

## **CHAPTER 7**

### **ABSENTEE VOTING**

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#### **7.1 Qualifications for an Absentee Ballot**

Qualified voters can apply for an absentee ballot if they meet one of the following conditions set forth in § 17-11-3:

- (a) The voter expects to be out of the county or the state on election day;
- (b) The voter has any physical illness or infirmity which prevents his or her attendance at the polls whether or not he or she is within the county on election day;
- (c) The voter expects to work a shift which has at least ten hours which coincide with the hours the polls are open at his or her regular polling place;
- (d) The voter is enrolled as a student in an educational institution located outside the county of his or her personal residence, which prevents his or her presence at the polls;
- (e) The voter is a member of the armed forces of the United States or the spouse or dependent of a member of the armed forces of the United States or similarly qualified to vote absentee pursuant to the

Federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C 20301;

- (f) The voter has been appointed as an election officer or named as a poll watcher at a polling place other than his or her regular polling place;
- (g) The voter is a caregiver for a family member to the second degree of kinship by affinity or consanguinity, if the family member is confined to his or her home; or
- (h) The voter is incarcerated in prison or jail and has not been convicted of a felony crime of moral turpitude.

Such absentee ballots may be cast by mail, commercial carrier, or hand delivery by the voter.

Additionally, if a group of people respond to a state of emergency in this state, another state, or by the federal government and the timing of that emergency makes substantial compliance with Chapter 11 of Title 17 of the Code, the Secretary of State may, pursuant to § 41-22-5 of the Alabama Administrative Procedure Act, promulgate an emergency rule to allow those qualified voters to vote by absentee ballot. §§ 17-11-3 and 17-11-7.

## **7.2 Application for an Absentee Ballot**

Prospective absentee voters must apply to the absentee election manager for an absentee ballot by mail or commercial carrier or by hand delivering an application in person. Hand delivered applications must be received at least five days before the election in which they desire to vote, and mailed applications must be received at least seven days prior to the election. § 17-11-3(b). Generally, the circuit clerk of the county is the absentee election manager. When the circuit clerk declines, an absentee election manager is appointed by the appointing board. § 17-11-2.

The form for absentee ballot application is prescribed and designed by the Secretary of State. However, an allowance is made for handwritten applications as long as the applications are submitted prior to the seven-day or five-day deadline, as appropriate. All applications must contain sufficient information to identify the applicant as a registered voter.

Absentee ballot applications must be accompanied by a copy of current,

valid photo identification, unless the voter is otherwise exempt from the identification requirement. If an absentee ballot application arrives on or after the eighth day before the election without identification, the ballot must be issued as a provisional ballot. §§ 17-9-30(c) and 17-10-2. However, the law does not provide for what the absentee election manager (AEM) should do if an application lacking identification arrives *before* the eighth day prior to the election. The absentee law does not explicitly require that any notice be sent to these applicants. However, the Secretary of State as authorized by § 17-1-3 has provided uniform guidance for AEM's to notify applicants that their application has been denied for lack of identification, in order to allow them an opportunity to correct their applications. This guidance does not specify how applicants may be notified, but the Secretary of State recommends sending notice via U.S. mail.

A person who requests an absentee ballot and signs an affidavit stating they never received the ballot is entitled to a replacement absentee ballot. Proper affidavit and documentation should be attached to the voter's application. Voters who did not receive their requested absentee ballot may alternately vote a provisional ballot at the polling place. AG AO 2000-244.

Applicants who need assistance with completing the form must manually sign the application. If the applicant signs with a mark, a witness to the signature must also sign. *See Taylor v. Cox*, 710 So. 2d 406 (Ala. 1998) (holding that trial court erred by counting absentee ballots that had been signed by designated agents and not the voters themselves). Separate applications for absentee ballots are required for elections more than 42 days apart except for military and overseas ballots and for voters on the permanent disability absentee voting list established pursuant to § 17-11-3.1. § 17-11-4.

### **7.3 Emergency Absentee Ballots**

In the case of certain personal emergencies arising within five (5) days of the election, separate procedures exist for voting by emergency absentee ballot.

Any registered elector who requires emergency treatment of a licensed physician within the five-day deadline for absentee ballots may apply for an emergency ballot for the election. The elector, or his or her designee,

must return the ballot to the absentee election manager no later than noon on the day the election is held. The attendant physician shall describe the circumstances of the emergency on a form provided by the Secretary of State. The form shall be attached to the application. § 17-11-3(d).

Any registered elector may also vote by an emergency absentee ballot if any of the following situations arise:

- (a) The elector is required by his or her employer under unforeseen circumstances within five days before an election to be unavailable at the polls on election day.
- (b) The elector is a caregiver of a person who requires emergency treatment by a licensed physician within five days before an election.
- (c) A family member to the second degree of kinship by affinity or consanguinity of an elector dies within five days before an election.

In the case of an emergency absentee ballot, the elector must sign an affidavit swearing that the elector was not aware of the situation constituting an emergency prior to five days before the election (i.e., the regular absentee application deadline). The ballot must still be signed by the voter. See *Taylor v. Cox*, 710 So. 2d 406 (Ala. 1998) (holding that trial court erred by counting absentee ballots that had been signed by designated agents and not the voters themselves). After voting the ballot, the elector shall hand the ballot to the absentee election manager. § 17-11-3(e).

## **7.4 Military and Overseas Ballots**

In 1986, Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. § 20301, et seq., repealing both the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975. This act provides voting protections for members of the military, their spouses and dependents, and U.S. citizens residing overseas. These voters are commonly referred to as UOCAVA voters.

This act, as amended by the federal Military and Overseas Voter Empowerment Act, requires absentee election managers to issue UOCAVA voters an absentee ballot no later than the 45<sup>th</sup> day prior to an

election for federal office if the UOCAVA voter's absentee ballot application was received no later than the 45<sup>th</sup> day prior to the election. Under this act, UOCAVA voters also have the option of receiving their blank absentee ballot electronically or by mail.

This act provides that UOCAVA voters will be given a federal write-in ballot for federal general elections if the voter (1) is absent from the U.S., (2) eligible to vote in their last U.S. domicile and (3) sends an application for a local absentee ballot received by the local officials at least 30 days prior to the election. The federal write-in ballot is only a back-up to the regular ballot, and the federal ballot is not to be counted if the regular ballot is received in time to be legally counted by the local officials.

For Alabama voters voting pursuant to the Uniformed and Overseas Absentee Voting Act, the Secretary of State standardizes military and overseas voter registration applications and applications for absentee ballots adopted by the United States government. § 17-4-35. Normally, an individual is required to present identification with the ballot when voting by mail. However, voters entitled to vote by absentee ballot pursuant to the Act, are not required to produce identification prior to voting. §§ 17-9-30(d) and 17-17-28.

Unless otherwise indicated by the military or overseas voter, an application for an absentee ballot by such a voter shall remain valid for any election for a federal, state, or county office or for any proposed constitutional amendment or a state or county referendum held through the end of the calendar year in which the application is filed. The absentee election manager should provide an absentee ballot to the military and overseas voters for each subsequent election. If an election cycle begins in one calendar year and continues into the subsequent calendar year, the absentee application will shall be valid for all elections within that election cycle. § 17-11-5(d). As with any absentee voter, if a change in circumstances makes an absentee ballot unnecessary for a military or overseas voter, they should notify the clerk's office to avoid being required to vote by provisional ballot at their polling place.

Following its creation by the Legislature in 2011, the Alabama Electronic Overseas Voting Advisory Committee determined that secure electronic absentee voting for military and overseas voters is feasible. This committee and the Secretary of State are charged with the adoption of rules for conducting overseas absentee electronic voting, including the requirements for the request, receipt, voting, returning and processing an

overseas absentee ballot. § 17-11-40, et. seq. Through these procedures, UOCAVA voters located outside the territorial limits of the United States also have the option of requesting electronic delivery of their blank absentee ballot pursuant to the Military and Overseas Voter Empowerment Act in order to return their voted absentee ballots electronically.

## **7.5 Permanent Disability Absentee Voter List**

The Secretary of State maintains a permanent absentee voter list for voters who have a permanent disability which prevents his or her attendance at the polls on election day. Any voter placed on this list will have an absentee ballot mailed to them before each election held during the calendar year. § 17-11-3.1.

To be placed on the permanent disability absentee voter list, the voter must submit an absentee ballot application for the list. The application must be signed and notarized by the primary physician for the person with the disability.

These voters must apply for the permanent disability absentee voter list on an annual basis. However, for an election cycle that begins in one year and continues into the subsequent year, the application shall be valid for the whole election cycle.

Applications for the list for federal, state, and county elections are submitted to the county absentee election manager. Applications for the list for municipal election are submitted to the absentee election manager for the town or city.

The Secretary of State has adopted rules to implement the provisions of § 17-11-3.1. Ala. Admin. Code r. 820-2-12.

## **7.6 Voter List**

In order to assist the absentee election manager in determining the names of qualified voters, the official list of qualified voters of the county is furnished to the manager by the judge of probate at least 55 days before the election. In municipal elections, the list must be furnished at least 35 days before the election. § 17-11-5(b). When the absentee election manager determines that an applicant is a qualified voter, the absentee

election manager furnishes the absentee ballot to the applicant either by handing it to the applicant or mailing it to their residence. § 17-11-4. The ballot is mailed to the voter's residence address shown on the voter list or, if requested by the voter, to an address where the voter regularly receives mail. AG AO 2000-156 and 2000-193. Where the absentee ballot application shows a residential address on the application which is different from the residential address on the voter list, the voter is issued a provisional absentee ballot.

The manager then designates the absentee voters on the official voter list. This list is not a public record until the day after the election, when the list is provided to the Board of Registrars. § 17-11-5(c)(1).

If an applicant for an absentee ballot is not registered to vote in the jurisdiction, then the absentee election manager does not issue any ballot to the applicant.

In all elections, the manager also supplies each polling place in the county with a list of the persons from that polling place who have applied for absentee ballots. The names of these persons are stricken from the list of qualified voters at the polling place because once they have voted by absentee ballot they may not vote again. § 17-11-5. Moreover, the list is to be maintained in the office of the clerk for 60 days following the election, at which time it must be filed with the judge of probate.

The absentee election manager has a responsibility to report any suspected fraudulent activity. If he or she has reasonable cause to believe that an applicant has given a fraudulent address on the application, then the manager must turn that ballot application over to the district attorney for appropriate action. When there is evidence of continuous absentee voting, the absentee election manager may require further additional proof of a voter's eligibility to vote absentee. § 17-11-5(a).

## **7.7 Delivering, Counting, and Reporting Absentee Ballots**

Each prospective absentee voter who meets the legal requirements is furnished an absentee ballot and envelopes for returning the marked ballot by mail. One envelope is a plain envelope in which the voter's marked ballot is sealed. The second envelope must have the voter's affidavit printed on the back and be large enough to seal the plain envelope inside. This second envelope also serves as a return mail envelope except where a

provisional ballot is issued due to lack of photo identification, as described below in Section 7.8. § 17-11-9.

Absentee ballots are to be printed with a designation specific to its ballot style and a pre-printed serial number unique within that ballot style. The list of qualified ballots shall identify the correct ballot style designations for each voter. The administrative rules on the printing of designations and serial numbers on absentee ballots are included in Appendix S.

Upon receipt of the absentee ballot, the absentee election manager must record such on the absentee list and safely keep the ballots without breaking the seal of the affidavit envelope until election day. Beginning at 7:00 a.m. on election day, the absentee election manager must deliver the sealed affidavit envelopes to the election officials designated for counting absentee ballots. § 17-11-10. The elections officials then follow this procedure:

- (a) The election officials call the name of each voter casting an absentee ballot with poll watchers present. § 17-11-10.
- (b) The election officials review the affidavits to certify that each applicant has a place of residence, reason for voting absentee and signature. *Williams v. Lide*, 628 So. 2d 531 (Ala. 1993). In addition, the affidavit must be either notarized or witnessed by two witnesses. A candidate may not witness or notarize any absentee ballot unless the candidate is running unopposed in the election. Remote notarization may not be used to notarize an absentee ballot application or an absentee ballot affidavit, or for any purpose related to voting. § 17-11-10. No poll worker or election official shall open an affidavit envelope if the voter's affidavit printed thereon is unsigned by the voter (and unmarked) or lacks the voter's address, lacks the reason for voting absentee, or if the ballot is not properly witnessed or notarized as provided on the form prescribed in § 17-11-7. Absentee ballots that are not witnessed or notarized should not be opened or counted even where the election officers and poll watchers all agree the votes "summarily" witnessed will be counted. AG AO 2000-180.
- (c) The election officials separate the ballot envelopes from affidavit envelopes. The plain envelope is deposited into the sealed ballot box.
- (d) The election officials then remove the ballots from the blank ballot envelopes and count per normal procedures.

No absentee ballot may be opened or counted if received by the absentee election manager by mail or commercial carrier, unless received by mail or commercial carrier by noon on election day. An absentee ballot submitted by hand delivery to the absentee election manager must be received in person from the voter no later than the close of the last business day before the day of election, or, in the case of a voter under the emergency voting procedure, delivered by the medical emergency designee to and received by the absentee election manager no later than noon on the day of the election. However, ballots submitted by military and overseas voters in a primary, primary runoff, general, or special election for federal, state, or county office, or for proposed constitutional amendments or other referenda are to be accepted up to seven days after the election date provided that they are postmarked no later than election day. §§ 17-7-21, 17-11-18, 17-17-27, and 17-9-51.

If the applicant signs by a mark, the name of the witness to the signature must be included. The completed application can then be mailed or delivered to the absentee election manager. §§ 17-11-3 and 17-11-4. The above provisions apply to both municipal and county elections. § 17-1-1.

Absentee ballots may be either notarized or witnessed by two individuals of at least 18 years of age to validate the ballot. Unless a candidate is running unopposed, the candidate cannot notarize or witness an absentee ballot. §§ 17-11-6 through 17-11-8. Remote notarization may not be used to notarize an absentee ballot application or an absentee ballot affidavit, or for any purpose related to voting. §17-11-10. Pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), members of the military, their spouses or dependents, and U.S. citizens residing overseas cannot be required to have their absentee ballots notarized. 52 U.S.C. § 20302(i). Their ballots must be witnessed by two individuals of at least 18 years of age.

Absentee election officials are named in the same manner as regular election officials. The appointing board may appoint an inspector and at least three clerks as are necessary to process and canvass absentee ballots. § 17-11-11(a).

In municipal elections held at a time other than the primary or in a general election in municipalities having a population of less than 10,000, absentee ballots are delivered to the regular election officials of the precincts of the respective voters. However, a municipality may establish a

procedure for appointment of absentee election officials pursuant to § 11-46-27 by permanent ordinance adopted six months prior to the municipal election.

## **7.8 Absentee Provisional Ballots**

On or after the eighth day prior to an election, if a voter who is not exempt from the photo identification requirement has not provided valid photo identification with the absentee ballot application, the absentee ballot is issued as a provisional absentee ballot. The absentee election manager will mark the word “provisional” on the affidavit envelope prior to sending the ballot. The absentee election manager should also enclose the information listed in Ala. Code § 17-10-2(c)(1)(b), which states in part that the provisional ballot will not be counted unless the voter provides identification with the voted ballot or provides identification to the Board of Registrars by 5:00 p.m. on the Friday following the election. §§ 17-10-2(a)(3) and 17-10-2(c)(1).

If a voter applies for an absentee ballot for a precinct in which the voter does not appear on the voter list, the absentee election manager will mark the word "provisional" on the affidavit envelope prior to sending the ballot. § 17-10-2(c)(2)

An absentee ballot that is challenged by the absentee precinct inspector or clerk due to the official having knowledge the voter is not entitled to vote a particular ballot becomes a provisional ballot. § 17-10-2(c)(3).

When the absentee election manager (AEM) mails a provisional absentee ballot to the voter, it should include:

- (a) Information on why the ballot is a provisional ballot;
- (b) A written explanations that photo identification must be provided by the Friday after the election at 5:00 p.m.;
- (c) A written explanation that if photo identification is not provided by the deadline, the vote will not be counted;
- (d) A voter reidentification form and an affirmation of provisional voter form;
- (e) An explanation of how the voter can later determine if their ballot was counted, and if it was not counted, why; and

- (f) A third envelope for identification as specified by § 17-11-9 (must be of a different color than the other two envelopes and large enough to contain them both).  
§ 17-10-2 and 17-11-9.

## **7.9 Ballots and Supplies**

At least fifty-five (55) days before an election and at most fourteen days after the first primary, the officer charged with printing and distributing the official ballots and election supplies must deliver to the absentee election manager an adequate number of absentee ballots, envelopes, and other necessary supplies. § 17-11-12. Except for municipal elections, the judge of probate must direct the delivery of ballots and voting materials to the absentee election manager. § 17-11-12. Any person or entity supplying any county or municipality with election supplies must provide the county or municipality and the Secretary of State, with an itemized and signed statement showing a description and quantity of each item so shipped or delivered.

All unused absentee election materials must be returned by the absentee election manager to the sheriff of the respective county along with an itemized, signed statement showing the description and quantity of each item of absentee election material not utilized by the county or municipality in the election. § 17-11-19.

Absentee ballots are to be printed with a designation specific to its ballot style and a pre-printed serial number unique within that ballot style. The list of qualified ballots shall identify the correct ballot style designations for each voter. The administrative rules on the printing of designations and serial numbers on absentee ballots are included in Appendix S.

## **7.10 Disqualification of Circuit Clerk**

When the circuit clerk is a candidate for any office and has opposition, the circuit clerk is disqualified from performing the duties required for absentee voting law. The circuit clerk must certify to the appointing board at least 55 days before election that they have opposition. The appointing board will then appoint a person to serve as an absentee election manager. § 17-11-13.

## 7.11 Municipal Elections

In a municipal election held at a different time from a primary or general election, the duties required by law of the absentee election manager with respect to absentee voting are performed by the municipal clerk. If the clerk is a candidate in the election, the clerk is disqualified and the municipal governing body appoints a qualified voter to perform these duties. § 17-11-15. *See also*, §§ 11-46-56 through 58.

Ordinarily, in municipal elections, the mayor or other chief executive officer of a municipality performs the duties with respect to preparation and delivery of ballots, other election supplies, and lists of registered voters. These duties are required of the judge of probate in other elections. §§ 11-46-25, 11-46-32, and 11-46-36. *See also*, § 11-46-37.

## 7.12 Criminal Offenses and Penalties

The penalty for changing or falsifying an absentee ballot is a Class C felony. § 17-17-24. Any person who knowingly and willfully prepares or assists in preparing an absentee ballot for a person who is comatose or who cannot communicate their voting preference is guilty of a Class C felony. § 17-17-26. The failure by an election official to count a legal vote is a Class C felony. § 17-17-27.

Additionally, willful failure or refusal to perform an absentee election duty required by Chapter 11 of Title 17 of the Code of Alabama is a violation. § 17-17-25.

The Alabama Code prohibits any voter in this state from voting more than once, or attempting to vote more than once, in any election held in this state, or who votes in both this state and another state or territory in the same or equivalent election. § 17-13-24. The Code also prohibits any voter from attempting to vote when they have knowledge that they are not entitled to vote, or to commit any kind of unlawful or fraudulent voting. § 17-17-36.