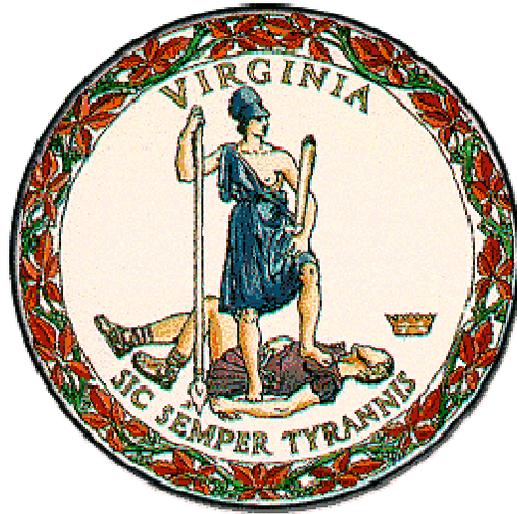


# ***REFERENDUM COMMITTEES***



## **Virginia's Campaign Finance Disclosure Act** Title 24.2, Chapter 9.3, and 9.4 of the *Code of Virginia*

### *Summary of Laws and Policies for Referendum Committees*

*Revised April 3, 2013  
Supersedes All Previous Versions*

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## CHAPTER 1 – General Information

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### Section 1.1 - Purpose of *Summary*

In accordance with §24.2-946, the Virginia State Board of Elections (SBE) has prepared this *Summary of Virginia's Campaign Finance Laws and Policies for Referendum Committees* (hereafter referred to as “*Summary*”), which will assist treasurers on how to file the required campaign finance reports and outlines the provisions of the Campaign Finance Disclosure Act (CFDA or the “Act”), Chapters 9.3 and 9.4 of Title 24.2 of the Code of Virginia and the policies adopted by SBE related to those laws.

It is important to understand that there is more to the law than just filing the required campaign finance reports in a timely manner. As a referendum committee or treasurer custodian of the books, you should familiarize yourself with this *Summary*, for it will serve as a valuable resource. This *Summary* is a basic reference tool, and is **NOT** a substitute for the actual law (a copy of which is available for purchase or to read on-line on our website: [http://www.sbe.virginia.gov/cms/Misc/Election\\_Laws.html](http://www.sbe.virginia.gov/cms/Misc/Election_Laws.html)).

This document has been prepared to assist the filer in understanding the law enacted by the General Assembly and the related policies set forth by the State Board of Elections. SBE makes this *Summary* available on the Internet to all referendum committees, their treasurers and the general public. SBE will also mail a copy of this *Summary* upon request.

### Section 1.2 - Campaign Finance Staff

SBE staff is available to assist you in preparing reports and interpreting the requirements of the CFDA. Should you have questions or require clarification, contact:

**Chris Piper**, Manager, Election Services: [chris.piper@sbe.virginia.gov](mailto:chris.piper@sbe.virginia.gov)

**Tina Edmonds**, Compliance Specialist: [tina.edmonds@sbe.virginia.gov](mailto:tina.edmonds@sbe.virginia.gov)

**Rise Miller**, Service Specialist: [rise.miller@sbe.virginia.gov](mailto:rise.miller@sbe.virginia.gov)

### Section 1.3 - Related Publications

If your committee is required to file its campaign finance reports electronically, or if you have chosen to file electronically, please refer to the *COMET* User Manual found online at SBE's website: [http://www.sbe.virginia.gov/cms/documents/CF/COMET\\_User\\_Manual.pdf](http://www.sbe.virginia.gov/cms/documents/CF/COMET_User_Manual.pdf)

Candidates will also need to familiarize themselves with the appropriate candidate bulletin for the office they seek. These can be found online at SBE's website: [http://www.sbe.virginia.gov/cms/Cidate\\_Information/Cidate\\_Bulletins\\_Forms.html](http://www.sbe.virginia.gov/cms/Cidate_Information/Cidate_Bulletins_Forms.html)

### Section 1.4 - Elections Not Covered

The provisions of CFDA do not apply to primaries and elections for:

Members of the United States Congress;

President and Vice President of the United States;

Town office in a town with a population of less than 25,000;

§24.2-945 allows, by adoption of an ordinance, the governing body of any town with a population of less than 25,000 may provide that the provisions of the Act shall be applicable to elections for town offices in the town.

Directors of soil and water conservation districts; or

Political Party Committee Officers.

In addition, persons (defined below) that make contributions from their direct operating or personal funds are not subject to the requirements of CFDA. However, they are subject to reporting requirements if they make an Independent Expenditure in excess of \$1,000 for a statewide election or \$500 for any other election (see § 24.2-945.2).

## Section 1.5 – Federal Laws and Requirements

A federal candidate or political committee is required to file campaign finance reports with the Federal Election Commission (FEC). The FEC (and *not* SBE) enforces federal campaign finance laws. The following are candidates or political committees who are not required to file with the State Board of Elections:

President of the United States;

Vice-President of the United States;

United States Senate;

United States House of Representatives; or

Any political committee wishing to support or oppose *federal candidates*.

These committees must contact the Federal Election Commission (FEC) to obtain forms and information pertaining to federal campaign finance requirements and filing deadlines. You may contact FEC at:

800-424-9530 (toll-free) or 202-694-1100 (within the Washington, D.C. area)

[www.fec.gov](http://www.fec.gov) – Internet address

999 E. Streets, NW, Washington, DC 20463-0002 – U.S. Mail

Federal Committees that are registered with SBE who file their reports with the FEC are not required to file campaign finance reports with SBE. Candidates for office in Virginia may accept contributions from these types of candidates or political committees. However, it is important for you to review the provisions of § 24.2-947.3:1 and Section 3.7 of this Summary prior to accepting contributions from these types of committees.

SBE has no authority to provide any guidance regarding federal tax laws. Please contact the Internal Revenue Service if you have questions regarding your committee's tax filing requirements. Their website address is <http://www.irs.gov/charities/political/index.html>.

## Section 1.6 - Cash-Basis vs. Accrual-Basis Reporting

Virginia's campaign finance reporting system works on an accounting principle known as 'cash-basis' reporting rather than 'accrual-basis' reporting. In an accrual-basis reporting system, contributions would be reported in the period in which it is earned (e.g., once contracted services are provided), regardless of when the cash from these contributions are received. Expenditures are recorded as they are owed (e.g. when supplies are ordered, the printer finishes your brochure, employees actually perform the work, etc.), instead of when they are paid.

On a cash-basis reporting system, contributions are reported when the cash is received. Expenditures are reported in the reporting period when the expenditures are paid. Therefore, it is important to remember that, in Virginia, contributions are reported on the dates when the funds are actually received (not deposited) and on the dates when the funds are actually expended. It is very similar to the method that most Americans use to balance their check books. The exceptions to this rule apply only in cases where debts on material goods have been received or for In-Kind Contributions with regard to services or advertisements purchased on behalf of a candidate where coordination has also occurred (See Chapter 4). Since no money is actually changing hands in this type of contribution, the information should be reported on the same date that the service was provided or when the advertisement benefiting the candidate was disseminated.

## Section 1.7 – Exemption from Political Advertisement Disclaimers

Referendum committees are exempt from political advertisement disclaimer requirements. Therefore, referendum committees who produce advertisements advocating support or opposition for a referendum on the ballot are not required to state on the advertisement the entity responsible for paying for the advertisement. The committee should review Federal requirements for advertisements broadcast on Television or Radio as disclaimers may apply to advertisements disseminated in these media.

The committee is still required to report the expenditure on its campaign finance reports.

## Section 1.8 - Definitions

The following are definitions of the terms used in this *Summary* that are of principal importance to treasurers. Please keep in mind that some of the terms, while not specifically defined in CFDA, are useful in understanding this document. If you wish to read the exact definitions as they appear in CFDA, you may refer to §§ 24.2-945.1 or 24.2-101 of the Code of Virginia.

***Adjournment sine die*** – adjournment on the last legislative day of the regular session (the regular session does not include the ensuing reconvened session or any special session following in the same year).

***Advertisement*** – any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under Chapter 9 (§§ 24.2-945 et seq.) of this title. "Advertisement" does not include issue advocacy or novelty items authorized by a candidate including, but not limited to, pens, pencils, magnets, and buttons to be attached to wearing apparel.

***Agent of the candidate or candidate's campaign committee*** – One empowered to act for or represent the candidate made through an agreement, verbal or otherwise, between the candidate and the person. The term shall not include unpaid volunteers.

***Aggregate Contribution*** – the total amount of contributions made by an individual or other entity during an election cycle.

**Authorization** – means the express approval or consent by the candidate, the candidate’s campaign committee, or an agent of the candidate campaign committee after coordinating the expenditure with the candidate, the candidate’s campaign committee, or an agent of the candidate campaign committee.

**Candidate** – an individual who seeks nomination for election, or election to public office, in the Commonwealth of Virginia whether or not that person’s name is on the ballot. The definition includes ‘write-in’ candidates. An individual is considered, for campaign finance purposes only, a candidate seeking nomination for election or re-election under the provisions of the Act if they have:

Provided payment of a filing fee for any party nomination method;

Submitted a Statement of Qualification form (see § 24.2-501) (whether or not funds or resources have been solicited, received or expended);

Personally, or through another person, solicited or received funds or other things of value, or made expenditures, including expenditures from personal funds, for the purpose of bringing about such individual’s nomination or election to any office;

Has been endorsed or nominated by a Political Party and is thus entitled to a position on the ballot at an election or primary (whether or not funds or resources have been solicited, received or expended);

Has otherwise been qualified for placement on the ballot pursuant to the election laws (whether or not funds or resources have been solicited, received or expended);

Has appointed a campaign treasurer, designated a campaign committee, or designated a campaign depository; Has not filed a final report for the previous election cycle prior to a new election cycle’s begin date. In this instance, an individual will be considered a candidate for the same office in the succeeding election for administrative purposes (see §24.2-947).

Candidate Types:

Local Candidate – Candidate for a city, county or town’s local or constitutional offices.

General Assembly Candidate – Candidate for Virginia State Senate or House of Delegates.

Statewide Candidate – Candidate for Governor, Lieutenant Governor or Attorney General.

**Candidate’s Campaign Committee** - The committee designated by a candidate to receive all contributions and make all expenditures for them or on their behalf in connection with their nomination or election. A Candidate’s Campaign Committee may not be established for multiple candidates.

**Candidate’s Election Cycle** – An election cycle begins on January 1 of the year that the candidate first seeks election for the office through December 31 immediately following the election for such office. The election cycle provides for the aggregation of contributions and expenditures for the candidate’s campaign finance reporting. A candidate with any activity to report in a new election cycle shall be presumed to be a candidate for reelection in the succeeding election solely for the purpose of filing campaign finance reports.

**Conspicuous** – So written, displayed, or presented that any reasonable person can notice it.

**Contribution** – Money or services of any amount, and any other thing of value, given, advanced, loaned, or in any other way provided to a candidate, campaign committee, political committee, inaugural committee or person for the purpose of influencing the outcome of an election or defraying

the costs of the inauguration of a Governor, Lieutenant Governor or Attorney General. “Contribution” includes money, services or things of value in any way provided by a candidate to his own campaign and the payment by the candidate of any primary filing fee.

*Coordinated or Coordination* – An expenditure that is made (i) at the express request or suggestion of a candidate, a candidate’s campaign committee, or an agent of the candidate or his campaign committee or (ii) with material involvement of the candidate, a candidate’s campaign committee, or an agent of the candidate or his campaign committee in devising the strategy, content, means of dissemination, or timing of the expenditure.

*Debt* – Any and all outstanding financial obligations.

*Candidate’s Campaign Committee* – the committee designated by a candidate to receive all contributions and make all expenditures for them or on their behalf in connection with their nomination or election. A Candidate’s Campaign Committee may not be established for multiple candidates.

*Depository* – the account(s) in a designated financial institution established to maintain all monetary receipts of a committee.

*Designated Contribution* – means a contribution that is designated specifically and in writing for a particular candidate or candidates and that is made using a political committee solely as a conduit.

*Election* – any general, primary, special election or referendum.

*Expenditure* – money or services of any amount, and any other thing of value, paid, loaned, provided or in any other way disbursed by any candidate, campaign committee, political committee, inaugural committee or person for the purpose of influencing the outcome of an election or for defraying the costs of the inauguration of a Governor, Lieutenant Governor or Attorney General.

*Express Advocacy* – a direct or indirect contribution, in-kind contribution or loan made to a candidate or political committee for the purpose of influencing the outcome of an election; an advertisement that refers to a party or candidate(s) by name and states “Vote for...”; “Support”; “Elect...”; “Smith for Congress”; “Send Him Home”; “Oppose”, etc.

*Failure to File* – any required campaign finance report not received by the State Board or local electoral board within 60 days after official notification from the State Board or local electoral board. For candidates for Statewide Office, a report shall be considered *failure to file* if the report is not received within fourteen days after official notification from the Secretary of SBE.

*Federal Political Action Committee* – any political action committee registered with the Federal Election Commission that makes contributions to candidates or political committees registered in Virginia.

*Full-screen* – the only picture appearing on the television screen during the oral disclosure statement that (i) contains the disclosing person, (ii) occupies all visible space on the television screen, and (iii) contains the image of the disclosing person that occupies at least fifty percent of the vertical height of the television screen.

*Inaugural Committee* – any organization, person or group of persons that anticipate receiving contributions or making expenditures, from other than publicly appropriated funds, for the inauguration of the Governor, Lieutenant Governor, or Attorney General.

*Incomplete report* – a campaign finance report that does not include all required information.

**Independent Expenditure** – an expenditure made by any person or political committee that is not made to, controlled by, coordinated with, or made with the authorization of a candidate, his campaign committee, or an agent of the candidate or his campaign committee. It includes an expenditure made by a candidate campaign committee (i) that is not related to the candidate's own campaign and (ii) that is not made to, controlled by, coordinated with, or made with the authorization of a different candidate, his campaign committee, or an agent of that candidate or his campaign committee.

**In-Kind Contribution** – the donation of goods, services, property or anything else of value that is offered for free or less than the usual and normal charge; or payments by a third party for goods and services rather than money. The basis for arriving at the dollar value of an In-Kind gift is as follows: new items are valued at retail value; used items are valued at fair market value and services rendered are valued at the actual cost of service per hour. Services are not to include personal services (outside of the person's professional occupation) for which no compensation is asked or given.

**Occurrence** – one broadcast of a radio or television political campaign advertisement in violation of the expanded disclosure requirements for television and radio.

**Out-of-State Political Committee** – means an entity subject to § 527 of the United States Internal Revenue Code that is not registered as a political committee or candidate campaign committee in Virginia and whose contributions made to political committees and candidate campaign committees registered in Virginia is 75% or less of their total expenditures in any calendar year. The term does not include federal political action committees.

**Person** – any individual or corporation, partnership, business, labor organization, membership organization, association, cooperative or other like entity who makes contributions from their direct operating funds, or their own personal funds as in the case of an individual. Persons are subject to independent expenditure reporting requirements.

**Petty cash fund** – fund established by a campaign treasurer for the purpose of making expenditures or reimbursing verified credit card expenditures of less than \$200. The total must never exceed \$200 and if established, the treasurer must maintain complete records, as required by CFDA, of any expenditure less than \$200 (see § 24.2-947.2).

**Political Action Committee (PAC)** – any organization, person, or group of persons, established or maintained in whole or in part to receive and expend contributions for the purpose of influencing the outcome of any election. The term shall not include a campaign committee, federal political action committee, out-of-state political committee, political party committee, referendum committee, or inaugural committee. **Note:** May also be referred to as Political Committee.

**Political Committee** – a general term which refers to any political action committee, political party committee, referendum committee, or inaugural committee. The term does not include:

federal political action committee,

out-of-state political committee,

campaign committee, or

person, which in making contributions does so out of their own personal funds or the entity's direct operating funds.

**Political Party Committee** – any state political party committee, congressional district political party committee, political party committee for a county or city, other election district political party committee,

organized political party group of elected officials, which anticipates receiving contributions or making expenditures in whole or in part, for the purpose of influencing the outcome of an election. **Note:** May also be referred to as Political Committee.

**Print Media** – billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, and outdoor advertising facilities.

**Radio** – any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

**Referendum Committee** – any organization, person, group of persons, or committee, that makes expenditures to advocate the passage or defeat of a referendum legally placed on the ballot.

**Reporting Period** – mean the activity beginning and activity ending dates for a particular campaign finance report.

**Residence** – means and requires both domicile and a place of abode for all purposes of qualification to register and vote.

**Scan Line** – a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

**Solicit** – to request a contribution, orally or in writing. This does not include a request for support of a candidate or their position on an issue.

**Sponsor** – a candidate, candidate campaign committee, political party committee, political action committee, individual, or other entity that purchases an advertisement.

**Surplus funds** – the funds remaining after the payment of all debts (including penalties owed) and expenses incurred by a committee. **Note:** May also be referred to as Excess Funds.

**Television** – any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

**Treasurer** – the appointed bookkeeping officer of a candidate's campaign committee.

**Un-obscured** – means that the only printed material that may appear on the television screen is a visual disclosure statement required by law and that nothing is blocking the view of the disclosing person's face.

## CHAPTER 2 – Statement of Organization

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### Section 2.1 - Becoming a Referendum Committee

Any organization (including 501 (c)(3), (c)(4) and (c)(6) organizations), person, group of persons, candidate campaign committee, or political committee that makes expenditures in a calendar year in excess of:

- ⇒ **\$10,000 to advocate the passage or defeat of a statewide referendum;**
- ⇒ **\$5,000 to advocate the passage or defeat of a referendum being held in two or more counties and cities; or**
- ⇒ **\$1,000 to advocate the passage or defeat of a referendum held in a single county or city**

are required to register within 10 days after the date on which it has received contributions or made expenditures in excess of the amounts listed above as a referendum committee and begin filing campaign finance reports with SBE.

Any advertisement supporting or opposing a referendum on the ballot is exempt from Political Advertisement disclaimer requirements.

### Section 2.2 – Establishing a Referendum Committee

No entity that may be subject to filing as a referendum committee may file as a referendum committee **until the referendum has been officially placed on the ballot.**

In order to form a referendum committee, a *Statement of Organization* for a Referendum Committee must be submitted to SBE within 10 days of the date that the committee has information that it will make expenditures or receive contributions in excess of the amounts listed in Section 2.1.

#### ***The Statement of Organization***

▪ If the committee is still in existence more than six months after the referendum has been decided then they must amend their *Statement of Organization* to register as a Political Action Committee. Failure to amend will result in civil penalties assessed against the committee.

The referendum committee must disclose on its *Statement of Organization*:

- ⇒ **The name of the referendum committee and its address in the Commonwealth;**
- ⇒ **The names, addresses, and relationships of affiliated or connected organizations;**
- ⇒ **The area, scope, or jurisdiction of the committee;**
- ⇒ **The name and business address of the treasurer and his residence address in the Commonwealth who shall be deemed the agent of the referendum committee for the purpose of service of process on the referendum committee;**

- ⇒ **The name, business address, and position of the custodian of the books and accounts who works under the direction of the treasurer, and the address in the Commonwealth where the books are maintained;**
- ⇒ **The subject of the referendum, the date and location of the election, and a statement whether the committee is promoting or opposing the referendum question; and**
- ⇒ **The designated depository to be used for the receipt and holding of funds and contributions received by the referendum committee, in an account in a financial institution within the Commonwealth.**

### ***Mailing Address***

The committee must include the primary mailing address of the committee. The address must be within the Commonwealth. Post Office Boxes are acceptable. This address will be SBE's primary mailing address and all official notifications will be sent to this address. It is the responsibility of the committee's treasurer to ensure that SBE has the most recent mailing address on the committee's *Statement of Organization*.

### ***Affiliated Organizations***

The committee must disclose any and all affiliated organizations on their Statement of Organization. An affiliated organization includes, but is not limited to: the affiliated Federal PAC, corporation, membership association, union, etc.

Affiliated organizations may make transfers to the referendum committee and not be subject to any other reporting requirements unless the affiliated organization is an out-of-state political committee or a Federal PAC. See the *Summary on the Laws and Policies for Out-of-State Political Committees* for more information.

### ***Area, Scope or Jurisdiction***

The committee must disclose the area and scope of the referendum (e.g. statewide, county or city).

### ***Treasurer Information***

The name, business address, and residence address of the treasurer must be disclosed. The treasurer must be a resident of Virginia but is not required to be a registered voter in the Commonwealth. See Section 2.3 for more information on the treasurer's requirements.

### ***Custodian of the Books***

The name and business address of the custodian of the books as well as the address where the books are maintained must be disclosed. The custodian of the books must be a resident of Virginia but is not required to be a registered voter in the Commonwealth. The address where the books are maintained must also be located within the Commonwealth. See Section 2.3 for more information on the custodian's requirements.

### ***Committee's Position on the Referendum***

The committee must disclose the subject and date of the referendum as well as a statement as to whether the committee supports or opposes the question.

### ***Establishing a Depository***

Referendum committees are required to establish a separate segregated depository in a financial institution located within the Commonwealth. The *Statement of Organization* will require your committee to identify the name and address of the committee's **PRIMARY** financial institution. You are not required to provide the committee's bank account number.

**\*\*\*PERSONAL BANK ACCOUNTS MAY NOT BE USED UNDER ANY CIRCUMSTANCES\*\*\***

The name of the account must match exactly with the name of the committee. All checks drawn off of the committee's depository must include the name of the committee.

In most instances, the financial institution will require your committee to obtain an Employee Identification Number or EIN from the Internal Revenue Service. It is not difficult, nor does it take long, to obtain this number. Simply visit the IRS website ([www.irs.gov](http://www.irs.gov)) and type "Employee Identification Number" into the search field and you will be able to find the necessary information to obtain this number.

### ***Establishing Secondary Depository Accounts***

Committees can transfer funds from the primary depository to another account or instrument for the purpose of earning interest on those funds. This can be done as long as:

Complete records are maintained for each election cycle;

All interest earned and fees paid are reported on the committee's campaign finance reports;

The establishment of such an account is reported on the Campaign Committee's Statement of Organization;

Expenditures are made only from the primary checking account; and

Before filing a Final Report, the transferred funds and any earned interest are returned to the primary checking account.

### ***Filing Method - Electronic or Paper?***

SBE requires committees to indicate if they intend to file their campaign finance reports electronically or on paper. Committees who raise or spend \$10,000 in a calendar year, or who raised or spent \$10,000 in a previous calendar year, are required to file their campaign finance reports electronically. If a committee raised or spent \$10,000 in a previous calendar year, but does not intend to do so in the current calendar year, then they may file an exemption from the requirements to file electronically.

To become an e-filer, you must register and submit your Statement of Organization using "COMET" (Committee Electronic Tracking System). More information on COMET can be found on our website: [www.sbe.virginia.gov](http://www.sbe.virginia.gov).

SBE offers COMET at no charge to any registered committee in the Commonwealth. SBE provides all of the support for this application and is available to assist you with your questions. However, if your committee wishes to use an outside company, they may choose from one of SBE's Approved Vendors. SBE certifies all companies who wish to sell their software for the purposes of creating campaign finance reports to be filed in Virginia. Once their software is approved, SBE will accept campaign finance reports created from the company's software.

The committee cannot change its filing method without first notifying SBE by submitting an Amended *Statement of Organization*. An electronic filer who submits a report on paper will not be considered to have filed a timely campaign finance report.

## **Section 2.3 – Treasurer and Custodian of the Books**

### ***Treasurer Requirements***

In order to serve as a treasurer for any referendum committee the individual must be a resident of the Commonwealth of Virginia.

The treasurer, for purposes of the service of process, is deemed the agent of the referendum committee and is the person ultimately responsible for all aspects of campaign finance reporting for the committee.

### ***Custodian of the Books***

The custodian of the books works under the direction of the treasurer and is eligible to perform all of the duties of the treasurer including, but not limited to: signing checks, signing campaign finance reports, making deposits, etc.

The committee is not required to appoint a custodian of the books if the treasurer also serves as the custodian.

### ***Duties and Responsibilities of the Treasurer***

The custodian of the books can perform all of the duties of the treasurer. However, the treasurer is ultimately responsible for the records of the committee. The committee's treasurer should not allow any person (other than the custodian of the books) to sign checks, receive contributions or make expenditures on behalf of the campaign. The ultimate responsibility for compliance with the requirements of the Act always rests with the treasurer and the other officers, and it is the treasurer's or other officer's signature that is required on the campaign reports.

The treasurer is responsible for the receipts and expenditures of campaign or committee funds for political purposes. The duties of a treasurer can include, but are not limited to:

Filing complete, accurate and timely contributions and expenditure reports and *Statement of Organization* Forms;

Signing contributions and expenditure reports and *Statement of Organization* Forms;

Authorizing expenditures (may also be authorized by any other officer of the committee);

Monitoring disclosure to ensure compliance with Virginia's Campaign Finance Laws; and

Keeping detailed and accurate records for at least three years after the report is filed.

### ***Changes or Vacancies in the Position of Treasurer***

The treasurer must keep the committee's addresses, phone numbers and email addresses current to help ensure receipt of periodic notices and compliance materials. If the treasurer position becomes vacant, the committee is responsible for notifying SBE within 10 days of the change ***and*** after appointing a replacement. Please be advised that a vacancy in the treasurer's position does not relieve the committee from filing timely disclosure reports.

### ***Disposal of Records***

The treasurer must keep detailed and accurate records of all contributions and expenditures in their possession for at least one year from the date of filing the final report or three years after the December 31<sup>st</sup> immediately following the election cycle.

### **Records**

Campaign Finance Records can include, but are not limited to:

Receipts;

Invoices;

Bank statements;

Copies of checks from contributors;

Any communications from State Board or local electoral board;

Copies of checks for expenditures; and

Completed solicitation forms.

## **Section 2.4 - Where to File the Statement of Organization**

Committees must file an original, signed copy of their Statement of Organization with the State Board of Election within 10 days of the time that their committee qualifies as a referendum committee according to the requirements outlined in Section 2.1.

You may fax a copy to the State Board of Elections as long as the original, signed copy is received by SBE within 10 days of the date which the committee met the requirements to file its Statement of Organization. All committees must maintain a copy of this form for their records.

### ***Amending the Statement of Organization***

The committee must file an amended *Statement of Organization* within 10 days of any change to a referendum committee's information (e.g., a change in address) with SBE.

## CHAPTER 3 – Schedule A: Direct Contributions

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### Section 3.1 – Limits on Contributions

There are no contribution limits in Virginia. A committee can accept contributions from any individual corporation, union, association or partnership. It is only required that all contributions received by the committee and that all required information identifying the contributor be reported on the committee's campaign finance reports.

Federal law prohibits any political organization from accepting contributions from a foreign national or foreign corporation. An exception to the law is granted for individuals who have a valid green card. For more information concerning the prohibition of contributions from foreign nationals please visit the FEC website at [www.fec.gov](http://www.fec.gov).

### Section 3.2 – Types of Contributions

A committee can solicit contributions from any source mentioned above. However, prior to accepting a contribution, the committee is required to retain certain information from each contributor, regardless of the amount of the contribution.

A direct contribution may be made in the form of, but is not limited to:

Cash

Check

Money Order

Credit or Debit Card

### Section 3.3 - Itemized Contributions vs. Unitemized Contributions

The referendum committee's election cycle begins on the date that the referendum committee first organizes for the referendum and ends on December 31 of the year of the referendum. The cycle is by calendar year. Therefore, a committee must aggregate contributions received within a calendar year.

A contributor who has contributed an aggregate amount of more than \$100 to a committee during a calendar year must be "itemized" on the committee's campaign finance report. This means that the committee must include the required information for the contributor on the campaign finance report.

A contributor who has contributed an aggregate of \$100 or less to the committee during a calendar year are reported as "unitemized" on the report. This means that the committee is not required to list the name of the contributor and other required occupation information on the report. However, the contributor will have to be "itemized" if the committee receives contributions totaling over \$100 within the calendar year.

### ***Anonymous Contributions***

If a committee receives any cash contributions from an unknown source, the receiver of the contribution may donate the money to any organization described in § 170(c) of the Internal Revenue Code.

### ***Committees Must NOT Accept Anonymous Contributions***

#### **Section 3.4 – Contributor’s Required Information**

The committee is required to report the following information about each contributor who contributes an aggregate of more than \$100 in a calendar year.

##### ***Name of the Contributor***

The report must contain the individual or organization’s name as it appears on the check. For contributions received by credit card, the name of the cardholder must be reported. If the contributor submitted their contribution by any other means it is the responsibility of the treasurer to retain the name of the contributor for purposes of reporting.

The full name of the contributor is required to be reported, in alphabetical order, on the campaign finance report. For individuals, the order must be followed by the person’s last name. For businesses and other types of organizations, the name of the company should be listed in alphabetical order. The committee must report the full name of the organization. Acronyms are not acceptable.

In no case is it allowed for a contributor who wishes to contribute more than \$100 to one committee to remain anonymous. The committee must not accept a contribution of more than \$100 from a person who does not wish for their name to appear on the report.

##### ***Address of the Contributor***

The full address of the contributor is required to be reported on the campaign finance report. The report must contain the individual or organization’s address as it appears on the check. For contributions received by credit card, the address of the cardholder must be reported. If the contributor submitted their contribution by any other means it is the responsibility of the treasurer to retain the address of the contributor for purposes of reporting. Post office boxes are acceptable addresses in all instances.

##### ***Occupation of the Contributor (Individuals Only)***

The occupation of the contributor must not state the title or position of the individual. The report should indicate the type of work of the individual is employed to do.

The following is a non-exhaustive list of acceptable occupations:

Construction;

Marketing;

Financial Advisor;

Entrepreneur;

Student;

Retired;

Homemaker/Housewife.

Unacceptable entries include:

Vice President;

Manager;

Owner;

N/A.

Every individual has an occupation even if that occupation is “retired” or “student.” In no case should a committee report the individual’s occupation as “not applicable.”

### ***Principal Type of Business (Contributions from Businesses Only)***

The treasurer must enter the type of business for that organization. For example, a committee that received a contribution from an electric utility would enter “Electric Utility.”

### ***Date Received***

A contribution is considered received the date that it knowingly comes into the hands of an “agent” of the committee. Contributions should never be reported as the date that the money is deposited unless the contribution was received on the same date that the contribution is deposited. Contributions should also not be reported as the date written on the check unless that is the same date that the check is received.

### ***Contributions by Credit Card***

If a contribution is provided by credit or debit card on a website, the date the contribution is considered received is the date the contributor submitted their contribution via the website. The treasurer should not report the contribution as being received on the date that the information is reported from the collecting entity to the committee. Contributions received via services such as PayPal should be reported when the funds are released to the committee’s account.

### **Section 3.5 – Soliciting Contributions**

All contributors who contribute more than \$100 in a calendar year must be itemized on the committee's campaign finance reports.

SBE strongly recommends that all committees make every effort possible to gather the required information at the time that a contribution is collected even if the contributor's donation is less than \$100. Although this information is not required for contributor's who contribute less than \$100, their aggregate contribution may exceed \$100 in the future. If the information is obtained at the time of the first contribution, time and energy will be saved in the future.

#### ***Recording Contributor's Information***

When keeping records, the treasurer should maintain, at a minimum, the following detailed information. List the following items when documenting contributions:

Contributor's full name;

Contributor's mailing address;

Contributor's occupation, employer and location (city/town and state) of principal place of business if the contributor is an individual;

Type of business and location (city/town and state) of the corporation or business if the contributor is a business or corporation;

Type of committee and the location (city/town and state) of the committee if the contributor is a political committee;

Date contribution received;

Amount of the contribution; and

Contributor's total contributions to date including In-Kind Contributions (see Chapter 4).

#### ***Solicitation Form***

Certain efforts can be made to secure a contributors required information. SBE recommends that each committee ensure that all contributions received by the committee be accompanied by a solicitation form and the form be maintained with a copy of the contribution in the committee's records. The solicitation form can be used to request the contributor's required information.

Each solicitation should include a request for the contributor's full name; complete mailing address, occupation, name of employer and location (city/town, state and zip code) of principal place of business. The following is an example of a solicitation form:

<b><i>“Yes on 15” Referendum Committee</i></b>	
Name:	_____
Occupation:	_____
Employer:	_____
Place of Employment:	_____
Contribution Amount:	\$ _____
Are you a U.S. Citizen or Have a Valid Green Card: <b>Y</b> <b>N</b>	
“Virginia law requires all candidate campaign committees to maintain a record of the name, mailing address, occupation information (includes type of work, employer, and principal place of business) for each individual who contributes to our committee. Your information will not be reported if your cumulative contribution is \$100 or less for this campaign.”	

### ***Best Efforts Policy***

Most committees, at one time or another, will receive unsolicited contributions which do not include the required information necessary to comply with the Act. In such instances, the committee must make every effort to contact the contributor in order to gather the required information. SBE considers a “best effort” made by the committee to include sending a written request to the contributor asking for the required information.

If the campaign finance report is due and, after sending a written request, any of the required information of the contributor is still unknown, it shall temporarily suffice to report “Unable to Obtain” or “Information Requested” in the field missing the required information. The committee is also required to submit, along with the committee’s report, a copy of the written request to the contributor asking for the required missing information. SBE does not consider a report complete if more than 20% of the total number of contributors or other required information is missing.

## **Section 3.6 – Other Contribution Policies**

### ***Joint Checks***

It is unacceptable to enter two names on the committee’s campaign finance report when referring to one contribution. There are cases where the committee will receive a check that has two names listed in the address field. In most cases, these are contributions written on checks from married couples who have a joint checking account.

In these cases, the treasurer must report the contribution as being received by the person who signed the check. This cannot be changed unless there is written authorization from both persons listed on the check. For example, both individuals should sign the check in order to split the contribution between both individuals listed on the check. Conversely, a solicitation form could be submitted which states that the contribution should be designated to the individual's listed on the solicitation form.

### ***Returned Checks***

If a contributor's check is returned by the committee's depository for insufficient funds, or if the check is otherwise not accepted by the committee, then the Committee has the option of not recording the contribution on its Campaign Finance Disclosure report if no report was due between the time the contribution was received and the time that the contribution was returned.

If the contribution was reported on a Campaign Finance Disclosure report and later returned by the depository for insufficient funds, then the committee has the option to amend the report by removing the contribution. This policy is to prevent potential public embarrassment from a contributor whose bank account was overdrawn.

#### **▪ *Designated Contributions:***

A contribution that is designated specifically and in writing for a particular candidate or candidates and that is made using a political committee solely as a conduit is considered a "designated contribution." The receiver of the designated contribution must let the designee know the contributor name, address, occupation or business information, the date of the contribution and amount of the contribution

### ***Contributions by Credit Card***

A contribution that is made by credit card may be made either in person, over the telephone or via the Internet. If this method of payment is used, the entire amount charged to the contributor's account must be reported. Any service fees charged to a committee by the credit card processing agent must be reported separately on the report as an expense by the campaign or committee. Even if the company charges the campaign or committee a "per transaction fee," the fee per transaction shall not be used to reduce the amount of the contribution shown, but must be reported as an expenditure for the campaign or committee for the period being reported. "Per transaction" fees can be bundled into a single item on the Schedule of Expenditures.

### ***Contributions During Legislative Session***

Contributions or promises of contributions may not be made, accepted or solicited by the Governor, Lieutenant Governor, Attorney General, any member of the General Assembly or any person acting on behalf of these individuals on and after the first day of a ***Regular*** Legislative Session which annually begins on the second Wednesday in January and continues for no less than 45 days in odd years and 60 days in even years. The ***Regular*** Session does not end until the General Assembly agrees to *Adjournment Sine Die* which signifies the end of the Regular Session. Contributions can be made to these candidates during ***Special*** Sessions or during any other non-Regular Legislative Session.

The restrictions of this section do not apply to contributions made by the Governor, Lieutenant Governor, Attorney General or any member of the General Assembly from their personal funds; or to contributions made to the campaign committee of a candidate in a special election.

Violations of these provisions are punishable by a civil penalty equal to the contribution of \$500, whichever is less. The appropriate Attorney for the Commonwealth is required to initiate the proceedings for collections.

## **Section 3.7 - Contributions from FEC PACs and Out-of-State Political Committees**

Prior to accepting contributions of \$10,000 or more in the aggregate in **any calendar year** from a political action committee registered with the Federal Election Commission or from an out-of-state political committee, the referendum committee must request the SBE supplied registration number from the committee and verify that number with SBE. This can be done by sending an email to SBE at [cfda@sbe.virginia.gov](mailto:cfda@sbe.virginia.gov) or by using our on-line submission form at <http://www.sbe.virginia.gov>.

Therefore, it is important that the treasurer verify the registration status of a political committee before the referendum committee accepts a contribution from any political committee that aggregates to \$10,000 or more in the calendar year.

## **Section 3.8 – Fundraisers**

In order to raise money for the referendum committee it may be necessary to organize fundraisers. However, there are several situations to be aware of when thinking about organizing fundraisers.

### ***Contributions vs. Expenditures***

Purchasing a ticket to a fundraiser is considered a contribution to the event.

A committee must report all expenditures related to the event. If other persons have paid for particulars of the fundraiser, then they must be reported as in-kind contributions. (See Chapter 4 for more information on in-kind contributions.)

In no case is it acceptable for the committee to defray the costs from the amount raised. The contributions received must be reported independently of the expenses of the event.

### ***Joint Fundraisers***

All contributors should make one check out for each committee participating in the fundraiser. At no time should a contribution be made to both committees on one check.

### ***Common Fundraising Scenarios***

The Act requires that all contributions collected by individuals for a committee be accompanied by certain identifying information. Anonymous contributions are illegal. As a result of this requirement, SBE has provided some examples of fundraising scenarios to avoid:

#### **Pass the Hat**

In a “pass the hat” scenario, the persons in the room may already be large contributors. Thus, any additional monies contributed would have to be reported. However, the contributor’s required information is not being gathered. Further, it is likely that someone in the room could contribute more than \$100. It is because of these issues that “pass the hat” fundraisers are considered illegal.

#### **Golf Tournaments**

In most cases golf tournaments require a monetary contribution to the host committee to participate. Once at the tournament, the competitors are able to purchase “mulligans” or other additional items. The money from these purchases is considered additional contributions to the host committee and therefore it

is the responsibility of the committee to record the purchaser's required information. Conversely, the committee could sell "mulligans" and give the money to charity. In this case, all contributions should be made out directly to the charity and the committee should not deposit these funds

### **Raffles**

According to *Code of Virginia* [§ 18.2-340.15](#), political organizations in Virginia may not, under any circumstance, use raffles as a fundraising tool. The State Board of Elections does not regulate this activity. Please see Department of Charitable Gaming's website for more information: <http://www.dcg.virginia.gov/>.

## CHAPTER 4 – Schedule B: In-Kind Contributions

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An in-kind contribution is the donation of goods, services, property or anything of value that is offered for free or at less than the usual and normal charge, or payments by a third party for goods or services. This type of contribution does not include a donation of cash, checks, or promissory notes. In-Kind Contributions must be itemized in the same manner as direct contributions.

### Section 4.1 - Types of In-Kind Contributions

Some types of In-Kind Contributions can include, but are not limited to:

- Voluntary contributions of advertising materials;
- Voluntary contributions of use of an automobile;
- Voluntary contributions of free lodging;
- Voluntary contributions of catering for a fundraiser;
- Voluntary contributions of printing of literature;
- Voluntary contributions of office space and equipment;

Discounts are also in-kind contributions. A discount is the difference between the usual and normal charge for goods or services and the amount charged to the recipient committee. Committees, which are using coupons available to any other consumer should NOT report the discounted amount as an in-kind contribution.

#### **Example 1**

*A business entity sells to a committee food or beverages that normally would cost \$1000, at a discount of 20%. The \$200 savings by the committee is considered an In-Kind Contribution from the business entity and this amount should be listed on Schedule B of the disclosure reporting forms. The remaining \$800 would be reported on Schedule D as normal.*

Although services provided to a campaign or committee can be considered an in-kind contribution, the uncompensated time volunteers spend working on a referendum committee – stuffing envelopes, knocking on doors, etc. is not considered an in-kind contribution.

**Example 2**

*Mrs. Dee Designer, a professional web page developer, designs a web page for the “Yes on 15” referendum committee free of charge. Since designing web pages is something Dee would normally charge \$2,500 for doing she has made an in-kind contribution of \$2,500 to the “Yes on 15” committee. This \$2,500 counts toward Mrs. Designer’s aggregate contributions to date to that committee.*

*Dee Designer still wants to do more to help the “Yes on 15” committee. She volunteers to answer telephones at the committee headquarters and to distribute flyers in the neighborhood. Since answering telephones and distributing flyers is not a service that Dee normally charges for, her activities are not considered an in-kind contribution to the committee.*

**Treasurers and In-Kind Contributions**

A committee’s treasurer is considered a volunteer if the campaign committee is not paying the treasurer for the services rendered. SBE considers an accountant volunteering time to the campaign to assist in preparing campaign finance reports as a professional service. Therefore, SBE considers it proper to report the treasurer’s time as an in-kind contribution if the person preparing the reports is offering the service at no charge or at a discounted rate.

**Section 4.2 – Reporting In-Kind Contributions**

It is the responsibility of the recipient of the in-kind contribution to obtain the information necessary to report the contribution. If the treasurer of the committee has coordinated with the person or committee providing the in-kind contribution, then the committee is responsible for accurately reporting the in-kind contribution.

The required contributor information for reporting in-kind contributors is the same as for reporting direct contributions (see Chapter 3). A few differences are outlined below:

***Date Received***

In-kind contributions must be reported as being received on the same date that the good or service was received and **NOT** the date the committee is informed of the cost of the good or service.

For example, if XYZ-PAC purchases an advertisement as an in-kind contribution to the “Yes on 15” referendum committee, then the referendum committee is required to report the in-kind contribution as being received on the date that the advertisement is first disseminated.

***Service or Goods Received***

As stated above, in-kind contributions can be professional services or material goods offered for free or less than the usual and normal charges or payments for materials through a third-party. The committee is required to indicate the type of service or the good received on their campaign finance report.

***Basis Used to Determine Value***

All in-kind contributions have an attached value whether they are a service or a good. Therefore, the committee is required to report what basis was used in order to determine the value for the service or goods received. SBE recognizes only two bases for determining an in-kind contribution's value:

**Actual Cost:**

This basis must be used when the actual cost of a good or service was determined to be the value of the in-kind contribution. This is typically used when determining the value for goods bought by a third-party.

**Fair Market:**

This basis is used when an actual cost is not able to be determined.

***Aggregate-to-Date***

Treasurers must always remember to aggregate a contributor's direct contributions with their in-kind contributions in cases where a contributor has given both directly and in-kind.

## **CHAPTER 5 – Schedule C: Refunds, Rebates and Interest**

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A committee may receive income from sources that are not direct or in-kind contributions. Typically, these are funds received by the committee which did not come from entities who support the committee's stated purpose. These types of income are known as miscellaneous receipts and must be reported on Schedule C of the disclosure report.

### **Section 5.1 - Types of Miscellaneous Receipts**

#### ***Bank Interest***

Treasurers are allowed to establish depositories that accrue interest. At the end of every month, the bank will report to the committee the amount of interest accrued on the statement. Bank interest is required to be reported on each committee's campaign finance report.

If the treasurer establishes a secondary depository for the purpose of earning interest, such as a money market account, it is required that all interest accrued from that account be reported on Schedule C as well.

\*Please note that interest income exceeding \$100 in a calendar year may be subject to federal tax. Please contact the IRS for more information.

#### ***Refunded Expenditures***

There are situations when a committee issues a check and it is returned to the committee or it is not cashed. In these instances, the committee must report the expenditure (see Chapter 6) and report the income back into the committee on Schedule C.

#### ***Rebates***

If a committee receives a rebate on previous expenditure it is to be reported on Schedule C. For example, if a committee purchases a computer and the manufacturer rebates the committee \$100, the receipt of this income must be reported on Schedule C.

## CHAPTER 6 – Schedule D: Expenditures

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### Section 6.1 - Reporting Expenditures

It is the treasurer's responsibility to ensure that all required information is retained at the time that the expenditure is made. The following is what is required to be reported on the committee's schedule of expenditures:

#### ***Full Name of Payee***

The report must contain the full name of the entity to which the expenditure was paid. For individuals, businesses and persons the full name is required. Entries containing acronyms for companies are not acceptable.

#### ***Mailing Address of Payee***

The report must contain the full mailing address of the entity to which the expenditure was paid.

#### ***Item or Service***

The committee should make every effort to be as descriptive as possible when reporting the item or service that was provided for the expenditure. Vague or incomplete descriptions must be avoided.

#### ***Date Paid***

The report must list the expenditures in order by the date that the expenditure was made (earliest first). It is not acceptable to report the expenditure on the date that the expenditure cleared the bank account.

### Section 6.2 - Other Types of Expenditures

#### ***Independent Expenditures***

Every person, campaign, or political committee who makes an independent expenditure in an aggregate amount of \$1,000 for a statewide campaign or \$200 or more for any other election within a calendar year must file an *Independent Expenditure Form* within 24 hours of making the expenditure or within 24 hours after the expenditure is disseminated, whichever is first.

Any independent expenditure made by committee must also be reported on Schedule D of the committee's next campaign finance report.

#### ***Credit Card Expenditures***

The Act requires that all credit card expenditures be itemized on the committee's campaign finance report. It is acceptable to report a single expenditure to the credit card company and in the Item or Service Field in detail list date of the expenditure, where the expenditure was made and what the expenditure is for. Each individual item must be reported on the date that the expenditure was made.

The committee should not report the payee as being the credit card company. The payee should be listed as the entity which initially received the funds. For example, if the treasurer of the committee uses a credit card to purchase a hotel stay, the report should list the name of the hotel as the payee and **NOT** the treasurer or the credit card company.

### ***Reimbursements***

The treasurer may only reimburse authorized members of the committee's staff with a check from the committee's primary depository if the staff member has used their personal funds for an expense made on behalf of the committee. It is the treasurer's responsibility to ensure that proper records for reimbursements are kept.

A reimbursement should not occur if the staff member does not provide the treasurer with a complete record of the expenditure including receipts which identify the nature of the expense and the names and addresses of each entity paid by the staff member who is being reimbursed.

To report a reimbursement, the person being reimbursed is listed as the payee. Under the item or service field report what the reimbursement was for. For example, on October 1<sup>st</sup>, Joe Staffer uses his personal credit card to purchase office supplies from "Office Warehouse." On October 9<sup>th</sup>, Mr. Staffer requests a reimbursement from the treasurer for \$50 providing a receipt for the expenses. On October 12<sup>th</sup>, the treasurer cuts a check for \$50 to Mr. Staffer. In this case, the treasurer would report an expenditure paid on October 1<sup>st</sup> of \$50 to "Office Warehouse" and not a \$50 expenditure to Mr. Staffer.

In the case of reimbursements to a single person which accounts for multiple expenditures of the same nature by said person, it is proper to report the single expenditure made by the committee. For example, if Joe Staffer pays for parking for the month of June at \$6 per day for 20 days, it is proper for the campaign to reimburse Joe Staffer \$120 and report the payee as "Joe Staffer" with the item or service indicated as "Parking for the Month of June."

In no case should the treasurer enter simply "reimbursement" in the item or service column. The report must be as descriptive as possible.

Reimbursements for mileage should be valued at the state rate of 55 cents per mile.

### ***Petty Cash Fund***

A treasurer may establish a petty cash fund up to \$200. These monies are inclusive of the committee's total expendable funds. The fund should be used for the purpose of making expenditures or reimbursing credit card expenditures of less than \$200. Receipts must be kept and the expenditure made for reimbursement must be reported on the date the expenditure was made and not the date that the reimbursement was made. The treasurer may replenish the petty cash fund as needed, provided that the total balance of the fund never exceeds \$200.

All expenditures from this fund must be kept as part of the treasurer's books and records and must be reported by the treasurer in the same manner as all other expenditures.

## CHAPTER 7 – Schedule E: Loans

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### Section 7.1 – Types of Loans

Loans are funds advanced to a committee that must be repaid sometime in the future. Loans must be recorded on Schedule E on the campaign finance report.

### Section 7.2 - Reporting Loan Receipts and Repayments

Loans received and loans repaid are reported on Schedule E only.

When reporting loan payments list the:

Date the loan was made;

Name and address of the person making the loan and any co-borrower, guarantor, or endorser of the loan;

Amount of the loan; and

Date and amount of any repayment of the loan.

#### *Schedule E – Part I (Income)*

Part I of the form requires the disclosure of loans received (income).

Unpaid loans are reported on Schedule F (see Chapter 8) as a unpaid debt until the loan is fully repaid or forgiven.

#### *Schedule E - Part II (Repayment)*

Part II of the form requires the disclosure of loans repaid.

Requires the disclosure of loans repaid (expenditure). An expenditure for a loan repayment should never be reported on Schedule D.

### Section 7.3 - Forgiving Loans

If there is an outstanding loan to the committee, the contributor has the option of forgiving the loan and converting it into a contribution. The campaign finance report must show the conversion of the loan to a contribution by listing the outstanding amount on Schedule A as a cash contribution and on Schedule E as a loan repayment.

## CHAPTER 8 – Schedule F: Debts Remaining Unpaid

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### Section 8.1 - Types of Reportable Debts

Any obligation for payment for a good, a service or a loan should be listed on Schedule F until the obligation is paid in full.

Virginia's campaign finance system operates on a cash-basis reporting system. Therefore, it is not necessary to report debts for outstanding bills from utility companies, etc.

#### ***Loans***

As soon as a committee receives a loan, the campaign finance report must report the amount of the loan remaining unpaid on Schedule F.

### Section 8.2 - Reporting Outstanding Debts

It is required that the committee enter the full name and mailing address of the creditor, the date that the debt was incurred and the remaining balance of the debt. The committee must continue reporting any debt on Schedule F on each subsequent report until the debt is fully repaid. The repayment of the debt must be reported on Schedule D.

#### ***Purpose of Obligation***

The committee should make every effort to be as descriptive as possible when reporting the purpose of the debt's obligation. Vague or incomplete descriptions must be avoided.

## CHAPTER 9: Schedules G and H: Summary Pages

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Schedules G and H are used to summarize the data contained in the campaign finance report. Be sure to follow the instructions on each form to accurately complete the schedules.

### ***Negative Balances and Outstanding Debts and Loans***

SBE will not accept a report if the report shows a negative balance. Negative balances do not occur with correct reporting. Any committee must amend the appropriate (i.e., prior) reports and resolve the problem. A negative balance is usually due to a failure to report all income or a failure to report or properly disclose in-kind contributions.

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## CHAPTER 10 – Schedule I: Disbursement of Excess Funds

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### Section 10.1 - Filing a Final Report

All committees are required to file a Final Report when the committee disbands or closes, in order to discontinue filing campaign finance reports for a committee.

#### ***Negative Balances and Outstanding Debts and Loans***

***SBE will not accept any report with a negative balance.***

SBE will not accept a Final Report if the report shows a negative balance. In this case, the committee must first amend the appropriate reports and resolve the problem.

If there is an outstanding loan to the committee, the loaner has the option of forgiving the loan and converting it into a contribution. The campaign finance report must show the conversion of the loan to a contribution by listing the outstanding amount on Schedule A as a cash contribution and on Schedule E as a loan repayment.

Outstanding debts (including penalties owed) must be paid prior to filing a final report.

### Section 10.2 – How to Dispose of Surplus Funds

Surplus funds must be properly disposed of by one or any combination of the following methods:

Transferring the excess to an affiliated organization of the committee;

Returning the excess to a contributor in an amount not to exceed the contributor's original contribution;

Donating the excess to any organization described in §170(c) of the Internal Revenue Code;

Contributing the excess to one or more candidates or to any political committee that has filed a statement of organization with Virginia;

Contributing the excess to any political party committee; and

Defraying any ordinary, nonreimbursed expense related to the referendum committee.

It is unlawful for any person to convert any contributed moneys, securities, or like intangible personal property to his personal use or to the use of a member of the candidate's "immediate family" as that term is defined in § 30-101.

### Section 10.3 - Disposition of Tangible Items of Value

Gifts of goods to the committee must also be disbursed. The disposition of this type of contribution may be carried out as follows:

The tangible item may be sold to any buyer for fair market value. The proceeds of sale must be reported as a rebate on Schedule C and used to pay off the debts of the campaign or as part of a surplus distribution.

If the committee is indebted to any person, the items may be transferred to the person to satisfy any or all of the debt.

The items may be distributed as non-cash surplus to any eligible recipient described above.

If any item is leased, the committee should simply return the item and discontinue the leasing agreement. If any item is loaned to the committee, it should discontinue use and return the item.

## **CHAPTER 11 – Special Reports**

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### **Section 11.1 – Types of Special Reports**

Referendum committees will sometimes be required to file other reports in addition to the required regular campaign finance reports. These are called “special reports.”

### **Section 11.2 – Large Dollar Contribution Reports**

A large dollar contribution report is required at any time that the committee receives a single direct contribution, in-kind contribution or loan of \$10,000 or more from a single source. Contributions or loans from the committee’s affiliated organization are exempt from this special report.

#### ***When to File Large Dollar Contribution Reports***

A large dollar contribution report is due within three business days of the actual receipt of the contribution or loan.

#### ***Where to File Large Dollar Contribution Reports***

A large dollar contribution report must be filed using COMET or an approved vendor.

## CHAPTER 12 – Where and When to File Campaign Finance Reports

### Section 12.1 – Filing Schedules

#### *November Referendum Schedule*

Referendum committees with activity to report related to a referendum to be decided at a November General Election during the current calendar year must adhere to the following filing schedule:

ACTIVITY BEGINNING	ACTIVITY ENDING	REPORT DUE*
January 1	March 31	April 15
April 1	13 Days <b>Before</b> Primary	8 Days <b>Before</b> Primary
12 Days <b>Before</b> Primary	June 30	July 15
July 1	August 31	September 15
September 1	September 30	October 15
October 1	13 Days <b>Before</b> General Election	8 Days <b>Before</b> General Election
Last Regularly Filed Report	23 Days <b>After</b> General Election	30 Days <b>After</b> General Election
Last Regularly Filed Report	December 31	January 15

\*Report due dates that fall on a holiday or weekend will be moved to the following business day.

#### *May Referendum Schedule*

Referendum committees with activity to report related to a referendum to be decided at a May General Election during the current calendar year must adhere to the following filing schedule:

ACTIVITY BEGINNING	ACTIVITY ENDING	REPORT DUE*
January 1	<b>*If Primary Called</b> 11 Days <b>Before</b> General Election	<b>*If Primary Called</b> 8 Days <b>Before</b> General Election
Last Regularly Filed Report	June 10	June 15
June 11	June 30	July 15
July 1	December 31	January 15

\*Report due dates that fall on a holiday or weekend will be moved to the following business day.

### **Special Referendum Reporting Schedule**

Referendum committees supporting or opposing a referendum to be decided at an election held on a date other than a May or November scheduled General Election.

<b>ACTIVITY BEGINNING</b>	<b>ACTIVITY ENDING</b>	<b>REPORT DUE*</b>
Inception	11 days <b>Before</b> Special Election	Eight Days <b>Before</b> Special Election
Seven Days <b>Before</b> Special Election	Election Day	30 Days <b>After</b> Special Election**

\*Report due dates that fall on a holiday or weekend will be moved to the following business day.

### **Section 12.2 - Where and When to File Reports**

All referendum committees are required to file all reports with SBE.

When a report's due date falls on a weekend or holiday then the report is due the first business day following the report due date.

Reports that are filed with SBE must be mailed and postmarked by the deadline for filing the report.

Reports that are electronically filed with SBE must file their electronic reports no later than 5:00 pm on the report's due date.

### **Section 12.3 - Extension of the Filing Deadline**

The *Code of Virginia* authorizes SBE to grant an extension of a filing deadline in certain situations. SBE will not impose civil penalties if an appropriate written request is received by the report's due date describing any of the following situations:

Death of treasurer or immediate family of either within 72 hours of report due date;

Personal Computer (PC) failure that prevents timely filing, if accompanied by documented statement from a computer company licensed to do business in Virginia;

Fire or natural disaster within 72 hours of the report due date, resulting in destruction of equipment or documents required for completing the report.

The following excuses are not sufficient and will not be considered for granting an extension of the filing deadline. They include, but are not limited to:

Inclement weather;

Treasurer or custodian of the books transition that may result in a "paper shuffle;"

Committee's lack of knowledge of how to file, the need to file or due date of filing; or

Committee's failure to have copies of necessary forms.

The Secretary of the State Board of Elections has additional authority to extend an established filing deadline for filing during emergencies that interfere with the timely filing of reports. The extension shall be limited in scope to the areas and times affected by the emergency. The emergency extensions can only be granted in the case of an emergency declared by the Governor pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 or declared by the President of the United States and confirmed by the Governor by executive order as an emergency.

## **Section 12.4 - No Activity Reports**

All committees are required to file a report on the required deadlines even if there is no financial activity, except for bank interest or bank fees, for the committee during the reporting period. In such cases, the committee can simply file a cover sheet and filling out the “No Activity” box on the form indicating that there has been no financial activity, other than Bank Interest or Fees. The filer must promise to report all interest and fees on the next required report in which the committee has financial activity.

Committees who file electronically can simply create the electronic report being sure to indicate in the required area that there is no activity for the reporting period.

## **Section 12.5 - Other Reporting Policies**

It is the responsibility of the filer to ensure that they receive documentation that the statement or report has been received by SBE or the local electoral board. All receipts should be maintained with the committee’s records.

E-filers will be provided an automatic receipt at the time that they submit their report. No e-filing committee should consider SBE as having received the report until they have been provided a receipt.

No report can be filed before the date through which activity is required to be complete.

No report can include activity before or after the reporting period for the report.

The first report filed must include all activity for the entire period from the time the committee met any of the requirements for establishing the committee.

Any form required to be filed must be signed and certified as true and correct by the treasurer or custodian of the books required to file it.

The security code used by the committee when filing electronically is considered the signature as long as the committee has indicated their intention to file electronically.

In order to close a committee, a Final Report must be filed for that committee or they will be required to file all required reports for that election cycle.

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## CHAPTER 13 – Campaign Finance Reporting Penalties

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### Section 13.1 – General Provisions

Any person who violates, or aids, abets, or participates in the violation of, the Act shall be subject to a civil penalty not to exceed \$100.

For purposes of establishing penalties, the *Code of Virginia* creates three categories of violations: (i) the failure to file reports (§24.2-953.1); (ii) the late filing of reports (§24.2-953.2); and (iii) incomplete reports (§24.2-953.3). In addition, a special category exists to provide for additional civil penalties that relate only to statewide campaigns (§24.2-953.4). As to each category, the Code provides for a specific range of civil penalties and, where appropriate, the type of notice that must be provided before a penalty may be imposed.

The sections relating to the failure to file reports (§24.2-953.1) and the late filing of reports (§24.2-953.2), do not require that notice be provided before the imposition of penalties. Thus, if the statutory filing deadline is missed, the penalty is automatically triggered.

The procedure to be filed for the assessment of penalties relating to incomplete reports is governed by §24.2-953.3. It provides, in part: “Prior to assessing a penalty ...for the filing of an incomplete report, the Secretary of the Board, or the general registrar or secretary of the local electoral board, as appropriate, shall notify, by certified mail, the candidate and treasurer, or person or political committee required to file a report...No penalty shall be assessed if the information required to complete the report is filed within 10 days of the date of mailing the written notice.”

In a similar fashion, §24.2-953.4, which provides for additional penalties relating to statewide races, also explicitly requires that a prior notice must be given before a penalty may be imposed. It provides, in relevant part: “Prior to assessing a penalty pursuant to this section the Secretary shall notify...the candidate and treasurer in writing that a report has not been filed or that a filed report has not been completed...No penalty shall be assessed pursuant to this section if the report or information required to complete the report is filed within seven days of the date of mailing the written notice.”

It will be noted that the above analysis does not address the terms of §24.2-953, which does contain a 60 day notice provision. Said provision does not relate to the imposition of civil penalties. Instead, it relates solely to the steps that might be followed if the Board seeks to create a rebuttable presumption of willfulness as to the violation of campaign finance laws. The potential of a rebuttable presumption is only triggered, however, after actual receipt of the mailing and only after the passage of 60 days, a time period much greater than that necessary to impose a penalty under §24.2-953.3 (10 days) and §24.2-953.4 (7 days).

The State Board has formally adopted the following schedules for the assessments of civil penalties. To ensure uniformity throughout the state, this schedule must be followed when the filing officer is assessing civil penalties.

“Official Notification,” or any variation of this phrase, as stated within this chapter refers to the letter sent via United States Postal Service Certified Mail to the committee’s primary mailing address as reported on the committee’s most recently filed Statement of Organization. The date of “official notification” is either the date that the letter is received and signed for or the date on which the USPS returned the mail to SBE or the local electoral board. The notification is considered made even if the notification is not signed for, or was undeliverable, so long as the notification was sent to the committee’s primary mailing address.

## Section 13.2 - Procedure to Collect Penalties for Campaign Finance Reports

**Late Report** = \$100 civil penalty automatically imposed after the conclusion of the report's filing deadline. The State Board or the local electoral board will notify the committee of civil penalty and collection procedures via email or regular postal mail. If the payment is not received within 60 days of the deadline, the matter is referred to the appropriate Attorney for the Commonwealth for collection.

**Failure to File Report** = if no report is filed within 60 days of the due date, the State Board or the local electoral board will notify the committee via certified mail. The penalty will increase to \$500 and the committee will be provided an additional 60 days to submit the report. If, after 60 days has passed, the committee has not filed the report, then the matter is sent to the appropriate Attorney for the Commonwealth for collection and determination as to whether the violation is willful. The penalty notification will increase from \$500 to \$1000 if second or subsequent violations.

If delivery of the certified letter to the committee's primary mailing address is returned undeliverable or the recipient refused to sign, then the matter shall immediately be referred to the appropriate Attorney for the Commonwealth.

The local electoral board of a county or city will notify the Commonwealth's Attorney for the county or city in which the electoral board has jurisdiction.

For candidates for the General Assembly, the State Board will notify the Commonwealth's Attorney of the county or city of the residence of the candidate in violation. For candidates for statewide office, the State Board will notify the Commonwealth's Attorney for the City of Richmond.

Candidates for the General Assembly or statewide office must make their checks payable to "Treasurer of Virginia" for deposit to the General Fund. Candidates for local office must make their checks payable to the treasurer of their locality for deposit to their General Fund.

## Section 13.3 – Penalty Schedule for Regular Reports

The following schedule applies to all referendum committee's campaign finance reports (other than special reports or reports due eight days prior to primary, general or special election) that are required to be filed by a referendum committee.

Type of Violation	Amount	Reason
<b>Late Report</b>	\$100	Report not received by SBE or local electoral board by the report's deadline, but before official notification of tardiness from SBE or the local electoral board.
<b>Delinquent Report</b>	\$100	Report not received by SBE or local electoral board within 10 calendar days from official notification of tardiness from SBE or the local electoral board.
<b>Failure to File</b>	\$500	Report not received by SBE or local electoral board within 60 days after official notification. At this point, the violation is presumed <i>willful</i> and must be forwarded to the appropriate Attorney for the Commonwealth.
<b>Late, Delinquent or Failure to File: Second or Subsequent Violations</b>	\$1,000	For a second or any subsequent reports during a single election cycle that are considered to be late, delinquent or the failure to file a required report.

### Section 13.4 – Penalty Schedule for Pre-Election Reports

For campaign finance reports due eight days prior to the referendum.

Type of Violation	Amount	Reason
<b>Late Report</b>	\$250	Report not received by SBE or local electoral board by the report's deadline, but before official notification of tardiness from SBE or the local electoral board.
<b>Delinquent Report</b>	\$500	Report not received by SBE or local electoral board within 10 calendar days from official notification of tardiness from SBE or the local electoral board.
<b>Failure to File</b>	\$500	Report not received by SBE or local electoral board within 60 days after official notification. At this point, the violation is presumed willful and must be forwarded to the appropriate Attorney for the Commonwealth.
<b>Failure to File: Second or Subsequent Violations</b>	\$1,000	For a second report and any subsequent reports during a single election cycle that are considered to be the failure to file a required report.

## Section 13.5 – Penalties for Late Filing or Failure to File Independent Expenditure Reports

The late filing or the failure to file an Independent Expenditure report will be assessed on the following schedule:

Type of Violation	Amount	Reason
<b>Late Report</b>	\$100	Independent Expenditure Report Received after the Deadline but Prior to Official Notification from SBE.
<b>Failure to File Report</b>	\$500	Independent Expenditure Report Not Received Within 60 days of Official Notification from SBE. At this point, the violation is presumed willful and must be forwarded to the appropriate Attorney for the Commonwealth.
<b>Second or Subsequent Late Reports</b>	\$500	Second or Subsequent Independent Expenditure Report from the Same Entity Not Received by its Deadline.

## Section 13.6 – Penalty Schedule for Incomplete Reports

### ***Best Efforts Policy***

Once reports are received, SBE and the local electoral boards are required to review the reports and provide requests for additional information to the committee within 21 days of the deadline. The committee's failure to file an amended report or late filing of an amended report will be assessed civil penalties.

In conducting its review, SBE and the local electoral board are required to check the following information:

- that the report is legible;
- that missing information in required fields such as "N/A", "none", "unknown" etc. In fields where "requested" or "unable to obtain" is entered, verify that copies of letters to the contributors requesting this information have been filed;
- that the beginning balance of the current report (Schedule H, Line 16) equals the ending balance of the previous period's report (Schedule H, Line 19);
- that Line 19 and Line 29 on Schedule H match;
- that contributions are reported in alphabetical order on Schedule A and Schedule B as required by § 24.2-947.4;
- that expenditures are reported in chronological order (earliest first) on Schedule D;

If any required information is not included or the report is not completed properly, the report is deemed incomplete. However, SBE has determined that some missing information does not necessarily mean that a report should be considered incomplete. SBE has adopted this “Best Efforts” policy in order to comply with the requirements of § 24.2-953.3.

Therefore, Campaign Finance reports are not considered incomplete if:

- 1) Less than 10% of contributors are missing required information on Schedule or Schedule B; or less than 10% of any other itemized information does not include the required information.  
\*For example, if there are 100 itemized contributors on Schedule A, then no more than 10 of those contributors can have missing information.

**AND**

- 2) Letters requesting the required information from those contributors are filed with the report.

If these conditions are not met, then the report is considered incomplete and a letter requesting an amended report will be mailed to the committee.

The late or failure to file the complete and amended report will result in the following civil penalties:

Election Cycle Expenditure Totals	Amount	Reason
<b>\$0 - \$10,000</b>	\$100	Report Not Received by Deadline Established by State Board or local board and Does Not Meet "Best Efforts" Policy.
	Additional \$400	Report Not Received within 60 Days of Deadline Established by State Board or local board.
<b>\$10,000 - \$50,000</b>	\$250	Report Not Received by Deadline Established by State Board or local board and Does Not Meet "Best Efforts" Policy.
	Additional \$500	Report Not Received within 60 Days of Deadline Established by State Board or local board.
<b>More Than \$50,000</b>	\$500	Report Not Received by Deadline Established by State Board or local board and Does Not Meet "Best Efforts" Policy.
	Additional \$500	Report Not Received within 60 Days of Deadline Established by State Board or local board.
<b>Second or Subsequent Incomplete Reports</b>	\$1,000	<p>This penalty is not applicable to:</p> <ul style="list-style-type: none"> <li>(i) committees which have raised less than \$10,000 during their election cycle; and</li> <li>(ii) to a report that has been filed less than 20 days after official notification of an previous incomplete report from the State Board or local electoral board.</li> </ul>

If the requested amended report is not filed within 120 days of the specified deadline then the violation is presumed willful and the matter will be forwarded to the appropriate Attorney for the Commonwealth.

## Section 13.7 - Procedure to Assess and Collect Penalties for Large Dollar Contribution Reports

In the event that Large Dollar Contribution report is found to be late or was failed to be filed, the State Board or the local electoral board will assess a penalty according to the table below.

Type of Violation	Amount	Reason
<b>Late Report</b>	\$250	Special report filed after the deadline, but prior to the next required report.
<b>Failure to File</b>	\$500	Special report not received prior to the next required report.
<b>Second or Subsequent Violations</b>	\$1,000	For a second report and any subsequent special reports during a single election cycle that are considered to be the failure to file the required report.

## Section 13.8 - Statement of Organization Penalties

### ***New Committee***

This schedule shall be used when SBE or the local electoral board has determined that an entity has met the qualifications to become a referendum committee in Virginia, but has failed to file a *Statement of Organization*:

Length of Delinquency*	Civil Penalty
1-15 Days	\$100
16-30 Days	\$200
31-45 Days	\$300
46-60 Days	\$400
61 Days or more	\$500
Late Filing of Committee formed within 30 Days Prior to an Election	\$500

\*Virginia Law states that the committee has 10 days to submit a *Statement of Organization* form from the date that they have cause to register. The length of delinquency begins on the 11<sup>th</sup> day after the committee has cause to file a *Statement of Organization*.

### ***Amended Statement of Organization***

This schedule will be used when SBE or the local electoral board has determined that a committee has not amended their *Statement of Organization* as a result of changes regarding the information contained in the form on file with SBE within the 10 days as required by law:

<b>Length of Delinquency*</b>	<b>Civil Penalty</b>
1-60 Days	\$100
61-120 Days	\$150
121-180 Days	\$200
181 Days or More	\$300

\* Virginia Law states that the committee has 10 days to submit a Statement of Organization form from the date that they have cause to amend their Statement of Organization. The length of delinquency begins on the 11<sup>th</sup> day after SBE has contacted the committee requesting the amended form.

## ***Procedure to Collect Penalties for Statement of Organization Violations***

### **New Statements**

The procedure for assessing penalties to committees who are late or fail to file the required Statement of Organization shall be the same as for collecting a late or failure to file a required Campaign Finance report.

### **Amended Statements**

- 1) When determining this penalty, the State Board of Elections must have concrete evidence that the committee in question has had cause to change the information contained on the form, but has not submitted an amended form (e.g. returned mail, phone line disconnected, etc.).
- 2) Before assessing the civil penalty, the State Board shall provide written notice to the committee requesting the updated information. If the form is not updated within 10 days of the date of the letter, then the committee shall be considered delinquent and the appropriate civil penalty shall be assessed.

## **Section 13.9 – Penalties for Accepting Contributions from Unregistered Out-of-State Political Committees or Federal Political Action Committees**

It is unlawful for any committee registered in Virginia to accept contributions of more than \$10,000, in the aggregate during a calendar year, from an out-of-state political committee or Federal political action committee which is not registered with SBE.

Accepting any contribution of \$10,000 or more, in the aggregate during a calendar year, without first verifying the committee's SBE registration status will result in a penalty equal to the amount of the contribution received.

SBE shall assess the penalty at the time that it becomes aware of the violation. If the penalty is not paid within five days after official notification of the penalty then SBE shall send the matter to the Commonwealth's Attorney for the city of Richmond to enforce its collection.

## **Section 13.10 - Willful Violations**

A willful violation occurs when the filer's failure to file continues for more than 60 days after notice from the State Board or an investigation determines that the person intentionally attempted to subvert the provisions of the Act.

In the case of willful violation, a committee shall be guilty of a Class 1 misdemeanor and the Attorney for the Commonwealth shall initiate civil proceedings to enforce any civil penalties prescribed. There shall be a rebuttable presumption that the violation of the Act was willful if the violation is based on a

committee's failure to file a report required and its failure to file continues for more than 60 days following the actual receipt of written notice of that failure, sent by mail, return receipt requested, by the Virginia State Board or an Electoral Board.