

## RECALL ELECTIONS

Recall elections are governed by the Arizona Constitution and Arizona Revised Statutes. Every public officer holding an elected office for at least six months, either by election or appointment, may be removed from office before the end of his term by means of a recall procedure.<sup>416</sup> The six months in which a candidate may not be recalled are the first six months of the first term of office. In other words, if a candidate is re-elected to the same office, he could be recalled at any time within the second term.<sup>417</sup> The recall process is now subject to strict compliance with constitutional and statutory requirements.<sup>418</sup>

Questions often arise regarding the campaign finance requirement for those circulating a recall petition. In 2016, the Legislature repealed a provision in state law that voided recall signatures if a Statement of Organization was not filed prior to collecting signatures. Since this provision is no longer in statute, recalls are subject to Title 16 requirements to determine if a Statement of Organization must be filed.<sup>419</sup> The clerk should provide the applicant with the campaign finance forms and reporting dates.

The method of securing a recall is as follows:<sup>420</sup>

1. The person or organization intending to file a recall petition must, prior to circulating the petitions, submit an application to the clerk with the following information:
  - A. Name and address of individual or, if organization, name of the organization and names and titles of its officers.
  - B. Intention to circulate and submit recall petition.
  - C. Text of the statement setting forth the reasons for the recall.
  - D. Request for issuance of an official number to appear on all petitions.
2. We recommend that the clerk have a pre-prepared packet for distribution for an individual or group seeking to circulate a recall petition. A model Recall Packet is included in this manual. Once the election

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<sup>416</sup> [A.R.S. § 19-201](#).

<sup>417</sup> [Ariz. Const., art. VIII, pt 1, §§1, 5; A.R.S. § 19-202; Circulation of Petitions to Recall a Public Officer, Ariz. Op. Atty. Gen. No. 81-064 \(1981\); memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to Cathy Connolly, League of Ariz. Cities & Towns \(Jan. 17, 1983\); memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to Catherine F. Connolly, Asst. Dir., League of Ariz. Cities & Towns \(Apr. 13, 1990\).](#)

<sup>418</sup> [A.R.S. § 19-201.01](#).

<sup>419</sup> [Laws 2016, Ch. 79 § 24](#) (eff. Nov. 5, 2016).

<sup>420</sup> [Ariz. Const., art. VIII, pt 1, § 1; A.R.S. §§ 19-201 - 19-217](#).

has been called, the clerk should once again any campaign finance forms and information regarding the proper filing dates.<sup>421</sup> The forms and cover sheets are included in the model Recall Packet.

3. After receiving the application, the clerk must assign a number to the applicant. This number must be on each copy of the recall petition located in the lower right-hand corner on each side of each signature sheet.<sup>422</sup> The petition must also include a statement of not more than 200 words explaining the reasons for the recall.<sup>423</sup>
4. The clerk must mark the application with an official date and time of receipt and this becomes the official copy of the text of the recall. **The copy of the time-and-date-marked application must be attached to the petition sheets.**<sup>424</sup> If there are any changes to the statement after this point in time, the applicant must begin a new process and any signatures already gathered are invalid.<sup>425</sup>
5. The petition must be signed by qualified electors of the community. When the recall is for a member of the council who is elected at large, the number of signatures needed for the recall petition is 25% of the number of votes cast at the last preceding general election for all of the candidates for the office held by the officer, and must be calculated according to the following procedure established by a 1979 court case: Add together the votes for each of the candidates cast at the last preceding general election for the office which is subject to recall even if the person being recalled was not elected at that election. The result is then divided by the number of offices to be filled at that election. This number is then multiplied by 25%.<sup>426</sup>

For example, as in the illustration below, add together the votes cast for each of the candidates - X, Y and Z. The votes cast for each of these candidates must then be divided by the two council seats filled at that election. The remainder is then multiplied by 25%, to give you a minimum of 100 signatures which must be collected for the recall petition.

Candidate X receives	250	votes
Candidate Y receives	350	votes
Candidate Z receives	200	votes
	800	votes
	$\div 2$	<u>council seats</u>
	= 400	
	$\times .25$	
	100	signatures required for the recall petition

When the person being recalled is the mayor or a councilmember elected by district, simply calculate what is 25% of the vote cast for that office at the last general election. **If you have not held a general election for a number of years, i.e. everyone has been elected at the primary, you should discuss with your attorney which election to use to calculate the number of signatures required.**

6. The petitions must be filed with the clerk within 120 days after submission of the application explained in paragraph 1 above. (Although it is not required to issue a [receipt for recall petitions](#), it may be useful to do so for your records.)
7. State law bars the circulating of recall petitions by a county recorder or justice of the peace. Any petitions circulated by such a person are void.<sup>427</sup> Out of state circulators must register with the Secretary of State.<sup>428</sup>

<sup>421</sup> [Application of Title 16 to Recall Committees, Ariz. Op. Atty. Gen. No. I11-003 \(2011\).](#)

<sup>422</sup> [A.R.S. § 19-202.01\(C\).](#)

<sup>423</sup> [Ariz. Const. art. VIII, pt 1, § 2; A.R.S. § 19-203; see also Ross v. Bennett, 228 Ariz 174, 265 P.3d 356 \(2011\)](#)(finding that “the purpose of recall was to permit the electorate to get rid of an officer...for any or no reason. Therefore, the grounds...may be very general in their nature and character”).

<sup>424</sup> [Morales v. Archibald, 246 Ariz. 398 \(2019\)](#)(finding that signatures for recall could not be certified because of committee’s failure to attach the signature sheets to the time-and-date-marked copy of the recall application).

<sup>425</sup> [A.R.S. § 19-202.01 \(D\).](#)

<sup>426</sup> [Ariz. Const. art. VIII, pt 1, § 1; see also Johnson v. Maehling, 123 Ariz. 15, 597 P2d 1 \(1979\).](#)

<sup>427</sup> [A.R.S. § 19-205.02.](#)

<sup>428</sup> [A.R.S. § 19-118.](#)

Paid circulators must register with the Secretary of State if they are circulating statewide measures. Local paid circulators are not required to register with the State.

8. Within ten days after receipt of the petitions, the clerk must follow the same steps as outlined for initial review of initiative and referendum petitions. If the total number of signatures eligible for verification equals or exceeds the minimum number required, the clerk shall make a copy of the front of each signature sheet on which any signature eligible for verification appears. There is no random sample requirement - on recall petitions, each signature is checked and transmitted to the county for verification. The clerk must certify the number of sheets and signatures that are being transmitted to the county recorder's officer and retain a copy of the certification.<sup>429</sup> If there are not sufficient signatures, the clerk returns the petitions to the person or organization that submitted them.
9. The county recorder has 60 days after receipt of the signature sheets to check the signatures or affidavits and report back to the clerk. The recorder must certify the number of valid signatures and return the signature sheets to the clerk obtaining a dated, signed receipt therefor.
10. After return of the petitions from the county, the clerk has 5 days excluding Saturday, Sunday and legal holidays to determine whether or not there are sufficient, verified signatures to qualify for the recall. If there are sufficient signatures, the clerk must officially file the petition and notify the mayor that a recall will be placed on the ballot as provided by law.<sup>430</sup> If there are not sufficient signatures, the petitions are returned to those submitting them along with a notice of why the petitions were not sufficient.
11. Any person who has signed a recall petition may withdraw his signature not later than 5:00 p.m. on the date the petitions are actually submitted to the clerk. Any person may withdraw his signature by signing a simple statement of intent to withdraw his name at the office of the clerk. Also, a person may withdraw his signature by mailing a signed, notarized statement of intent to withdraw to the clerk. Withdrawn signatures and crossed-out signatures may not be counted in determining the legal sufficiency of the petition.<sup>431</sup>
12. If an elector wishes to challenge the number of signatures certified by the county recorder, the elector must commence an action in superior court within ten calendar days of when the clerk notifies the mayor that a recall has qualified and that an election is called. The superior court decision may be appealed to the state supreme court within ten calendar days after judgment.<sup>432</sup>
13. The clerk must within forty-eight hours after the official filing, excluding Saturdays, Sundays and other legal holidays, notify in writing the officer that a recall petition has been filed against him. The notice must state that a recall petition has been filed, the grounds for the petition and information concerning the officer's right to defend their conduct in writing. The officer then has ten days in which to file a statement of not more than 200 words defending their official conduct. If the officer files such a statement, it is printed on the ballot at the time of the recall election. If the office fails to provide a defensive statement, the right to have a statement printed on the ballot shall be considered waived.<sup>433</sup>
14. If the officer does not resign within five days from the date of filing excluding Saturdays, Sundays or other holidays, the city or town council must call an election within fifteen days. The election must be held on the next consolidated election date that is ninety or more days after the call.<sup>434</sup>
15. The officer's name automatically appears on the ballot at the recall election if he does not resign within the five-day period or otherwise request in writing that his name not appear.<sup>435</sup> Other candidates' names may appear on the ballot if they have been nominated by means of a nomination petition containing signatures of qualified electors of at least 2% of the total votes cast for all candidates for that office in the last election for that office.<sup>436</sup> To sign the nomination petition, a qualified elector must reside in the same electoral

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<sup>429</sup> [A.R.S. § 19-208.01.](#)

<sup>430</sup> [A.R.S. § 19-208.03.](#)

<sup>431</sup> [A.R.S. § 19-113.](#)

<sup>432</sup> [A.R.S. § 19-208.04\(B\).](#)

<sup>433</sup> [Ariz. Const. art. VIII, pt 1, § 3;](#) [A.R.S. § 19-207.](#)

<sup>434</sup> [Ariz. Const., art. VIII, pt 1, § 3;](#) [A.R.S. § 19-209.](#)

<sup>435</sup> [A.R.S. § 19-212;](#) [Abbey v. Green, 28 Ariz. 53, 235 Pac. 150 \(1925\),](#) and [A.R.S § 19-212.](#)

<sup>436</sup> [Ariz. Const., art. VIII, pt 1, § 4;](#) [A.R.S. § 19-212 \(A\).](#)

district as the person being recalled. Filing deadlines for the nomination petition for a recall election differ from the regular election deadlines and must be filed not more than 90 nor less than 60 days prior to the date of the recall election.<sup>437</sup> The form of the nomination petition is found in statute and is included in the Recall Packet.<sup>438</sup> The statements on the recall petition and the officer's statement also appear on the ballot.<sup>439</sup>

The recall election board is constituted in the same manner as a regular election board. One inspector, two judges and two clerks are appointed by the city or town clerk.<sup>440</sup> The election is conducted in the same manner as prescribed for the general election.<sup>441</sup> The candidate who receives the largest number of votes is declared elected for the remainder of the unexpired term on his qualification for the office and on completion of the canvass. If the incumbent receives the largest number of votes, he continues in office. If the incumbent does not receive the largest number of votes, he will remain in office until the completion of the canvass of votes.<sup>442</sup> There appears to be no limitation on the number of persons who can file nomination petitions against the incumbent. The expenses of one election are the responsibility of the city or town. The expense of a subsequent election against an officer during the term in which the first recall election was held must be paid for by the petitioners signing the petition. The funds necessary to pay for the election must be paid to the clerk at the time of application for a subsequent recall petition.<sup>443</sup>

Following are some points that should be considered when involved in a recall election:

1. The only offices that are subject to recall are those filled by direct election of the qualified electors. In effect, this means that a mayor may not be directly recalled as mayor unless he is a directly elected mayor. If a mayor who is not directly elected is to be recalled, he must be recalled as a councilmember rather than as mayor.<sup>444</sup> Appointed offices are not subject to recall; however, a person appointed to an elected office is subject to recall. Also, it is important to remember that a recall petition cannot be circulated against any officer in the first six months of his first term of office.
2. If more than one member of the council is to be recalled, separate recall petitions for each officer are required. In other words, if three members of the council are facing recall, three separate petitions must be filed.<sup>445</sup>
3. If recall petitions are filed against the elected official and he chooses to stay in office and no one else files nomination petitions, the election must be held because of the possibility of write-in votes.
4. The elected official subject to recall shall be declared the winner if the recall vote ends in a tie.
5. The person filing a nomination paper for a recall election must specify which member of the council they will oppose in the recall election if more than one official will be subject to recall in the election.<sup>446</sup>
6. Particularly when there is more than one officer to be recalled, **your city or town attorney should be consulted** as to how many signatures will be needed on the recall petitions.
7. Campaign finance laws, including reporting, apply to recall elections. For purposes of a recall election, "election cycle" means the period between issuance of a recall petition serial number and the latest of the following:
  - a. The date of the recall election that is called.<sup>447</sup>

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<sup>437</sup> [A.R.S. § 19-212 \(F\)](#).

<sup>438</sup> [A.R.S. § 19-212](#).

<sup>439</sup> [A.R.S. § 19-213](#).

<sup>440</sup> [A.R.S. § 19-214 \(A\), \(B\)](#).

<sup>441</sup> [Ariz. Const. art. VIII, pt 1, § 6](#); [A.R.S. § 19-215](#).

<sup>442</sup> [A.R.S. § 19-216](#).

<sup>443</sup> [Ariz. Const. art. VIII, pt 1, § 5](#); [A.R.S. § 19-202](#); [Arizona City Sanitary Dist. v. Olson, 224 Ariz. 330, 230 P.3d 713 \(Ariz. Ct. App. 2010\)](#).

<sup>444</sup> [Memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to Catherine F. Connolly, Asst. Dir., League of Ariz. Cities & Towns \(Aug. 10, 1988\)](#).

<sup>445</sup> [Memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to Catherine F. Connolly, Asst. Dir., League of Ariz. Cities & Towns \(Apr. 13, 1990\)](#).

<sup>446</sup> [A.R.S. § 19-212](#); [Candidate Specification, Ariz. Op. Atty. Gen. No. 76-240 \(1976\)](#).

<sup>447</sup> [A.R.S. § 19-209](#).

- b. The date that a resignation is accepted.<sup>448</sup>
- c. The date that the clerk provides notice that the number of signatures is insufficient.<sup>449</sup>

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<sup>448</sup> [A.R.S. § 19-208.](#)

<sup>449</sup> [A.R.S. § 19-208.01.](#)