



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Recounts

Step-by-Step Instructions

Adopted 08/2023

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For the Public, Media, Candidates, and Their Representation

Recount background information

A recount is a secondary count of all votes cast for an office during an election that is directed by an appropriate court of law. A recount may occur for an election for any office or referendum where (i) an election is certified by the appropriate authority and (ii) the losing candidate or losing position in a referendum is within a specific margin (generally, 1%).(Va. Code § 24.2-800(B)).

The State Board of Elections (SBE) must create standards for the administration of recounts (see Va. Code § 24.2-802(A)). These Recount Step-By-Step Instructions (“Instructions”) are in furtherance of that mandate. As of July 1, 2023, the State Board is required to create additional standards and instructions for the conduct of recounts in elections for an office to which more than one candidate can be elected (see Va. Code § 24.2-802(C)). These Instructions have been updated to address recounts in those elections and, additionally, for recounts of elections conducted using ranked choice voting (RCV) under Va. Code § 24.2-673.1.

Pursuant to Va. Code § 24.2-802.2(B), “The recount of votes shall be based on votes cast in the election and shall not take into account (i) any absentee ballots or provisional ballots sought to be cast but ruled invalid and not cast in the election, (ii) ballots cast only for administrative or test purposes and voided by the officers of election, or (iii) ballots spoiled by a voter and replaced with a new ballot.”

Additionally, a recount is not an opportunity to validate or invalidate the eligibility of a voter. Pursuant to Va. Code § 24.2-802.2(C), “the eligibility of any voter to have voted shall not be an issue in a recount.” For instance, if a provisional voter was determined to be qualified by the local electoral board and the vote was counted for the election, the provisional voter remains qualified and the ballot must be processed as all other ballots during a recount.

Further, a full hand count completed as part of a risk-limiting audit under Va. Code § 24.2-671.2 “shall not be construed as a recount under Chapter 8 (§ 24.2-800 et seq.).”

Briefly, what is the process for a recount in Virginia?

In conducting a recount, the voting machine, which will scan all valid ballots, must be programmed to reject or return ballots that have write-ins, undervotes, overvotes, or ballots that cannot be read (see Va. Code § 24.2-802.2(D)). These returned ballots will be hand counted, along with other ballots required to be hand counted, by recount officials. Recount officials may challenge ballots when they question the validity of the ballot or cannot agree to the voter’s intent presented on the ballots. The recount court will make the determination on the challenged ballot. Additionally, the recount court will certify the final results of the recount.

How does a recount happen?

In Virginia, there is no automatic recount; rather, a recount will only occur under certain circumstances and when certain actions are conducted.

First, the election results must be certified. Certification of election results can happen at different times depending on the office being certified.

The local electoral board must have results certified for local offices within one week following the election (*see* Va. Code § 24.2-671).

The SBE certifies primary and general election results for all federal offices, states offices, and any offices shared by two or more localities. For primary nominations, the SBE must meet to certify results no more than fourteen days after the election (*see* Va. Code § 24.2-534). For November general elections, the SBE must meet to certify the results by the first Monday in December (*see* Va. Code § 24.2-679).

Second, the difference between the winning candidate (the winning candidate with the lowest vote total, in the case of multi-winner elections) and the appealing losing candidate must not be more than one percent (1%) of the total vote cast for the two candidates. Votes cast for other candidates cannot be included within this total (*see* Va. Code § 24.2-800(B)).

When the losing or winning candidate is a write-in candidate, the difference between the winning and losing candidates cannot be more than five percent (5%) of the total votes cast for those two candidates (*see* Va. Code § 24.2-800(B)).

In an RCV election, a losing candidate must be within the required threshold of a winning candidate in the round of tabulation in which the winning candidate **first** reaches the required threshold to be elected. A losing candidate is not eligible for a recount on the basis that he or she is within the required threshold of a winning candidate in a round after the round in which the winner first reached the threshold required to be elected. If a round has only two candidates remaining, the candidate receiving the most votes in the round will be considered the winning candidate and the candidate receiving the second most votes will be considered the losing candidate; the losing candidate within the required threshold of the winning candidate in such scenario will be eligible to petition for a recount under § 24.2-800(B).

Third, the losing candidate must petition the appropriate court to request a recount (*see* 24.2-801).¹

In a multi-winner election, the petition must: (i) specify the winning candidate, who is party to the recount, with whom the losing candidate was within the required margin based upon the total votes of the two candidates; and (ii) list the other winning candidates in the election. If there are multiple winning candidates with whom the losing candidate is within the required threshold, the winning candidate with the lowest vote total shall be listed as the party to the recount in (i). Consistent with Virginia law, the recount court, on its own initiative or upon

¹ *See* 24.2-800(C) for thresholds related to ballot questions.

request, may join winners listed in (ii) as parties to the recount.

For local offices, the petition must be filed in the circuit court of the county or city in which the candidate being challenged resides. The losing candidate has 10 days from day the results are certified to file a petition with the appropriate court (*see* Va. Code § 24.2-801).

For statewide offices, the petition must be filed in the Circuit Court of the City of Richmond. The losing candidate has 10 days from day the results are certified to file a petition with the appropriate court (*see* Va. Code § 24.2-801).

For presidential electors, the petition must be filed in the Circuit Court of the City of Richmond. The losing candidate must file the petition no later than 5:00 PM of the second calendar day after the day the SBE certifies the election results (*see* Va. Code § 24.2-801.1). Presidential candidates who anticipate the possibility of asking for a recount are encouraged to notify the State Board by letter or email as soon as possible after Election Day.

A recount for presidential electors must be “held promptly” and completed in accordance with the provisions of 3 U.S.C. § 5, at least six days before the time fixed for the meeting of the electors.

The petition to the appropriate court must contain:

- The certified results of the election and
- A request to the appropriate court to have the ballots in the election recounted.

What happens after a recount petition is correctly filed?

The winning candidate (or the governing body of the jurisdiction in the case of a referendum) must be served a copy of the petition within 10 days of certification by the State Board of Elections or electoral board (*See* Va. Code § 24.2-801). For multi-winner elections, all winning candidates must be served a copy of the petition. The petition must be served within five calendar days of certification for an election for presidential electors (*see* Va. Code § 24.2-801.1).

A recount court (also referred to as “Court”) will be established (*see* Va. Code §§ 24.2-801 and 801.1). The Court will consist of three judges: the Chief Judge of the Circuit Court of where the recount petition was filed, and two judges appointed by the Chief Justice of the Supreme Court of Virginia. The Court will preside over the entirety of the recount process. The Court must hold a preliminary hearing within seven calendar days of a petition filed for a recount of any election other than an election for presidential electors. The Court must hold a preliminary hearing within five calendar days of a petition filed for a recount of an election for presidential electors (*See* Va. Code § 24.2-802.1(A)).

What happens at the preliminary hearing?

At the preliminary hearing, (i) motions may be disposed of and (ii) the rules of the procedure for the recount may be “fixed” or determined (*see*. Va. Code § 24.2-802.1). In recounts of multi-

winner races, the addition of parties to the proceedings, if at issue, should be addressed first to allow any added parties the opportunity to fully participate in the process.

The parties to the recount will be entitled access to the pollbooks and other election materials used in the election for “examination purposes” under the supervision of the electoral board; thus, the general registrar and the locality’s legal representation must be present during the hearing. However, **individual ballots cannot be examined** here (see Va. Code § 24.2-802.1(A)).

The Chief Judge and the recount court will also determine other details; including but not limited to, transportation and delivery of election materials and voting machines and testing. The Court will also determine the number of recount officials and confirm the officials suggested by the parties to the recount, confirm recount coordinators, and security measures for the recount (see Va. Code § 24.2-802.1).

How are ballots counted?

First, ballots will be scanned by recount officials. Prior to the recount, the locality is required to program the voting machines to return or set aside ballots with overvotes, undervotes, or write-ins (see Va. Code § 24.2-802.2(D)(2)).

Second, these returned/set aside ballots, any ballots not accepted by the scanner, and any ballots for which a scanner could not be programmed properly to comply with the requirements of the Code related to recounts will be hand counted (see Va. Code § 24.2-802.2(D)(2)). The recount team will also hand count any ballot that was hand counted on Election Day.

Third, if the recount team cannot agree on a ballot’s validity, the ballot will be challenged and handed to the Court for adjudication (see Va. Code §§ 24.2-802.2(D)(3) and 24.2-802.2(F)). The Court will adjudicate the validity of the ballot and the voter’s intent (see Va. Code § 24.2-802.2(F)).

Can candidates/ media/ general public observe the recount?

Yes, a recount is a public event.

“On the request of any party to the recount, the court shall allow that party to appoint one representative observer for each team of recount officials” (see Va. Code § 24.2-802.1(C)).

Each party to the recount is entitled to have one observer per recount official team if they request to the Court to have observers. The observer may stand behind or sit to the outside of the recount officials as they work and may only watch and take notes. Observers must have an unobstructed view of the recount officials’ work. No observer may handle ballots, election materials, or recount materials for ballot security reasons (see Va. Code § 24.2-802.1(C)).

If an observer has a question, it must be directed to the supervising Recount Coordinator -- not the recount officials -- without disturbing the proceedings.

Members of the news media and the general public may also be in the room but are not allowed to handle any official materials or disturb the proceedings in any way.

What happens after the Court adjudicates the challenged ballots?

The Court will certify the total results, including any votes adjudicated for those party to the recount. If the recount changes the result of the election, the winner(s) of the recount will be issued a certificate of election. Further, any updates to vote numbers will be shown on the Department of Elections' website (*see* Va. Code § 24.2-802.2(F)).

Instructions – General Registrar/ Electoral Board Members

The requirement to execute a recount can occur very rapidly. The Department suggests that if you think a recount is likely to occur, you should begin preparations for a recount prior to the issuance of the Court’s preliminary recount order.

What are the responsibilities of the General Registrar and Electoral Board for a recount?

There are multiple actions to be completed prior to and during the recount. While the general registrar and electoral board members will likely share responsibilities, the Code ultimately places responsibility for the completion of these actions on the local electoral board. Responsibilities of the general registrar and the electoral board members may shift depending on the court order. Ensure the following is completed prior to the recount:

- Provide to the Clerk of the Court a signed ELECT-659 (Request to Inspect Sealed Materials) from the Department of Elections.

You may also want to request to open **Envelope 6** (unused ballots) or have your ballot printer print a number of ballots for the test deck for the L & A testing.

- Provide to the parties and the recount court a list of election officials, including the party they represent, who served on election day.

Each candidate and governing body/chief executive officer (in the case of a referendum) party to the recount may select an equal number of officers of election to serve as recount officials. Each team of recount officials must be composed of one representative of each party (*see* Va. Code § 24.2-802.1(C)).

- Have a data storage medium for the voting machines of each precinct.

Central Absentee Precinct (CAP) will be counted as a separate precinct.

Valid provisional votes cast for Election Day will be counted as a separate precinct.

- Program your voting machine(s) and data storage device(s).

You must have your voting machine(s)/ data storage medium(s) programed to count the votes cast for the candidates or issue ordered in the recount.

You must have your voting machine(s)/ data storage medium(s) programed to return overvotes, undervotes, and write-ins, as these ballots must be hand counted (*see* Va. Code § 24.2-802.2(D)(2)).

- Conduct an L&A prior to the recount.

Your Recount Court may stipulate in the recount order when your L&A must be conducted and how many ballots will be used.

- For RCV race recounts, ensure that necessary voting systems, computers, software, data storage devices, and other necessary items are prepared for RCV tabulation in accordance with guidance from the Department of Elections.
- Review and amend the **Recount documents** (if needed).

Your recount court may add other winning candidates as parties to the recount. If this happens, amend the recount forms to add the additional parties.

Also, your recount court may require you to account for vote totals for candidates not party to the recount. If so, amend the **votes cast for candidates not party to the recount** on the recount forms to include the other candidate names.

Your recount court determines how many recount officials will assist with the recount. You may be given multiple teams for each precinct or only one team. As such, **review and amend** your instructions for handing off returned ballots from the scanning team to the hand counting team.

- Prepare materials for recount official training.

Ensure the recount officials and coordinators understand how to fill out the **Recount Precinct Results Report** and the **hand count tally sheet** as directed by the Department of Elections and the recount court.

Ensure the recount officials and coordinators understand how to conduct the hand count procedure.

- Prepare materials and set up location for the recount.

Prepare office supplies and required recount documents for your recount teams and coordinators in a “recount kit” for easy access. Set up the recount location as most efficient for your teams.

What documents are accessible for a recount?

“The petitioner and his counsel and each other party and their counsel under supervision of the electoral board and its agents shall also have access to pollbooks and other materials used in the election for examination purposes, provided that individual ballots cast in the election shall not be examined at the preliminary hearing” (see Va. Code Sec. 24.2-802.1(A)).

Prior to the recount proceedings, the following election related materials are available to the public:

- Statement of results are available at the general registrar's office (*see* Va. Code Sec. 24.2- 668(B)).
- Machine tapes are available with the appropriate Clerk of Court (*see* Va. Code Sec. 24.2-658)
- Printed return sheets are available with the appropriate Clerk of Court (*see* Va. Code Sec. 24.2- 658).
- Abstract of votes are accessible with the electoral board (*see* Va. Code Sec. 24.2-675).

Can candidates/ media/ general public observe the recount?

Yes, a recount is a public event.

“On the request of any party to the recount, the court shall allow that party to appoint one representative observer for each team of recount officials” (*see* Va. Code § 24.2-802.1(C)).

Each party to the recount (candidate) is entitled to have one observer per recount official team, if they request to the Court to have observers. The observer may stand behind or sit to the outside of the recount officials as they work and may only watch and take notes. Observers must have an unobstructed view of the recount officials' work. No observer may handle ballots, election materials, or recount materials for ballot security reasons (*see* Va. Code § 24.2-802.1(C)).

If an observer has a question, it must be directed to the supervising Recount Coordinator -- not the recount officials -- without disturbing the proceedings.

Members of the news media and the general public may also be in the room but are not allowed to handle any official materials or disturb the proceedings in any way.

Closing the Recount

Issuance of a new Certificate of Election

The person(s) having the highest number of votes after the recount will be determined to have been elected to the office(s). The Court will certify to the State Board and the electoral board(s) the person(s) elected. If the recount court's certification of the recount declares the petitioning candidate the winner (or one of the winners in a multi-winner race), a new certificate of election must be issued, making the original certificate null and void.

Update Results

Localities involved in a recount may need to change their election results. Per Va. Code § 24.2-671, amendments to official abstracts must be provided to the ELECT. Official amendments to abstracts should be certified and mailed to ELECT. Further, the locality must change election results in VERIS. To do so, the locality must enter a “Reason for Change” in VERIS before they can change their vote totals.

Return and Final Retention of Material

All of the recount material received from each city or county for the conduct of recount proceedings should be resealed, signed by the recount officials and then securely stored by the Clerk of the Circuit Court (Clerk) for each locality in which recount proceedings were held. These materials should remain secured and sealed until the time for the candidate losing the recount to initiate a contest has expired.

If the recount was for a primary or election for a General Assembly seat, statewide office or federal office, ELECT will check with the appropriate office to determine if a contest has been filed by the deadline, and then notify the Clerk. If no contest is pending, the records for the Clerk's own locality should then be treated as prescribed by law for other records from that same election date that are in the custody of the Clerk.

Materials sent from any other localities in a district to be recounted should be returned to the Clerks for those localities, again to be treated in the same manner as other records from that election date that are in the custody of the Clerk. The other Clerks may want to pick up the records, or the sending Clerk may have them delivered personally or by a method that includes tracking of delivery. If the materials are picked up or delivered personally, both Clerks should keep a record documenting the transaction.

Instructions – Recount Coordinators

What are my responsibilities as a recount coordinator?

- Supervise multiple recount teams' work progress.
- Assist the recount teams.
 - Provide information on the recount procedure to recount teams.
 - Enter data on the recount precinct results form for the recount teams, if needed.
 - Pick up from the Clerk and deliver to recount teams sealed ballots precinct by precinct.
 - Ensure recount teams have all necessary materials.
 - Check that ballot bins are empty as requested by recount officials.
- Speak with the general public, candidate(s), and their representatives, and media regarding recount information.
 - Recount teams may have to count many ballots by hand and third parties speaking with recount teams may disturb their process of the hand count. To ensure that teams work effectively, recount teams cannot speak to the general public, candidate(s), or their representatives, or media.
- Ensure the recount proceedings are not disturbed.
- A recount coordinator cannot touch any ballots.
 - Only recount teams may touch the ballots. This requirement is due to ballot security and chain of custody.

Instructions – Recount Officials (Scanning Ballots)

Check that you have these materials.

- Two (2) copies of *Recount Precinct Results* form (For RCV elections, use *Precinct Results – RCV* form)
- Data storage device for the ballot scanning machine
- Container(s)/ Envelope(s) #3
- Returned ballot bin/ place to set aside ballots that could not be scanned

Print two (2) zero tapes from the voting machine.

1. **Check** that all totals on the zero tapes read 0000.
2. **Check** that the public counter total reads 0000.
3. **Complete** PART 1 on the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).
4. **Staple** a zero tape to the first page of each *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).

Scan all ballots through the machine.

1. **Open** container/Envelope #3 and take out the counted ballots for the precinct.
If you have multiple containers, open one container at a time.
2. **Feed** the counted ballots into the scanner.
If the machine returns a ballot or a ballot will not scan, **put the ballot aside in the returned ballots bin.**
3. **Repeat** Step 1 and 2 with all containers /Envelopes #3 for the precinct until all ballots have been scanned or set aside for hand counting.
4. **Ask** the recount coordinator to check that all containers /Envelopes #3 are empty.

Print two (2) results tapes from the voting machine.

1. **Complete** PART 2 of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form) with the results tapes.
2. **Staple** one (1) results tape to page 3 of each *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).
3. **Remove** the ballots that successfully scanned from the ballot scanner compartment.
4. **Return** successfully scanned ballots to container/ Envelope #3s.
5. **Ask** the recount coordinator to check that the ballot scanner compartment is empty.

If you do not have returned ballots set aside.

1. For RCV races, **jump** to page 18 of these instructions to the section titled: *Instructions – Recount Officials (RCV Tabulation)*.
2. For non-RCV races, **jump** to page 19 of these instructions to the section titled: *Instructions – Recount Officials (Completing Process)*.

If you have returned ballots set aside.

1. **Remove** the returned ballots from the bin if directed by the recount coordinator.
2. **Place** returned ballots in the designated area if directed by the recount coordinator.
3. **Ask** the recount coordinator to check that the returned ballot bin is empty.
4. **Go to** page 15 to the section titled: **Instructions – Recount Officials (Hand Counting Ballots)**.

Instructions – Recount Officials (Hand Counting Ballots)

Check that you have these materials.

- Returned ballots for the precinct
- Two (2) copies of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV form*) for the precinct
- The Department of Elections’ *Virginia’s Guide to Hand-Counting Ballots*
- Statement of Recount Official - Challenged Ballot* sheet
- Challenged Ballots* envelope
- One (1) copy of the Hand Counting Tally Sheet (For RCV, use the *Hand Counting Cast Vote Record Tally Sheet – RCV*)
- Envelope #2

Review these definitions.

Definitions you must know.
Undervote: means the voter did not vote the total number of candidates they could have for a seat. For instance, the voter could have voted for six candidates, but the voter only cast a vote for three candidates. For ranked choice voting races, undervote means a voter has left a ranking unassigned.
Overvote: means the voter made more choices than they were entitled. In ranked choice voting races, overvote means a voter assigned more than one candidate the same ranking.
Write-in vote: means the voter wrote the name of an individual that is not printed on the ballot.

Group the returned ballots.

1. **Separate** and group the ballots into groups of 10.
2. **Secure** each group and label with a group number, starting with Group 1.

Review ballots one at a time.

1. **Starting** with Group 1, take the first ballot from the group.
2. **Place** the ballot with the office of the recount face up.
3. **Review** the ballot for a vote, undervote, or overvote.

Record the vote of the ballot.

1. **Tally** a vote, undervote, or overvote presented on the ballot on the *Hand Counting Ballots Tally Sheet*. For RCV races, use the *Hand Counting Cast Vote Record Sheet – RCV* and tally

the vote, undervote, or overvote at each ranking on the ballot.

You and your teammate must agree on the vote(s) presented on the ballot. If you and your teammate do not agree on how the vote was cast, **challenge the ballot and set the ballot aside**. Tally the ballot as “challenged” on the *Hand Counting Ballots Tally Sheet* (or, for RCV contests, the *Hand Counting Cast Vote Record Tally Sheet – RCV*).

Return the ballot.

1. **Turn** the counted ballot face down. You will stack all returned ballots for this group like this.

Repeat this process until all ballots in the group have been counted.

1. **Total** the numbers for this group of ballots on the hand counted ballots tally sheet.
2. **Check** your numbers with your teammate.

If you and your teammate do not have the same numbers, **repeat count** until you and your teammate arrive at same totals.

3. **Secure** together the hand counted ballots tally sheet, the group of hand-counted ballots, and the label.
4. **Set** the documents aside.

Repeat this process until all ballot groups have been counted and tallied.

Record totals for hand counted ballots.

1. **Complete** PART 3 of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form for first choice results).

If you have ballots that were set aside to be challenged.

1. **Continue** to the next section titled: *Instructions – Recount Officials (Challenged Ballots)*.

If you do not have ballots that were set aside to be challenged.

1. **Jump** to page 19 of these instructions to the section titled: *Instructions – Recount Officials (Completing Process)*.

Instructions – Recount Officials (Challenged Ballots)

Challenge the ballot

1. **Fill** out the *Statement of -Recount -Official – Challenged Ballot* sheet
2. **Attach** the *Statement of Recount Official – Challenged Ballot* sheet slip to the ballot
3. **Place** the ballot and attached *Statement of Recount Official – Challenge Ballot* sheet slip into the *Challenged Ballots* envelope
 - Leave the envelope unsealed
 - Leave the envelope blank
4. **Repeat** steps 2 and 3 until there are no more ballots.
5. **Fill** in the total number of challenged ballots for the precinct in PART 5 of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).

Instructions – Recount Officials (RCV Tabulation)

Check that you have these materials.

- Department of Elections *Ranked Choice Voting Handbook*
- Data storage device(s) containing cast vote record(s) created by voting system(s)
- *Hand Counted Ballots Cast Vote Record Tally Sheet – RCV*
- Two (2) copies of the *RCV Tabulation Results* form

Follow *Ranked Choice Voting Handbook* and other guidance from ELECT as process varies depending on voting system vendor.

Transfer cast vote record(s) to computer with RCV tabulation software.

1. **Insert** data storage device(s) into RCV tabulation computer.
2. **Upload** cast vote record(s) from data storage device(s) into tabulation software.
 - Follow ELECT guidance on the process for inputting the data from the *Hand Counted Ballots Cast Vote Record Tally Sheet – RCV* form.

Conduct RCV Tabulation.

1. **Ensure** settings of tabulation software properly reflect rules established in 1VAC20-100-10 *et seq.*
2. **Tabulate** results.
3. **Complete** *RCV Tabulation Results* form.
4. **Proceed** to page 19 to section titled *Instructions – Recount Officials (Completing Process)*.

Instructions – Recount Officials (Completing Process)

Complete the *Recount Precinct Results* form

1. **Complete** PART 4 of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).
2. **Complete** PART 5 of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).
3. **Complete** PART 6 of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).

Use the SOR in Envelope #2 for your number of votes cast on election day.

If you did not check “Yes” in PART 6, explain why your numbers do not match. Speak with your recount coordinator for assistance.

Place SOR back in Envelope #2 and reseal when you are done.

4. **Complete** PART 7 of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).
5. **Complete** PART 8 of the *Recount Precinct Results* form (or *Recount Precinct Results – RCV* form).

Collect all groups of hand counted ballots (if applicable).

1. **Remove** the hand counted tally sheet(s) and labels from the grouped ballots.
2. **Secure** together all hand counted tally sheet(s) and labels from the grouped ballots.
3. **Place** all hand counted tally sheet(s) and labels from the grouped ballots in Envelope #2
4. **Place** all ballots that were not challenged into container/Envelope #3.
5. **Check** that all challenged ballots are in the *Challenged Ballots* envelope.

Seal all envelopes/ containers.

1. **Give** all recount materials to your recount coordinator.
 - Sealed Envelope #2
 - Sealed container/ Envelope #3
 - Sealed challenged ballots envelope
 - Completed *Recount Precinct Results* form (or *Recount Precinct Results form – RCV*) for the precinct
 - Secured hand counted tally sheet(s) and labels from the grouped ballots
 - For RCV races, the completed *RCV Tabulation Results* form

Instructions – Clerk of the Court

Briefly, what is the process for a recount in Virginia?

A recount is a secondary tabulation of votes cast for a particular office between two candidates: (i) the candidate certified the winner by the appropriate authority and (ii) the candidate that lost within a specific margin (1%) to the winner (Va. Code § 24.2-800). In multi-winner races, additional winning candidates may be added to the proceedings by the recount court.

In conducting a recount, the voting machine, which will scan all valid ballots, must be programed to reject or return ballots that have write-ins, undervotes, overvotes, or ballots that cannot be read (*see* Va. Code § 24.2-802.2). These ballots that were returned will be hand counted, along with “paper” ballots, by recount officials (*see* Va. Code § 24.2-802.2). Recount officials may challenge ballots when they question the validity of the ballot or cannot agree to the voter’s intent as presented on the ballots. The recount court will make the adjudication of the ballot’s validity and voter intent. Additionally, recount officials will conduct tabulation for RCV elections. the recount court will certify the final results of the recount.

What are my responsibilities during a recount?

For a recount, you are responsible for ensuring the security of the ballots and other necessary election materials.

- Certify that security measures have been taken in whatever form is deemed appropriate by the chief judge of the recount court (Va. Code § 24.2-802.1(A)).
- Be present and administer oaths to recount officials on the day of the recount.
- Release sealed ballots as requested to the **recount coordinator**.
 - Ensure to sign out the sealed materials before giving them to the recount coordinator.
- Accept completed recount materials and sealed ballots from the **recount coordinator** per precinct.
 - Before accepting materials, ensure that all materials are being returned that were released and that they are sealed.
- Convey sealed recount materials to the recount court for the entire locality in precinct number order.
- Secure sealed election materials after the recount as required by Va. Code § 24.2-669.

Instructions – Recount Court

Briefly, what is the process for a recount in Virginia?

A recount is a secondary tabulation of votes cast for a particular office between two candidates: (i) the candidate certified the winner by the appropriate authority and (ii) the candidate that lost within a specific margin (1%) to the winner (Va. Code § 24.2-800). In multi-winner races, your court may add additional winning candidates as parties to the proceedings.

In conducting a recount, the voting machine, which will scan all valid ballots, must be programmed to reject or return ballots that have write-ins, undervotes, overvotes, or ballots that cannot be read (see Va. Code § 24.2-802.2). Returned ballots will be hand counted, along with “paper” ballots, by recount officials (see Va. Code § 24.2-802.2). Recount officials may challenge ballots when they question the validity of the ballot or cannot agree to the voter’s intent presented on the ballot. Your court will adjudicate the validity of the ballot and the voter’s intent. Additionally, your court will certify the results of the recount.

What are the legal requirements of the chief judge/ recount court?

Review Va. Code § 24.2-802.1 for a full outline of your legal requirements.

- The Chief Judge must call a preliminary hearing within seven (7) calendar days of a petition filed for a recount of an election (five [5] days for a presidential election) (see § 24.2-802.1(A)).
 - For multi-winner elections, your court should first address the addition of parties, if at issue, before proceeding with other matters in order to ensure that all added parties to the recount have the full opportunity to participate.
- Determine logistics and security of the recount and relevant election materials (see Va. Code § 24.2-802.1(A)).
 - The Chief Judge should review all security measures for all ballots and voting systems taken prior to the recount and “ensure proper security to conduct the recount.”
 - Determine the time/ location for recount, delivery and transportation of election material and voting machines.
 - Determine the procedures for the recount.
 - Determine the number of recount officials required to conduct the recount within a “reasonable period” (see Va. Code § 24.2-802.1(C)). Parties to the recount are entitled to choose the officials.
- Your court may select pairs of recount coordinators to serve for each county or city in the election district. These coordinators must be members of the county or city electoral board and represent the political parties as defined by Va. Code § 24.2-101 (see Va. Code § 24.2-802.1(C)).
- Supervise the recount (see Va. Code § 24.2-802.1(D)).
- Determine the validity and voter intent of a ballot challenged by recount officials (Va. Code § 24.2-802.2(F)).

- Certify the results of the recount (*see* Va. Code § 24.2-802.2(F)).

Why were ballots challenged?

Your court received a challenged ballot because the recount officials during the hand counting phase of the recount procedure could not agree on the validity of the ballot or the voter's intent as presented on the ballot. Per Va. Code § 24.2-802.2(E), a written statement from a recount official challenging the ballot is "sufficient to require" the submission of the ballot to the Court.

The challenged ballot should be attached to another paper which provides information on the specific ballot regarding (i) the precinct number, (ii) precinct name, (iii) office seat up for election, and (iv) reason for the challenge.

Is there any guidance on determining the validity of a ballot?

The recount court will ultimately determine the voter's intent as presented on the ballot. Determination of the validity (and vote) of the challenged ballot is under the authority of your court.

At the beginning of the recount, the recount officials were provided with State Board of Election's guidance titled, "*Virginia's Guide to Hand-Counting Ballots*," which exemplifies how a ballot may be marked and how voter intent may be interpreted by the viewer.

Should the Court adjudicate challenged ballots as they become available within the precinct or adjudicate challenged ballots within a precinct all at once?

ELECT recommends that the recount court view all challenged ballots of a precinct at once for purposes of ballot security and handling.

How are political parties and/or candidates involved in the Recount procedure?

A recount process is an election administrative procedure that your court directs. As a result, candidates and/or their representatives (observers) will be more involved with the recount court's hearings; including, preliminary and any hearing regarding appropriately challenged ballots.

Political parties, candidates, and/or their representatives (observers) are entitled to observe the recount process but have no explicit legal standing to determine voter intent on a ballot (legally reserved for the recount officials or your court) or challenge a ballot (legally reserved for the recount officials).