

# VACANCIES

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Presented by

Colleen Carlson

Colleen Carlson spent many years, including those during law school, working for the firm of Dooley & Herr representing numerous public agencies focusing primarily on day to day administration of the agencies, community development, land use planning and zoning, land acquisitions and dispositions, and related CEQA/NEPA environmental issues. She eventually became a partner in that firm. Approximately four years ago she opened Carlson Law Corporation, specializing primarily in assisting various local agencies acquire land and right of way and researching and dealing with all associated funding requirements and legal issues to bring roads, canals, and other development projects to fruition as well as serving as general counsel to two local water entities. She is a member of the Tulare County Bar Association, International Right of Way Association, Tulare County and National Associations of Realtors. She is also a licensed real estate broker and notary public.

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# MEMORANDUM

**To:** Attendees of the 2009 Government 101 Workshop  
**From:** Colleen J. Carlson  
**Date:** October 5, 2009  
**Re:** Process to Fill Vacancy on Board of Directors of Special Districts

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## A. WHAT IS A VACANCY?

A vacancy is basically an empty seat in an office of an elected official. A vacancy can occur a variety of ways, including:

- Death
- Mental incapacitation
- Resignation (Should be in writing per Gov. Code §1750(d), but can become effective through words or actions under doctrine of abandonment)
- Removal from office
- Change of residence
- Absence from the state for an extended period (eg: 3 consecutive months)
- Failure to discharge duties
- Conviction of a felony
- Refusal or neglect to file Oath of office or required bond
- Election or appointment is declared void
- Order by Court vacating the office
- Commitment to hospital or sanitarium for specific reasons (eg: drug/alcohol addictions)

See Government Code Section 1770 for a more extensive explanation of the above bases for finding a vacancy.

**EXCEPTIONS:** Like any rule, there are exceptions. For example, extensive illness (§17770(g)), activated military service (§395.1 of Military & Veterans Code). A successful recall creates a vacancy, however the Elections Law has a process to fill that vacancy by special election [and in limited instances by appointment] (See *generally* Elections Code §§11000 et seq.).

## **B. LAW DIRECTING WAS PROCESS MUST BE FOLLOWED TO FILL VACANCY**

The law under which special districts are formed usually indicates how vacancies shall be handled. A few examples include:

- The Public Utility District Act indicates: "A vacancy in the office of director shall be filled pursuant to Section 1780 of the Government Code." (See Public Utilities Code §16003);
- The Community Services District Law indicates: "Any vacancy in the office of a member elected to a board of directors shall be filled pursuant to [Government Code] Section 1780." (See Gov. Code §61042(c);)
- The Irrigation District Law indicates: "Notwithstanding any other provision of law, all vacancies on the board of directors elected pursuant to [Water Code] Section 21551 shall be filled pursuant to Section 1780 of the Government Code." (See Water Code §21265.5; Note: §21265 may have an exception when an elected official failed to qualify for office or when a vacancy occurs in an office held by someone who was appointed rather than elected);
- County Water District Law indicates: "All vacancies occurring in the office of director shall be filled pursuant to Section 1780 of the Government Code." (See Water Code §30504).

If there is no specific provision that applies to your special district, then the Government Code at Section 1780 states: "Notwithstanding any other provision of law, a vacancy in any elective office on the government board of a special district... shall be filled pursuant to this section."

## **C. NOTICE OF VACANCY AND ALTERNATIVE PROCESSES TO FILL VACANCY [See Gov. Code §1780(c).]**

- 1. Notify County Elections Official:** Upon vacancy, the District shall notify the County Elections Official (and should also notify the Clerk of the Board of Supervisors) of the vacancy no later than 15 days after the later of either:
  - The date the District Board is notified of the vacancy; or
  - The effective date of the vacancy
- 2. District Has Two Options to Fill Vacancy.** The Board may fill the vacancy by either:
  - appointment of a new director; or
  - by calling a special election.

**D. APPOINTMENT PROCESS/TIMING [See Gov. Code §1780(d)]:** The remaining members of the Board of the District may appoint a person to fill the vacancy. Appointment must occur within 60 days of the notice or effective date of vacancy, whichever is later. The remaining Board would nominate individuals (after receiving interest and qualifications from interested parties) then follow the steps below:

1. At least 15 days prior to making an appointment, the District shall post a notice of the vacancy in three conspicuous places within the territory of the District; and Although not required, it is suggested that the District notify the County Elections Official of its intent to fill the vacancy by appointment and provide a notice of vacancy to the County Board of Supervisors so that it can be posted there as well; and
2. Schedule a special meeting or agendize a vote for the next regular meeting that occurs after expiration of the 15 day notice period. At the meeting, receive input from interested candidates and then take action to make the appointment. Thereafter, the newly appointed Director may be given the oath of office.
3. Notify the following agencies of the appointment :
  - Secretary of State (within 10 days), by preparing and filing an amended Statement of Facts – Roster of Public Agencies Form (as required by Gov. Code §53051(b).) The form can be found on line at: [www.sos.ca/gov/business/sf/forms/np-sf-405.pdf](http://www.sos.ca/gov/business/sf/forms/np-sf-405.pdf).
  - County Elections Official (within 15 days);
  - County Clerk of each county in which the district maintains an office (within 15 days).
  - The Clerk of the Board of Supervisors should also be notified to enable the County's Roster of Public Agencies to be updated.
4. If the vacancy occurs at least 130 days before the next general election, the appointment shall continue from the date the newly appointed Director takes the oath of office until the seat is filled by a subsequently elected director. If the vacancy occurs later than 130 days prior to the next election and in the last half of the vacating director's term, the appointment shall continue from the date the newly appointed Director takes the oath of office through the balance of the unexpired term of the vacating Director.

**E. SPECIAL ELECTION PROCESS/TIMING [See Gov. Code §1780(e)]:** Instead of the appointment process, the District may call a special election to fill the vacancy. The election would be held on the next election date established by the Elections Code which is at least 130 days after the Board acts to call an election. The Board would need to:

1. Agendize an action to call a special election and adopt a resolution to that affect;
2. Forward the resolution to the County Elections Official within 60 days of the date the District Board is notified of the vacancy or the effective date of the vacancy, whichever is later (a courtesy copy could also be provided to the County Board of Supervisors);
3. Although not required, the Board may want to advertise the vacancy and invite declarations of candidacy;

4. The County Elections Official will then prepare an estimate of the District's share of the cost of the election and require payment from the District.

- F. **DISTRICT'S FAILURE TO APPOINT OR CALL SPECIAL ELECTION [See Gov. Code §1780(f)&(g)]:** If the District fails to appoint or call an election within 60 days of a vacancy or effective date of vacancy, then the Board of Supervisors has the authority to make an appointment or call an election. However, if the Board of Supervisors does not act within 90 days of receiving notice of the vacancy, then the District shall call an election to fill the vacancy.

**These are general guidelines summarizing the process a special district should follow to determine when a vacancy has occurred and how to fill that vacancy. It is highly recommended that each District consult an attorney regarding determination of a vacancy and the process that should be followed in order to fill a vacancy.**



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