

# Residence for Voting Purposes



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### **Basic Principles**

There is no satisfactory brief definition of "residence". The concept of a person's "residence" is dependent upon the facts of each particular case. Therefore, it is of fundamental importance that one pay close attention to detailed factual circumstances.

It is also essential to understand that residence is an objective concept and not a subjective concept. That is, what counts is not where someone thinks his or her residence is or wants it to be, but rather, where the facts show it is. Of course, a person's statements and expressed desires, especially when they are not self-serving, may be evidence of residence because they are facts themselves. Perhaps more important, however, is evidence of a person's actions. Some of those actions may be the amount of time spent in various places, former residences and voter registrations, future plans, income taxes, bank accounts, telephone listings, places of employment and religious, social and political affiliations.

A person's successive residences must form a continuous chain. In other words, no one loses an old residence until establishing a new one. This may mean that someone will not have set eyes on his or her "residence" for years in some cases. But this concept is essential if everyone is always to have a residence.

A person's residence at birth is the parents' residence. A child ordinarily retains the residence of his or her parents. If the parents separate the child retains the residence of the parent with whom she or he is living. Until they reach the age of eighteen children usually cannot acquire separate residences of their own.

After turning eighteen (or before that, if one is "emancipated" from parents) a person may acquire a new residence unless the person lacks the necessary mental capacity. In order to gain such a new residence at a place two things are necessary:

- the person must be physically present at the place, that is, the person must eat and sleep there; and
- the person must actually intend to make the place "home" at least for the time being.

With respect to the second requirement (the intention to make the place "home") several things should be noted:

1. "Home" is used for this purpose in a technical sense to mean the center of a person's domestic, social and civil life.
2. A person need not intend to make the place home permanently or even for an indefinite time. Since the only requirement is an intent to make the place home for the time, at least. A place can be a person's residence even if she or he definitely intends to leave it next year, for example.
3. It should be stressed again that a person's intent must be determined not only by words but also by actions like the examples listed previously.

## Change of Residence

*This section provides a short summary of the basic principles of residence. Some applications of these principles to special situations and an example follow.*

### Travelers

People who are simply traveling away from home do not change their residence as a result. This is true, even though they may spend a considerable time away before returning and applies if they sell or lease their home in the meantime.

#### Example 1.

Burt and Catherine, a retired couple in Ware, leave on a long trip to stay with relatives in California for several months. They lease out the house they own to tenants for this time until they return. Their residence remains at the Ware house even though others are living there.

#### Example 2.

Alan, a construction worker, lost his job in Lowell where he had resided in a rented apartment. Alan terminated his tenancy, packed all his possessions in a trailer and drove away in search of work. He stopped in several different cities staying a few days or weeks in each to look for work. Alan's residence remains in Lowell until he eventually establishes a new home elsewhere.

### Legal References

#### *Facts important, objective test, evidence*

- Dane v. Board of Registrars of Voters, 374 Mass. 152, 172, 371 N. E. 2d. 1358, 1370 (1978);
- Hershkoff v. Board of Registrars of Voters, 366 Mass. 570, 579, 321 N. E. 2d. 656, 664 (1974);
- Restatement § 12, comments c-j; sec. 18 comment d; § 20, special note.

#### *Continuity*

- Dane, 374 Mass. at 162, 371 N. E. 2d. at 1365;
- Restatement sec. 11 (2), comment m; sec. 19

#### *Residence of origin, children*

- Hershkoff, 366 Mass. at 576-77, 321 N. E. 2d. at 633
- Restatement §§ 14-22

#### *Residence of choice, change of residence*

- Dane, 374 Mass. at 162, 371 N. E. 2d. at 1365
- Hershkoff, 366 Mass. at 576-77, 321 N. E. 2d. at 663
- Restatement §§ 15-20

#### *"Home"*

- Dane, 374 Mass. at 162, 371 N. E. 2d. at 1365;
- Hershkoff, 366 Mass. at 577-79, 321 N. E. 2d. at 663;
- Restatement §§ 12, 18

#### *Nature of intent*

- Dane, 374 Mass. at 162-66, 371 N. E. 2d. at 1365-67;
- Hershkoff, 366 Mass. at 577 - 79 32 N. E. 2d at 663 - 664
- Coulombre v. Board of Registrars of Voters, 3 Mass. App. Ct. 206, 208-09, 326 N. E. 2d. 360, 362-63 (1975);
- Restatement, § 18, comments b, c

• See *Newburger v. Peterson*, 344 F. Supp. 559 (D. N. H. 1972); *Putnam v. Johnson*, 10 Mass. 488 (1813)

### **Students**

The same general principle used to describe residence in the preceding paragraph apply to college students as well. It is illegal to apply special standards or to use different tests for students than those used for other people. Furthermore, the fact that a student lives in a dormitory or receives financial support from parents does not prevent the student from acquiring residence in the college community.

Of course, in order to establish residence in a community a student must actually eat and sleep there, not merely attend school there. This is simply the same requirement of "physical presence" which applies to everyone else.

A Massachusetts student can attend college in another Massachusetts community or in another state, be physically present there and still retain his/her residence at his/her home in Massachusetts.

The student's intent and objective evidence of such intent is extremely important when determining a student's legal domicile.

It is not easy to generalize about the effect of voter registration on certain other considerations which may concern students, such as out-of-state scholarships, tuition, automobile registration or insurance. Certainly registering to vote is an important factor in determining residence for these purposes. On the other hand, although mere self-interest alone will not be sufficient, it is possible in some exceptional situations to have different residences for different purposes. For example, a student who registers to vote in Boston and owns a car which she garages at her parents' home in Ohio and drives it only when she is there may be under no obligation to register the car in Massachusetts. Obviously, this situation will be the exception and not the rule.

If a student asks about the consequences of voter registration he or she should be referred to the appropriate government agency. The registrars may not advise students about such consequences before they register.

Finally, note again that students' actions and not merely their words must be considered in determining their residence. It should be no more difficult for a student to acquire residence than for any other citizen. A declaration of intention may be decisive in a close case.

#### **Example 3.**

Dan is twenty years old and lives in a dormitory at the college he attends in Worcester. He receives financial support from his parents in New York city. He owns a car which is registered from his Worcester address and he has a Massachusetts driver's license. He has bank accounts in New York and Worcester. He often visits his parents' home on vacations. He worked at a summer job in New York last summer and filed state and federal income tax returns

using his parents' New York address. He now states that he considers Worcester his home and intends to remain there until he graduates next year. Dan's residence is in Worcester.

Legal References

No special tests or standards:

- *United States v. Texas*, 445 F. Supp. 1245 (S. D. Tex. 1978) (three judge court), *aff d. mem. sub nom.*
- *Summ v. United States*, 439 U. S. 1105 (1979)
- *Hershkoff v. Board of Registrars of Voters*, 366 Mass. 570, 579 - 80, 321 N. E. 2d 656, 664 - 65 (1974).

Dormitory residence and financial support:

- *Hershkoff v. Board of Registrars*, 366 Mass. at 570, 579-80, 321 N. E. 2d 656, 664 - 65.

Physical presence:

- *Brainard v. Hollingsworth*, No. 28193 (Mass. Super., Berkshire Oct. 25, 1977), *aff d. mem.*, 376 Mass. 932 (1978).

Effect on other considerations:

- *Restatement § 20, Special Note on Evidence for Establishment of a Domicile of Choice.*

Patients

The residence of patients in hospitals, nursing homes and similar facilities is governed by the same general rules discussed earlier. Patients can establish residence at the facility where they are physically present if the facts show that they have the necessary intention of making it their home at least for the time being. In practice this will be true only of some long-term patients. For example, the state Appeals Court has decided that a state hospital patient living there as a condition of probation was nonetheless a legal resident there because he had not returned to his previous home for ten years and was employed and had a bank account in his new community.

On the other hand, many patients will remain residents of the place where they had lived beforehand. This may be true even though they have not lived there for some time so long as the facts show they have no intention of making the institution their home even for the time being.

In fact, when the registrars are informed that a person whose name has been designated "inactive" on the voting list of a city or town is in a

- sanatorium,
- hospital,
- rest home,
- convalescent home or
- nursing home

in another city or town they must investigate and restore that person to the active voting list unless the facts show that there has been a change of domicile.

Example 4.

Ellen is a tenant in a Boston apartment. While vacationing in Barnstable she was injured in an automobile accident. She was hospitalized there, and required a long convalescence. She sublets her apartment to others, but intends to return to Boston when she is able. Her residence remains in Boston at her old address.

**Example 5**

Fred lived in Boston for many years, but has been in a nursing home in Dedham for the last five years. He has no plans to return to Boston and intends the institution to be his permanent home. Fred's residence is in Dedham.

*Legal References*

*Hospitals, nursing homes and rest homes*

- MGL chapter 51 § 38

*State hospital patient*

- *Coulombe v. Board of Registrars of Voters*, 3 Mass. App. Ct. 206, 326 N. E. 2d. 360 (1975)

**Military Personnel**

The fact that military personnel are under military orders does not prevent members of the armed forces from establishing legal residence for voting purposes in the communities where they are stationed. Again, facts which show where they intend to make their homes are decisive.

Of course, this also means that if a soldier does not in fact intend to make his military billet his home he will retain his former residence no matter how long he may have been away on duty.

**Example 6.**

Gordon, a native of Texas, is stationed at Hanscomb Field in Bedford for five years and lives on the base. He established a bank account in town and retains another one in Texas; he has a Massachusetts driver's license. He uses his Bedford address on state and federal income tax forms. Gordon's residence is in Bedford.

*Legal References*

- *Carrington v. Rash*, 380 U. S. 89 (1965)
- *Kennedy v. Kennedy*, 10 Mass. App. Ct. 113, 406 N. E. 2d. 499 (1980) (divorce purposes);
- *Moog v. Harvey*, 128 Mass. 219 (1880) (statute of limitations purposes)

**Prisoners**

Unlike any other category of citizens, prisoners at state correctional institutions are presumed not to have their residence in the city or town in which the institution is located, but rather, to have retained the residence each had before incarceration.

Even these prisoners, however, may overcome this presumption by clear evidence that they have established a new home in the prison community. Activities such as work release spent in the vicinity of the prison or a bank account there could provide such evidence.

Most prisoners will not be residents of the community where the correctional facility or jail is located.

**Example 7.**

Helen, a resident of Worcester, was convicted of a crime and sentenced to three years at MCI Framingham. On furloughs she returns to Worcester. Helen's residence remains in Worcester.

*Legal Reference*

• *Dane v. Board of Registrars of Voters*, 374 Mass. 152, 161-166, 371 N. E. 2d 1358, 1364-67 (1978)

**Part-Time Residents**

Some people spend part of the year in one place and part in another.

Although they may live in more than one community they can have only one legal residence. That is the place where the facts show they intend to make their home according to the basic principles discussed earlier.

It is not true that people who live part of the time in different places may simply pick one of them as their legal residence. Rather, residence is determined by examining all the factual circumstances which indicate where their home actually is.

Although the relative amount of time people live in various places is not conclusive it is an important factor to be considered. It is unlikely that many people will have their home in a community where they live only during the summer months.

Federal government employees stationed in Washington D. C. or overseas present a slightly different issue. If there temporarily, such as by political appointment to policy making positions, they may well retain their original residences. On the other hand, those employed there indefinitely, such as in civil service capacities, are likely to lose their former residences. In all cases, the specific facts will be decisive. Of course, the Constitution requires elected members of Congress to be residents of the states which they represent.

**Example 8.**

Janice owns a summer house on Nantucket where she lives during July and August every year. The rest of the year, except for an occasional weekend, she spends in New York City where she works and where her car is registered. Janice's residence is in New York City.

**Citizens Living in Another Country**

Massachusetts residents living in another country may vote (by absentee ballot or in person at the polling place if they are temporarily in Massachusetts) from their last residence in Massachusetts provided they have not registered to vote in any other state or district since then.

**Boundary Cases**

What if someone's home straddles the boundary line between two different communities?

That person's residence is in the town which contains that part of the home where he or she habitually sleeps or which is most closely connected with the primary purposes of a dwelling.

### **Legal References**

- Inhabitants of Abington v. Inhabitants of North Bridgewater, 40 Mass. (23 Pick.) 170 (1839);
- Teal v. Hamilton-Wenham Regional School District, 13 Mass. App. Ct. 345, 348-49, 433 N. E. 2d, 907, 909-10 (1982)
- See Bruinerd v. Hollingsworth, No. 28193 (Mass. Super. Berkshire Oct. 25, 1977), aff'd mem., 376 Mass. 932 (1978);
- Klein v. Alfredson (Board of Registrars of Voters of Leominster, May 16, 1979) (on file with State Secretary)

### **"Homeless" Persons**

Homeless persons may not be denied the right to register and vote simply because they do not have a traditional residence.

If a "homeless" person is living in a place with an identifiable address and intends to make that place his home for the time being at least (for example, a homeless shelter, an abandoned building) that is his residence for voting purposes and he may register in the city or town where that building is located. Such an address is required by law on the affidavit of registration, the voting list, the annual street list of residents and nomination papers and petitions.

If a homeless person claims to be living in a place with no identifiable address (for example, a park bench) that person should be asked about whether there is a shelter where he stays and can receive mail; if not, one should inquire about his last residential address. That address may be considered his residence for voting purposes.

However, it is also possible for a "homeless" person who lives on a park bench to have that bench considered his/her residence. The voter registration affidavits (two part form used in offices and the mail-in form) include a map where the voter can draw the location of the place where he or she lives if that location cannot be described as a number and street or a rural route and box number. Any location identified on the map will constitute the voter's "address" for voting purposes.

### **Legal References**

- Pitts v. Black, 608 Fed. Supp. 696 (S.D.N.Y., 1984)
- 11 CFR Section 8.4 (2)

## **Part Two Residence and Elections**

Part One of this booklet discussed what residence means. Part Two will consider some of the ways in which residence applies to the Massachusetts election process.

### **Voter Registration**

Massachusetts requires citizens who vote in its elections to register in advance with local election officials. (A person who is qualified may register at any local election office in the state.) Only residents of a city or town may be registered voters there.

For many years Massachusetts voters had to reside in the state for one year and in the city or town for six months before registering. However, courts declared these laws unconstitutional in the early 1970's. Now, there is no waiting period. Citizens need only be actual residents at the time of registration. They may establish their homes and then register to vote immediately.

Voters who register shortly before an election may not vote in that election. In order that local officials have time to prepare the voting list for use at the polls on election day registration closes 20 days before all preliminaries, primaries, elections and town meetings. Voter registration closes 10 days before a special town meeting. This is not a durational residence requirement, but only an administrative bookkeeping period. New residents may register immediately at any time.

To prove that they are residents for the purpose of voter registration the citizens need only swear to that fact by signing an affidavit of registration. Officials may ask no further questions at the time of registration. (Additional questions may be asked of prisoners in correctional institutions and jails to allow them to overcome the presumption that they are not residents of the prison community or of a homeless person living in a place with no identifiable address. See pages 10-12.)

If officials or other registered voters in that city or town suspect that someone has registered illegally or incorrectly they may require a formal hearing before the registrars of voters by filing a written complaint. (See the next section and the Appendix.)

In addition, nonresidents who register to vote knowing that they are ineligible commit a crime punishable by a fine or imprisonment.

Officials may ask registrants for identification if they wish, but may not refuse to register someone without identification.

When registered voters change their residences within a city or town it is helpful for them to notify local election officials in writing. Registrars may require that this notification be signed under the penalties of perjury. The voter may then vote at his/her new address immediately if he/she notifies the Registrars before the registration deadline. If the voter does not notify the Registrars, the

voter may continue to vote within the city or town in all elections from his/her old address until June 1 of the following year. After that the "street listing" process should transfer their registration to the new address. (See the following sections.)

#### Example 9.

Kathleen and Len, a married couple, moved into their Winthrop apartment ten days before the annual town election.

Neither lived in Winthrop before.

They may register to vote at once, but they will not be able to vote in the town election because registration for it closed twenty days before election day.

#### Example 10.

Janice, the summer home owner on Nantucket in Example 8, sends in a completed mail-in registration. Although the clerk suspects she is a New York resident, she must add Janice to the annual register. However, the clerk or any other registered voter may file a complaint and have Janice summoned to a full hearing at which the registrars of voters will hear all the facts and make a decision about her true residence.

#### Legal References

##### Voter residence

- Mass. Constitution amend. art. 3;
- MGL ch. 51 § 1

##### No durational residence required

- MGL ch. 51 § 1;
- *Dunn v. Blumstein*, 405 U.S. 330 (1972);
- *Burg v. Cannon*, 315 F. Supp. 380 D. Mass. 1970 (three judge court) *aff'd mem.*, 405 U.S. 1034 (1972)(Mass. one year in state requirement invalid);
- *Sinder v. Board of Election Commissioners*, No. 70-1404-F (D. Mass. Apr. 10, 1972) (consent judgement invalidating six months in municipality requirement)

##### Close period

- MGL ch. 51 §§ 26, 29

##### Proof of residence

- MGL ch. 51 §§ 42-49
- *Dane v. Board of Registrars of Voters*, 374 Mass 152, 166-73, 371 N. E. 2d 1358, 1367-71 (1978);
- Dept. of Secretary of State memorandum, Feb. 6, 1978.

##### Registration crimes

- MGL ch. 56 §§ 6-8

##### Move within community

- MGL ch. 51 §§ 3, 37

### Removing and Restoring Voters' Names

Voter registration in Massachusetts is permanent. This means that once voters register, their names should appear on the voting list for every election until they move away or die.

In particular, the local board of registrars of voters may remove voters' names from the register of voters only as a result of one of the following procedures:

1. The registrars receive a written communication from the voter indicating the desire to be dropped from the voting list.
2. The registrars receive an official notice that the voter has died from the city or town clerk.
3. The registrars receive a notice of the voter's registration in another state, city or town indicating that the voter is no longer a resident of their community.
4. The registrars receive notice from the Registry of Motor Vehicles that the voter has moved out of the city or town.
5. The registrars decide after a formal hearing that the voter is illegally or incorrectly registered. One such reason may be that the voter is no longer a resident. The Appendix describes the procedures for filing a complaint and holding this hearing.
6. The voter's name does not appear on the annual "Street List", a list of all residents of the city or town. (See the next section.) After April 1 of every year the registrars use the new street list to move names from the list of active voters to the list of inactive voters. By the first Monday in June they must send written notice by first class mail to every voter they have moved to the inactive voters list and must post a list of such inactive voters. This "Confirmation Notice"\* must be sent by forwardable mail and contain a preaddressed and prepaid return card. An inactive voter who fails to return the preaddressed and prepaid card or fails to vote, or take any other action to restore themselves as active voters during the period of two consecutive state elections shall be dropped from the voting list. (See pamphlet "Local Lists: Street List/Annual Register/Voting List" in the *ELECTION RESOURCE HANDBOOK*. It is also available separately from the Elections Division.)
7. The registrars receive written notice from the voter that he or she has moved out of the community. (The registrars must then send the voter a notice of intent to remove him or her and give the person an opportunity to be heard if he or she objects to the removal.)

Voters who simply have not been at home or have been negligent about responding by mail to the street-listers, or have moved within the city or town, or have changed their names are also sometimes placed on the inactive voters list.

Voters whose names have been placed on the inactive voters list can be restored to the active voters list at any time before election day by establishing that they were previously registered to vote in the city or town. Usually returning the "Confirmation Notice", sending a signed letter (which registrars may require be signed under the pains and penalties of perjury) or presenting written identification will be sufficient. It is not necessary to re-register.

On election day the presiding officer at the polls will try to identify a voter by

- consulting the voters' list(s) (active and inactive) in the precinct; and then, if necessary, by
- contacting the registrars who will check their registration records and prior voting lists (active and inactive) for at least the previous three years. If the presiding officer learns that the voter is entitled to vote and the voter signs an

"Affirmation of Current and Continuous Residence" in the precinct the officer will issue and sign a certificate stating the voter's name, residence and party enrollment, if any. The certificate along with the signed "Affirmation of Current and Continuous Residence" is attached to the voting list and the voter may then vote.

If the presiding officer cannot satisfactorily identify the voter, the voter may go to the city or town hall. If the registrars can satisfactorily identify him or her there, the registrars will issue a certificate to be attached to the voting list. The voter may then vote either by absentee ballot at the clerk's office or by returning to the voter's polling place with the certificate.

If the person's name cannot be found on any voting list she or he must be offered an escrow ballot. This ballot is not cast on election day and will be counted only if the election is close enough for the escrow ballot(s) to make a difference in the outcome and it is determined that the ballot was cast by an eligible voter.

In all cases voters should be restored to the active voters' list or allowed to vote by certificate under these procedures if they can show that they have registered to vote in the past and have not since changed their legal residence out of the city or town. This is true even if these voters have failed to respond to the street list or to a "Confirmation Notice" before election day, have changed their names or have moved within the city or town. All voters should vote in the precinct where they are listed on the voting list (active or inactive) or in the precinct where they currently reside if they are not listed on the voting list at all. (At a state election voters may return to the precinct of their former residence if they have moved less than six months before.) Voters allowed to vote by certificate on election day must have their names restored to the active register of voters without having to take any additional steps.

#### Example 11.

Monica, a resident and registered voter in Pittsfield, was not at home when the street listers came by and misplaced the return card they left. She also took no action in response to the "Confirmation Notice" she received in June. When she arrived to vote on election day her name was not on the active voters list. Her current driver's license shows she is still a resident of Pittsfield and her name appears on the list of inactive voters. Monica must be allowed to vote if she signs the "Affirmation of Current and Continuous Residence" and is restored to the active voters list.

#### Legal References

- Removing names: MGL ch. 51, § 38.
- Death notice: MGL ch. 51, § 14.
- Other community registration notice: MGL ch. 51, § 46A.
- Complaint and hearing: MGL ch. 51, §§ 47B, 48, 49.
- Street list: MGL ch. 51, §§ 4, 6, 7, 10A, 14A, 14B.
- Drops: MGL ch. 51, § 37.
- Pre-election restoration: MGL ch. 51, §§ 35, 38.

The street list sometimes omits the names of residents who have temporarily left town such as travellers, students, military personnel and other special classes mentioned in Part One. To avoid this and the resulting possible designation as inactive voters these temporarily absent residents should leave word with neighbors, tenants or relatives to communicate their status to street listers. Better still, they should write to the local registrars of voters with the necessary information about their whereabouts and plans. If the registrars are satisfied that these temporarily absent residents do intend to return, their names should be included on the street list and not dropped from the register of voters.

For more information see the booklet "Local Lists" in the ELECTION RESOURCE HANDBOOK. The booklet is also available from the Elections Division.

#### Example 12.

Nathan is a college student in Amherst. His parents live in North Attleborough where he spends his summers. Nathan should probably be listed on the street lists in both places even though facts may show him to be a resident for voting purposes in one place or the other. If he is registered to vote in North Attleborough but away at school his parents should make certain the street listers receive his name.

#### Legal References

- Street lists: MGL ch. 51, §§ 4, 6, 7, 14A, 14B.
- Street list: "residence": Dept. of State Secretary memorandum, December 7, 1977
- Federal census "residence"  
Mass. Const. amend. art. 101 §1, as amended by amend. art. 109 & 117  
*Opinion of the Justices*, 365 Mass. 661, 321, N. E. 2d 656 (1974)

#### Running For and Holding Office

To appear on the ballot for virtually every public office in Massachusetts a candidate must be a registered voter and, therefore, a resident. Except for representative in Congress, governor's councillor and district attorney, candidates must be residents in the district or community from which they seek election at least on election day. Local charters often contain the requirements for local offices.

Candidates at state primaries and elections must prove their voter registration at the time they file nomination papers with the Secretary of the Commonwealth by filing a certificate (usually printed on the nomination papers) signed by the registrars of voters of their home community.

Unlike voters, candidates for some federal and state offices must be residents for a minimum period of time. The list of these requirements is on the next page.

President	14 years in U.S. & natural born citizen	US Const. art. II, § 1
U.S. Senator	U.S. citizen for 9 years	US Const. art. I, § 3
Representative in Congress	U.S. citizen for 7 years	US Const. art. I, § 2
Governor & Lieutenant Governor	MA resident for 7 years immediately before election	MA Const. pt. 2, ch. 2, § 1, art. 2
State Attorney General, Secretary, Treasurer, Auditor, Governor's Councillor	MA resident for 5 years immediately before election	MA Const. amend. art. 17; amend. art. 16 (councillor) amend.
Senator	MA resident for five years immediately before election; resident of district on election day	MA Const. amend. art. 101, § 2
Representative	Resident of district for 1 year immediately before election	MA Const. amend. art. 101, § 1

A registered voter in the proper district can claim that a candidate does not meet the residence requirements by filing a written objection within the time allowed with the board of registrars, city or town clerk or election commission for municipal elections and with the Secretary of the Commonwealth for state elections. A hearing will be held before the board of registrars for local elections and before the State Ballot Law Commission for state elections. The losing party may appeal to the superior court. A decision that a candidate does not meet the residence requirement will prevent the candidate's name from appearing on the ballot.

*For more information about objection procedures see the Elections Division's publication "Legal Remedies for Election Problems" and "Objections Before the State Ballot Law Commission" (for state elections).*

If an elected town official changes his residence out of the town the office is automatically vacant. If the official serves as a member of an elected board the board may vote to declare the position vacant. Any registered voter in the town may question the official's residence in a voter registration challenge proceeding before the local registrars of voters (See Appendix). In this or any other situation where a public official may lack the necessary legal qualifications to hold office the Attorney General may sue to determine the issue. The lawsuit is called a civil action in the nature of quo warranto.

- *Election day certificate; residence standard:*  
MGL ch. 51, § 59;  
950 CMR 52.03(5), 53.03(5), 54.04(6);  
*Santana v. Registrars of Voters*, 390 Mass. 353, 455 N.E. 2d 1200  
(1983)
- *Escrow ballot procedure:* MGL ch. 51, § 59A.
- *Return up to six months:* MGL ch. 51, § 1.

### **Street Lists**

In January and February of every year local election officials compile a "street list" of all local residents three years old and older which notes whether or not they are registered voters.

Methods used include door-to-door canvass, mail, telephone and combinations of these. Registrars who communicate with their residents by mail may require a response under the penalties of perjury.

Owners of

- lodging houses,
- dormitories and
- apartment buildings of more than eight units, and
- condominium associations

must directly supply lists of their building's residents. As discussed above, voters' names not included on the street list will be placed on the inactive voters list.

"Residence" for purposes of the street list is not necessarily the same as residence for the other voting related purposes discussed in this booklet. There is no procedure used when compiling the street list for investigating the various circumstances necessary to determine whether each occupant intends to make the place "home" at least for the time being as discussed in Part One. Therefore, the street list may include persons who live and sleep at an address at least part of the time. Use of this standard, similar to that used in taking the federal census ensures that no person who is a resident for voting purposes at an address will be improperly missed or removed to the inactive voters list.

Residents should even be included on the street list if the registrars have knowledge of a person's residence from sources other than the resident's response to a mailed questionnaire. Of course, under this standard a person's name may appear on a street list in more than one community, but the person may vote in only one community - the one where she or he is a true resident for voting purposes.

Some cities and towns do not list unregistered residents of a narrow class of institutions such as mental health or correctional facilities because of privacy concerns. Once such a resident registers to vote they should be listed on the street list because any privacy interest is negated by the appearance of his or her name on the voting list.

officer cannot determine the voter's current address he or she will serve the summons at the voter's last known address.

In any case, before the day of the hearing the officer must have presented a written statement to the registrars explaining how the summons was delivered.

### **Hearing**

When the voter appears before the registrars at the hearing he or she will be examined under oath. Any member of the board of registrars may administer oaths to witnesses who appear before them at this hearing. The registrars must receive any evidence that may be offered. All parties may be represented by counsel.

The burden of proof is on the person filing the complaint. She or he must submit evidence showing the voter to be incorrectly or illegally registered in the city or town.

If the board of registrars has made the complaint it is advisable for the board to select an independent person to present the evidence to the board at the hearing. If this is not possible and one of the registrars presents the evidence at the hearing he or she should not be involved in the decision making process.

If a voter fails to appear at the hearing his or her name will be removed from the register if the complainant produces enough evidence to show the registrars that the voter should not be registered.

However, the hearing must be reopened if the voter appears before the registrars prior to the next election or town meeting and makes an acceptable explanation of why she or he did not appear.

On the other hand, if at the hearing the registrars are satisfied that the voter is properly registered and qualified they will enter a statement of their findings in the register. If they are satisfied that the person is a qualified voter in the city or town but is illegally or incorrectly registered in a ward or precinct they will correct the register.

### **Appeal**

The losing party may appeal the registrars' decision to Superior Court in a civil action against them.

#### ***Legal References***

- MGL c. 51, §§ 47B, 48, 49.
- MGL c. 233, § 8.