

# RECALL

## GEORGIA PUBLIC OFFICERS RECALL ACT OF 1989

### 1. WHO IS SUBJECT TO RECALL?

Every state, county, and municipal public official who holds elective office, either by election or appointment, is subject to recall. O.C.G.A. §21-4-4(a).

### 2. WHO MAY RECALL?

Persons who are registered and qualified to vote in the recall election and who reside in the electoral district from which a public officer is elected may recall such public officer. O.C.G.A. §21-4-4(a).

### 3. WHEN CAN A PUBLIC OFFICER BE RECALLED?

A public officer can be recalled at any time during his term of office except during the first 180 days or the last 180 days of his term of office. O.C.G.A. §21-4-5.

### 4. WHAT IS THE PROCESS?

Recall is a three-step process:

- (1) Application for a recall petition. O.C.G.A. §21-4-5.
- (2) Recall petition. O.C.G.A. §21-4-8.
- (3) Recall election. O.C.G.A. §21-4-13.

### 5. WHAT IS THE APPLICATION PROCESS?

- A. The application for a recall petition is an official form designed and printed by the Secretary of State and provided to election superintendents. O.C.G.A. §21-4-5(b)(3).
- B. An application for a recall petition must contain:
  - (1) The name and office of the person sought to be recalled. O.C.G.A. §21-4-5(b)(1)(A).
  - (2) The signatures and printed names of the official sponsors, the date signed, residence addresses, and county of residence. O.C.G.A. §21-4-5(b)(1)(B).

(a) "Official sponsors" or "sponsors" means the electors who circulate or file an application for a recall petition who were registered and eligible to vote in the last general or special election for the office held by the officer sought to be recalled and who reside in the electoral district of the officer sought to be recalled.

(3) The designation of one of the sponsors as chairperson who shall represent the sponsors in all matters pertaining to the recall process. O.C.G.A. §21-4-5(b)(1)(C).

(4) A statement that the officer sought to be recalled has, while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interest of the public and stating the appropriate ground or grounds for recall as set forth in the Act with a brief statement of the fact or facts upon which the ground or grounds are based.  
O.C.G.A. §21-4-5(b)(1)(D).

(a) The grounds for recall are that the officer:

(i) Has committed an act or acts of malfeasance while in office.

(ii) Has violated his or her oath of office.

(iii) Has committed an act of misconduct in office.

(A) "Misconduct in office" means that an unlawful act committed willfully by an elected public official or a willful violation of the Code of Ethics for Government Service contained in O.C.G.A. §45-10-1.  
O.C.G.A. §21-4-3(8).

(iv) Is guilty of a failure to perform duties prescribed by law.

(A) "Failure to perform duties prescribed by law" means the willful neglect or failure by an official to perform a duty imposed by a statute. O.C.G.A. §21-4-3(6).

(v) Has willfully misused, converted, or

misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed. O.C.G.A. §21-4-3(7).

- (5) An affidavit of the chairperson and the circulator that each person signing the application for a recall petition is a voter of the district and that the facts upon which the grounds for recall are based are true. O.C.G.A. §21-4-5(b)(1)(E)(i).
- C. The election superintendent must assign a number to each application and keep a record of the number and the date of issuance. The number must appear on the application. O.C.G.A. §21-4-5(b)(2).
- D. The election superintendent must notify the public officer sought to be recalled in writing that an application for a recall petition has been issued for circulation. O.C.G.A. §21-4-5(b)(2).
- E. To be valid, an application must contain either the signatures of 100 sponsors or a number of sponsors equal to 10 percent of the number of voters who were registered to vote at the last preceding election to fill the office held by the public officer sought to be recalled, whichever is less. O.C.G.A. §21-4-5(c).
- F. The application must be submitted for verification within 15 days after issuance. O.C.G.A. §21-4-5(f)(1).
- G. If the application consists of more than one page, it must be bound together with each page numbered consecutively at the foot of each page, beginning with the number 1. O.C.G.A. §21-4-5(f)(1).
- H.
  - (1) The application shall be submitted for verification to the election superintendent who is, in the case of any elected state officer, the Secretary of State. O.C.G.A. §21-4-3(A).
  - (2) The application shall be submitted for verification to the election superintendent who is, in the case of a county officer, the county board of elections (if a county has such), or the judge of the probate court. O.C.G.A. §21-4-3(B).
    - (a) Provided however, that if the judge of the probate court is the officer sought to be recalled, then the election superintendent shall be the clerk of the superior court. O.C.G.A. §21-4-3(B).
  - (3) The application shall be submitted for verification to the election super-

intendent who is, in the case of a municipal officer, the municipal clerk, the municipal board of elections, or the municipal election superintendent. O.C.G.A. §21-4-3(C).

- I. At any time prior to the submission of the application for verification, a sponsor may withdraw his signature from the application by filing an affidavit in accordance with law. O.C.G.A. §§21-4-5(e), 21-4-9.
- J. The election superintendent must notify the public officer sought to be recalled in writing that the application for a recall petition has been returned for verification. O.C.G.A. §21-4-5(f)(3).
- K. The election superintendent shall verify the application within five days, excluding Saturdays, Sundays, and legal holidays. This period may be extended upon application and good cause shown for an additional time of up to 15 days by a judge of superior court. O.C.G.A. §21-4-5(f)(2).
- L. The election superintendent in verifying the application determines the "legal sufficiency" of the application. O.C.G.A. §21-4-5(f)(2).
  - 1. "Legal sufficiency" for election superintendents means a determination that the application contains a sufficient number of valid signatures. Such determination shall not include any review of the sufficiency of the ground or grounds for recall or the fact or facts upon which the ground or grounds are based. O.C.G.A. §21-4-3(7.1).
- M. The election superintendent is authorized to examine registration records, take evidence and testimony, and summon persons who signed the application in order to verify the signatures. O.C.G.A. §21-4-5(f)(2).
- N. The eligibility of a person to sign the application for a recall petition is determined as of the day before the date of his signature. O.C.G.A. §21-4-19.
- O. The nullification of one signature does not invalidate the remaining signatures. O.C.G.A. §21-4-5(f)(2).

**NO NOTARY PUBLIC MAY SIGN THE APPLICATION AS AN ELECTOR OR SERVE AS A CIRCULATOR OF ANY APPLICATION WHICH HE OR SHE NOTARIZED. ANY AND ALL SHEETS OF AN APPLICATION FOR A RECALL PETITION THAT HAVE THE CIRCULATOR'S AFFIDAVIT NOTARIZED BY A NOTARY PUBLIC WHO ALSO SERVED AS A CIRCULATOR OF ONE OR MORE SHEETS OF THE APPLICATION AS AN ELECTOR SHALL BE**

## **DISQUALIFIED AND REJECTED.**

- P. Applications cannot be amended, supplemented, or returned after submission for verification. O.C.G.A. §21-4-5(g).
- Q. If the application is found to be sufficient, the election superintendent shall officially file the certification of the application, issue recall petition forms, assign a number to the petition, and issue the number to the sponsors. O.C.G.A. §21-4-5(h).
- R. The election superintendent shall then immediately notify in writing the public officer sought to be recalled that recall petition forms have been issued for circulation. O.C.G.A. §21-4-5(i).
- S. Within four days after the application is submitted for verification, excluding Saturdays, Sundays, and legal holidays, the public officer sought to be recalled may petition the superior court in his county of residence (domicile) to review the sufficiency of the grounds for recall and the facts asserted in support of the grounds for recall. O.C.G.A. §21-4-6(a).
1. The administrative judge of the district will select a judge from within the district who is not a resident of the circuit containing the county in which the petition for review is filed or a senior judge who is not a resident of the circuit in which the petition for review is filed. If there is not a judge in the district who can serve or if the administrative judge is a resident of the circuit in which the petition for review is filed, the administrative judge will contact the administrative judge of an adjoining district to select a judge to preside over the petition for review. O.C.G.A. §21-4-6(c) and (d).
  2. The review shall be limited solely to a review of the legal sufficiency of the recall ground or grounds and the legal sufficiency of the alleged fact or facts upon which such ground or grounds are based as set forth in the recall application. The review of such alleged fact(s) shall include a determination whether probable cause exists to believe that such alleged fact or facts are true. The burden shall be on the petition chairperson to prove that such probable cause exists. The judge shall consider such review petitions on an expedited basis. Discovery shall be permitted but shall not delay the consideration of the review petition by the judge. The judge may enter such orders as the judge deems necessary. O.C.G.A. §21-4-6(f).
  3. **During the pendency of the review by the superior court, all other recall proceedings shall be suspended.** If a filing of sufficiency is

rendered by such judge, then recall proceedings shall continue in the manner provided for in this chapter. The time for circulating a recall petition after the review of the sufficiency petition shall begin from the date of the order of the superior court or the issuance of recall petition forms, whichever is later, notwithstanding the fact that recall petition forms were issued before the filing of the petition for review of the sufficiency of the recall application. Valid signatures obtained on a recall petition prior to the filing of a petition for review of the sufficiency of a recall application shall be counted. The officer sought to be recalled may file a discretionary appeal in the Supreme Court of Georgia within ten days after the date of an order finding a recall application sufficient, excluding Saturdays, Sundays, and legal holidays, and such court shall consider such appeal on an expedited basis. The filing of such appeal shall not operate to stay the recall proceedings. If a ruling of insufficiency is rendered by such judge, then a discretionary appeal may be filed in the Supreme Court of Georgia within ten days after the date of such ruling, excluding Saturdays, Sundays, and legal holidays, and such court shall consider such appeal on an expedited basis. O.C.G.A. §21-4-6(g).

6. **WHAT IS THE PETITION PROCESS?**

- A. Recall petitions are official forms designed and printed by the Secretary of State and distributed to election superintendents. O.C.G.A. §21-4-5(j).
- B. The form of the recall petition is set forth in O.C.G.A. §21-4-7.
- C. Although the law is not perfectly clear on this point, it would appear that the same grounds for recall and facts in support of those grounds must be used on the petition as were used in the application.
- D. Each person signing a recall petition must be a voter who is registered and eligible to vote in the recall election and who resides in the electoral district of the officer sought to be recalled. O.C.G.A. §21-4-8(a).

7. **HOW MANY SIGNATURES ARE REQUIRED?**

- A. (1) In the case of a state officer whose electoral district encompasses the entire state, a recall petition must contain signatures equal to 15% of the active voters registered and eligible to vote at the last preceding election for the office of the person sought to be recalled. O.C.G.A. §21-4-4(a)(1).
- (2) In the case of a state officer whose electoral district encompasses only a part of the state, a recall petition must contain signatures equal

to 30% of the active voters registered and eligible to vote at the last preceding election for the office of the person sought to be recalled. O.C.G.A. §21-4-4(a)(2).

(3) In the case of a county or municipal officer, a recall petition must contain signatures equal to 30% of the active voters registered and eligible to vote at the last preceding election for the office of the person sought to be recalled. O.C.G.A. §21-4-4(a)(2).

B. A separate petition is required for each officer sought to be recalled. O.C.G.A. §21-4-4(b).

8. **WHAT CONDITIONS GOVERN THE SIGNING OF A RECALL PETITION?**

- A. A recall petition cannot be circulated where alcoholic beverages are sold or served. O.C.G.A. §21-4-8(a).
- B. A recall petition must be signed in the presence of the person circulating the petition. O.C.G.A. §21-4-8(b).
- C. Each person signing a recall petition must sign his or her name and such elector or the person circulating the petition shall print the name, the residence address (with street and number or route), county of residence, and date of signature. O.C.G.A. §21-4-8(b).
- D. If a person cannot sign his name, the person may request the circulator to sign the petition and complete the information. The circulator shall then sign his full name beside the person's name. O.C.G.A. §21-4-8(c).
- E. The circulator must complete an oath that the petition was signed in his presence on the date indicated and that the signers are, to the best of his belief, voters of the electoral district of the officer sought to be recalled. O.C.G.A. §21-4-8(b) and (e).
- F. An elector may change the way his or her signature and residence address appear on the petition at any time prior to the petition being submitted for verification by striking through his or her name, initialing the strike-through, and resigning the petition correctly. O.C.G.A. §21-4-8(f).
- G. A voter may withdraw his signature at any time prior to the petition being submitted for verification by filing an affidavit in accordance with law. O.C.G.A. §21-4-9.
- H. If the application consists of more than one page, it must be bound together with each page numbered consecutively at the foot of each page, beginning with the number 1. O.C.G.A. §21-4-5(f)(1).

9. **WHO CAN CIRCULATE A RECALL PETITION OR APPLICATION?**

- A. The following persons *CANNOT* circulate a recall petition or application:
- (1) Registration officers and persons authorized by law to register voters;
  - (2) Persons who are not voters of the electoral district of the officer sought to be recalled;
  - (3) State employees. O.C.G.A. §21-4-10.

**NO NOTARY PUBLIC MAY SIGN THE PETITION AS AN ELECTOR OR SERVE AS A CIRCULATOR OF THE PETITION WHICH HE OR SHE NOTARIZED. ANY AND ALL SHEETS OF AN APPLICATION FOR A RECALL PETITION THAT HAVE THE CIRCULATOR'S AFFIDAVIT NOTARIZED BY A NOTARY PUBLIC WHO ALSO SERVED AS A CIRCULATOR OF ONE OR MORE SHEETS OF THE RECALL PETITION AS AN ELECTOR SHALL BE DISQUALIFIED AND REJECTED.**

- B. All such signatures obtained are void. O.C.G.A. §21-4-10.

10. **WHAT ARE TIME LIMITS FOR PETITIONS?**

- A. Any statewide office, 90 days from the date of issuance of the petition. O.C.G.A. §21-4-11(b)(1).
- B. Any office other than statewide, if 5,000 or more signatures are requested, 45 days from the date of issuance of the petition. O.C.G.A. §21-4-11(b)(2).
- C. Any office other than statewide, if less than 5,000 signatures are required, 30 days from the date of issuance of the petition. O.C.G.A. §21-4-11(b)(3).
- D. The election superintendent must verify the petition within 30 days after submission or within 45 days after submission if more than one petition is submitted or is subject to verification during that time period. O.C.G.A. §21-4-11(a).

11. **WHAT IS THE VERIFICATION PROCESS?**

- A. The election superintendent is authorized to examine registration records, take testimony of evidence, and summon persons signing the petition in order to verify the signatures contained on the petition. O.C.G.A. §21-4-11(a).
- B. A person's eligibility to sign a recall petition is determined as of the day before the date of the signature on the petition. O.C.G.A. §21-4-19.



- C. Signatures which the election superintendent cannot reasonably ascertain to be those of qualified voters are not to be counted. O.C.G.A. §21-4-11(a).
- D. The nullification of one signature does not affect the other signatures on any sheet. O.C.G.A. §21-4-11(a).
- E. The recall petition cannot be amended, supplemented, or returned after it is submitted for verification. O.C.G.A. §21-4-11(c).
- F. The election superintendent shall immediately notify the petition chairman and the officer sought to be recalled of the election superintendent's findings in writing and shall file a certification of those findings. O.C.G.A. §21-4-11(e).
- G. Within five days, excluding Saturdays, Sundays, and legal holidays, after the election superintendent has certified the legal sufficiency of a petition, he or she shall immediately notify the Governor or the appropriate official, who shall call the recall election as provided in Code Section 21-4-13. O.C.G.A. §21-4-11(d).

12. **WHO CALLS FOR A RECALL ELECTION?**

- A. In the case of a state officer, the Governor calls for the recall election. O.C.G.A. §21-4-13(b)(1).
- B. In the case of a county officer, the election superintendent of the county calls for the recall election. O.C.G.A. §21-4-13(b)(2).
- C. In the case of a municipal officer, the election superintendent of the municipality calls for the recall election. O.C.G.A. §21-4-13(b)(3).

13. **WHEN IS THE CALL MADE AND HOW?**

- A. The call must be made and published within 10 days after the receipt of the certification of sufficiency. O.C.G.A. §21-4-13(a).
- B. The recall election must be held not less than 30 nor more than 45 days after the call, unless a general primary or a general election is to be held not less than 30 nor more than 45 days after the call. In such cases, the recall election shall be held on the date of the general primary or general election. O.C.G.A. §21-4-13(a).
- C. (1) The call is to be published, in the case of state officers, in a newspaper of general circulation in the electoral district. O.C.G.A. §21-4-13(d)(1).
- (2) The call is to be published, in the case of county officers, in the official

organ of the county. O.C.G.A. §21-4-13(d)(2).

- (3) The call is to be published, in the case of municipal officers, in the official gazette of the municipality. O.C.G.A. §21-4-13(d)(3).

14. **WHO CONDUCTS THE RECALL ELECTION?**

- A. The appropriate official authorized by law to conduct elections conducts the recall election and declares and certifies the results. O.C.G.A. §21-4-13(e).
- B. The form of the ballot for the recall election is contained in O.C.G.A. §21-4-13(e).
- C. If more than 50 percent of those voting vote in favor of recall, the office is immediately vacated. O.C.G.A. §21-4-13(f).

15. **HOW IS THE VACANCY FILLED?**

- A. A special election shall be called by the appropriate state or local official to fill the vacancy created by the recall election. O.C.G.A. §21-4-13(g).
- B. The special election must be called within 10 days after the recall election and must be conducted not less than 30 nor more than 45 days after the date of the call. O.C.G.A. §21-4-13(g).
- C. The person who is recalled may run in the special election to fill the vacancy. O.C.G.A. §21-4-13(g).

16. **WHAT IF THE OFFICIAL RESIGNS PRIOR TO THE RECALL ELECTION?**

If the official resigns prior to the holding of a recall election, there shall be no recall election and the vacancy shall be filled in accordance with law. O.C.G.A. §21-4-12.

17. **WHEN CAN ANOTHER RECALL EFFORT BE MADE IF THE FIRST RECALL EFFORT FAILS?**

- A. If a recall petition is found to be insufficient, no further applications for recall petition can be issued for **SIX MONTHS** from the date of the finding of insufficiency except that any recall petition being circulated or verified at the time of the finding of insufficiency may continue to be circulated or verified. O.C.G.A. §21-4-14(b).
- B. If a recall election fails to recall the public official, no further application for recall petition can be issued for **SIX MONTHS** from the date of the recall election and all pending applications and petitions are void. O.C.G.A. §21-4-14(a).

- C. There is no limit on applications or petitions which are issued but not returned for verification.
- D. There is no limit on rejected applications for recall petition.

18. **HOW IS THE RECALL ACT ENFORCED?**

If the election superintendent fails to comply with the Act, any voter may apply, within 10 days after such refusal, to the superior court for a writ of mandamus to compel the election superintendent to perform his official duties. O.C.G.A. §21-4-18(a).

19. **ARE THERE CRIMINAL PENALTIES?**

- A. It is illegal for any person to give or receive money or any other thing of value for signing a recall petition or application or for signing an affidavit of signature withdrawal. O.C.G.A. §21-4-20(a).
- B. It is illegal for a person, by menace or threat, either directly or indirectly, to induce or compel or attempt to induce or compel any other person to sign or subscribe or to refrain from signing or subscribing that person's name to a recall petition or application or, after the person has signed or subscribed his name, to have that person's name taken therefrom. O.C.G.A. §21-4-20(b).
- C. It is illegal for any person to sign any name other than his or her own to a recall application or petition, except in the circumstance where he or she signs for a person in the presence of and at the specific request of such person who is incapable of signing that person's own name. O.C.G.A. §21-4-20(c).
- D. It is illegal for any person to knowingly sign his or her name more than once for the same recall application or petition or to sign if the person knows that he or she is not at the time of signing a qualified voter of the electoral district of the officer sought to be recalled. O.C.G.A. §21-4-20(c).
- E. Each of these crimes is a misdemeanor punishable by up to 12 months imprisonment and a fine not to exceed \$1,000.00.

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