NORTH CAROLINA
STATE BOARD OF ELECTIONS

Numbered Memo 2020-15

TO: County Boards of Elections

FROM: Karen Brinson Bell, Executive Director

RE: Absentee Requests Forms

DATE: July 28, 2020

This numbered memo addresses certain issues related to absentee request forms. It sets out uniform standards to be applied statewide. It includes changes to the law based on Session Law 2020-17 and Session Law 2019-239.

Determining Validity of Form

An absentee request is valid if it contains all of the following information:[1]

- The request is on the State Board's Absentee Request Form.
- The request form indicates it is for the 2020 general election. If the form has a checkbox for the election date, the box must be checked for the request to be valid. Voters may use any 2020 State-issued form, including the soon-to-be released redesigned version.
- The form is signed by the voter, near relative, or legal guardian.
- The request is returned by the voter or the voter's near relative or legal guardian, or a multipartisan assistance team (MAT).
- All required fields on the form are completed:
    - Voter's name and residence address
    - Name and address of voter's near relative or legal guardian if that individual is making the request
    - Address the voter wants their ballot mailed to, if different from the voter's residence address
    - One of the following:
        - The voter's DMV-issued drivers license number or nonoperator ID number; or
        - The last four digits of the voter's Social Security number; and

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[1] G.S. § 163-230.2(a), as amended by Section 1.3.(a) of Session Law 2019-239.

o   The voter's date of birth

A form that does not contain all of the above information is invalid.

If a county board receives an invalid request, it shall immediately contact the voter, or the voter's near relative or legal guardian, ideally within one business day. The county board shall use any available method to contact the voter. If the contact is by phone, the county board shall also contact the voter in writing (by email, fax, or mail). The county board shall include a copy of a blank absentee request form and explain to the voter why their absentee request was invalid. A county board may not pre-fill an absentee request form for any reason.[2]

Absentee Request Submission

How to Submit the Request Form
In 2020, a request may be delivered using any of the following methods:

- In person;
- Email;
- Fax;
- U.S. Mail or designated delivery service; or
- Online request form portal, which will be available on or before September 1, 2020.

There is no requirement for the particular type of file a voter may use to submit a request form by email. A voter may attach a picture of the form taken with their phone camera, for example, provided it is readable by the county board of elections. We recommend that voters do not send a link to the form using a service such as Google Docs because performing a cyber scan of such documents may not be possible and thus could pose a security risk to the board of elections.

Who May Submit the Request Form
Only the following individuals may return an absentee request form:

- The voter;
- The voter's near relative or verifiable legal guardian; or
- A MAT.

An absentee request returned by any other person is invalid.[3] A third party may not submit the request.

In some cases, it may not be clear whether the absentee request form was submitted by the voter, the voter's near relative or legal guardian, or MAT. **In the absence of evidence to the contrary,**

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[2] G.S. § 163-230.2(e)(2), as amended by Section 1.3.(a) of Session Law 2019-239.

[3] G.S. § 163-230.2(e)(4), as amended by Section 1.3.(a) of Session Law 2019-239.

a county board of elections should presume that the request was submitted by an authorized person.

<u>Submission by Mail</u>

If you receive an absentee ballot request by mail, you may consider the return address of the envelope in determining whether the request was returned by the voter or the voter's near relative or legal guardian. If there is no return address and no other information indicating the request was submitted by someone other than the voter or the voter's near relative or legal guardian, the request is valid. It is permissible for multiple requests to be submitted in the same envelope provided the sender is the voter or the voter's near relative or legal guardian for each request.

A third party may provide a postage stamp to the voter or the voter's near relative or legal guardian to return the request form.[4]

<u>Submission by Email</u>

The following are a non-exhaustive list of scenarios where an emailed absentee request would be treated as being submitted by an authorized person:

1. A request form is sent from a theme, fanciful, or other email address that is not associated with a person's name. For example, the request is sent from <u>animallover10@gmail.com</u> and there is no other information included in the body of the email to identify the sender.
2. A request form is sent from an email address that appears to be associated with the voter. For example, the absentee request form of voter John Smith is received from <u>John-Smith@yahoo.com</u>, and there is no other information included in the body of the email to identify the sender.
3. A request form is sent from an email address that appears to be associated with the voter's near relative or legal guardian. For example, Jane Smith signed the request form for her husband, voter John Smith, and the request is sent from <u>JaneSmith@hotmail.com</u>. There is no other information included in the body of the email to identify the sender.
4. A request form is sent from an email address that appears to be associated with a person other than the voter or the voter's near relative or legal guardian. For example, the request form of voter John Smith is received from <u>CrystalJones@hotmail.com</u>. However, the body of the email includes a note indicating that the voter used that email address to submit their

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[4] The U.S. Department of Justice, in its <u>Federal Prosecution of Election Offenses</u> manual, states that giving a stamp is not a federal crime, because "'facilitation benefits,' e.g., things of value given to voters to make it easier for them to cast a ballot that are not intended to stimulate or reward the voting act itself, such as a ride to the polls or a stamp to mail an absentee ballot, do not ordinarily involve federal crimes."

absentee request form and that the form was sent by the voter. This form is acceptable because there is evidence indicating the voter actually returned the form, as required by G.S. § 163-230.2(e)(4). An example of language that would be acceptable in the body of the email is "*I certify that I am the voter and that I personally transmitted this request by email. Sincerely, [INSERT VOTER'S NAME].*" It is not required that this language be used, but an email with this language will be acceptable.

A request form returned using an email address associated with a website is invalid because it was not "returned" by the voter. We are aware that leo@voteamerica.com, for example, has submitted request forms to county boards of elections by email. In this situation, transmission was made by a third party, not the voter, and therefore the form is invalid. You should contact the voter and let them know they must submit the request. If the voter has a copy of the form they completed online, the voter may forward this form to the county board of elections.

It is Class G felony for a third party to retain copies of an absentee request form or the personally identifying information contained therein.[5]

Signatures

No Signature Verification

County boards should accept the signature on the absentee request form if it appears to be made by the voter or their near relative or legal guardian. The voter's signature should not be compared with the voter's signature on file because this is not required by North Carolina law. Additionally, attempting to verify a voter's signature would result in different treatment of absentee request forms, since it is not possible to verify the signature of the near relative or legal guardian. If the absentee request form appears to have been signed by the voter or near relative, you should accept the signature as valid.

Signature Requirement

The absentee request form must be signed by the voter or the voter's near relative or legal guardian. A wet ink signature is not required, but the signature must be unique to the individual. A typed signature is not acceptable, even if it is cursive or italics such as is commonly seen with a program such as Docusign.

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[5] G.S. § 163-237(d3), as amended by Section 1.5.(a) of Session Law 2019-239: "Any person, other than the voter or near relative or verifiable legal guardian of that voter, who copies or otherwise retains the request for absentee ballots, a completed application for absentee ballots, or any identifying information, as defined in G.S. 14-113.20, disclosed in a request or application, shall be guilty of a Class G felony."

The following is a nonexclusive list of examples of acceptable signatures:

- The voter signs the form by hand with a pen, pencil, etc.;
- The signature is made by the voter's hand with their finger or stylus on a touchscreen or using a mouse to draw their signature;
- The voter copies and pastes a photo their unique signature onto the request form; and
- The voter makes their mark on the form.

Assistance with Absentee Requests

Who May Assist

A voter may receive assistance with their request form from only the following people:

- The voter's near relative or legal guardian; or
- A MAT.

Assistance means helping the voter physically fill out the form. Any person may provide a voter with a copy of a blank absentee request form or explain what the voter needs to do to complete the request form because this is not considered assistance.

Exception for Blind, Disabled, and Illiterate voters

A voter who is blind, disabled, or unable to read or write, including unable to read or write English, and whose near relative or legal guardian is unavailable to assist the voter, may receive assistance from another person. "Unavailable" means that the near relative or legal guardian is not available at the time the voter is filling out the form.

The assistant is not required to be a registered voter, U.S. citizen, or over the age of 18. The assistant must complete the appropriate section of the request form.

A voter who is a patient or resident in a nursing home is prohibited from receiving assistance from a person identified in G.S. § 163-226.3(a)(4).

Pre-Filled Request Forms

A form that is pre-filled, in part or in whole, by a third party or the county board of elections is invalid.[6] A county board may not complete missing elements of the form even if the voter provides that information when contacted about an incomplete form.

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[6] G.S. § 163-230.2(e)(2), as amended by Section 1.3.(a) of Session Law 2019-239: "The completed written request is completed, partially or in whole, or signed by anyone other than the voter, or the voter's near relative or verifiable legal guardian. A member of a multipartisan team

A request form that is typed is acceptable provided it was not completed by someone other than the voter or the voter's near relative or legal guardian. A voter may use a portal to enter information onto the form provided the voter or the voter's near relative entered the information and signed the form. A form that has "NC" pre-filled as the state in the "Current NC Residential Street Address" box of Section 1 of the form is acceptable because there is no other acceptable response in that box.

Logging Requests

County boards are required to maintain a log of absentee request forms dropped off at the office. The log may be a single sheet per form to avoid having multiple people touch the same form. If a county board's office is closed to the public due to COVID-19, the logging requirement is waived, but the county board shall provide a secure, immovable drop box for the return of absentee request forms and other documents.

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trained and authorized by the county board of elections pursuant to G.S. 163-226.3 may assist in completion of the request."