TO RECEIVE RAFFLE AND BAZAAR PERMITS

Only certain organizations are qualified under 271:7A to receive raffle & bazaar permits. These must be organizations in which no part of the net earnings inure to the benefit of members or shareholders and are specified in 271:7A as follows:

1. veterans' organizations chartered by the Congress of the United States or included in 40:5(12) such as the American Legion, DAV, Veterans of Foreign Wars, AMVETS, DAR and SAR, etc.

2. church or religious organizations

3. fraternal organization or fraternal benefit society such as Elks, Masons, Grange, Fire or Police Relief Associations, etc.

4. education or charitable organizations such as public school departments, parent-teacher organizations, private schools, Red Cross, Morgan Memorial, Salvation Army, etc. NOTE: Public school departments should be advised to consult their legal departments or town counsel to determine whether or not they are empowered to conduct raffles and bazaars and to expend the proceeds without an appropriation.

5. civic or service clubs or organizations such as Kiwanis, Rotary, Lions, Citizens for Good Government, BPW, Jaycees, Quota, Etc.

6. clubs or organizations organized and operated exclusively for pleasure, recreation and other purposes such as swim clubs, garden clubs, art clubs, little league, etc.

In addition, the organization must have been organized and actively functions as a nonprofit organization in Massachusetts for a period of NOT LESS THAN 2 YEARS before applying for a permit.

C. PURPOSES FOR WHICH PROCEEDS MAY BE USED

The proceeds from a raffle or bazaar must be used exclusively for the purposes stated in the application and are limited to the following: educational, charitable, religious, fraternal, civic, or veterans' benefits.

The purposes stated in the application may be somewhat general. For example, if the school department requests a permit, it may state as the purpose support of educational programs and activities not provided for in the school budget. In this way, each organization within the school would not need to apply for a separate permit since the one permit issued to the school department would cover all school organizations. School committee members might be listed as the three persons responsible for the operation of the raffle, and the superintendent of schools might be the person to sign the application.

However, organizations other than the public school department should probably be more specific in stating the purposes for which the raffle or bazaar will be conducted.

D. PROMOTION AND OPERATION OF RAFFLE OR BAZAAR

The promotion and operation of a raffle or bazaar must be confined solely to the qualified members of the sponsoring organization. No member shall receive remuneration in any form for time or effort devoted to the promotion or operation of the raffle or bazaar.

E. THE APPLICATION

1. To Whom Made

The application must be made in writing to the clerk of the city or town in which the raffle is to be DRAWN, or in which the bazaar is to be HELD. Raffle tickets may be sold in several towns, not just in the

town in which the permit is granted. For example, members of a church organization who live in different towns may sell tickets in their own home towns even though the drawing is to be held in your town and you issued the permit.

2. Form of Application

Application forms for raffle and bazaar permits are available commercially, or you may make up your own form. However, the form used must be one approved by the commissioner of public safety.

The application must contain the name and address of the applicant, evidence on which the applicant relies in order to qualify for a permit, the names of three officers or members of the organization who will be responsible for the operation of the raffle or bazaar, and the uses to which the net proceeds will be applied. It must also be signed by an officer or member of the organization.

3. Fee

The fee must accompany each application. 271:7A specifies a fee of \$10. However, your town meeting may establish a higher fee, up to a maximum of \$50 for each application. [Chapter 351, Section 98 of the Acts of 1981]

4. Documentation Which You May Require to be Submitted with the Application

Since you are required to determine whether or not the organization applying for the permit meets all the qualifications specified in the law, you MAY require the following documentation if you believe it necessary.

a. to prove that the organization is a type which qualifies: articles of organization, bylaws, certificate of incorporation as a charitable corporation, etc. If you question whether or not an organization is one of the 6 types allowed (see B above), check with your town counsel, the commission of public safety, or the state lottery commission.

b. to prove that the organization has been organized and actively functioning as a nonprofit organization in Massachusetts for at least 2 years: statement of condition for the past 2 years, minutes of meetings over a two year period, canceled checks showing the organization's name, affidavit of the organization's clerk or secretary.

c. to prove that the persons stated on the application or signing it are members or officers of the organization: certificate of election of officers or membership, or affidavit of organization's clerk or secretary.

d. to show that only qualified members of organization will promote or operate raffle or bazaar: statement of officers to that effect signed under penalties of perjury.

e. uses to which net proceeds will be applied: statement of the officers, signed under the penalties of perjury, that the net proceeds will be used exclusively for the purposes stated in the application and that no part of the net earnings will inure to the benefit of any member or shareholder.

Documentation is not required under the law, but having a copy of such documentation on file in your office together with a copy of the permit issued, will substantiate your reasons for issuing the permit should questions be raised about the organization at a later time.

If, however, the organization applying for the permit is one known to you and you are sure it fulfills all the requirements, documentation would not be needed.

5. Notice of Issuance of Raffle & Bazaar License [form RBL-25M-7-83]

Each application for a raffle and bazaar permit should be accompanied by a Notice of Issuance of: Raffle and/or Bazaar License. These forms are supplied to town clerks by the Massachusetts state lottery commission.

The organization applying for the raffle or bazaar permit must complete the back of the form showing the date organized, whether it is a corporation or an unincorporated association, the type of organization. An authorized officer of the organization should sign the form, date it and add his title, his home and business telephone number, the date of the raffle or bazaar and the number of events to be held during the year.

After you issue the raffle and bazaar permit, you should enter the information requested on the front of the form in the box entitled "For City/Town Use Only." Enter the name of your town at the top left of the form. Affix the town seal and add your signature in the space provided. This form should be sent to the Charitable Gaming Department, Massachusetts State Lottery, P.O. Box 859012, Braintree, MA 02185-9012.

After it receives the form, the state lottery commission will forward the necessary tax forms to the organization holding the permit. Each organization is required to pay a 5% tax to the commission on the gross proceeds of each raffle or bazaar within 10 days after the event is held. Questions concerning the required taxes or forms should be referred to the state lottery commission.

6. Processing the Application

Each application should be carefully checked to be certain that the form is completed and signed.

If the application is in order, add your statement that application is certified to be in conformity with chapter 271, Section 7A of the General Laws and sign it. The application should then be forwarded to the chief of police in your town for his determination as to whether or not the applicant is qualified to operate a raffle or bazaar. The chief should cross out (is) or (is not) as applicable, sign in the appropriate space, and return the application to you.

F. THE PERMIT

1. Issuing the Permit

If the chief has signed, indicating that the applicant is qualified for the permit, you may then issue it. Cross out (DENIED) in the bottom left corner of the application, date and sign it.

A certified copy of the completed and signed application may be used as the permit and no special permit form is necessary. However, if you wish, you may make up a separate form to be used as the permit. The form is not specified in the General Laws, but it should contain the name and type of the organization, the uses to which the proceeds will be applied, the names of the members and the name of the person who signed the application, the date issued, the expiration date and your signature.

You should prepare three certified copies of the permit. Two should be given to the organization. It will need one copy for its files. The second copy may be given to the person printing tickets for the organization. The printer may require a copy since he will not be subject to a penalty for his work should an action be taken at a later time against the organization for which he has printed tickets IF he has been presented a copy of the permit.

The third certified copy should be sent to the Commissioner of Public Safety, One Ashburton Place, Boston, MA 02108.

2. Denial of Permit

If you find that the organization applying for a permit is not qualified, or the uses to which the proceeds will be applied are not those allowed by law, you should deny the application. Notify the applicant in writing and state your reasons for denial.

3. Time Limits

a. for issuing or denying permit

After receiving a completed application, you have 30 days in which to take action either to issue or deny the permit. You may consider that the 30 day period does not begin until you have received a properly completed application together with any documentary evidence you required, and the required fee.

b. for valid permit after issuance

A permit is valid for one year from the date of issue. A permit may be renewed for another year provided a completed renewal application is submitted together with the fee and provided the required report has been received.

Fee and forms for renewal are the same as for original permit.

4. Number of Raffles or Bazaars Which May be Held Under Valid Permit

During the year in which the permit is valid, an organization may conduct as many raffles as it wishes. However, an organization is limited to 2 bazaars in a calendar year. (Regs. 940 CMR 13.09) The net proceeds from all such events must be used specifically for the purposes stated in the application. The organization may not hold one raffle or bazaar for one purpose and a second raffle or bazaar for another purpose unless BOTH purposes are stated on the original application.

If, however, the organization originally planned to hold only one raffle or bazaar, for the purpose stated on the application and sometime later, prior to the expiration of the permit, decided to hold another raffle or bazaar for a different purpose, the application and permit may be amended to add the second purpose.

G. AMENDMENTS

If there is any change in the facts set forth in the application after it has been submitted, the applicant must notify the town clerk. This notice should be in writing.

If the permit has not yet been issued, attach the notice containing the new facts to the application. If the changes do not affect the qualifications of the applicant, the permit may be issued. The permit should include the facts as of the date it is issued.

If the permit has been issued, and the new facts do not affect the qualifications of the applicant, attach the notice to the copy of the permit in your file. Send a copy of the amendment notice to the commissioner of public safety referencing the original permit.

If the permit has been issued, and the new facts disqualify the applicant, you must revoke the permit. Notify the applicant in writing and state the reasons you have revoked the permit.

H. REVOKING A PERMIT

The town clerk shall immediately revoke a permit for a violation of any provisions of 271:7A and shall not issue any permit to the same organization for a period of 3 years from the date of the violation.

Examples of violations for which a permit might be revoked are as follows:

- non-members of the organization promoting or operating raffle or bazaar

- uses to which proceeds applied not those stated in application
- payments for time and work done by a member of the organization in connection with the raffle or bazaar
- facts stated on the application have changed, but the organization failed to notify you.

If you believe an organization should have its permit revoked, it is suggested that you discuss the case with your town counsel prior to taking action.

I. APPEALS

Any person named on the application may obtain a judicial review if the application is not acted upon within 30 days after it is submitted, the organization is denied a permit, or a permit is revoked.

The petition for judicial review must be made in the district court having jurisdiction over the city or town in which the application was filed. It must be filed within 10 days of the expiration of the 30 day period if no action was taken on the application, or within 10 days of a denial or revocation of a permit. After a hearing, the justice of the district court may order that the permit be issued, if he is satisfied that there was no reasonable ground for refusing the permit and that the applicant was not prohibited by law from holding raffles or bazaars.

It should be noted that an appeal from a revocation of a permit is covered in two separate paragraphs of 271:7A, the 6th paragraph as stated above and again in the 8th paragraph as follows:

Any person aggrieved by the revoking of a permit may appeal to the district court having jurisdiction in the city or town where the permit was issued. In this case, the person taking the appeal need not be one of those named on the application. The appeal must be filed within 20 days, instead of the 10 days appearing in the 6th paragraph, following receipt of notice of revocation. After hearing all the pertinent evidence and determining the facts, the court may annul the revocation or take whatever action it deems appropriate.

J. ANNUAL REPORT

An organization holding a raffle and bazaar permit is required to file a report within 30 days of the expiration of the permit.

The form for the report must be one approved by the commissioner of public safety and the following information is required:

- * number of raffles and bazaars held during the year in which the permit was valid
- * the amount of money received
- * the expenses connected with the raffles or bazaars held
- * the names of winners of prizes exceeding \$25 in value
- * the uses to which the net proceeds were applied

The report must be certified by the three persons designated in the permit application as being responsible for the raffle or bazaar. In addition, it must be signed by an accountant.

If one of the persons whose names appeared on the original application is no longer available to sign the report due to death, moving, etc., then the other two should sign. The third signature required on the report may be a person who signs an application for a renewal of the permit if one is made, or an officer of the organization.

While it is not required under the General Laws, many town clerks notify the permit holders when the permit expires to remind them that the report must be filed. Failure to file a report is sufficient grounds for you to refuse to issue a renewal of the permit.

Make a certified copy of the annual report and send it to the commissioner of public safety and place the original in your files. A copy need not be sent to the state lottery commission.

K. RECORDS TO BE KEPT

1. By the Town Clerk

Raffle and bazaar permits, renewals, and reports must be kept on file until the completion of a satisfactory audit. However, permits and renewals must be recorded permanently. [state retention schedule #2.87, #2.87A]

It may be easier simply to keep the permits, renewals and reports permanently rather than recording the information in a separate bound record book. They may be periodically taken out of the active files, if necessary, and placed in a post binder or bound in some other manner. If they are bound in order by date of receipt, an index should be prepared listing the permits and reports in alphabetical order by name of organization.

2. By the Permit Holders

The organization must keep books and records necessary to substantiate the details of the report for at least one year from the date of the report. These books and records must be available for inspection.

L. PENALTIES

For violating any provision of 271:7A or submitting false information on an application or report required under section 7A, a fine of not more than \$1,000 or imprisonment in the house of correction for not more than one year, or both.

For mailing lottery or raffle tickets or any information or materials, including money, checks, drafts, money orders, etc., concerning lotteries, raffles, or other games of chance, or advertising raffles, lotteries, etc. in a newspaper entered as a second class mail - a fine of not more than \$1,000 or imprisonment for not more than two years, or both. [Section 1302 of Title 18, U.S. Code] NOTE Section 3005 of Title 39, U.S. Code defines material related to raffles as unmailable and empowers the postmaster to refuse delivery.

II. LICENSES GRANTED BY THE BOARD OF SELECTMEN

A. GENERAL

There are many different types of licenses which the board of selectmen is responsible for granting. In a number of cases, the town clerk is also involved in the licensing process in signing and issuing the license certificate and/or in recording the license after it has been granted by the selectmen. Only those licenses which involve some action by the town clerk are included in this manual.

A general rule to follow in connection with the licenses covered here is to be certain prior to signing, issuing or recording a license, that you have a copy of the vote of the board of selectmen showing that the license was granted, the date of the selectmen's vote, the type of license, and to whom granted.

In many towns, the town clerk also collects the fees for the licenses. However, not all fees are specifically required by sections of the General Laws to be collected by the town clerk and those may be collected by the selectmen's office as part of the application process. The licenses for which the fees must be

collected by the town clerk and the amount of the fees are noted under each specific type of license in the following.

B. AUCTIONEER'S LICENSE [100.2]

An individual wishing to obtain an auctioneer's license must make application to the board of selectmen, the granting authority. An individual who has been a town resident for at least 6 months immediately preceding the application may be granted a license which will be good for one year from the date of issue. An individual who is not a town resident may apply for a special auctioneer's license which will be good for certain days as specified in the license.

The fees for both the resident auctioneer's license and for the special license are set by the selectmen and will therefore vary from town to town. The fee for a special license is to be set for each day specified. The fees may be collected by the selectmen as part of the application process, or they may delegate such collection to the town clerk or town treasurer depending upon local custom.

In either case, the law requires that the town clerk sign the license and record it in a book kept for that purpose.

Commercial forms are available for auctioneer's licenses. These forms are bound in booklets, usually containing 50 certificates and stubs. By filling out the stub related to each certificate, you will comply with the law requiring the licenses to be recorded in a book kept for that purpose.

You may, if you wish, make up your own form for auctioneer's license certificates and keep a separate bound book in which to record the appropriate information. Included in the record and on the certificate should be the name and address of the auctioneer, the date of expiration of the license, the date on which the selectmen granted the license, and the fee. For a special license, the dates on which the license may be used should also be included.

Number each license certificate and add the date on which you issued it. This information should also be included in the record book for each license.

The record of each auctioneer's license you have issued must be kept permanently. (state retention schedule #2.71)

C. BILLIARDS, POOL, BOWLING ALLEY, ETC. LICENSES [140:202]

There are several types of licenses governed by Chapter 140, Section 202 as follows:

- billiard, pool, sippio and bowling alleys [140:177]
- skating rinks, carousels, inclined railways, Ferris wheels, outdoor exhibitions of fire fighting [140:186]
- groves maintained for picnics, lawful gatherings and amusements [140:188]
- junk, metal, second hand articles - collectors, dealers, and shopkeepers [140:54]
- pawnbrokers [140:70, 77]

All of the above licenses shall be signed by the clerk of the town where they are granted. Before the license is delivered to the person to whom it has been granted by the selectmen, the town clerk must record it in a book kept for that purpose. [140:202]

The license must include the name of the licensee, the nature of the business and the building or the place in the town in which it is to be carried on. Each license shall continue in force until May 1st following the date it is granted, unless revoked prior to that date by the selectmen [140:202]

The fee for all these licenses, except a pawnbroker's license, is determined by the board of selectmen, but may not be less than \$2.00 [140:202] The fee for a pawnbroker's license, original and renewal, shall be set by town meeting action by adoption of a bylaw up to a maximum of \$100. [140:77; Ch. 351 of 1981, s. 79] The town clerk may, but is not required, to collect these fees.

If the selectmen should revoke a license, the town clerk must make a note of the revocation on the record. Also he must give written notice of the revocation to the licensee by delivering it to him in person or by leaving it at the place of business designated in the license. [140:205]

Commercial forms are available for billiard, pool, sippio and bowling alley licenses as well as for dealers in junk, metal and second hand articles. These forms are made up in bound booklets and each license has a stub. Filling out the stub with the required information will comply with the requirement that these licenses be recorded in a book kept for that purpose.

For other licenses, you may design your own forms, or use a certified copy of the vote of selectmen granting the licenses. Add to the vote the date of receipt in your office and the date of recording. In this case, you will need to establish some method of making a permanent record of issuing the license. This may be an entry in a bound book, or you may keep copies of the licenses issued and bind them permanently when a sufficient number have been collected.

These licenses must be recorded permanently: state retention schedule #2.71 - billiard saloons; #2.73 - bowling alleys; #2.74-carousels; #2.76-fire fighting exhibitions; #2.77-Ferris wheels; #2.80-inclined railways; #2.81-junk collectors; #2.82-junk dealers; #2.84-pawnbrokers; #2.85-picnic groves; #2.86-pool rooms; #2.88-skating rinks; #2.89-second hand articles.

D. STORAGE OF INFLAMMABLES AND EXPLOSIVES [148:13]

1. Licenses

No building or structure may be used for the storage, manufacture or sale of inflammables or explosive materials unless the board of selectmen has granted a license. Certain buildings or structures in existence in 1911 are exempted. (see 148:14) A detailed listing of the inflammable or explosive materials subject to the licensing requirements of 148:13 is given in 148:9.

The license shall be recorded in the office of the town clerk and shall, from the time of granting, be deemed a grant attaching to the land described in the license. Therefore a change in ownership or occupancy of the property does not affect the validity of the license.

The license remains in force unless and until it is revoked by the board of selectmen. The license may be subject to conditions and restrictions prescribed in the license.

When you receive a license from the selectmen's office, time stamp it or note the date and time of receipt. The license may be simply a copy of the vote of the selectmen granting the license, or it may be on a form prepared by the selectmen with or without a copy of the application. It should include the name of the applicant, the address of the building or structure for which the license is granted, the amount and type of inflammable to be stored and any conditions or restrictions imposed by the selectmen.

Since the law does not specify that the license be recorded in a special book, you may either record the information appearing on the license in a book or you may keep the license in your files. The original license record should be kept permanently since it is in force as long as the selectmen do not revoke it and regardless of change in property ownership. (state retention schedule #2.78)

If a license is revoked by the board of selectmen, it should notify you of the revocation. Note the revocation on your master list, and on the record of the original license. Include the date of revocation. The notice of revocation should be attached to the original license received from the board of selectmen's office.

2. Annual Certificate of Registration

The owner or occupant of the property for which the license is granted must file with the town clerk each year a certificate of registration, or renewal of the license. This should be filed on or before April 30th. (the annual certificate of registration is not required for a building used as a garage for storing not more than three vehicles provided an original license for the property has been granted.)

There is no requirement in the General Laws that you notify licensees of the renewal date or provide forms for them. However, some town clerks fill out a certificate of registration for each owner or occupant whose license has been recorded. These forms are forwarded to the owner or occupant sometime in March to allow time for them to be signed and returned.

Included on the sample is the following information which, although it is not required to be entered, is helpful to you and to the licensee: the amount of the fee, the amount and type of material for which the license was granted, and your file or document number.

If you find that the owner or occupant of the licensed premises has changed, the certificate of registration for April 30th following the change should simply be made out in the name of the new owner or occupant. Change the name on your master list and note the new information on your record of the original license.

When you receive a certificate of registration from a licensee, the top half should have been signed by the occupant or owner of the property in the space provided at the right. The address should also be included. You should fill in the date of receipt at the left side of the top half, sign your name and enter your title.

In addition, fill out the name of your town and enter the date of receipt on the bottom half of the certificate. Sign it and add your title. The bottom half of the certificate should be returned to the owner or occupant since he is required to post this on the premises for which the license was granted.

Place the top half of the certificate, signed by the owner or occupant, on file in your office. There are no particular requirements for the manner in which to file these certificates. They may be filed by year, all certificates received in a given year together in one file; or, they may be filed by the location of the property on the assessors' maps; or by street address, keeping all the certificates received for a particular address together in one file along with a copy of the original license granted covering that particular address. The last method of filing will provide you with a complete history of each premises which has a license, provided you keep each year's certificates.

There are no particular requirements for keeping track of those licensees who have filed the annual certificate and those who have not. A convenient method to use it to make up a master list of all licenses recorded in your office. As the annual certificates of registration are returned to you, check the name of the licensee and enter the date on the master list. This list will also provide you with a reference arranged alphabetically by name of licensee.

The annual certificates of registration must be kept for 7 years. If litigation is pending, they must be kept longer. (state retention schedule #2.78) However, on occasion you will be asked to verify that the licensee has filed the annual certificate every year so you may want to keep these on file for longer than the required retention period.

E. SHELLFISH [130:52,53,62,74]

1. Regulations [130:52]

The selectmen of a town bordering upon coastal waters, if authorized by their own town, may make regulations concerning the taking of eels, shellfish and sea worms and they may grant permits and establish the fees for permits.

A copy of the regulation must be posted in the office of the town clerk among other places in the town.

Upon receipt of a copy of the regulations, time stamp it and post the copy in your office. You might want to file a second copy as a reference.

2. Permits [130:53]

The selectmen may issue permits for taking shellfish or they may vote to allow permits to be valid if signed by only one member of the board of selectmen, or by the town clerk.

The officer issuing the permit must record the name, residence and address for every person to whom a permit issued, and include any special details relating to the permit. The record must be entered in a book kept in his office for that purpose.

The stubs or duplicates of permits must be retained until the completion of a satisfactory audit. The record of permits must be kept permanently. [state retention schedule #2.90] You may use the completed stub of a permit as your record and in this case the stubs would have to be kept permanently.

3. Private Shellfish Licenses [130:57,61,62]

The selectmen may grant a license to plant, grow and take shellfish for a period not to exceed 10 years. [130:57] The licensee must mark out the area covered by his license. [130:61]

The selectmen must keep in their office plans showing all licensed areas and in a book devoted to that purpose only, a record of each license granted and of all transfers and renewals of the license. The selectmen must also transmit to the town clerk all licenses and all transfers and renewals. The town clerk must record each of these licenses and all transfers and renewals in a book kept especially therefor in his office. The licensee must pay to the town clerk \$1.00 for recording the license and he must also pay \$4.00 as reimbursement to the town for the costs incurred in granting the license. The town clerk must record the payment of the recording fee and the reimbursement fee in the record book. The license does not become effective until the record has been made. [130:62]

The record book shall be open to public inspection at all reasonable times. This record is not included in the state retention schedule, but it should probably be kept permanently.

the forms for these licenses shall be provided by the selectmen at the expense of the town. [130:62]

4. Inspection of Shellfish [130:74]

The state department of environmental protection shall examine from time to time as conditions may require, or upon the request of the director, the commissioner of public health, selectmen or town manager, the coastal waters and flats and samples of shellfish to determine what areas are so contaminated that shellfish obtained therefrom are unfit for food and dangerous to the public health.

The department of environmental protection or the department of public health must publish the results of its determination in a newspaper published in each city and town in which or adjacent to which any contaminated area is situated. Also the results of its determination must be filed in the office of the city or town clerk.

When you receive such a report, time stamp it and place it in your files. This report is not included in the state retention schedule.

F. TRANSIENT VENDOR'S LICENSE [101:1,3,5,10]

A transient vendor is a person who engages in a temporary or transient business selling goods, wares or merchandise, either in one locality or in traveling from place to place. [101:1]

Each transient vendor is required to obtain two licenses. He must apply to the state director of standards in the Executive Office of Consumer Affairs for a state license. [101:3] In addition, he must apply to the board of selectmen in a town before making any sales of goods, wares or merchandise in that town. [101:5]

After determining the fee, the board of selectmen must authorize the town clerk, upon the payment by the applicant of a fee, to issue the local transient vendor's license. Before issuing any such license, be sure that you have on file a copy of the board of selectmen's vote of authorization. All such licenses are subject to local rules and regulations and must be obtained prior to selling any goods, ware or merchandise.

You may use a copy of the board of selectmen's vote as the license. Add the date on which the selectmen voted unless it is already included. Add the date on which you issued the license and your signature as town clerk.

The expiration date of a transient vendor's license is so long as the licensee shall continuously keep and expose for sale in such town such stock of goods, but not later than the first day of January following the date the license was issued. The expiration date should be included on the license.

You may also include the amount of the fee and the date paid. Fees for transient vendor's licenses are either an amount equal to the taxes assessable in the town on the goods being sold, or a specific fee fixed by the board of selectmen. The fee should be collected by the town clerk prior to issuing the license.

You may also make up your own form for a transient vendor's license.

The transient vendor should present to you the state license he has obtained from the director of standards. After he has paid the fee for the local license, and proves that all other license fees, if any, chargeable upon local sales have been paid, you must record the state license of such transient vendor in full. Then endorse on the state license the words "local license fees paid," add the date and your signature.

In order to record the state license in full, you may make a copy of each page of the state license presented to you. A copy of the application for a state license and other statements are required to be attached to that license so that you will undoubtedly need to copy more than one page. Keep the copy in your files and return the original to the licensee.

If a person liable for the license fee for a transient vendor's license refuses or neglects to pay it after demanded by the town clerk, you may take the individual to court. Contact your town counsel if you contemplate such action. [101:10]

Transient vendor's licenses are not included in the state retention schedule. However, since most other licenses are required to be recorded permanently, it would seem likely that the transient vendor's license should also be recorded permanently.

G. HAWKER'S AND PEDDLER'S LICENSE [101:13,14,17,22,27]

A hawker or peddler is a person who goes from town to town or from place to place in the same town selling or bartering any goods, wares or merchandise, either on foot or from any animal or vehicle. [101.13]

The selectmen or the state director of standards may issue hawkers' and peddlers' licenses. [101:17] If a hawker has obtained a state license which specifically allows him to sell articles in the town, he need not also obtain a license from the selectmen. [101:22]

There is no provision in the General Laws for a town clerk to issue a license certificate, the license itself, or to file or record a hawker's or peddler's license. However, the town clerk is listed in 101:27 as one of those officials who may demand of a hawker or peddler that he produce his license for inspection. If the hawker or peddler refuses to produce his license he is subject to a fine of not more than \$200.00 to be equally divided between the commonwealth and the town in which the offense was committed. [101:14]

H. STEAM BOATS [140:191,192]

The selectmen may license a person to run a steamboat or other boat propelled by power other than muscular, for the conveyance for hire of passengers on lakes, ponds, or waters not within the maritime jurisdiction of the United States. [140:191]

The license shall be recorded by the clerk of the town where granted and must include the name of the boat, the master and owner, the number of passengers it is permitted to carry at any one time, and the number of life preservers that shall be carried. The license shall be granted for a term of not more than one year. [140:192]

Record these licenses by making a copy of the original license granted by the board of selectmen, or a copy of the selectmen's notification to you that a license has been granted and placing the copy in your files. You may copy the required information into a record book although a separate record book is not required.

The fee for recording the license is \$1.00 unless your town meeting has established a different fee, not to exceed \$20.00. [140:192]

Your record of these licenses must be kept permanently. [state retention schedule #2.92]

III. DOG LICENSES

A. HISTORY

Provisions concerning dog licenses have appeared in the laws of the Commonwealth since 1797. Chapter 58 of the 18936 Revised Statutes contained 8 separate sections under the main heading DOGS. The provisions of chapter 58 would indicate that the main reason for requiring dogs to be licensed was for the protection of persons and property. It was not until 1877 that dog licensing was related to public health when a description of the symptoms of hydrophobia (rabies) was required to be printed on each license. [Chapter 168 of the Acts of 1877]

By 1882, under chapter 102 of the Public Statutes, the town clerk was specifically designated to issue dog licenses.

The money received from dog licenses was to be paid to the county treasurer instead of the town treasurer, but the town clerk was allowed to keep 20 cents for each license issued. The amount to be kept by the town clerk was increased through the years and section 82 of chapter 351 of the Acts of 1981 increased the amount to 75 cents per license.

The eight sections related to dogs appearing in the 1838 law were replaced by 31 sections in 1882. Provisions had been added that the assessors were to make a list of all dogs owned or kept in the town on May 1st of each year and to turn this list over to the town clerk. Provisions for having the selectmen issue a warrant for all unlicensed dogs were also added as were provisions under which the selectmen could order a dog to be restrained or muzzled. The county treasurers were to pay back to the cities and towns the amounts from dog licenses not expended for damages and this money could be used by the towns for the support of the public

libraries or the schools. The laws related to dog licensing, damages to be paid for injuries caused by dogs, etc., now appear in Chapter 140, sections 136A through 174B of the General Laws.

In the late 1990's the county form of government was, for the most part, dispensed with in the Commonwealth. This left towns to develop systems for dog licensing on their own. Even prior to the county system going down, many towns had pulled out of the county system and were licensing dogs on their own. Towns now collect the full amount of the revenue and provide the services required by M.G.L.

B. DUTIES OF DOG OWNER OR KEEPER

1. Who Must License

The owner or keeper is responsible for obtaining the license for each dog three months old or older in his possession. He must also cause the dog to wear a collar or harness to which the dog tag has been attached. [140:137]

2. Licensing Period

The licensing period runs from April 1st through March 31st of the following year (unless your town has withdrawn from the county and set up different dates for the licensing period). A license must be obtained as follows:

- as soon as a dog is obtained or becomes 3 months old, if obtained at a younger age [140:137]
- on or before the expiration of 30 days following the arrival of the dog in town, if brought from another state or country [140:138]
- within 30 days after moving into town from another Massachusetts town.
- **AND**
- at the beginning of each licensing period as long as the dog is kept in the town [140:137]

While it is not required by the General Laws, many town clerks place ads in the local papers during March each year to remind owners to license their dogs. In some towns the clerk or the dog officer mails a notice to each owner.

3. Change of Ownership within the Town [140:138]

If the ownership of the dog is changed from one town resident to another, the new owner must forthwith give written notice to the town clerk. The town clerk shall then change the record of the license of the dog to show the new ownership. A new license certificate or tag does not need to be issued to the new owner - UNLESS your local regulations state otherwise.

4. Rabies Vaccination [140:145B]

The owner or keeper of a dog is responsible for having it vaccinated against rabies. The vaccination must be done by a licensed veterinarian within 30 days after the dog is obtained or at the time it becomes 6 months old, whichever is later. Dogs must also be revaccinated periodically in accordance with rules and regulations adopted by the department of public health. The owner or keeper must obtain from the vet a vaccination certificate showing the duration of the immunity, or a notarized letter stating that a certificate was issued, or a metal rabies tag, bearing an expiration date indicating that the certificate is still in effect. [140:145B]

The town clerk is prohibited from issuing a dog license unless the owner or keeper presents a certificate, notarized letter, or metal rabies tag showing that the certificate is still in effect. [140:137] (see chapter 525 of the Acts of 1983) You will need to ask each person requesting a dog license to show such evidence of rabies vaccination. You do not need to keep the rabies certificate, but it will be helpful if you note on your dog license record the date of expiration of the vaccination. In this case, you will not need to ask the owner to produce a rabies certificate again until after the expiration date, which may be two or three years later depending upon the type of vaccine used.

a. exemptions:

The town clerk may grant an exemption from the provisions requiring evidence of rabies vaccination if one of the following applies:

- * the dog is less than 6 months old
- * the board of health has declared the dog exempt for a specified period of time. In this case, the owner or keeper would need to obtain a vet's certificate that inoculation is inadvisable because of infirmity, other physical condition or regimen of therapy, and present this certificate to the board. The law does not specify that the board of health issue a written declaration. You should be sure, however, that the board of health has taken official action before you grant an exemption in this case.
- * the dog is in transit, or has been brought into the commonwealth temporarily for the sole purpose of showing in dog shows or exhibitions. [140:137] (see Chapter 525 of the Acts of 1983)

C. DUTIES OF THE TOWN CLERK

1. General

The town clerk is responsible for issuing the certificates and dog tags, for keeping a record of the dog licenses issued and dogs destroyed by the dog officer, accounting for the money collected for licenses and for making out a monthly report covering all licenses issued during the preceding month. [140:137, 137A, 147, 151A]. If you act as clerk to the board of registrars, you will also be responsible for obtaining, as part of the annual town census, a list of all dog owners in the town. [140:150] However, the town clerk is not responsible for enforcing the laws related to dog licensing, except with respect to requiring evidence of rabies vaccination, since that is the responsibility of the dog officer and the board of selectmen. [140:151, 151A, 152]

2. Licenses to be Received from the County

Unless your town is in Barnstable County or one of the remaining counties, your town will have by now promulgated dog regulations, since the county form of government is being dissolved in Massachusetts. The following is merely a guide for some of the issues that your town should be covering and you addressing in your licensing of dogs. If there is any question, you should refer to M.G.L. (see above references). If you do not belong to the county dog system, you need to acquire a supply of the following:

- ⇒ male, female and spayed female license certificates. You can order these in blocks of duplicate licenses or create a licensing program on your computer that will produce duplicate forms when printed.
- ⇒ transfer license certificates if your town does transfer licenses.
- ⇒ kennel license certificates for each of three types of kennels, an original and a duplicate for each license
- ⇒ metal tags on which the name of your town, the year and the tag number has been stamped to be given out with the license certificates

- ⇒ metal tags on which the name of the town and the year, but no tag number, has been stamped, to be used as substitute tags
- ⇒ metal hooks which the dog owner may use to attach the tag to the dog's collar.

At the time you receive your dog license supplies, you will also receive a receipt form showing the number of books of male, female and spayed female license certificates, the serial numbers for each type, the number of transfer and kennel licenses and the number of tags. Check the supplies you have received against the receipt form to be certain that you have received what has been entered on the receipt. Note difference, if any, directly on the receipt form prior to signing it. One copy of the signed receipt form should be mailed to the county treasurer (ONLY if your county is in existence and your town belongs to the county dog system)

3. Completing a License for Issuance

a. male and female licenses [140:137,147]

On male and female license certificate forms, you need to include: the name of your town, the name of the town clerk, the number of the license, the number of the dog tag if different. Clerks are not required under law to sign each certificate in the upper part of the license, however many town clerks either sign or enter their signature using a facsimile stamp.

If you expect to issue a large number of licenses and you are using forms instead of a computer driven form; it would be of some help if ahead of time you or one of your employees has entered the name of the town and your name on the forms to save time.

Before issuing a license, you will need to enter the following information in the spaces provided:

- date of issue and no other date
- tag number
- name of owner or keeper
- address of owner or keeper
- name of dog
- breed -in many cases the dog will be mixed. Enter the breed or breeds which the dog most closely resembles, such as Lab/Husky, Sheltie X, etc. This will help the dog officer identify the dog
- color - This may be a single or a combination.
- age - if unknown, ask the owner to estimate as closely as possible.
- issuing clerk - The person who is issuing the license should sign in the space provided. This may be the town clerk, assistant, or other clerk designated by the town clerk.
- other data - Enter not over 10 descriptive words as requested by the owner which further identify the dog, such as tattoo number, scars, weight, etc. Also you may enter a notation of the expiration date of the most recent rabies shot or other information helpful to you.

(Note - Some clerks put telephone numbers on form as well to contact in case dog is found loose).

b. spayed female license [140:139]

If an owner requests a spayed female license and the dog is being licensed for the first time in your town, proof of spaying must be shown by the owner. Proof may be:

- a certificate of spaying signed by the vet who performed the operation
- a statement signed under the penalties of perjury by a vet registered and practicing in Massachusetts, describing the dog and stating that he has examined the dog and that it appears to have been spayed and thereby deprived of the power of propagation
- a receipt of a bill from the vet who performed the operation that spayed the dog
- a spayed female license certificate, or certified copy thereof, from another town if the dog was previously licensed elsewhere

If the owner does not have a spay certificate with him at the time he appears in the office to license the dog and the spaying was done by a local vet, you may call the vet for a verification of the spaying and issue a spayed female license after obtaining such verification.

In any event, prior to issuing a spayed female license, enter all the information listed above under a. male and female licenses [140:137] and enter in the space provided for other date, the date on which the proof of spaying was shown or obtained by you and the type of proof. Such a note might be spay certificate shown 3/25/99, or telephone verification of spaying by (name of vet) 3/25/99.

c. transfer license [140:146]

If a dog is permanently removed from one Massachusetts town to another, the owner or keeper must, within 30 days of his moving into the new town, present the original license certificate and tag to the clerk of the new town. The clerk must take up the license certificate and tag and issue a new license. A transfer license form is to be used for this purpose. However, if your town has promulgated new rules and regulations for dog licensing and does not include a transfer license - a regular license is to be issued.

4. Issuing the License

After you have completed the license, separate it if it is carbon, or make sure you have a copy and the owner has a copy. Also you must supply him/her with a numbered dog tag and hook - the tag number should be on the license. Your copies must be retained in your office until after the completion of a satisfactory audit. [state retention schedule #2.75]

5. Fees waived [140:139]

No license fee shall be charged for a license for a dog specially trained to lead or serve the blind. However, the Massachusetts Commission for the Blind must certify that the dog is so trained and is actually in the service of a blind person.

No fee shall be charged for a license for a dog professionally trained in the hearing dog business to serve a deaf person. However, the director of the Office of Deafness must certify that the dog is so trained and actually in the service of the deaf person.

If you should issue such a dog license, note on the license certificate and on your record of licenses that the fee has been waived because the dog has been certified as serving a blind or deaf person.

No fee shall be charged for a license for a dog owned by a person aged 70 years or over in any city or town that accepts MGL 140:139.

a. refund of fee [140:139]

The former county system did not allow the refund of any license fee once it had been turned over to the county. No refunds were given even if: the dog had died, been disposed of, lost, removed from Massachusetts, a female dog had been spayed after the female license was issued, or the license fee was paid by mistake. Your town should make a regulation to address these issues in order to avoid problems.

6. Substitute Tags [140:137]

If a dog tag is lost during a licensing period, the owner must obtain a substitute tag. The clerk should use a blank tag and stamp out the original tag number utilizing a set of metal stamps and a hammer.

7. Kennel Licenses [140:136A, 137A]

A kennel is defined as any of the following:

- * one pack or collection of dogs on a single property whether maintained for breeding, boarding, sale, training, hunting or other purposes
- * a shop where dogs are on sale, including an individual who keeps one female for breeding and sells puppies from time to time
- * every pack or collection of more than 3 dogs, three months old or older, owned or kept by a person on a single premises irrespective of the purpose for which they are kept.

If you are in doubt about whether a particular situation in your town constitutes a kennel, check with your town counsel.

A kennel license does not apply to pet shops licensed under 129:39A or to institutions organized for scientific research, etc. licensed under Chapter 49A. [140:141A,141B]. In some towns, there are zoning bylaws governing the operation of a kennel within the town. If you have such a bylaw, check carefully prior to issuing a kennel license to be sure the person requesting the license has complied with the bylaw requirements.

IV FISHERIES AND WILDLIFE LICENSES

A. HISTORY

Fish and game were an important supply of food for the early settlers of Massachusetts and the concern for proper management dates back to colonial days. Chapters 53, 54, and 55 of the Revised Statutes of 1836 contained the early provisions of the law governing hunting, fishing and taking of shellfish during certain periods of the year and established fines for noncompliance.

In 1902, Chapter 91 of the Revised Laws established a state board of commissioners on fisheries and game to enforce regulations with respect to fishing, hunting and trapping. Chapter 92 prohibited Sunday hunting, specified closed season for certain game and regulated the manner in which an individual could hunt and trap.

Hunting licenses were first required under Chapter 317 of the Acts of 1905. However, only unnaturalized foreign born persons were required to obtain these licenses from the city or town clerk in the community in which the applicant resided. If the licensee was convicted of violation of the fish and game laws, or of hunting on Sunday, the town clerk was to revoke the license.

Under Chapter 198 of the Acts of 1907, the licensing requirement was expanded to include all those who were NOT residents of the commonwealth and actually domiciled therein for a period of 6 months. This

license was obtained from the commissioners on fisheries and game. However, if a resident of another state owned real estate in the commonwealth which was assessed at a value of not less than \$500 he could hunt without a license.

Chapter 484 of the Acts of 1908 further expanded the licensing requirement to include Massachusetts residents who were United States citizens. This license to hunt was called a certificate of registration and was obtained from the clerk of the town in which the individual lived. The requirement for obtaining a certificate of registration did not apply to a citizen who is a “bona fide resident on land owned or leased by him and on which he is actually domiciled, which land is used exclusively for agricultural purposes and not for club or shooting purposes.” This provision has remained in the law to the present time.

The town clerk was required to keep a record of all certificates issued and on the first Monday of every month had to pay to the state treasurer all money received for certificates issued during the preceding month. In 1909, town clerks were allowed for the first time to be paid part of the fee from the sale of certificates of registration (hunting licenses). Fifteen cents of the fee was to be returned to the town clerks by the state treasurer if the annual salary of such clerk did not exceed five hundred dollars.

Chapter 235 of the Acts of 1911 required that the applicant prove to the satisfaction of the town clerk that he was a citizen of Massachusetts prior to receiving a license. It also provided for a minor’s hunting license for those under 16, requiring that the written consent of the parents be submitted.

It was not until 1919, under chapter 296 of the Acts of that year, that fishing licenses were required. Section 3 authorized the town clerk to designate a resident of the town as a deputy registrar for fishing licenses. The deputy was required to return to the town clerk the fee for licenses issued. Chapter 467 of the Acts of 1921 provided for a combination certificate of registration which allowed the holder to hunt, trap and fish. There was also a certificate allowing the holder to hunt and trap and a separate certificate covering fishing only. In 1925 under Chapter 295, the term sporting license came into use and these licenses covered both hunting and fishing as they do today.

Chapter 325 of the Acts of 1924 increased the fee to be retained by the town clerks for issuing hunting, trapping and fishing licenses from 15 cents to 25 cents per license. In spite of the fact that the license fees charged the sportsmen increased many times over the next 57 years, the town clerk’s fee remained at 25 cents per license until 1981 when Chapter 758 of the Acts of that year increased the town clerk’s fee to 50 cents.

As of January 1, 1997, any city or town clerk issuing any license under the authority of any provisions of this chapter SHALL, except as otherwise provided by law, charge (licensee) a municipal processing fee of one dollar, provided, however, that such fee be IN ADDITION to the (\$.50) fee provided under section 17 of this chapter. [131:17A]. Also in 1997 the regulations stated that no city or town clerk shall be required to sell the licenses established under chapter 131 of the MGL. Each city or town clerk shall, on or after July 1st of each year, give an annual notice of an intention NOT to sell said licenses to the director on a form prescribed by the director. Said notice not to sell licenses shall only be effective if received by the director by July 31st each year, provided, however, that the failure of a city or town clerk to so notify the director of an intention not to sell shall be construed as an intention to sell said licenses during the next calendar year. Where said notice not to sell licenses is received in a timely manner, the director shall not forward for sale in the next year any licenses to the sender of such notice. This section took effect Jan. 1, 1997 - and was taken from the *Manual for the Issuance of Sporting, Hunting, Fishing & Trapping Licenses for 1999*.

The laws relative to fishing and hunting licenses underwent a major revision and recodification in 1930 under Chapter 393 of the Acts of that year. A division of fisheries and game headed by a director was established under the department of conservation. A license was required in order to fish in any inland waters in the state, sporting licenses were issued authorizing a person to hunt and fish, but a separate license was required for trapping.

A second major revision of Chapter 131 was adopted by the General Court under chapter 802 of the Acts of 1967. Chapter 131 has been amended several times since 1967 and is now the chapter governing the various licenses issued by town clerks for hunting, fishing and trapping. The number of categories of licenses has increased. Stamps for archery and primitive firearms, and stamps for hunting waterfowl have been added.

The division of fisheries and game is now the division of fisheries and wildlife and comes under the Department of Fisheries, Wildlife and Recreational Vehicles instead of the Department of Conservation.

Fees have increased considerably over the years and provisions have been adopted to allow a reduced fee for licenses issued to those 65-69 years of age. Free licenses are available to those over 70, and for paraplegic, blind and mentally retarded persons.

Town clerks are still required to report monthly to the state and to turn in fees collected as they were in 1930. However, because of the proliferation of the classes of licenses to be sold, reporting has become more complicated.

The license fees for each type of license were established by the General Court and were specified in Chapter 131 until recently when Chapter 572 of the Acts of 1980 authorized the commissioner of administration to establish these fees.

1. Licenses [131:11-16]

The department of fish and game will supply each clerk who wishes to sell hunting and fishing licenses with books of licenses. The licenses are valid during the calendar year for which it is issued and expires on December 31st. [131:32]

Each person over 15 years of age or older who wishes to fish in any INLAND waters in Massachusetts must first obtain a fishing license. [131:11,14} Any individual under 15 years may fish without a license as long as accompanied by an licensed adult. There are many different classifications of licenses for fishing and hunting, and each clerk should refer to her license chart (supplied by fish and game) for proper identification of the type of license to be sold based on age and eligibility.

In order to issue a hunting or sporting license, the clerk must see a prior year's license, a new firearms i.d. card (Section 129B of chapter 140) or a certificate of completion of a hunter safety course. Individuals who have been issued a firearms identification card or a license to carry firearms, including Class A and B licenses, under Section 131 of said Chapter 140 shall be automatically qualified to receive a sporting, hunting, fishing or trapping license.

All minors between 15 – 17 years of age who wish to purchase a hunting license must produce the following documentation in order to purchase any hunting license: a basic hunter education course certificate from any state or province and a letter of consent allowing the minor to hunt, from his or her parent or guardian or a letter signed by the minor's parent or guardian affirming that the minor will be accompanied at all times by a licensed adult while hunting and a letter of consent allowing the minor to hunt from his or her parent or guardian. This new law restores legislation that had been in effect previous to 1998 and is similar to the other 49 states requiring all new hunters take a basic hunter education course in order to purchase a hunting or sporting license.

Sporting licenses may only be issued to United States citizens who have been residents of Massachusetts for at least 6 months, or to those who are on active duty in the military and stationed in Massachusetts. Licenses may be issued to aliens: 1) who have established residence in the commonwealth for a period of at least six consecutive months immediately prior to making application, and 2) all other aliens; provided, however, that in the case of a hunting or sporting license, an alien shall hold a valid permit issued under the provisions of section one hundred and thirty-one H of Chapter one hundred and forty.

For a full list of rules and regulations, please refer to: **MANUAL FOR THE ISSUANCE OF SPORTING, HUNTING, FISHING & TRAPPING LICENSES FOR (year)**. This manual is issued by and may be obtained from Division of Fisheries & Wildlife, 100 Cambridge Street, Room 1902, Boston, MA 02202. If you have any questions call 1-617-727-3151.

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