

# The Election is Over! Now What?



**POST-ELECTION REQUIREMENTS AND  
CONSIDERATIONS**

**MAY 3, 2016 REGULAR ELECTION**

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# Road Map



- Cancelled Director Elections
- Full Elections (not cancelled)
  - Requirements for All Elections
  - Debt/TABOR Post-Election Requirements
  - Organizational Elections Post-Election Requirements
- Election Recounts and Contests
- Election Records Retention and Destruction

***Attorneys Disclaimer:*** *The information contained in this presentation is not intended to constitute legal advice or create an attorney-client relationship. Further, this presentation is intended to provide general information regarding elections only. Attendees should consult with their respective attorneys for specific legal advice.*

# Cancelled Director Elections



- On March 1, if there are no more self-nominations or write-in candidate affidavits received than positions up for election, and the only matter on the ballot is for the election of directors, the Designated Election Official (“DEO”) may cancel the election and declare the candidates elected (§ § 1-13.5-513(1) & (6), C.R.S.)
- DEO cancels the election and declares candidates elected (§ 1-13.5-513(1), C.R.S.)
  - Cancellation done by resolution of the DEO
  - Resolution filed with the Division of Local Government (“DLG”) within 30 days of election (§ 1-11-103(3), C.R.S.)

# Cancelled Director Elections (cont.)



- **Notice of Cancellation**
  - DEO to provide notice by publication of the cancellation
  - A copy of the notice must be posted at the following locations:
    - ✦ Polling place of the District, if any
    - ✦ DEO's office
    - ✦ County Clerk and Recorder's Office (for each County with territory within the District)
  - A copy of the notice must be filed with the DLG
- **DEO notifies candidates that they have been elected by acclamation (§ 1-13.5-513(6), C.R.S.)**
  - Notify immediately after the election (§ 1-11-103(1), C.R.S.)
  - Method of notification not specified nor any methods prohibited

# Cancelled Director Elections (cont.)



- **Oath(s) of Office and Bond**
  - Oath must be taken within 30 days after the election date (not the date of the cancellation) (§ 32-1-901(1), C.R.S.)
    - ✦ If not taken within 30 days, position is vacated (§ 32-1-901(3), C.R.S.)
  - Oath may be administered by: 1) County Clerk and Recorder; 2) Chairman of the Board; 3) Clerk of the Court; or 4) Notary public.
  - Individual, schedule or blanket surety bond in amount not less than \$1,000 must be filed with Oath
  - Oath and Bond filed with Clerk of Court and DLG
- **Formal Certificate of Election provided to candidates by DEO**
  - After oath and bond filed (§ 1-13.5-1305(2), C.R.S.)
  - Copy of certificate filed with DLG

# Full Elections



- Full elections refers to elections that cannot otherwise be cancelled and are conducted through the May 3, 2016 regular election date
  - The following elections cannot be cancelled:
    - ✦ Debt/TABOR elections
    - ✦ Contested director elections
    - ✦ Organizational elections
- With a few noted exceptions, the post-election procedures for director, debt/TABOR and organizational elections are the same

# Self-Affirmation of Eligible Elector



- Any person desiring to vote who does not appear on the voter registration list or the property owners list shall sign a self-affirmation that they are an elector of the district (§ 1-13.5-605(2)(a), C.R.S.)
- Required content of self-affirmation set forth in § 1-13.5-605(2)(a), C.R.S.

# Challenge of Persons Voting



- No person shall be permitted to vote unless they are so qualified (§ 1-13.5-1201, C.R.S.)
- Challenges occur before a ballot is cast (i.e. when requesting ballot or when casting ballot)
- If the person's name appears on the voter registration list or property owner list and they apply for a ballot, their right to vote may be challenged (§ 1-13.5-1202(1), C.R.S.)
  - If not entitled to vote, no ballot may be delivered
- It is the duty of an Election Judge to challenge any person offering to vote who s/he believes is not eligible (§ 1-13.5-1202(2), C.R.S.)
- Watchers or any eligible elector of the District may also challenge anyone offering to vote (§ 1-13.5-1202(2), C.R.S.)
  - Each challenge must be made by written oath (§ 1-13.5-1203, C.R.S.)
  - All challenges and oaths are given to the DEO with election papers who must deliver them to the district attorney for investigation and action



# Challenge of Persons Voting (cont.)



- Each challenge must be made by written oath (§ 1-13.5-1203, C.R.S.)
  - All challenges and oaths are given to the DEO with election papers who must deliver them to the district attorney for investigation and action
- Person offering to vote to sign written oath or affirmation answering certain questions to help determine eligibility. Questions set forth in § 1-13.5-1204, C.R.S.
- Person challenging right to vote may withdraw after applicable questions answered (§ 1-13.5-1204(7), C.R.S.)
- If challenge not withdrawn, person offering to vote to sign written oath of affirmation that they are eligible to vote (§ 1-13.5-1205, C.R.S.)
  - Ballot then received and pollbook marked “sworn” next to name
- If challenged person refuses to answer questions or take oath, Election Judges shall reject the person’s vote (§ 1-13.5-1206, C.R.S.)

# Counting of Ballots



- Counting may begin 15 days before the Election and continue until complete (§ 1-13.5-1107, C.R.S.)
- Election official in charge to take all precautions necessary to protect the secrecy of the procedures
- No information concerning the count to be released by officials or watchers prior to 7:00 PM on Election Day
- Only Election Judges and Watchers may be in room (§ 1-13.5-609(3), C.R.S.)
  - DEO and others not permitted in room

# Election Judges' Certificate (Statement on Ballots)



- Election Judges' Certificate of Statement on Ballots
- Made as soon as all votes have been read and counted
- Must contain:
  - Name of each candidate, designating the office for which each candidate received votes;
  - Number of votes each candidate received, which number must be expressed in words, at full length, and in numerical figures; and
  - The ballot issue or ballot question, if any, voted upon and the number of votes counted for and against the ballot issue or ballot question
- Statement must contain a separate statement that identifies and specifies each of the following:
  - The number of ballots delivered to electors
  - The number of ballots not delivered to electors
  - The number of unofficial and substitute ballots voted
  - The number of spoiled ballots
  - The number of ballots returned
- All unused ballots, spoiled ballots, and stubs of ballots voted must be returned with the Statement to the DEO who provides a receipt for all (§§ 1-13.5-613 and 614, C.R.S.)

# Election Judges' Abstract of Votes



- **Results of the election (§ 1-13.5-615, C.R.S.)**
  - When originally issued, may not contain additional votes to be counted for UOCAVA voters (*Uniformed and Overseas Citizens Absentee Voting Act*)
  - UOCAVA ballots are considered valid and are to be counted if received by the close of business day on the 8<sup>th</sup> day after the election (§ 1-8.3-113(2), C.R.S.)
- **Election judges are required to make an abstract of the count of votes containing:**
  - Names of the offices
  - Names of the candidates
  - Any ballot issues or ballot questions voted upon
  - Number of votes counted for and against each candidate or ballot measure
- **The form will be provided to the election judges by the DEO**
- **Immediately upon completion of the count, the abstract must be posted in a conspicuous place that can be seen from the outside of the polling place**
- **May be removed at any time forty-eight hours after the polls close**
- **NOTE:** If UOCAVA ballots sent to voters but not returned by time ballots counted and then ballots later returned by deadline, Election Judges will need to update the Abstract to add the additional results and finalize the Abstract

# Canvassing of Returns



- **Canvass Board appointed by DEO at least 15 days before the Election**
  - Requirements for members of Canvass Board set forth in § 1-13.5-1301, C.R.S.
    - ✦ At least one member of the District's BOD and one eligible elector not on BOD
  - Canvass Board includes DEO and appointed members
  - No maximum number of members for Board
- **Members must take oath before commence duties (§ 1-10-201(5), C.R.S.)**
- **No later than the 14<sup>th</sup> day after the Election (17<sup>th</sup> day if a coordinated election), Canvass Board makes statements from the Election Judges' Official Abstract of Votes and issues Statement and Certificates of Election Results (§ 1-13.5-1305(1), C.R.S.)**
  - If fewer than 10 UOCAVA ballots sent and not returned, Election Judges to hold 10 previously received ballots to be counted with UOCAVA ballots when received to maintain secrecy
  - UOCAVA ballots to be counted if received by EOB on 8<sup>th</sup> day after Election (§ 1-8.3-113(2), C.R.S.)
  - If UOCAVA ballots issued, recommended to schedule Canvass Board after the 8<sup>th</sup> day after the Election

# Statement and Certificate of Election Results



- **Statement and Certificate of Election Results (§ 1-13.5-1305(1), C.R.S.)**
  - Issued by Canvass Board
  - Statement contains the following:
    - ✦ Names of the candidates
    - ✦ Any ballot issue or ballot question
    - ✦ The number of votes given to each
  - Canvass Board members certify the statement to be correct and subscribe their names thereto
  - Canvass Board then determines which persons have been duly elected by the highest number of votes and shall endorse and subscribe on such statement a certificate of their determination

# Certificate of Persons Elected



- **Certificate of Persons Elected sent to:**
    - Each candidate declared elected
    - Division of Local Government
- (§ 1-13.5-1305(2), C.R.S.)

# Recounts



## Recounts (§ 1-13.5-1306, C.R.S.)

- DEO required to order a recount if there is less than or equal to  $\frac{1}{2}$  of 1% of a difference in the votes (§ 1-13.5-1306(1), C.R.S.)
  - Must be completed by 28<sup>th</sup> day after Election
  - Paid for by District
  - Notice of recount must be given to BOD, all candidates and any issue committees
- Interested party may request recount (§ 1-13.5-1306(2), C.R.S.)
  - Must be requested in writing within 17 days of Election
  - At interested party's expense
    - ✦ Costs refunded if results reversed in favor of party
  - Recount must be completed no later than 28<sup>th</sup> day after Election



# Contests



## Contests (§§ 1-13.5-1401, *et seq.*, C.R.S.)

- Election of any **person** declared duly elected may be contested by any eligible elector of the District on the following grounds:
  - Not eligible for office
  - Illegal votes received or legal votes rejected at polls in sufficient numbers to change results
  - Error or mistake made by Election Judge, DEO or Canvass Board, which is sufficient to change results
  - Malconduct, fraud or corruption occurred which is sufficient to change results
  - Any other cause that shows another candidate was the legally elected person

# Contests (cont.)



- Contests tried and determined in County District Court
- Contester files bond with court to pay all costs in event contest fails
- Must be filed within 10 days after conclusion of a recount or 10 days after the expiration of the period within a recount may be requested
- Contestor files verified written statement of intent to contest election with particulars set forth in § 1-13.5-1403, C.R.S.
- Court order summons and contestee required to file answer within 10 days (§ 1-13.5-1404, C.R.S.)
- Once issue joined (answer filed), court sets trial date within 10-20 days of when issue joined
- Judge may order recount and ultimately enters judgement and issues certificates of election

# Contests (cont.)



- If contest is over **order of ballot** or **form** or **content of ballot titles**, election official is the contestee (§ 1-13.5-1408(2), C.R.S.)
- If contest is the result of the election on a **ballot issue** approving the creation of debt or financial obligation, District is contestee (§ 1-13.5-1408(3), C.R.S.)
- Same procedures for these contests as for elected official

# Oaths and Bonds



- **Oath(s) of Office and Bond**
  - Oath must be taken within 30 days after the election date (not the date of the cancellation) (§ 32-1-901(1), C.R.S.)
    - ✦ If not taken within 30 days, position is vacated (§ 32-1-901(3), C.R.S.)
  - Oath may be administered by: 1) County Clerk and Recorder; 2) Chairman of the Board; 3) Clerk of the Court; or 4) Notary public.
  - Individual, schedule or blanket surety bond in amount not less than \$1,000 must be filed with Oath
  - Oath and Bond filed with Clerk of Court and DLG
- **Formal Certificate of Election provided to candidates by DEO**
  - After oath and bond filed (§ 1-11-103, C.R.S.)
  - Also known as a “wall certificate”

# Debt/TABOR Post-Election Requirements



- **After Abstract of Votes**
  - DEO posts certificate of votes cast for and against each ballot issue and question for no less than 10 days following completion of Abstract for public inspection
  
- **30 Day Filings**
  - Certificate of Election Results to DLG (§ 1-11-103(3), § 32-1-104(3), C.R.S.)
  - Certificate of Election Results to Board of Directors of District and Petition Representatives of a ballot issue or question (§ 1-11-103(2), C.R.S.)
  - DLG-32 to be recorded with County Clerk & Recorder (§ 32-1-1604, C.R.S.)
    - ✦ Copy to DLG
  - Fair Campaign Practices Act Disclosure, if applicable (§ 1-45-108, C.R.S.)
  
- **45 Day Filings**
  - Certification of election results authorizing incurrence of general obligation indebtedness by certified mail to BOCC or municipality with jurisdiction (§ 32-1-1101.5(1), C.R.S.)
    - ✦ If not done, shall certify no later than 30 days prior to issuance of general obligation debt
    - ✦ Copy of certification to be provided to Division of Securities

# Organizational Post-Election Requirements



- In addition to requirements for director elections and debt/TABOR elections, districts in the process of organizing must file a motion with the district court containing the certified election results and requesting the issuance of an Order and Decree organizing the district (§ 32-1-305.5(5), C.R.S.)
- Order and Decree must be recorded with the County Clerk & Recorder within 30 days of the date of the Order and Decree (§ 32-1-306, C.R.S.)
  - Copy of Service Plan provided to County Clerk & Recorder
- Order and Decree and Service Plan to DLG, map of boundaries to Assessor and DLG (§ 32-1-306 and § 32-1-104(1), C.R.S.)
- Notice of Intent to Impose Mill Levy in Year of Organization (§ 39-1-110(1), C.R.S.)
  - Sent to County Assessor and BOCC with legal description and map
  - Allows District to impose mill levy for collection in following year

# Election Records Retention and Destruction



- Unless contested or litigation, ballots required to be maintained in a sealed box in the DEO's custody until 25 months after the election at which the ballots were cast (§ 1-13.5-616(1), C.R.S.)
  - DEO may then open the box and destroy the ballots by fire, shredding, burial or other approved method
- All other official election records and forms required to be preserved for at least six months after the date the polls close (§ 1-13.5-616(2), C.R.S.)
- Certain election records required to be permanently maintained pursuant to Colorado Special District Records Retention Schedule (e.g. Resolution Calling Election, Notice of Cancellation and Certified Statement of Election Results)

# Resources



- Special District Association (<http://www.sdaco.org/>)
- Division of Local Government
  - Election Resources (<https://www.colorado.gov/pacific/dola/special-district-elections>)
  - Forms (<https://www.colorado.gov/pacific/dola/special-district-election-forms>)
- Colorado Secretary of State (<http://www.sos.state.co.us/pubs/elections/main.html>)
  - Election Rules ([http://www.sos.state.co.us/pubs/rule\\_making/CurrentRules/8CCR1505-1Elections.html](http://www.sos.state.co.us/pubs/rule_making/CurrentRules/8CCR1505-1Elections.html))
  - Help Center ([http://www.sos.state.co.us/pubs/info\\_center/contact.html](http://www.sos.state.co.us/pubs/info_center/contact.html))



# Questions?

