



FILLING A VACANCY IN THE GENERAL ASSEMBLY

1. WHEN DOES A VACANCY IN THE GENERAL ASSEMBLY OCCUR?

A vacancy in the General Assembly occurs when there is a failure to elect a member, a member is declared ineligible, a member dies, a member resigns, a member is removed from office, or the member's seat otherwise becomes vacant.¹

2. HOW IS A VACANCY IN THE GENERAL ASSEMBLY FILLED?

The Delaware Constitution provides that vacancies in the General Assembly are filled by election.²

3. WHAT IS THE PROCESS OF FILLING A VACANCY IN THE GENERAL ASSEMBLY?

How does the process begin?

The Delaware Constitution provides that when a vacancy occurs in the General Assembly, if the General Assembly is in session, the presiding officer of the chamber in which the vacancy exists shall issue a writ of election to fill the vacancy and if the General Assembly is not in session, the Governor shall issue the writ of election.³

When must the writ of election be issued?

The Delaware Code provides that the writ of election shall be issued within 10 days of the creation of the vacancy. The writ is addressed to the Department of Elections.⁴

Who sets the date of the election?

The Delaware Code further provides that the individual who issues the writ of election sets the date for holding the election for the vacancy in the General Assembly.⁵

¹ Del. Const. art. II, § 6.

² *Id.*

³ *Id.*

⁴ 15 Del. C. § 7101.

⁵ 15 Del. C. § 7102(a).

How is the date of the election chosen?

Generally, the Delaware Code provides that the date of the election must be held no sooner than 30 days and no later than 35 days next after the date of the issuance of the writ.⁶

However, the Delaware Code provides that if the vacancy occurs in the year of a general election and if the election to fill the vacancy would be held after June 30 but before the date of the general election, the officer issuing the writ of election must set the general election as the date for the election to fill the vacancy, unless the vacancy occurs after September 1 and the vacant office is not up for election, in which case the election must be held no earlier than December 12 and no later than December 20.⁷ That said, the Delaware Code also provides that the presiding officer of the chamber in which the vacancy occurs can choose to have the election held sooner than the general election.⁸

4. WHO SELECTS EACH POLITICAL PARTY'S CANDIDATE?

Primary elections are not held to choose each party's candidate. Instead, the county committee for each political party eligible to place candidates on the general election ballot for the most recent past general election nominates a candidate for the election to fill the vacancy.⁹

The county committee must submit its nomination to the Department of Elections no later than 25 days prior to the date of the election.¹⁰

If the legislative district includes area in more than 1 county, the county committees of each county must agree on one candidate.¹¹

If the political party does not have a county committee, the state committee makes the nomination.¹²

5. FOR HOW LONG IS THE VACANCY FILLED?

The Delaware Constitution and the Delaware Code provide that the individual chosen to fill a vacancy in the General Assembly holds the vacated office for the remainder of the term of the office.¹³

⁶ *Id.*

⁷ 15 *Del. C.* § 7102(b).

⁸ 15 *Del. C.* § 7102(c).

⁹ 15 *Del. C.* § 7103(a).

¹⁰ *Id.*

¹¹ *Id.*

¹² 15 *Del. C.* § 7103(c).

¹³ Del. Const. art. II, § 6; 15 *Del. C.* § 7108.