# Local Government Public Officers

## New York Department of State
## Division of Local Government

**Slide 1 – Local Government Public Officers – Welcome and Overview**
Welcome to the New York State Department of State's online course “Local Government Public Officers."

This course provides an overview of the fundamental powers and duties of local government public officers, who play a crucial part in local government operations in towns, villages, cities and counties throughout New Your State. Public officers include persons who serve in local offices that are filled by election or appointment. Elected public officers include mayors and members of municipal governing boards. Appointed public officers may include persons serving as department heads, enforcement officers and members of other boards such as planning boards and zoning boards of appeal. This course will review the basic requirements and guidelines that public officers need to know to carry out their local government duties.

**Slide 2 – Instructions**

Before we start, let's go over a few basic instructions. *Please click each item on the left.*

One hour - This course should take approximately one hour to complete.

Assessment – There will be an assessment at the end of the course. You must score at least 70% to pass.

Certificate of Completion – You may print a certificate of completion at the end of the course. If you are a member of a planning board or a zoning board of appeals, the printed certificate should be presented to your municipality; the municipal governing board is empowered to determine whether this course can count towards your 4-hour annual training requirement. We suggest that you also keep a copy of the certificate for your own files.

Helpful Features – Please take note of a few features on your screen that will help you move through the course.

To advance slides, use the navigation buttons that appears at the bottom right after you have reviewed all the information on the slide.

On the top right are a few additional helpful tabs, including *Resources*, and *Exit*.

On the top left is the *Glossary*.

On the left-hand side of the screen there are two tabs; the *Menu* shows the course outline and *Notes* has the course script.

We are ready to begin.

**Slide 3 – Offices and Officers**
First, let's look at the definitions of state and local public officers.

**Slide 4 – Who are Public Officers?**
Public Officers Law § 2, defines "public officer". The term "public officer" includes a "state officer" and a "local officer." We will look at the definition of each.

*See Resources tab, under State Laws for a link to New York State Public Officers Law § 2.*

**Slide 5 – Who are Public Officers at the State Level?**
Some general indications that a person is a state level public officer include:

- The person is elected to office by electors (voters) throughout all of New York State.
- The person is appointed by one or more state officers, or by the state legislature.
- The person is authorized to exercise his or her official functions throughout the entire state, or without limitation to any political subdivision of New York State.

The office of a state officer is considered a state office.

Examples of New York State officers who are elected in state-wide elections include the Governor, the State Comptroller, and the Attorney General.

Examples of appointed New York State officers are commissioners of state agencies, and people appointed to serve on state boards.

The decisions of these New York State officers often impact citizens throughout New York State.

**Slide 6 – Who are Public Officers at the Local Level?**
A local public officer is <u>not a state level public officer.</u>

A local officer is a person who satisfies one or more of the following general characteristics:

- The person is limited in the execution of his or her official functions to <u>only a portion of the state</u>
- The person is elected by the voters of only a portion of the state or is appointed
- The person serves a <u>political subdivision or municipal corporation</u>

The office of a local officer is considered a local office.

Examples of elected local officers are city and village mayors, town supervisors and local governing board members.

Examples of appointed local officers are code enforcement officers, planning board members, and zoning board of appeals members.

Public officers who work for local governments are important members of our communities. They are your neighbors, friends or even members of your family. They make decisions that affect people's lives, and citizens' rights in your community. They are elected or appointed to public office and exercise governmental functions. Some public officers exercise some degree of discretionary authority associated with the office in which they serve.

This course focuses on public officers who are local officers within the State of New York. For the remainder of this course, discussions about "public officers" will be in reference to local government public officers in New York State.

**Slide 7 – Qualifications**
We will now look at the qualifications needed to be a public officer.

**Slide 8 – Qualifications for Membership**
Public officers must meet several basic, minimum requirements as stated in New York State Public Officers Law § 3.

*Click the buttons on the left for more information.*

- Age – You must be at least 18 years of age.
- Citizenship – You must be a U.S. citizen.
- Residency – You must be a resident of the municipality in which you serve as a public officer.

We will now look at each of these qualifications in more detail.
*See Resources under State Laws for a link to New York State Public Officers Law § 3*

**Slide 9 – Age**

The State is authorized to set the qualifications for public officers and employees in accordance with the New York State Constitution. As a general rule, public officers must be at least 18 years of age. However, some public officers have different requirements. The State Legislature has established differing age limitations for holding different types of public offices.

For example, police officers are public officers within the meaning of the Public Officers Law. However, Civil Service Law requires certain police officers to be at least twenty years of age.

State Youth Commission members are also public officers. Sixteen years of age is the minimum age for members of this Commission. Other commissions and boards with this same age requirement includes youth boards, recreation commissions and community boards in NYC.

*See Resources tab under State Laws for a link to Civil Service Laws, Section 58, subdivision 1, paragraph (a).*

**Slide 10 – Citizenship**
U.S. Citizenship is required to hold public office.

The Supreme Court of the United States has upheld the citizenship qualification requirement. In the *Matter of Sugarman v. Dougall*, the Court stated that:
"Just as the Framers of the Constitution intended to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections, each state has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen. . . . Such power inheres in the State by virtue of its obligation, . . . to preserve the basic conception of a political community. And this power and responsibility of the State applies not only to the qualifications of voters, but also to persons holding state elective or important nonelective executive, legislative and judicial positions, for officers who participate directly in the formulation, execution or review of broad public policy perform functions that go to the heart of representative government."

*See Resources tab for case law: Sugarman v. Dougall, supra, 93 S. Ct. at 2850.Amin v. Bronstein, No. 73 CIV. 4011, 1973 WL 251, at *8 (S.D.N.Y. Nov. 14, 1973)*

**Slide 11 – Residency**

Generally, to hold public office, there is a local residency requirement. The meaning of the term residency is derived from traditional notions of domicile, meaning "where you live".

New York State Election Law § 1-104 (2) defines "residence" as "that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return." To determine a person's residence, both expressed intent and conduct must be evaluated. To be a resident of a place, a person must be physically present with the intent to remain for a period of time.

Residency cannot be gained or lost due to a person's service in the military, while a student, or while in a public prison or certain other public institutions as stated in New York State Constitution, Article 2, § 4.

State Exemption from the Residency Requirement:
Occasionally, the State statutory residency requirement may be subject to a *legislative exemption* that the State Legislature passes. Most *legislative exemptions* from the

residency requirement that must be met for specified public service in each type of local government are contained in New York State Public Officers Law § 3. Town officers and employees should also take note of the *legislative exemptions* from the town residency requirement contained in New York State Town Law § 23.

Before or upon election to a public office, or appointment to a position of public employment or a public office, it is recommended that you contact the municipal clerk or attorney to understand any residency requirement that must be met for service in your position of employment or office.

Another Exemption from the Residency Requirement:
The residency requirement may also be changed to cover a public officer whose powers and duties are exercised on behalf of more than one municipality. For example, code enforcement officers often work part-time for several municipalities, even though each code enforcement officer (CEO) cannot have a legal primary residence in all of the municipalities for which he or she works part-time. Under Article 5-G of New York State General Municipal Law, it would be permissible for the services performed by such a CEO to be the subject of an inter-municipal agreement between all municipalities wherein the CEO's duties are to be performed. Such an inter-municipal agreement could lawfully expand the area wherein the CEO can reside, to the area of all municipalities that are parties to the agreement.

Sharing a CEO as described above can also have added benefits. It may attract higher caliber candidates to the position of CEO. The part-time CEO position can be changed to a full-time CEO position where all municipalities that are parties to the inter-municipal agreement cover the costs associated with any health care coverage and retirement benefits extended to the CEO. This arrangement may increase a municipality's ability to hire a CEO with more experience and help with employee retention that may foster stability and predictability in code enforcement.

Sharing an employee is a good example of an option that can be studied/implemented through a Local Government Efficiency (LGE) Grant.

*See Resources tab:*

*Under State Laws for links to*

- *New York State Public Officers Law § 3*
- *New York State Election Law § 1-104 (22)*
- *New York State Town Law § 23*
- *New York State General Municipal Law Article 5-G*

- *NYS Constitution, Article 2, § 4*
- *Link to the LGE Program*
- *Residency case law references*

**Slide 12 – The Differences Between Public Officers and Public Employees**
How are public officers at the local level different from other local public employees?

**Slide 13 – Local Government Public Officer vs Local Government Employee**
How are public officers at the local level different from other public employees?
*Click on files for more information on these 2 roles.*

PUBLIC OFFICER CHARACTERISTICS
*Use scroll bar on right*
A public officer has the following general characteristics:

- The position is authorized by statute, resolution or charter. In other words, a State or local enactment created the position and refers to it as an "office."
- The officer must take and file the constitutional oath.
- The officer carries out a statutorily defined duty or duties.
- The duties are part of the sovereign power of the governmental entity.
- The duties may involve the exercise of discretion.
- The officer exercises a high degree of initiative and independent judgment.
- The position, if elected or appointed, usually has a fixed or definite term.
- The compensation generally does not depend on the number of hours worked.

LIKE PUBLIC OFFICER
Like public officers, public employees perform functions and exercise duties on behalf of the sovereign government, whether that government be the State, county, city, town or village.

New York State Civil Service Law § 62 imposes an oath of office requirement on public employees, who are not classified in the labor class but are otherwise a part of the State Service System. The oath that public employees must take and file is derived from New York State Constitution Article XIII, § 1. Like some public officers, public employees are appointed to serve.

The substantive work performed by public employees in counties, cities, towns and villages are government functions authorized under local regulations, which include charters, administrative codes, local laws and ordinances.

UNLIKE PUBLIC OFFICER
Unlike a public officer, an employee's functions typically are:

- Routine
- Subordinate
- Advisory
- Directed

Qualifications
Public employees have different qualification requirements than public officers. A public employees need not be a U.S. citizen before appointment in the competitive class of

civil service. General employment matters for public employees are usually governed under New York State Civil Service Law.

*See Resources for:*
*New York State Civil Service Law § 62*
*New York State Civil Service Law § 53*
*New York State Constitution Article XIII, § 1*

**Slide 14 – Election and Appointment**
Elections and appointments must be made in accordance with law, which can include state and local regulations.

**Slide 15 – How Public Offices Are Filled**
New York State Constitution, Article 9, § 1 states:

> (a) *Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof. Every local government shall have power to adopt local laws as provided by this article.*
> (b) *All officers of every local government whose election or appointment is not provided for by this constitution shall be elected by the people of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.*

Election: Governing or legislative bodies are comprised of elected members such as the city/common council, the village board of trustees and the town board.
Appointment: Elected local officers make appointments to boards, offices and positions, such as:

- Members of Planning, Zoning and other Administrative Boards
- Code Enforcement Officers
-

Appointed officers and employees, such as heads of departments, may make certain appointments.

Once elected or appointed to office an oath of office or official undertaking must be filled. Oaths of office and official undertakings are discussed in upcoming slides.

**Slide 16 – Local Public Officers – Filled by Election & Appointment**
We will examine which offices are elected and which are appointed in various local governments in New York State.

*Please click on each file or "next" for more information.*
TOWN: New York State Town Law § 20 lists the supervisor, town councilpersons, town clerk, town justices, town superintendent of highways, and receiver of taxes and assessments (and/or assessors and collector) as elective public officers.

All other town officers and employees are appointed unless otherwise provided by law

VILLAGE: New York State Village Law § 3-301 lists the following as elective public officers: the mayor, trustees and village justices. All other officers in a village shall be appointed by the mayor, subject to the approval of the board of trustees.
A village charter (enacted or approved by the State legislature) may also have valid provisions, which should be consulted.

CITY: *Use scroll bar on right*
Elected and appointed officers are listed in New York State General City Law as well as in the charter enacted to govern each city's operations.
New York State contains all of the major forms of city government: council-manager, strong mayor-council, weak mayor-council and commission. All cities have legislative bodies called city or common councils that are comprised of elected members. The elections of city council members may be by wards, at large, or by a combination. Cities have mayors; some mayors are elected at large by the voters, while others are selected by the council. As you see, city government in New York exhibits a variety of forms. Cities of New York State have home rule powers, including authority to change their charters and adopt new charters by local action. Although cities have home rule power, this authority is not unlimited, and must be exercised as authorized by the State Constitution.

A city's charter forms the legal basis for the operation of the city. The charter enumerates the basic authority of the city to govern, establishes the form of government, and sets up the 3 branches- legislative, executive and judicial. Each city has enacted and amended various ordinances and local laws over time, and has often codified these enactments into a code of ordinances and/or local laws. Together, the charter and code prescribe the method and extent to which the city carries out its legal powers and duties. It is difficult to describe a common city structure because all cities have separate charters granted or continued by the State Legislature, and all now have the power to revise their charters by local action.

City departments, offices, agencies and commissions are led by public officers. City leaders can address municipal needs by creating and staffing departments and offices. Cities provide and maintain basic services and infrastructure such as roads, water and sewer. A city may provide other services and amenities depending on the city's size, population, resources and finances. A city may decide to create departments, such as a Parks and Recreation Department, or establish an agency or office to address economic development, land use planning or other matters and appoint public officers to head these offices, agencies and departments.

COUNTY: *Use scroll bar on right*
Elected and appointed officers are listed in New York County Law and in each charter that has been locally adopted and approved at referendum to govern the county's operations.

Under New York State County Law, elected positions include:

- District Attorney
- Treasurer
- Sheriff
- County Clerk

A County Charter that is adopted at public referendum may alter certain duties of local officers. The Charter may provide for a County Executive or Manager, depending on the organization. This leader may be elected, or appointed by the county legislators, also depending on the organization.

**Slide 17 – Oath of Office**
Let's look at the requirement to take an oath of office.

**Slide 18 – Oath of Office**
New York State Constitution
Members of the State Legislature and all public officers, executive and judicial, are required to take and sign an oath of office provided by Article XIII, § 1 of the New York State Constitution before they commence the duties of their office.

State Statute
Public Officers Law § 10 reiterates the requirement for every public officer to take and file the oath required by law before he/she performs official duties. Public Officers Law § 10 also governs the procedures for administering oaths of office and specifies the public office in which such oaths must be filed.

Timeframes
An oath of office for an elective office must be taken and filed before or within 30 days after the commencement of the term of office.

An oath of office for an appointive office must be taken and filed within 30 calendar days after notice of the appointment or within 30 calendar days after the commencement of the term of office. Public Officers Law § 30 provides special provisions for oaths of public officers who are on active duty in the armed forces at the time of the election or appointment.

What happens if your oath is not taken and filed?
Public Officers Law § 30 provides that the office of a public officer becomes vacant when the public officer refuses or neglects to take and file his or her oath of office within the time required by law. Therefore it is of particular importance that public officers take and file their oath of office within the time permitted by law.

Public Officer's Law § 15 entitled "validation of official acts performed before filing official oath or undertaking" protects the rights of the public when an officer has acted without taking his or her oath of office. The section validates the actions by an official who either had not taken and filed an official oath, as well as those who took official

action before they took and filed their oath of office. It also makes their acts valid if there was a defect in the oath of office. Public Officer's Law § 15 reads:

*"If a public officer, duly chosen, has heretofore entered, or shall hereafter enter on the performance of the duties of his or her office, without taking or filing an official oath … as required by the constitution, section 10 of this article [or] section 25 of the Town Law … his or her acts as such officer, so performed, shall be as valid and of as full force and effect as if such oath had been duly taken and filed…"*

If a public officer fails to take the oath of office in an appointed position, the office and decisions made are valid, but the public officer can be replaced at any time since a *vacancy* was created in the office when the oath of office was not filed within 30 calendar days. The person or body with the power of appointment may reappoint or replace the officer.

Best Practice: It is best practice to take and file the oath of office before beginning the duties of a public officer. Taking the oath is not a task to be taken lightly, but should be seen as an important prerequisite to the commencement of the term of office.

*See Resources tab for:*

- *The Constitution of the State of New York Article XIII, § 1 on Public Officers*
- *New York State Public Officers Law §§ 10, 15, 30*

**Slide 19 – An Official Takes Oath**

Here is a video demonstration of a local officer, in this case, a town supervisor, taking an official oath of office. The officer was elected in November and the official oath of office was administered the following January, before he began his term of office.

*"I, …, do solemnly swear that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of supervisor for the Town of …, according to the best of my ability."*

**Slide 20 – An Official Begins His Term**

Let's look at the beginning of a new term for an elected town officer such as a town supervisor. Every town supervisor, like all public officers, must take the oath of office within 30 days after the commencement of the term of office. As mentioned, it is best practice to take the oath before the term begins. The oath and official undertaking must be filed in the office of the clerk as per Town Law, § 25 and Public Officer's Law, §§ 10 - 11.

The departing supervisor must turn over all town funds in his or her possession at the end of the term. Once the transfer of funds has occurred, the outgoing supervisor no longer has any authority to receive or disburse town moneys.

Town Law § 25 states that the filing of the oath and undertaking, are deemed an acceptance of the office. After this occurred, the supervisor shown on the slide is ready

to sit on the town board, preside over town board meetings, vote on all matters, and perform the fiscal and executive responsibilities of the office.

*See Resource tab for:*

- *New York State Town Law, § 25*
- *New York State Public Officers Law §§ 10 - 11*

**Slide 21 – Official Undertaking**

Certain public officers must execute an official undertaking before entering into the duties of his or her office. Every official undertaking, when required by law, must ensure that the official will faithfully discharge the duties of office and promptly account for all moneys or property received, in accordance with the law. If the official defaults, then the parties executing the undertaking are obliged to pay all damages, costs and expenses resulting from such default, not exceeding a sum, if any, specified in the undertaking.

The general law directing municipal officers to execute an official undertaking is New York State Public Officers Law § 11. It provides that:

- The undertaking of a municipal officer must be approved as to its form and the sufficiency of the sureties by the chief executive officer or by the governing body of the municipality. The governing body may approve it by resolution. A certified copy of the resolution must be attached to the undertaking.
- It shall be filed with the clerk.
- The sum specified in an official undertaking shall be the sum required by the law. If no sum is required by law, the officer or board authorized to approve the undertaking shall fix the sum.
- Every official undertaking shall be executed and duly acknowledged by at least two sureties. Public officers must follow the provisions for the specific office held.
- The failure to execute an official undertaking in the form or by the number of sureties required or by the omission of the approval required, shall not affect the liability of the sureties.
-

Other laws address details on the execution of the official undertaking. We will now look at some of these other laws.

**Slide 22 – Official Undertaking – Who Files?**

The requirement that certain public officers execute an official undertaking is stated in several statutes. This requirement is often associated with fiscal roles, roles with police powers and other positions with a high level of responsibility. We will now review information related to specific local government entities and their public officers.

*Please click on each box on the right for information on official undertakings in various local governments.*

*TOWN*

*Use scroll bar on right*

New York State Town Law § 25 requires official undertakings from the:

- Clerk
- Collector
- Receiver of taxes and assessments
- Justice
- Constable
- Highway superintendent

Other officers and employees, by local regulation, may be required to file an undertaking. The undertaking of a town officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the clerk of the county and filed in his or her office. In lieu of individual undertakings, the town board may authorize a blanket undertaking covering all appropriate officers, as per Public Officers Law, § 11.

VILLAGE

Village Law § 3-306 expressly requires the following public officers to file an undertaking upon taking office:

- Village treasurer
- Clerk
- Justice
- Acting justice

A village board of trustees may identify and require other village officers to post an undertaking. Separate undertakings must be filed unless a blanket undertaking covering all appropriate officers has been authorized.

CITY

Cities are subject to the provisions of their city charter. If you are a public officer in a city, please consult your city charter to determine if there are requirements for an official undertaking, a list of public officers obliged to comply and other related information.

COUNTY

New York State County Law § 403 requires official undertakings from:

- County clerk
- Treasurer
- District attorney
- Sheriff

In addition counties may identify other county officers who are required by law or by resolution of the board of supervisors. The undertakings of such county officers shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the clerk of the county and filed in his/her office.

*See Resources tab for laws discussed on this slide:*

- *New York State Public Officers Law § 11*
- *New York State Town Law § 25*

- *New York State Village Law § 3-306*
- *New York State County Law § 403*

**Slide 23 – Vacancy in Public Office**
Once validly in a public office, you have the right to hold the office until there is a vacancy in the office.

**Slide 24 – Right to Hold Office Until Vacancy**
Article 3 of New York State Public Officers Law (POL Article 3) identifies the circumstances under which a public officer no longer has the right to hold office, because a vacancy has been created in the office. Public Officers Law Article 3 also identifies how to fill a vacancy that is created in public office.
A vacancy can occur in several ways under Public Officers Law Section 30, including automatically upon the officer's:

- Death
- Resignation
- Removal from office due to cause
- Residency change for which no exception or exemption applies
- Conviction of a felony, or a crime
- Judgment of incompetency by a court with jurisdiction
- Judgment declaring election or appointment void, or office as forfeited or vacant
- Failure by neglect or refusal to file an official oath or undertaking within the timeframe set forth in law. Generally, the statutorily required timeframe is within 30 days of:
    - commencement of the term of an elective office; or
    - notice of appointment to an office that is filled by appointment; or
    - commencement of a term of an appointive office.

**Slide 25 – Other Ways Vacancy Occurs**
A vacancy may occur in other ways:

- A term for an office ends or expires.
- A new or an additional office is created. The newly-created or additional office will be considered vacant until filled by election or appointment.
- When any member of a board, commission, committee or authority, holding office by appointment of the governor, fails to attend three consecutive regular meetings of such board, commission, committee or authority, unless such absence is for good cause and is excused by the chairman or other presiding officer.

We will now examine two of these ways vacancies are created in greater detail.

**Slide 26 – Resignation**
Resignation is one way that a public office is deemed or rendered vacant. The requirements are addressed in New York State Public Officers Law § 31.

To Whom does a Public Officer Resign?

As the slide points out, public officers resign to the official or body designated in law. Let's look at some examples:

Towns

- Every town officer must resign to the town clerk. A town clerk must resign to the New York State Secretary of State.

Counties

- Sheriffs, county clerks, district attorneys and registrars of counties must resign to the governor.
- Every other county officer must resign to the county clerk.

Other municipalities

- The officer of any other municipal corporation must resign to the clerk of the corporation.
- Every other appointive officer, where not otherwise provided by law, must resign to the body, board or officer that appointed him or her.
- Every other elective officer, where not otherwise provided by law, must resign to the Secretary of State.

Courts

- Judges and justices of the Unified Court System must resign to the chief administrator of the courts.

Notify NYS Board of Elections of Resignation from Elective Offices.

The officer or body which received the resignation from an elective office must immediately notify the New York State Board of Elections of the resignation and its effective date, if any. This is a mandatory notification.

**Slide 27 – Resignation**

How? Public officers can resign from office by following these required steps:

- The resignation must be in writing and addressed and delivered to the place of business of the person or body (such as identified above) authorized to accept the resignation. Resignation of local public officers are usually made to the municipal clerk.
- Have an effective date of no more than 30 days (except for an effective date of up to 90 days in the case of a judge or justice of the Unified Court System). If effective date exceeds the 30 (or 90) days, then the resignation shall take effect upon the expiration of the 30 (or 90) days from the date it was delivered or filed in accordance with law. If no effective date is identified, then the resignation will take effect upon delivery to, or when filed with the proper officer or body.

Can you reconsider, once you resign? Resignation Withdrawal, Cancellation, or Amendment

An effective resignation may not be withdrawn, cancelled, or amended unilaterally. To withdraw, cancel or amend the resignation, the officer who resigns must get the consent of the officer to whom the resignation was delivered or body with which it was filed in accordance with law.

*See Resources tab under State Laws for:*
*New York State Public Officers Law § 31*
*New York State Town Law § 26*
*New York State General City Law § 2-a*

**Slide 28 – Removal**
Removal is another way that a public office is deemed vacant. The primary provision that authorizes removal of town, village improvement district and fire district public officers is § 36 of Article 3 of New York State Public Officers Law (Section 36). Section 36 sets a high standard for the removal of town, village improvement district or fire district public officers by a court.

Section 36 states, in part that: "Any town, village, improvement district or fire district officer, except a justice of the peace, may be removed from office by the supreme court for any misconduct, maladministration, malfeasance or malversation in office." Removal from office is not an action that should be taken lightly. It is in fact, a drastic measure. A public officer's removal from office requires *cause* or reason for removal.
Only a resident citizen or district attorney can remove an officer from public office using Section 36. To remove a public officer in an elected or appointed office, the citizen or district attorney must follow these steps:

1. The application for removal must be made:
    a) by a resident citizen or by the district attorney of the county and
    b) to the Appellate Division of the Supreme Court
2. Notice of not less than eight (8) days before court action must be given to the officer that is the subject of the removal application and
3. A copy of the charges must be served on the officer with such notice

After a removal application is filed in court, the public officer who is the subject of the application should answer the charges in court. Failure to answer the charges may result in a contempt of court action against the officer.

*See Resources for Public Officers Law § 36.*

**Slide 29 – Removal**
Article 3 of New York State Public Officers Law contains several other provisions that governs removal of an officer from public office. See those provisions in sections 32, 33, 33-a, and 35-a. These provisions deal with items such as:

- § 32 Removals by Senate (upon Governor recommendation)

- § 33 Removals by Governor (of specific city and other officers)
- § 33-a Removals of Heads of Departments (by Governor)
- § 35-a Removal for Treasonable or Seditious Acts or Utterances (of any state or local public officer who satisfies requirements)

Additional removal procedures are in §§ 34 and 35.

Local charters should also be reviewed to determine whether there are applicable provisions that govern removal of a local officer from public office.

*See Resources tab for references relating to removal including:*
*Article 3 of New York State Public Officers Law §§ 32, 33, 33-a, 34, 35 and 35-a.*
*New York State Civil Service Law, § 75 – governs removal and other disciplinary actions for persons holding certain public positions of employment within the civil service system.*

*Other state laws included as resources here that provide procedures for removing an officer from local public office are:*
*New York State Town Law § 271(7), § 267(7), and § 51(1)*
*New York State Village Law § 4-412(3)(12), § 7-718(7), § 7-718(9), § 7-712(9)*
*New York State General City Law § 2-a, § 4, § 27(7), § 81(6), and § 81(8)*

**Slide 30 – Court Clerk Must Notify the Governor**
New York State Public Officers Law § 37 (Section 37) mandates the court clerk with the relevant jurisdiction to notify the governor when a vacancy occurs because a public officer received against him or her a court order or judgment:

1) Convicting him or her of a felony;
2) Convicting him or her of a crime involving a violation of his or her oath of office;
3) Declaring his or her election or appointment to office as void;
4) Declaring his or her office as forfeited or vacant.

The notice of such conviction or judgment must include a statement to the governor of the specific cause of conviction or judgment.

*See Resources tab for New York State Public Officers Law § 37*

**Slide 31 – Removal**
Removal is another way that a public office is deemed vacant. The primary provision that authorizes removal of town, village improvement district and fire district public officers is § 36 of Article 3 of New York State Public Officers Law (Section 36). Section 36 sets a high standard for the removal of town, village improvement district or fire district public officers by a court.

Section 36 states, in part that: "Any town, village, improvement district or fire district officer, except a justice of the peace, may be removed from office by the supreme court

for any misconduct, maladministration, malfeasance or malversation in office." Removal from office is not an action that should be taken lightly. It is in fact, a drastic measure. A public officer's removal from office requires *cause* or reason for removal.
Only a resident citizen or district attorney can remove an officer from public office using Section 36. To remove a public officer in an elected or appointed office, the citizen or district attorney must follow these steps:

1. The application for removal must be made:
    a) by a resident citizen or by the district attorney of the county and
    b) to the Appellate Division of the Supreme Court
2. Notice of not less than eight (8) days before court action must be given to the officer that is the subject of the removal application and
3. A copy of the charges must be served on the officer with such notice

After a removal application is filed in court, the public officer who is the subject of the application should answer the charges in court. Failure to answer the charges may result in a contempt of court action against the officer.

*See Resources for Public Officers Law § 36.*

**Slide 32 – Additional Concerns**
There are a few other important topics we need to discuss related to some public officers. These topics include holdover status, and the provision for defense and indemnification of officers and employees of towns, cities, villages, counties and other public entities.

**Slide 33 – Holdover in Public Office**
Let's first look at holdover status in public office. Holdover status may apply to a public officer in appointed positions that have specified terms, such as a member of a planning board or a zoning board of appeals. Here is how this works.

Applicable:
*Use scroll bar on right*
What happens at the end of a term, if no one else is appointed to fill a public office? Public Officers Law § 5 addresses this situation. After the expiration of the term, and until a successor is chosen and qualified, the public officer can continue in holdover status. The holdover status gives the appointed public officer the authority to continue to discharge his or her duties until a successor is chosen and qualified. The holdover status allows for continuity for the office and facilitates no gap in service provided to the public.

A public office in holdover status is deemed vacant so that a successor can be chosen.

A public officer may choose not to be a holdover by resigning. If he/she continues, the appointing authority may appoint someone else at any time.

Not Applicable:
The right to holdover in public office is not applicable to judicial officers, notary publics, commissioners of deeds, and not applicable if the term of the public office is fixed by New York State Constitution or if the public office has been terminated or abolished.

*Resources*
*See Resources tab for Public Officers Law § 5.*

**Slide 34 – Defense and Indemnification**
The second additional topic we will discuss is the defense and indemnification of officers and employees.

New York State Public Officers Law § 18 authorizes towns, cities, villages, counties and other public entities, which have adopted the provisions of Section 18, to defend and indemnify its officers and employees in actions that arise out of acts or omissions that occurred within the scope of the officers' or employees' duties. Defense and indemnification is permitted for civil actions only and the authorization must be in effect before the occurrence happens. Public Officers Law § 18 authorizes public entities to purchase insurance or act as a self-insurer against any liability imposed by the provisions of this section.

Local regulations
A municipality may enact a local law supplementing the defense and indemnification provisions of Public Officers Law § 18. The supplemental protections may provide reimbursement for legal expenses incurred defending criminal matters where the employee is acquitted of the charges or the charges are dismissed. The courts have upheld the constitutionality of providing reimbursement to public officer for reasonable expenses incurred in successfully defending himself or herself against criminal prosecution based on a charge of official misconduct.

Inapplicable
The duty to indemnify under Public Officers Law § 18 does not arise "where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee."

Reinstatement
A public entity may provide for the defense and indemnification of its officers and employees, but this statute does not provide authorization for defense or indemnification in an action brought by an officer or employee for reinstatement.

*See Resources, under State Law for Public Officers Law § 18.*

**Slide 35 – Defense and Indemnification – Additional Statutes that address Defense and Indemnification**
There are additional laws that provide for defense of public officers:

- New York State County Law § 409 authorizes the reimbursement for civil defense expenses.

- New York State Town Law § 65(1) empowers a town board, as it deems necessary for the benefit and protection of the Town, to direct town officers to defend any action "in the name of the town." This law authorizes the town board to pay for the legal defense of an officer when the officer is sued, together with the town, for damages arising from official duties in the officer's capacities as a town official. This also applies when the officer is sued and the town is not named in the action, but could be held liable.

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*See Resources for references relating to defense and indemnification*
*Under State Laws*
- *New York State County Law § 409*
- *New York State Town Law § 65(1)*

*Opinions*
- *Opinions of Attorney General 2003 N.Y. (Inf.) 1083 (November 4, 2003), citing to, Op. Att'y Gen. (Inf.) No. 88-6; cf. In re Kane v. McClellan, 110 A.D. 44 (2d Dep't 1906)*
- *Opinions of State Comptroller, 1987 No. 87-48 (June 22, 1987).*
- *Opinions of State Comptroller, 1985 No. 85-8 (January 29, 1985).*
- *Opinions of State Comptroller, 1990 No. 90-47 (November 15, 1990)*
- *Opinions of State Comptroller, 1961 No. 17 p 125*
- *Opinions of State Comptroller, 1986 No. 86-37 (June 5, 1986)*

*Case Law*
- *Comins v. City of Delaware, 66 A.D.2d 931 (3d Dept. 1978).*
- *Corning v Village of Laurel Hollow, 48 NY2d 348*

**Slide 36 – One Step Left**
In this course, you have heard about public officers and some important information you should know when entering into public service. There is just one step left. There is a short assessment. Are you ready? You must receive a score of 70% to pass the course. Please proceed to the next slide to begin.

**Slide 37 – Public Officer Assessment**

1. In general, all the following are minimum statutory requirements for a local government public officer **EXCEPT**:

   a. The public officer must be a U.S. citizen.
   b. The public officer must hold a Master's Degree.

c. The public officer must be a resident of the municipality in which his or her powers and duties are to be exercised.
d. The public officer must be at least 18 years of age.

2. Which of the following is NOT a general characteristic of a public officer?

a. The person carries out statutorily defined duties.
b. The person usually serves for a fixed or definite term.
c. The person's duties are subordinate, routine and directed.
d. The person's duties may involve a high degree of initiative and independent judgment.

3. True or False: Local government public offices are filled by election or appointment.

3. Click ALL statements that are true about local government public officers:

a. The local government public officer may be elected to the office by electors (voters) throughout all of New York State.
b. The office held by the local government public officer is considered a local office.
c. The person is limited in the execution of his or her official functions to only a portion of the state.
d. The person serves a political subdivision or municipal corporation.

5. True or False: Elected local government public officers make appointments to boards, offices, and positions such as members of planning boards, zoning boards of appeals, and other administrative boards.

6. True or False: City, town, and village departments, agencies and commissions are led by public officers.

7. For all public officers, the oath of office is:
a. Suggested, but not required.
b. Mandatory only if locally required.
c. Required only for elected public officers.
d. Required to be taken and filed.

8. True or False: An official undertaking is required to be executed and filled by every public officer.

9. True or False: Once validly in office, a public officer has the right to hold the office until there is a vacancy in the office.

10. At the end of an appointed public officer's term, if no one else is appointed to fill the office, the public officer can continue to discharge his or her duties until a successor is chosen and qualified. This status is known as:
a. A holdover

b. Executing an official undertaking
c. A creation of a new office
d. Becoming indemnified

**Slide 38 – Summary**

**Congratulations! You passed the assessment. You have successfully completed "Local Government Public Officers" Online Course.**

As a public officer, you carry out many important governmental functions. You play a vital role in keeping local governments operating and providing services to the citizens you serve in towns, villages, cities and counties throughout New York State. In this course, we provided you with an overview of the basic requirements and guidelines necessary to carry out your local government duties.

You are held to a high standards and are well advised to take responsibilities seriously, and to realize that your actions reflect on the municipality you serve. We thank all public officers for the service you provide to communities throughout New York State.

We encouraged you to continue learning more about Local Government Organization, and many other topics on land use planning, regulations, and procedures. The Department of State's James A. Coon Technical Series offers many publications and legal memoranda. The Department of State offers other online courses as well as on-site training events conducted by our Training Specialists and Attorneys. Our website has a calendar listing training being offered by the Department of State, other state agencies, and local government and academic organizations. See resources tab to connect to the calendar.

**Slide 39 – New York State Department of State, Division of Local Government Services – Contact information**
Our mission is to assist local government officials. Please contact us if you have any questions or would like additional information on issues affecting local government.

*Please click on **Exit** tab in upper right to leave course.*