

DIRECTIVE 2010-93 (Reissue of SOS Directive 2010-68)

December 29, 2010

To: All County Boards of Elections, Members, Directors, and Deputy Directors

Re: Guidelines for Absentee Voting

This directive incorporates the provisions of Directive 2008-82 and supersedes it. The directive does not make significant changes to Directive 2008-82, but rather, is clarifying in nature and intended to clarify the application of Ohio's absentee voting laws by Ohio's boards of elections and their staff. All boards of elections shall implement the instructions provided in this directive, and train all board of elections staff working with absentee ballots as to the requirements of this directive and Ohio law.

Please note that this directive cannot address every issue related to absentee voting. It is not intended to be exhaustive. For example, this directive does not address uniformed services or overseas absent voter's ballots as provided in R.C. Chapter 3511. See Directive 2010-62 and Advisory 2010-06.

ABSENTEE VOTING REQUIRMENTS

Any qualified Ohio elector whose current voting residence is at the address appearing in the records of the board of elections may request an absentee ballot **without stating a reason**.

Absentee voting occurs in three phases:

- Application process for absentee ballots;
- Voting and return of absentee ballots (both done by voters); and
- Receipt and processing of absentee ballots.

Any Ohio elector may apply to the county board of elections in the county of his or her residence for an absentee ballot either by mail or in person. Any Ohio elector may also vote his or her absentee ballot either by mail or in person at the county board of elections of the county where he or she resides.¹

¹ Boards of elections may designate an alternate location for in-person absentee voting; for the purposes of this directive "office of the board of elections" or "board of elections" may mean either the main office of a board of elections or an alternate, designated site for in-person absentee voting.

Details regarding the three steps for absentee voting are set forth below.

A. STEP 1: Applying for Absentee ballot

Application Required

If a board of elections receives a request from an individual for an absentee ballot application, that board of elections must provide an application (Form No. 11-A) to that individual.

An elector desiring to vote an absentee ballot either by mail or in person at a board of elections must request an absent voter's ballot by completing an absentee ballot application. (See R.C. 3509.03, which requires that a voter must complete the application and submit it to the board of elections for the county in which he or she resides, either in person or by mail.)

Deadline

The deadline to apply for an absentee ballot to be mailed to an elector is noon of the third day (Saturday) before the election. Individuals applying in person at the board of elections may apply and vote absentee in person until the close of regular business hours on the day before an election (Monday). No one other than voters described in R.C. 3509.08(B) (hospitalized due to accident or medical emergency or whose child is hospitalized), may apply for an absentee ballot on Election Day.

Boards of elections may remain open past noon on the Saturday immediately prior to an election to allow additional time for in-person absentee voting if the board chooses to do so. However, boards of elections are not required to remain open past noon on the Saturday before an election.

Form of Application

There is no required form for an application for an absentee ballot, although the Secretary of State's office does prescribe an application that may be used (Form No. 11-A). An individual's request, in any form, is sufficient if it contains ALL of the following:

1. The elector's name;
2. The elector's signature;
3. The address at which the elector is registered to vote (or in the case of an individual submitting a voter registration form and an absentee ballot application simultaneously, the address at which the individual is registering to vote as an elector);
4. The elector's date of birth;
5. *One* of the following:
 - a) The elector's driver's license number; *or*
 - b) The last four digits of the elector's social security number; *or*

- c) A copy of any other acceptable form of identification as described in Directive 2008-80 on Voter Identification.
6. A statement identifying the election for which an absentee ballot is requested;
7. A statement that the person requesting the ballot is a qualified elector;²
8. If the request is for a primary election ballot, the elector's party affiliation; and
9. If the elector desires a ballot to be mailed to the elector, the address to which that ballot shall be mailed.

Note on ID for Absentee Ballot Application and Absentee Ballots

Please note, as described in Directive 2008-80 on Voter Identification, Ohio law does not require an applicant for an absentee ballot to provide a photo ID or any other form of ID that may be required of a voter at the polls on an Election Day unless the voter cannot provide an Ohio driver's license number or the last 4 digits of his or her social security number. A voter may choose to provide any of the identification documents listed in Directive 2008-80 on Voter Identification. For more information on Ohio's ID requirements, please see Directive 2008-80 on Voter Identification.

Sufficiency of Application

Once an elector has applied for an absentee ballot, whether in person or by mail, the application must be reviewed for completeness to ensure that all required information (see 1 through 9 above) has been provided.

If the application is **insufficient**, i.e. it does not contain all the required information, the board of elections must, under R.C. 3509.04 and under procedures established by board policy, notify the elector of the application's insufficiency and inform the elector what information must be provided in order to complete the application. This notification must be made as soon as is practicable under the circumstances, but in no case more than 48 hours after receiving the absentee ballot application

The **elector** must personally complete any missing information on the application, unless the elector receives assistance from an attorney in fact designated pursuant to R.C. 3501.382.

ELECTION OFFICIALS MAY NOT COMPLETE MISSING INFORMATION ON INSUFFICIENT ABSENTEE BALLOT APPLICATIONS FOR VOTERS.

Applications Valid for One Election Only

Current Ohio law limits absentee ballot applications to requests for a single election. Only eligible voters using the federal postcard application may request

² Under Ohio law, the facts of an individual's qualifications to vote shall be determined as of the date of the election (i.e., Election Day).

absentee ballots for more than one election. (See Directive 2010-62 and Advisory 2010-06.)

B. STEP 2: Voting an Absentee Ballot

Once an application is complete, an election official designated by the director must provide the voter, either in person or by special delivery mail, air mail, or regular mail, postage prepaid, an absentee ballot with the correct candidates and issues for the voter's election precinct, based on the voter's residence address.

No Delegation of Ballot Delivery to Other Entities

Ohio law (R.C. 3509.04) provides that a board of elections must provide the ballot to the voter directly.

BOARDS OF ELECTIONS MUST PROCESS AND MAIL ABSENTEE BALLOTS AND MAY NOT DELEGATE THE TASK OF MAILING ABSENTEE BALLOTS TO ANY OTHER ENTITY, ORGANIZATION, COMPANY, OR CORPORATION.

Additionally, such a delegation would render a board of elections incapable of complying with other sections of Ohio law.

Deadlines

Absentee Ballots Delivered to Boards of Elections In-Person

Once a voter receives his or her absentee ballot from a board of elections, that voter must properly complete the identification envelope and vote the ballot. The voter must carefully follow all instructions for placing the ballot in the secrecy envelope, including the instruction on not removing the ballot stub. The voter must then return the completed secrecy envelope (containing the voted ballot sealed in the identification envelope) to the board of elections no later than the close of polls on Election Day. Boards of elections operating alternate sites for in-person absentee voting before the election may accept absentee ballots returned in person to such alternate sites in addition to the board of elections office. A voter delivering his or her ballot to a board of elections in person must return the ballot by the close of the polls on Election Day.

Mailed Regular Absentee Ballots and Uniformed Services Absentee Ballots from within the U.S.

All absentee ballots returned to the board of elections by U.S. mail, that are sent from within the United States, must either be **received** by the board of elections prior to the close of polls on election day (regardless of whether the outside/secrecy envelope is postmarked or not) OR be **postmarked** by the day **before** the election in order to be eligible to be counted. Absentee ballots that are mailed from within the U.S. and that are postmarked by the day before the election must be received by the board of elections before the eleventh day after an election in order to be eligible to be counted during the official canvass of the votes.

Different deadlines exist for uniformed services or overseas absent voter's ballots as provided in R.C. Chapter 3511; those deadlines are covered in the Directive 2010-62 and Advisory 2010-06.

Counting Absentee Ballots in Unofficial and Official Canvasses

All absentee ballots returned by the close of polls on Election Day, whether returned in-person or by mail, shall be included in the unofficial results if the ballots meet all other requirements of law.

Absentee ballots postmarked before Election Day and received after the close of polls on Election Day but before the eleventh day after the election shall be included in the official canvass if the ballots meet all other requirements of law.

Absentee Ballot ID Envelope

Ohio law requires boards of elections to provide with absentee ballots identification envelopes that have a form printed on their face that "substantially" contains the information listed in R.C. 3509.04. To assist boards of elections in complying with that requirement the Secretary of State's office has prescribed a form for absentee ballot ID envelopes (Form No. 12-A and 12-A-OS) which you should already be using.

An absentee voter must necessarily provide on the absentee ballot ID envelope **his or her name, signature, and proper ID for the absentee ballot to be counted.** Other information set forth in R.C. 3509.04 may be necessary for a board of elections to properly identify the voter in order to count his or her ballot.

All absentee ballot ID envelopes containing absent voter's ballots for former resident voters who are entitled to vote for presidential and vice-presidential electors only, must have printed or stamped thereon the words, "Presidential Ballot." R.C. 3509.021. (This requirement does not apply to such voters who are members of the organized militia called to active duty within the state and who will be unable to vote on Election Day on account of that active duty. R.C. 3509.031)

The absentee ballot ID envelope requires that voter identification be provided. Proper ID for purposes of casting an absentee ballot means any ONE of the following must be provided by the absentee voter (see Directive 2008-80 on Voter Identification for additional details):

1. Last four digits of Social Security number;
2. Ohio driver's license number;
3. Copy of driver's license or state ID card;
4. Military ID;
5. Any of the following showing the voter's name and residence address as appears in the records of the board of elections:
 - Original or copy of a current utility bill;
 - Original or copy of a current bank statement;

- Original or copy of a current paycheck;
- Original or copy of a current government check; or
- Original or copy of a current other government document.

Special Note for DRE Counties

If your board of elections provides in-person early absentee voting using DRE voting equipment, the in person absentee voters **may choose** either to vote on the DRE upon properly completing an application **or** by paper ballot delivered to the voter in person. This has been required by Ohio law for at least 9 years. R.C. 3509.01

Every board of elections using DRE equipment must post at least four notices in the area of the board of elections office for in person absentee voting that indicate that he or she may choose between electronic voting and a paper absentee ballot.

Additionally, an absentee voter who chooses to vote a paper absentee ballot delivered to him or her in person at a board of elections office **may choose** either to vote that ballot immediately **or** may take that ballot with him or her to complete at a later date. It is the absentee voter's responsibility to timely return his or her absentee ballot to the board of elections.

The election official delivering a paper absentee ballot to an elector shall notify the voter of the deadlines for returning the ballot by mail (must be received by the close of polls on Election Day or, if received after the close of polls on Election Day, it must be postmarked before Election Day) and, if the absentee voter indicates a desire to return the absentee ballot at a later date, shall provide the absentee voter with a return mailing envelope in addition to the identification envelope.

C. STEP 3: Accepting and Counting Absentee Ballots

Any absentee ballot that is legally sufficient must be counted pursuant to R.C. 3509.06.

Notifying Voters of Absentee Ballot ID Envelope Errors

Boards must notify voters when either the minimum required information on an absentee ballot ID envelope is missing or when additional information is necessary to verify the identity and eligibility of a voter. The notification must inform the voter of the nature of the ID envelope error. The notices must also be reasonably calculated to reach the affected voter in time to allow them to provide the necessary information. After notifying voters of any problems, the Board must allow voters the opportunity to correct any omission or error regarding their absent voter's ballot ID envelope through the tenth day after the election.

Where practical, Boards must send notifications no later than six (6) days after the election. The notices should be sent by postcard or letter using first class, not bulk, postage. However, when an ID envelope containing deficiencies that prevent

the ballot contained in it from being counted is received at a point when postal notice would be ineffective, boards should send notice via email if an email address is known. When an email address is known, boards are advised to simultaneously use both email and first class mail notification methods to notify the voter. Boards should consider using telephone notification as a last resort when all other means of communication have failed, or are impracticable or impossible.

If an absent voter's ballot ID envelope is deficient but it is possible to correct the deficiency, the required notice must be sent to the voter in the following situations:

- when the ID envelope does not contain the minimum required information (name, signature or acceptable ID);
- when the ID envelope contains the minimum required information but other information is necessary for the board to reasonably verify the identity and eligibility of the voter;
- when the ID envelope is not sealed.

Electors sign absentee ballot ID envelopes under penalty of election falsification. As such, electors who are not disabled must personally correct any deficiencies associated with their absentee ballot ID envelope. However, if a disabled absentee voter who is homebound notifies the board that he or she desires to correct an error on his or her absentee ballot, the Board must either:

- Dispatch a bipartisan team of election employees to the disabled voter's home, or
- Allow an appointed family member or an attorney to transport the absentee ballot to the disabled voter's home and, after correction, return it back to the board office.

General Reasons for Rejection of Absentee Ballots

R.C. 3509.07 provides the reasons and procedures for a board of elections to reject an absentee ballot. Those reasons are:

1. The statement accompanying an absentee ballot or absentee presidential ballot is insufficient.³
2. The signature of the voter does not correspond with the person's registration signature.
3. The applicant is not a qualified elector in the precinct.⁴

³ Please refer to the "Absentee Ballot ID Envelope" of Step 2 of this Directive:

"Ohio law requires boards of elections to provide with absentee ballots identification envelopes that have a form printed on their face that "substantially" contains the information listed in R.C. 3509.04. An absentee voter must necessarily provide on an absentee ballot ID envelope for it to be counted **his or her name, signature and proper ID**. Other information set forth in R.C. 3509.04 may be necessary for a board of elections to properly identify the voter in order to count his or her ballot. [Double check this quote]

⁴ In this circumstance, Ohio law requires that the facts of a voter's qualifications to vote shall be determined as of the date of the election (i.e., Election Day).

4. The ballot envelope contains more than one ballot of any one kind, or any voted ballot that the elector is not entitled to vote.
5. Stub A is detached from the absentee ballot.
6. The elector has not included with the elector's ballot any identification required under R.C. 3509.04, 3509.05 or 3511.09.

All returned absentee ballots must be examined for eligibility to be counted **before** they are removed from their identification envelopes. If after providing a voter with the opportunity to correct any errors on the absentee ballot ID, an absentee ballot envelope still does not meet the requirements to be counted, it shall not be opened nor the ballot counted. Such ballots must be endorsed on the back of the envelope "Not Counted" with the reasons the ballot was not counted, and shall be retained by the board of elections pursuant to established retention schedules. In the event an ID envelope is opened and it is determined that the ballot cannot be counted (see reasons 4, 5 and 6 above), such ballot must be endorsed on the back of the ballot "Not Counted" with the reasons the ballot was not counted, and shall be retained by the board of elections pursuant to established retention schedules.

ID Envelope Must be Sealed

Ohio law requires all absentee voters to place their ballot in the ID envelope and seal the envelope. Thus, in addition to the reasons for rejection of absentee ballots listed above, all paper absentee voters' ballots, except uniformed services or overseas absent voter's ballots cast pursuant to R.C. 3511.11, **MUST BE SEALED WITHIN THE ID ENVELOPE** when returned to a board of elections in order to be counted. This requirement serves several purposes, one of which is to ensure that no one may tamper with an absentee ballot after it is mailed without leaving some indication of tampering.

To avoid the disqualification of absentee ballots under this requirement boards of elections should:

- ensure that absentee ballots easily fit within the ID envelopes **without folding**;
- ensure that the ID envelopes easily fit within the return envelopes without folding; or
- clearly indicate by instruction whether voters must fold a ballot in order to place it in an ID envelope (and this is not a recommended procedure for absentee ballots because of voter confusion and greater difficulty in tabulating folded ballots);
- notify voters of any deficiency on the ID envelope and allow them the opportunity to correct as discussed above.

In all cases boards of elections shall indicate clearly that the ballot must be sealed within the ID envelope in order to count.

D. Miscellaneous Information**Absentee Ballot ID Envelopes Are Not Voter Registration Forms**

After the voter registration deadline (30 days before an election), absentee voters must already be properly registered to vote before applying for an absentee ballot. Additionally, after the thirtieth day before an election, absentee voters whose voter registration information is out-of-date must vote a provisional ballot. (See Directive 2008-81 on Provisional Voting.)

The Secretary of State's office recommends that electors needing to change their voting address or name be encouraged to properly complete and sign the Secretary of State prescribed voter registration form to ensure that the change in address or name is properly and timely updated.

Nothing in Ohio law permits an absentee ballot ID envelope to be used as a voter registration form, change of name form or change of address form. Absentee ballot ID envelopes are not the same as the Federal Postcard Voting Application. (See Directive 2010-62 and Advisory 2010-6.) Absentee voters may update their voter registration information through the voter registration deadline before an election by completing an appropriate form in addition to applying for an absentee ballot. Such registration procedures should be completed before absentee voting takes place.

Returning Absentee Ballot Applications Electronically

Non-military, in-country absent voters may not submit absentee ballot applications electronically (fax or email) under current Ohio law. Only a uniformed service member, the spouse or dependent children of a uniformed service member, or an overseas absent voters may return absentee ballot applications electronically (fax or email).

If you have questions about this directive, please contact your assigned elections counsel at 614-466-2585.

Sincerely,

Jennifer Brunner