



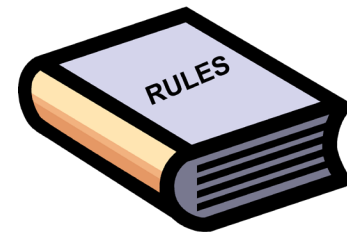
# Municipal Law for Clerks

Chapter 4

Municipal Records of the Clerk



# Resources

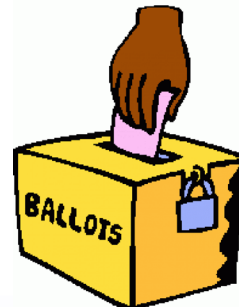


- Municipal Clerk's Manual, revised in 2013
- Maine Municipal Association Legal Staff
- Maine Revised Statutes (MRSA)
- State agencies (Vitals, SOS, IFW, etc.)
- Local Government Records Disposition Schedule
- MTCCA Records Management Class
- Clerk mentors



## Municipal Records of the Clerk

- Town Meeting & Election Records
- Maine law requires the Clerk to accurately record the votes of all town meetings.
- Clerk is responsible for keeping nomination papers, certificates of political caucus nominations, ballot receipts from ballot clerks, and the ballots.



# Municipal Records of the Clerk

- Records of Election or Appointment/Oath of Office



- The clerk must record the election or appointment of each municipal official or deputy, including his/her own.
- The appointment must be in writing and must be signed by the appointing authority.
- Before an official or deputy assumes the duties of office, he/she must be sworn in by the moderator in open town meeting, by the clerk or other person authorized by law to administer an oath (dedimus justice, notaries public, attorneys at law)



# Municipal Records of the Clerk

- The oath of office is required of each official or deputy at the commencement of each new term, even if a person is re-elected or re-appointed to the same office.
- A municipal official is defined as an elected or appointed member of municipal government. By definition, this includes selectmen, councilors, mayor or alderman, clerks, tax collectors, treasurers, planning board members, road commissioners, animal control officers, etc.
- Municipal employees do not require an oath of office if they are not discharging official duties in the name of the municipality.



# Municipal Records of the Clerk

- Oaths vs Affirmations

The oath of public office is found in the Maine Constitution, Article IX, Section 1, by which the municipal official swears to support the federal and state constitutions for as long as that individual remains a citizen.

Alternate wording is also provided, in the form of an affirmation, which provides that the person agrees to perform the duties of office in accordance with the Constitution and laws of this state, but makes no mention of the U.S. Constitution, and pledges no ongoing fidelity to any constitution beyond the term of office and in the context of the duties of the office.

Both the oath and affirmation found in the Maine Constitution conclude with the statement "So help me God." , but it is commonly held that no governmental oath in this country can compel the person taking the oath to subscribe to a belief in God against his or her religious principles.



# Municipal Records of the Clerk



- When certain municipal officials are chosen and qualified, notification should be sent as follows:
  - Municipal Treasurer – State Treasurer
  - Animal Control Officer – Commissioner of ME Dept. of Agriculture
  - Clerk – Secretary of State, Office of Vital Records, IFW
  - Tax Collector – Maine Revenue Services
  - Excise Tax Collector – Bureau of Motor Vehicles
  - Registrar of Voters – Secretary of State
  - Road Commissioner – ME Dept. of Transportation



# Municipal Records of the Clerk

- Record of Public Meetings
  - Maine’s FOAA requires a record of all public proceedings of a public body, excluding one’s that are purely advisory.
  - An audio, video or other electronic recordings satisfies this requirement.
  - At a minimum, the record must include:
    - Time, date and place of meeting
    - The members of the body either present or absent
    - All motions and votes taken, by individual member if by roll call





# Municipal Records of the Clerk

- Decisions of Municipal Boards
- FOAA law requires that written records be created whenever a municipal body:
  - Issues a denial or conditional approval of any application, license, permit or certificate
  - Issues a decision involving dismissal or the refusal to renew the contract of any public official, employee or appointee
- The written record must include the decision, any conditions of approval, and must set forth the reason for the decision, along with any findings of fact.



# Municipal Records of the Clerk



- Board of Appeals Records
- This board is required to file a record of all board meetings and all correspondence with the municipal clerk's office.
- Note: In many cases, there is no specific requirement to file records of a board with the municipal clerk. The board that creates the record can be its custodian.



# Municipal Records of the Clerk

- Conflict of Interest Disclosures & Abstentions



- The vote of a municipal body is voidable when any official votes on any question in which that official has a direct or indirect pecuniary interest. (30-A MRSA Sec. 2605)
- In situations involving a municipal official with a direct or indirect pecuniary interest, the vote is not voidable if:
  - The official makes full disclosure of his/her interest before action is taken, and
  - The official abstains from voting, for the negotiation or award of the contract, and
  - The official abstains from otherwise attempting to influence the decision in which that official has an interest



# Municipal Records of the Clerk

- Annual Report
- Must be kept in the municipal office and must be open for inspection of voters during regular business hours at least three days prior to the annual town meeting.
- Items required to be included are found in 30-A MRSA 2801:
  - A record of all financial transactions during the last municipal year
  - Detailed statement of the assets and liabilities of the municipality, including a list of delinquent taxpayers and the amount due from each
  - Post audit report for the last municipal year including the name & address of the auditor, auditor's comments, comparative balance sheet, statement of departmental operations
  - Vital record data can be included, but is limited to the number of births by year and location of occurrence, deaths including date of death, name, age & town where death occurred, and marriages by names of parties and date of marriage.



# Municipal Records of the Clerk

- Treasurer's Bond
- Before assuming the duties of office, the municipal treasurer must give a surety bond to the municipality, conditioned on the faithful discharge of the duties of the office and recorded by the clerk after approval by the municipal officers.



# Municipal Records of the Clerk



- Assessment Record
- The assessors must make a record of their assessment, and of the invoice and valuation from which it was made, and deposit it in the assessor's office before the taxes are committed to the tax collector for collection.
- In a primary assessing area, the record must be deposited with the municipal clerk, before the taxes are committed to the tax collector.



# Municipal Records of the Clerk

- Town Roads
- Eminent Domain
  - A municipality may take property for highway purposes. As part of the eminent domain process, the municipal officers must file a condemnation order with the municipal clerk. 23 MRSA Sec. 3023
- Road Discontinuance
  - The process by which a municipality may terminate any property interest held by the municipality for highway purposes, after notice to all abutting property owners and the municipal planning board, and after filing an order of discontinuance with the municipal clerk. 23 MRSA Sec. 3026
- Neither a taking of a property or a formal discontinuance is deemed valid against owners or abutters who have not received notice unless a deed or a certificate attested by the clerk is recorded in the registry of deeds.



# Municipal Records of the Clerk



- Interlocal Cooperation
  - Two or more municipalities or quasi-municipal corporations may contract with one another to provide services and facilities. 30-A MRSA Sec. 2201
  - The agreement must be filed with the clerk of each municipality and the Secretary of State before the agreement can take effect. The agreement must specify:
    - Its duration
    - The organization of any legal entity created by the agreement
    - The purpose of the agreement
    - The manner of financing the joint undertaking and of establishing and maintaining a budget
    - The method to terminate the agreement and dispose of property
    - Any other necessary measures





# Municipal Records of the Clerk

- Commercial Filings



- Mercantile Partnerships – where two or more persons become associated as partners for the purpose of engaging in a business having to do with the buying and selling of merchandise, or with trade or commerce. 31 MRSA Sec. 1
- Sole Proprietor – any person engaging in a mercantile business and who adopts any business name other than his or her own name exclusively. 31 MRSA Sec. 2
- A certificate **must** be filed in the clerk’s office of the municipality in which the business is to be conducted. The one-time filing fee is \$10.



# Municipal Records of the Clerk

- Hospital Services Lien



- Applies only to clerks of municipalities in which hospitals are located.
- A licensed hospital in the State of Maine is allowed a lien for the reasonable charges for hospital care, treatment and maintenance with respect to persons injured by reason of accident.
- The written notice must be filed with the clerk of the municipality where the hospital is located and must contain:
  - The name & address of the injured person
  - The date of the accident
  - The name & location of the hospital
  - The name of the person or corporation alleged to be liable to the injured party for the injuries received.



# Municipal Records of the Clerk

- **Miscellaneous Filings & Records**
  - Sewer Drain Assessments 30-A MRSA Sec. 3421
  - Farmland Exemption 30-A Sec. 3442
  - Private Drains 30-A Sec. 3421
  - Poles & Wires 35-A Sec. 2501, 2502
  - Highway Boundary 23 MRSA Sec. 653
  - Historical Marker 5 MRSA Sec. 13090-D
  - Revenue Refunding Securities 10 MRSA Sec. 1068
  - Dangerous Buildings 17 MRSA Sec. 2851
  - Oil Trademarks 10 MRSA Sec. 1651
  - Natural Gas Pipelines 35-A MRSA Sec. 4514
  - Liens for Monument Work 10 MRSA Sec. 3701
  - Church Pews 33 MRSA Sec. 454
  - Partition Fences 30-A MRSA Sec. 2955

etc



# Test your knowledge

- Examples of municipal records filed with the clerk
- Difference between an oath and an affirmation
- Who to notify when certain municipal officials take office
- When formal decisions of boards must be filed
- Annual report requirements



# Thank You



- You have reached the end of Module 4 of Municipal Law for Clerks.
- For specific questions on any topic in this module, please contact the legal department at Maine Municipal Association, your town's attorney, or a clerk mentor.
- Please print this final page as proof of completion of this module.
- You may submit this final page to MMA along with the other ten modules' completion pages to obtain a certificate to be used for certification points.

