Numbered Memo 2021-07

TO: County Boards of Elections  
FROM: Karen Brinson Bell, Executive Director  
RE: Deficiencies in Notary Portion of Absentee Application and Certificate  
DATE: August 31, 2021

This numbered memo explains how county boards of elections should treat technical deficiencies in the execution of the notary portion of an absentee container return envelope (officially called the absentee ballot application and certificate). It replaces Numbered Memo 2020-07. The guidance balances the goal of uniformly applying the law while seeking to not punish the voter for a notary’s inadvertent mistake or error.

G.S. § 163-231(a) requires a voter to mark the absentee by-mail ballot in the presence of two witnesses or one notary public, who must sign the container return envelope as witness(es). If witnessed by a notary, the statute requires the notary public to affix their valid notarial seal to the envelope and include the phrase “Notary Public” below his or her signature.

State Board of Elections staff consulted with the North Carolina Department of the Secretary of State’s Electronic Notarization and Notary Enforcement Division regarding the validity of an incomplete notarization on the container return envelope. While the Secretary of State’s Office cannot adjudicate an absentee ballot, they provided useful information on how the notary statutes work in conjunction with our election statutes, including that there is a presumption of regularity in the absence of fraud on the part of the notary, or evidence of a knowing and deliberate violation of the notary statutes by the notary.¹ The Secretary of State’s Office has requested that notarial errors on the absentee ballot container-return envelope be reported to them.

Certain technical errors in executing the notary’s portion of the container return envelope are not considered deficiencies. Other errors are considered deficiencies that require the ballot to be spoiled and reissued in accordance with Section 2.2 of Numbered Memo 2021-03.

¹ G.S. 10B-99(a) (relevant portion): “In the absence of evidence of fraud on the part of the notary, or evidence of a knowing and deliberate violation of this Article by the notary, the courts shall grant a presumption of regularity to notarial acts so that those acts may be upheld, provided there has been substantial compliance with the law.”
1. Technical Errors That Are Not Considered Deficiencies

The following technical errors do not affect the sufficiency, validity, or enforceability of the notarial certificate itself or the underlying document and are not considered deficiencies:

- Notary leaves off the name of the voter or misspells the voter’s name;
- Notary does not write the expiration date of their commission;
- Notary does not include the name of the county or State;
- The notary seal is hard to read;
- The notary does not include the date the notary witnessed the marking of the ballot; or
- A combination of the above.  

2. Technical Errors That Are Considered Deficiencies

The following errors in the notarial certificate are considered deficiencies that cannot be cured by certification, and require that the ballot be spoiled and reissued in accordance with Numbered Memo 2021-03:

- The notary’s signature is missing. Pursuant to G.S. § 163-231(a)(5), the notary’s signature is required.
- The notarial seal is missing altogether or contains missing information. G.S. § 163-231(a) requires the notary to affix a valid notarial seal to the envelope.

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2 G.S. § 10B-68 (relevant portion):

(a) Technical defects, errors, or omissions in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related instrument or document.

[...]

(c) As used in this section, a technical defect includes those cured under G.S. 10B-37(f) and G.S. 10B-67. Other technical defects include, but are not limited to, the absence of the legible appearance of the notary's name exactly as shown on the notary's commission as required in G.S. 10B-20(b), the affixation of the notary's seal near the signature of the principal or subscribing witness rather than near the notary's signature, minor typographical mistakes in the spelling of the principal's name, the failure to acknowledge the principal's name exactly as signed by including or omitting initials, or the failure to specify the principal's title or office, if any.”

G.S. 10B-67: “An erroneous statement of the date that the notary's commission expires shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related record if the notary is, in fact, lawfully commissioned at the time of the notarial act. This section applies to notarial acts whenever performed.”

G.S. 10B-37(f): “The failure of a notarial seal to comply with the requirements of this section shall not affect the sufficiency, validity, or enforceability of the notarial certificate, but shall constitute a violation of the notary's duties.”
3. Fraud Indicators

If there are indications of fraud on the absentee envelope, whether they relate to the notary section or other sections of the envelope, this information should be sent to the State Board’s Investigations Division. Examples of fraud indicators include:

- A notary or witness completed multiple applications containing technical errors;
- The handwriting for the voter’s signature and witness’s signature appears identical;
- The envelope appears to have been tampered with; and
- There are stray or suspicious markings on the envelope.