

The following questions are of a general nature. The answer provided here may not be the appropriate answer if your county's circumstances are not identical. For more detailed information, please refer to directives, advisories, the appropriate statutes or municipal charters (if applicable), or call the Elections Division at (614) 466-2585.

Click on a question to see the answer. Click on the question again to hide the answer.

### Provisional Ballots

#### ▼ May a Board of Elections update a voter's record after the a 25th day before a Presidential Primary?

R.C. 3503.16 is very specific with regard to how an elector who has moved prior to election day must vote if the elector's change of address is received by the board of elections after the deadline.

The deadline for a change of address form to be received by the board of elections before the presidential primary election is the **25th day (February 8, 2008)**. If a change of address form is received after that date, then the change will not be effective for the presidential primary election. So, you must take the statutory deadline into account with regard to the updating of your poll books prior to the election. If the 25-day deadline has not passed, then you may update your poll books with regard to that elector.

If the elector moves within the **same precinct in the county** and fails to file a change of address on or before the 25th day before the presidential primary election, then that voter may still vote a regular ballot in that precinct polling place under the procedures in R.C. 3503.16(B)(1)(a).

If the elector moves to a **different precinct within the county** and fails to file a change of address with the board of elections on or before the 25th day before the presidential primary election, then that voter **must vote a provisional ballot at the board of elections between the 24th day and the day before the election OR at that elector's new precinct polling place** or at the board of elections on the day of the presidential primary election under the procedures in R.C. 3503.16(B)(2).

If the elector moves to a **different county within the state** and fails to register to vote in the new county within the state on or before the 25th day before the presidential primary election, then that voter **must vote a provisional ballot** either at the board of elections in the county where the elector now resides starting on 24th day before the presidential primary election through the day of the presidential primary election under the procedures in R.C. 3503.16(C) **OR** at the elector's **new precinct polling place on the day of the presidential primary election** under R.C. 3505.181(A)(9), (B), and (C).

The only exception is for electors who, due to illness, physical disability, or infirmity, cannot appear at the board of elections and vote an absentee ballot under R.C. 3503.16(G) (a provisional absentee ballot).

Please note that after the 25-day deadline has passed, electors who move to a different precinct in the county or to a different county within the state **must vote a provisional ballot** regardless if your poll books have been printed or not.

*(as of March 3, 2008)*

#### ▼ Is a Board of Elections required to label Provisional Ballots in some way or print them on special paper stock to ensure they are designated as "provisional?"

No. The Secretary of State's office is not aware of any provision in law that requires some type of label or special designation for provisional ballots. (Absentee ballots, yes; but provisional ballots, no.) *(as of November 21, 2007)*

#### ▼ Is the SOS prescribed Affirmation Statement that has been printed on a provisional ballot envelope sufficient to register a non-registered voter for future elections?

No. The form cannot be used to register a previously unregistered person. However, the SOS prescribed Provisional Ballot Affirmation Statement (SOS from 12-B) printed on a provisional ballot envelope, if completed properly, may serve several purposes. For example, it is an affirmation for providing a provisional voter's identity and qualifications to vote, and it may be used for voters who are currently registered by need to update their registration due to an address or name change. *(as of 3/7/08)*

**▼ Is a voter who is casting a provisional ballot at a precinct polling place required to complete a voter registration card for a change of address?**

No. Election officials may request, but shall not require, that a provisional voter complete a new voter registration card. It should be noted that the provisional ballot affirmation statement prescribed by the Secretary of State in 2006 serves two functions: it serves as a provisional voter affirmation statement as well as a change of name/address form (voter registration card).

Therefore, Boards of Elections need not attach a voter registration form to a provisional ballot envelope because the affirmation statement printed on the envelope, as designed by the SOS office, serves as a multi-function document; if properly completed it will serve to provide proof of identity and voter qualification, AND as a change of address form. Using the SOS prescribed affirmation statement as a multi-purpose form in this way will likely reduce confusion and BOEs are STRONGLY encouraged to do. (as of 3/7/08)

**▼ Our BOE office stapled a voter registration form to all our provisional ballot envelopes that went to the polling locations. We have some provisional voters that didn't put their ID information on the provisional ballot envelope but did put the ID information on the attached voter registration form. Can we use their ID information from the registration form as a valid reason to count the provisional ballot?**

Maybe. As stated in Directive 2007-06, on Pages 14-15, Section III.E., all that is *required* of a voter who casts a provisional ballot is that the voter affirm certain things by signing an affirmation statement. This affirmation statement should be preprinted on the provisional ballot envelope, so all a voter should *have* to do is sign it.

However, before counting the ballot, additional information may be needed for the BOE to verify the voter's identity and qualifications to vote - which is why we encourage election officials to ask the voter to complete the rest of the info requested in our office's prescribed affirmation statement for provisional ballot envelopes. If - **based on the information provided by the voter** - the BOE can verify the voter's identity and qualifications, the BOE may count the provisional vote. The process a BOE uses to verify the voter's ID and qualifications is up to the Board - and there should be a policy in place regarding this.

It should be noted that Boards of Elections need not attach a voter registration form to a provisional ballot envelope because the affirmation statement printed on the envelope, as designed by the SOS office, serves as a multi-function document; if properly completed, it will serve to provide proof of identity and voter qualification, AND as a registration form. Using the SOS prescribed affirmation statement as a multi-purpose form in this way will likely reduce confusion and BOEs are STRONGLY encouraged to do. (as of 9/10/07)

**▼ Our Board of Elections printed its SOS prescribed Affirmation Statements for provisional voters on a piece of paper separate from the provisional ballot envelopes (we were trying to use up our old supply of plain envelopes). The precinct Election Official sealed the Affirmation Statement in the provisional ballot envelope. How should this be handled?**

This should not have happened because the SOS prescribed provisional voter affirmation statement was redesigned based on changes in law and the current version should now be printed on the outside of the provisional ballot envelopes used by boards; old provisional ballot envelopes without affirmation statements printed on them, or with outdated affirmation statements printed on them, should not be used. Please refrain from using old envelopes and affirmation statements in the future, and please address this situation with your poll workers in case the poll workers don't understand the purpose of the affirmation statement or the need for an affirmation to be accessible without also accessing the ballot.

Because state law seems to indicate that the determination as to the sufficiency of the affirmation statement must be made before the envelope is opened, there is an argument that there is no way to count these ballots without violating state law. As such, you should certainly make your legal counsel, the county prosecutor, aware of the circumstances.

As for dealing with these particular ballots, there are two options:

1. First, the voter should not be disenfranchised because of mistakes made by election officials and, after discussing the situation with others here in the office, I think the situation can be resolved without jeopardizing the secrecy of the ballot by following the process outlined below:
  - o First, a Democrat and a Republican, together, should carefully unseal the envelope, without looking at the contents of the envelope, so that the envelope may be resealed with tape later in the process. During this step, the team of election officials MUST NOT remove anything from the envelope.

- Second, the team should carefully look in the envelope to determine whether or not the affirmation statement was in fact sealed in the envelope. If it was, remove ONLY the affirmation statement, reseal the envelope with the ballot still inside, and mark the envelope with an explanation why the envelope was opened prematurely. If no affirmation statement is found inside, the ballot cannot be counted and the envelope should be resealed and marked as rejected with an explanation as to why the envelope was opened at all. At no time should either member of the team look at the actual provisional ballot.
  - Third, assuming an affirmation statement was found and the envelope was resealed, review the affirmation statement to verify the voter's identity and qualifications to vote. If the affirmation statement is sufficient, follow office procedures for processing the envelope and ballot as you would for any other valid provisional ballot.
2. Alternatively, the Board could simply determine, in consultation with its legal counsel, not to count these ballots on the grounds that the Board may violate state law by doing so. Of course, if the Board chooses this option, it will need to deal with whatever public response may arise because of the mistake and subsequent decision not to count the provisional ballots in question. (as of 9/10/07)

**▼ A precinct Election Official failed to sign the SOS prescribed Affirmation Statement printed on the outside of the provisional ballot envelope. Should the provisional ballot be counted?**

The BOE should ask the election official who failed to comply with his or her statutory duty why they failed to do so. If the election official failed to do so because of a perceived problem with the affirmation statement, then the affirmation statement should be reviewed for sufficiency with the election official's concern in mind. If there is no good reason for the official's failure to sign the statement, then, assuming the BOE can verify the voter's identity and qualifications to vote based on the information provided by the voter, the ballot should be counted. The voter should not be penalized for the mistake of an election official, but the BOE should deal with the election official as necessary and appropriate. (as of 9/10/07)

**▼ A provisional voter provided no ID and completed the SOS prescribed Affirmation Statement printed on the provisional ballot envelope. The Election Official signed the Affirmation Statement but did not record any information on the Election Official Verification Statement form. May the ballot be counted?**

Maybe. As noted at p. 14, Section III.E., of Directive 2007-06, all that is *required* of a voter to vote a provisional ballot is that the voter complete the provisional ballot affirmation statement. Thus, a provisional voter may cast a provisional ballot without providing ID. If the BOE can verify the voter's identity and qualifications to vote based on the information provided by the voter, then the BOE shall count the ballot.

However, if the BOE cannot verify the voter's identity and qualifications to vote based on the information provided by the voter, and the voter does not provide additional identification information within 10 days after the election, then the vote shall not count. (as of 9/10/07)

**▼ If the name and address of the voter are missing on a provisional ballot envelope's Affirmation Statement prescribed by the SOS, but it contains the voter's signature, should the ballot be counted?**

No. According to the provisional ballot affirmation statement requirements in R.C. 3505.181, and described in R.C. 3505.182, the voter's name must appear in the statement, but the voter's address need not. So based on the fact that the name is missing, the ballot should not be counted.

Although the voter's address is not required, it should still be noted that on Page 14 of Directive 2007-06 ("Section E - Provisional Ballot Affirmation Statement"), election officials should encourage provisional voters to provide additional information on the Affirmation Statement (such as the voter's date of birth, current address, etc.), which may be needed to verify the voter's identity before the ballot can be counted. If the board cannot verify the voter's identity and eligibility using the information provided, then the ballot cannot be counted. (as of 9/10/07)

**▼ May a board count a provisional ballot if it was cast in a precinct in which the voter does not currently reside?**

In general, the answer is "no." R.C. 3505.183(B)(4)(a) provides: "If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board determines that any of the following applies, the provisional ballot envelope shall not be opened, and the ballot shall not be counted:

- (ii) The individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot."

The exception is if the voter is registered in Ohio and has moved into a new precinct and has not updated his or her registration. In that case, if the voter has cast his or her provisional ballot in a new precinct in which he or she now resides, the ballot is counted. (as of 9/10/07)

▼ **If a voter provides the wrong number from his/her Ohio driver's license on the SOS prescribed Affirmation Statement that is printed on a provisional ballot envelope, I've heard the Board of Elections has two days to contact voter. Where is this in the Revised Code?**

It is not in the Revised Code; it is part of Directive 2007-06 issued by Secretary Brunner, acting in her capacity as the state's chief elections officer. (as of 9/10/07)

▼ **Can the last 4 digits of the Driver's License be used, instead of the last four digits of the SSN, as verification of identity for a provisional voter when the BOE is reviewing the SOS prescribed Affirmation Statement printed on the provisional ballot envelope to determine whether or not the provisional ballot should be counted?**

A: If the BOE can verify the identify of the voter and his or her qualifications to vote, based on the information provided on the SOS prescribed Affirmation Statement while following the identity verification process implemented by Board, then the ballot may be counted. While electors are required to provide ID, the ORC only requires that a provisional voter complete the SOS prescribed Affirmation Statement. If, based on information in the statement, the BOE can verify the identity of the voter, then the ballot should be counted. (as of 9/10/07)

▼ **Are Observers allowed to view the verification process of provisional ballots and if so how do we hide Social Security Numbers from them ?**

Yes, official "observers" as described in R.C. 3505.21 are allowed to view the verification process of provisional ballots, as provided by R.C. 3505.181(D):

"Provisional ballots that the board determines are eligible to be counted under division (B)(3) of this section shall be counted in the same manner as provided for other ballots under section 3505.27 of the Revised Code. No provisional ballots shall be counted in a particular county until the board determines the eligibility to be counted of all provisional ballots cast in that county under division (B) of this section for that election. **Observers, as provided in section 3505.21 of the Revised Code, may be present at all times that the board is determining the eligibility of provisional ballots to be counted and counting those provisional ballots determined to be eligible.** No person shall recklessly disclose the count or any portion of the count of provisional ballots in such a manner as to jeopardize the secrecy of any individual ballot." (Emphasis added.)

Election officials should cover Social Security numbers using non-permanent tape that is of an appropriate size and which can be removed without damaging, or leaving residue on, the provisional ballot envelope's affirmation statement. as of (9/10/07)