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## **DIRECTIVE 2012-26**

**July 12, 2012**

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

Re: Absentee Voting

### **SUMMARY**

This Directive is a summary of Ohio law regarding absentee voting. This Directive rescinds Directives 2010-95, 2010-93, 2008-109, 2008-91, 2008-50, 2008-47, and 2008-26, Advisories 2008-28, 2008-19, and 2008-18 and Memoranda issued on October 16, 2009 and September 5, 2008.

### **OVERVIEW**

Any qualified voter whose registration information is current may request and vote an absentee ballot at any election without stating a reason.<sup>1</sup>

A qualified voter who wishes to cast an absentee ballot must submit an application in writing to the board of elections of the county in which the voter resides. While there is no required form for an application for an absentee ballot, the Secretary of State's Office makes available prescribed forms specific to each type of absentee voter. Generally, a voter's request in any form is sufficient if it contains ALL of the following pieces of information:<sup>2</sup>

1. The voter's name;
2. The voter's signature;
3. The address at which the voter is registered to vote;
4. The voter's date of birth;
5. One of the following:
  - a) The voter's driver's license number;

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<sup>1</sup> RC 3509.02

<sup>2</sup> RC 3509.03

- b) The last four digits of the voter's social security number; or
  - c) A copy of a current and valid photo identification, a military identification, or a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of election or a notice of voter registration by a board of elections, that shows the voter's name and address.
- 6. A statement identifying the election for which the absentee ballot is requested;
  - 7. A statement that the person requesting the ballot is a qualified elector;<sup>3</sup>
  - 8. If the request is for a primary election ballot, the voter's party affiliation; and
  - 9. If the voter desires a ballot to be mailed to the elector, the address to which that ballot shall be mailed.

Certain classifications of absentee voters must provide additional information in order to receive an absentee ballot, as discussed below. All absentee ballot applications, except the Federal Post Card Application (FPCA) used by UOCAVA voters, are valid for a single election only.<sup>4</sup> Non-UOCAVA voters must reapply for an absentee ballot prior to each election in which the voter desires to vote by absentee ballot.

## **INSTRUCTIONS**

### **I. TYPES OF ABSENTEE VOTING**

There are different types of absentee voters, each with slightly different requirements. Specific guidelines for each type of absentee voter are set forth below:

#### **A. Absentee Voting By Mail and In Person**

Except for voters with special circumstances (see below), an absentee voter is any qualified voter who prefers to vote by mail or in person prior to Election Day<sup>5</sup> and who applies using Secretary of State prescribed form 11-A or any written application containing all the required information mentioned above.

##### **1. By Mail**

Voters may submit applications to receive an absentee ballot by mail beginning January 1 of the election year or 90 days before the election, whichever is earlier, and ending 12 p.m. the Saturday before Election Day.

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<sup>3</sup> Under RC 3503.01, a voter's qualifications to vote are determined as of the date of the election.

<sup>4</sup> RC 3509.02, 3509.03

<sup>5</sup> RC 3509.02

Boards may begin mailing absentee ballots 35 days before Election Day and may continue mailing absentee ballots as they receive valid applications up until 12 p.m. the Saturday before Election Day.

A voter who receives an absentee ballot by mail may return it to the office of the board of elections through the mail or by personal delivery.

- Returned by mail—
  - The absentee ballot must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day OR
  - If the absentee ballot does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.
  - A postmark does not include mail sent using a postage evidencing system, including a postage meter.<sup>6</sup> Postage labels from USPS Automated Postal Centers and online providers (e.g., Stamps.com) are postage evidencing systems; the date on which such postage was purchased, even when printed on the envelope or label, is not a postmark.
- Returned by personal delivery—a voter may deliver the absentee ballot personally or may have a family member<sup>7</sup> deliver the absentee ballot by the close of polls on Election Day at the office of the board of elections only. No one may return a voted absentee ballot to a precinct polling location.

## 2. In Person

Voters may submit applications in person at the board office or other designated location.

In person absentee voting begins 35 days before Election Day and ends at 6 p.m. on the Friday before Election Day.

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<sup>6</sup> RC 3509.05(B)(2)

<sup>7</sup> RC 3509.05(A): spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece.

Boards of elections may accommodate in person absentee voting at the board office, or may designate another location for that purpose.<sup>8</sup> If the board chooses to designate an alternate location for in person absentee voting, in person absentee voting may occur only at that location, and that designated location must comply with all applicable requirements and prohibitions for polling locations.<sup>9</sup> Boards of elections having designated another location for in person absentee voting may not issue absentee ballots to voters, other than by mail, from the board office.

Boards of elections operating an alternate site for in person absentee voting before the election may accept the return of absentee ballots to such alternate site in addition to the board of elections office, but may only allow in person absentee voting at one location.

A voter who applies for and receives an absentee ballot in person may vote the ballot immediately in compartments (or on DREs) provided by the board for this purpose or may take that ballot home to complete at a later date. If the absentee voter chooses to take the ballot home, the board must provide the absentee voter a return mailing envelope along with the identification envelope. A voter who receives an absentee ballot in person and takes the ballot home to vote may return it to the office of the board of elections through the mail or by personal delivery.

- Returned by mail—
  - The absentee ballot must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day OR
  - If the absentee ballot does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.
  - A postmark does not include mail sent using a postage evidencing system, including a postage meter. Postage labels from USPS Automated Postal Centers and online providers (e.g., Stamps.com) are postage evidencing systems; the date on which such postage was purchased, even when printed on the envelope or label, is not a postmark.
- Returned by personal delivery—a voter may deliver the absentee ballot personally or may have a family member<sup>10</sup> deliver the absentee ballot by

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<sup>8</sup> RC 3501.10(C)

<sup>9</sup> RC 3501.11(Z)

<sup>10</sup> RC 3509.05(A): spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece.

the close of polls on Election Day at the office of the board of elections only. No one may return a voted absentee ballot to a precinct polling location.

During the first five days of In Person absentee voting, which occur before the voter registration deadline for an election, voters may both register to vote in person and apply for and cast an absentee ballot in person at the same time.

## **B. Special Circumstances**

### **1. Disability or Confinement**

A voter who has a disability or is confined and cannot vote at a polling location on Election Day or in person at the board office due to personal illness, physical disability, infirmity, or confinement may vote by absentee ballot.<sup>11</sup> This includes voters who are confined to a nursing home, jail, or workhouse. An absentee voter who has a disability or is confined applies using Secretary of State prescribed form 11-F or any written application containing all the required information plus the nature of the voter's illness, physical disability, infirmity, or confinement.

Voters with a disability or who are confined may submit applications to receive an absentee ballot beginning January 1 of the year or 90 days before the election, whichever is earlier, and ending 12 p.m. the Saturday before Election Day.

A voter who has a disability or is confined may receive and return an absentee ballot in person through two board of elections employees.

The two board of elections employees, each belonging to different major political parties, may deliver an absentee ballot to a voter who has a disability or is confined, and return the ballot to the board office. The two board employees must be present during delivery, voting, and return of the ballot, and must subscribe to that fact on the absentee ballot identification envelope (see Secretary of State prescribed form 12-C).<sup>12</sup>

An absentee voter who has a disability or is confined and who also is required to vote a provisional ballot due to a change of address or change of name may vote a

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<sup>11</sup> RC 3509.08(A)

<sup>12</sup> RC 3509.08(A)

provisional absentee ballot<sup>13</sup> (see Secretary of State prescribed form 11-I). No other type of absentee voter may vote provisionally by absentee ballot.

## **2. Unforeseeable Hospitalization**

An absentee voter who is confined to a hospital or whose minor child is confined to a hospital due to an accident or unforeseeable medical emergency occurring after the absentee voting by mail application deadline of 12 p.m. on the Saturday before Election Day may vote by absentee ballot.<sup>14</sup> Any such voter applies using Secretary of State prescribed form 11-B or any written application containing all the required information plus the hospital at which the applicant or the applicant's minor child has been admitted, the date of the applicant's or the applicant's child's admission to the hospital, and the offices for which the applicant is qualified to vote.

Voters with an unforeseeable hospitalization may submit applications beginning after 12 p.m. the Saturday before Election Day and ending at 3 p.m. on Election Day.

An absentee voter with an unforeseeable hospitalization may receive and return the absentee ballot through a family member, through two board of elections employees, or by mail. If the hospitalization is out of county, the absentee voter may receive and return the absentee ballot through a family member or by mail.

- Received and returned by a family member—a family member<sup>15</sup> of the voter may deliver the absentee ballot to the voter, and return the voted absentee ballot to the board of elections office by the close of polls on Election Day. A voter's family member may not return a voted absentee ballot to a precinct polling location.
- Received and returned by two board of elections employees—two board of elections employees, each belonging to different major political parties, may deliver a ballot to an absentee voter who is hospitalized or whose minor child is hospitalized. The two board members must be present during delivery, voting, and return of the ballot, and must subscribe to that

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<sup>13</sup> RC 3503.16(G)

<sup>14</sup> RC 3509.08(B)

<sup>15</sup> RC 3509.05(A): spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece.

fact on the absentee ballot identification envelope (see Secretary of State prescribed form 12-C).

- Received and returned by mail—if the hospital is located outside the county in which the voter is registered to vote, the board may mail the absentee ballot.
  - The absentee ballot must be postmarked no later than the day before Election Day and received at the board of elections office no later than the 10th day after Election Day OR
  - If the absentee ballot does not have a postmark, it must be received at the board of elections office no later than 7:30 p.m. on Election Day.
  - A postmark does not include mail sent using a postage evidencing system, including a postage meter. Postage labels from USPS Automated Postal Centers and online providers (e.g., Stamps.com) are postage evidencing systems; the date on which such postage was purchased, even when printed on the envelope or label, is not a postmark.

### **3. Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)**

A UOCAVA absentee voter is any active or reserve duty uniformed services voter or overseas voter.<sup>16</sup> UOCAVA voters apply using the Federal Post Card Application (FPCA). The FPCA may be submitted by mail, email, or fax. Relatives of UOCAVA voters<sup>17</sup> may submit an absentee ballot application on behalf of the voter using Secretary of State prescribed form 11-E, which may not be submitted by email or fax. A UOCAVA voter's relative may only submit form 11-E by mail or by personally delivering it to the board of election office.

UOCAVA voters may submit applications beginning January 1 of the election year or 90 days before the election, whichever is earlier, and ending 12 p.m. the Saturday before Election Day. UOCAVA voters may receive absentee ballots by mail, email, or fax. To receive and vote an absentee ballot in person, UOCAVA voters must submit an application at the office of the board of election by the close of polls on Election Day.

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<sup>16</sup> RC Chapter 3511. See also Directive 2012-20.

<sup>17</sup> RC 3511.02(C) defines family member as a spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother or sister of the whole blood or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, daughter-in-law, son-in-law, uncle, aunt, nephew, or niece of the UOCAVA voter.

A UOCAVA voter who receives an absentee ballot by mail, email, or fax may return it to the office of the board of elections through the mail or by personal delivery.

- Returned by mail—the UOCAVA absentee ballot must be submitted for mailing no later than 12:01 a.m. on Election Day and received at the board of elections office no later than the 10th day after Election Day. If the board receives the ballot by the 10<sup>th</sup> day after Election Day, it shall be deemed to have been submitted for mailing by 12:01 a.m. on Election Day. A postmark is not required in order for a UOCAVA ballot to be valid.
- Returned by personal delivery—a voter may deliver the absentee ballot personally or may have a family member deliver the absentee ballot personally by the close of polls on Election Day at the office of the board of elections only. No one may return a voted absentee ballot to a precinct polling location.

Refer to Directive 2012-20 for a more complete discussion of UOCAVA voting.

## II. PROCESSING ABSENTEE BALLOT APPLICATIONS

A board may not accept or process a Non-UOCAVA absentee ballot application received by fax or email.

If the board receives an application for an absentee ballot that does not contain all the required information listed above, it promptly must notify the voter of the missing information and ask the voter to supply the missing information.<sup>18</sup> The board may not return an incomplete application to the voter, as once an application is received at the board office, it is a public record. Election officials may not complete an application's missing information on behalf of the voter. The voter must personally complete any missing information on the application, unless the voter has paperwork on file with the board of elections to receive assistance from a designated attorney in fact.<sup>19</sup>

**Absentee voting by mail begins 45 days before each election for UOCAVA voters only and 35 days before each election for all other types of absentee voters.**<sup>20</sup> Due to the earlier start date for UOCAVA voting, boards must have ballots proofed and ready to mail prior to the 45<sup>th</sup> day before each election.

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<sup>18</sup> RC 3509.04(A)

<sup>19</sup> RC 3501.382

<sup>20</sup> RC 3509.01(B)

Once the board receives an application that meets the requirements explained above, it must provide the voter with the correct ballot for the voter's precinct, based on the voter's residence address. Boards of elections may not outsource the mailing of absentee ballots to vendors or any other third party except when the board has received prior written authorization from the Director of Elections, conditioned upon submission of appropriate quality assurance procedures, including the onsite presence of board personnel during every phase of the vendor or third party's possession of ballots, supplies, and/or data.

Ohio law requires boards of elections to provide an identification envelope with the absentee ballot (see Secretary of State prescribed forms 12-A and 12-C).<sup>21</sup>

### III. PROCESSING AND COUNTING ABSENTEE BALLOTS

Boards of elections may begin processing, but not tabulating, absentee ballots not earlier than ten days prior to Election Day. "Processing" includes:

- Opening absent voter's ballot envelopes having been examined and accepted as valid;
- Determining whether the stub is still attached;
- Preparing the absent voter's ballot for scanning; and
- Scanning of the absent voter's ballot using automatic tabulating equipment at a central counting station<sup>22</sup>; and identifying absent voter's ballots that cannot be "read" or are "rejected" by the ballot scanning device to determine whether the ballot needs to be remade so that it can be read by the scanner. This includes remaking of UOCAVA ballots transmitted by email or fax.

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

Valid absentee ballots received after the close of polls on Election Day through the 10th day after the election must be included in the official canvass.

The board must examine each returned absentee ballot envelope for eligibility **before** the board may remove the ballot from the envelope.

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<sup>21</sup> RC 3509.04

<sup>22</sup> In no circumstance may any board initiate the human-readable reporting of election results from absentee ballots processed prior to 7:30 p.m. on Election Day. RC 3505.26

In order for an identification envelope to be opened and the absentee ballot to be counted, the absentee voter must provide, at a minimum, the following information on the absentee ballot ID envelope:

- Name;
- Signature; and
- Proper ID.

Ohio law requires all absentee voters to place their ballot in the ID envelope and seal the envelope. The board of elections must clearly indicate that the ballot must be sealed within the ID envelope in order to count. If the board receives an absentee ballot that is not sealed in its identification envelope, the board must seal the envelope. If the ballot is not inside the identification envelope, the board must put the ballot in the identification envelope and seal it.

Pursuant to a Court Order,<sup>23</sup> if an absentee voter provides the number above his or her picture and not the driver's license number (two alphabet letters followed by six numbers), the board must notify the voter of such error by telephone or in writing, within two business days of receiving the application or voted ballot. The voter so notified must be permitted to appear in person at the office of the board to provide the correct information. In the case of a returned absent voter's ballot, the voter shall have until the tenth day after the election to provide this information to enable his or her ballot to be counted.

**Boards may not count an absentee ballot in the following situations:<sup>24</sup>**

- The absentee ballot identification envelope contains insufficient information;
- The signature of the voter does not correspond with the voter's registration signature;
- The applicant is not a qualified elector in the precinct as of Election Day;
- The ballot envelope contains more than one ballot of any one kind, or any voted ballot that the elector is not entitled to vote;
- Stub A is detached from the absentee ballot;
- The voter provides a different address than the address at which the voter is registered. Ohio law does not permit an absentee ballot identification envelope to be used as a voter registration form, change of name form, or change of address form. If the address on the absentee ballot identification envelope indicates that

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<sup>23</sup> NEOCH v. Brunner, Case No. 2:06-cv-00896 (S.D. Ohio) April 19, 2010 Consent Decree

<sup>24</sup> RC 3509.07, 3503.16

the voter's registration information is out of date and that the voter would be required to vote a provisional ballot, the absentee ballot cannot be counted; or

- A **Non-UOCAVA** ballot contains no postmark and is received after 7:30 p.m. on Election Day or is postmarked later than the day before Election Day. Please note that a postmark is no longer required in order for a UOCAVA ballot to be valid. The board must count an otherwise valid UOCAVA ballot regardless of whether it contains a timely postmark, a late postmark, or no postmark.<sup>25</sup>

If an absentee ballot envelope does not meet the requirements to be counted, or if an ID envelope is opened and it is determined that the ballot cannot be counted, the board must not count the ballot. The board must endorse the back of the envelope "Not Counted," write on the envelope the reason the ballot was not counted,<sup>26</sup> and retain the rejected ballot pursuant to established retention schedules.

If you have questions concerning this Directive, please contact the Secretary of State's elections attorney assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted

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<sup>25</sup> RC 3511.11(C)

<sup>26</sup> RC 3509.07