



ELECTIONS BULLETIN

TO: Town and City Clerks

FROM: Kathy DeWolfe

RE: 2003 Elections Division Updates--New Provisional Ballot Requirements

DATE: December 2003

The Help America Vote Act of 2002 requires election officials to offer a provisional ballot to certain individuals whose names are not on the voter checklist at their polling place. Vermont's provisional ballots will include only the Federal races. We do not expect that provisional ballots will be used very often in Vermont, however, because most of these situations can be better addressed by use of the sworn affidavit. (Many states do not allow names to be added to the checklist at the polling place.)

In Vermont, our election officials can have a person complete a Voter Affidavit Form (see attached) in the event that the individual arrives at the polling place and finds that his or her name is not on the checklist. The affidavit form requires the individual to swear under penalty of perjury that he or she submitted an application for addition to the checklist prior to the deadline, and that he or she is otherwise qualified to vote at that polling place. If the person signs the affidavit then the voter can be added to the checklist and vote a regular ballot. This is the best way to handle checklist omissions when the election official believes that the person likely submitted a timely application and is otherwise qualified to vote.

HAVA adds an additional requirement. HAVA gives individuals the right to vote a provisional ballot if the person swears that he or she submitted an application for addition to the checklist prior to the deadline and swears that he or she is qualified to vote at the polling place. This requirement applies even if the election official at the polling place does not believe that the person actually submitted an application prior to the deadline or believes that the person is not qualified to vote (i.e. is not a town resident, not a U.S. citizen, not over 18). In other words, in Vermont, because we have the sworn affidavit process, there will be very few instances when a provisional ballot will be needed, but that election officials should be ready to offer individuals whose names are not on the checklist a provisional ballots when the affidavit process is not appropriate.

HAVA also requires election officials to offer a provisional ballot in two other situations: If a first time voters who has registered by mail cannot provide identification and for voters who arrive with a court order to vote after the polls have been closed. Election workers should first offer the person without identification the opportunity to leave and return with the identification so he or she could vote the regular ballot. HAVA also requires that if a voter arrives with a court order after the polls are closed, the voter must be offered a provisional ballot--but we believe that this would be extremely rare in Vermont.

A provisional ballot envelope would be also used if a first time voter returns an absentee ballot without providing the proper identification. The voted absentee ballot, as it was returned to the clerk's office, would be placed inside a provisional ballot envelope.

In Vermont, the Secretary of State will provide the Town Clerk with the provisional ballots along with provisional ballot envelopes. Note again that the provision ballots will include only the Federal races and are not the regular ballot used by the town.

If a provisional ballot is needed, the voter will vote the provisional ballot, then place the ballot in the inside envelope and seal it. The sealed inside envelope will then be placed inside the provisional ballot outside envelope that will have an affidavit for the voter to complete on the left side and space for an election official and town clerk to complete on the right side. I have attached a copy of the language that will be printed on the envelope.

In the 48 hours following the election, the Town Clerk will research the eligibility of the voter of any provisional ballots, or investigate the circumstances alleged and then check one of the boxes on the outside envelope to indicate whether the person is qualified to vote and whether ballot should be counted or not counted. The provisional ballot envelope(s) will then be sent to the Office of the Secretary of State with the Official Return of Votes. If there are any provisional ballots marked "to be counted," the Office of the Secretary of State will open those ballots and include the votes in the statewide totals for federal offices. 17 V.S.A. §2556 and 2557.

For the March 2, 2004 Presidential Primary, you will use the regular ballot for any provisional voting because there is only one federal race on the ballot. For the September Primary and the November General Election, each town clerk will be sent a small number of provisional ballots with federal races only.

In summary, we strongly recommend that election officials make use of the sworn affidavit that can be used to add names to the regular checklist on Election Day. This affidavit can be used for all individuals who can swear that they submitted an application to the checklist prior to the registration deadline and are otherwise qualified to vote at the polling place. If the affidavits are used, there should be very few provisional ballots that need to be offered in Vermont.

VOTER AFFIRMATION FORM
for Addition to the Checklist

Check here if this is a name or address change only.

To the Honorable Board of Civil Authority of the town of:

I, (Last Name) (First Name) (Middle Initial), hereby swear or affirm that on or about (Date license renewal was processed, most likely near your birthday), I completed, signed, and submitted to DMV a license renewal form

which included my signed request to be added to the checklist or to have my name or address changed. At the time I submitted this form, I believed that I had taken all necessary steps to have my application for addition to the checklist acted upon by the Board of Civil Authority. Through no fault of my own, the form was not properly processed and was not sent to the Town Clerk of the town in which I legally reside.

I hereby reaffirm my request to have my name added to the checklist of the Town or City of

I am a citizen of the United States and a resident of Vermont.

I have not yet taken the Voter's Oath. I understand I must take the Voter's Oath prior to voting.

I have taken the Voter's Oath since becoming a resident of Vermont.

I am eighteen years of age or older (or will be eighteen on the day of election).

My principal dwelling place is at (Give complete address, if rural describe the exact location of your home.)

I was born on (month/day/year) at (Town or City) (State).

The last address at which I was registered to vote, if any, was (Give complete address, if rural describe the exact location of your home.)

and I authorize my name to be removed from the list of registered voters there or in any other place. The name under which I was registered there, if different, was (Last name) (First name) (Middle Initial).

I meet all of the eligibility requirements. I hereby swear, or affirm, under potential federal or state criminal penalties of up to \$5,000 fine, or imprisonment for not more than five years, or both, that the statements made by me in this application are true. 13 V.S.A. ' 3016. 42 U.S.C. ' 1973gg-10.

(Month/Day/Year) (Applicant's Signature)
(Applicant's Phone) (Applicant's Mailing Address)

VOTER'S OATH (Vermont Constitution, Chapter II, Section 42)

You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the state of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person.

FOR OFFICIAL USE - VOTER'S OATH

I hereby certify that on the ___ day of _____ 20___, I administered the Voter's Oath to the applicant.

(Official's Signature) ___ Town Clerk ___
Notary Public (county) ___
Justice of the Peace (town) ___
Other(specify) ___
(Please print your name legibly)

FOR TOWN OR CITY CLERK USE

The Town Clerk, as authorized by vote of Town Meeting, has reviewed the application and OR
At a meeting of the Board of Civil Authority held on _____, the board has reviewed the application
AND the applicant ___ was, or ___ was not added to the checklist. If not, the reason was _____
The applicant's usual polling place is located at _____

Signature of town clerk _____

1. Inside Provisional Ballot Envelope for Voter to place ballot with no identifying information:

Vermont Provisional Ballot Inner Envelope

Place voted ballot in this envelope and seal. Then place this envelope into the Vermont Provisional Ballot Affidavit Envelope.

Do Not Make any Marks on this Envelope. If you make any identifying marks on this envelope your ballot will be spoiled and will not be counted.

2. Outside Vermont Provisional Ballot Envelope:

Instructions for Election Officials: Any person can go to court to seek a court order to vote a regular ballot. If voter was purged from checklist in error, the voter's name can be added back onto the checklist and vote a regular ballot. 17 V.S.A. §2150(d)(6). You must offer provisional ballots to persons who qualify for one of three reasons listed on the right below.

Vermont Provisional Ballot Envelope	Election Official (at the polls):
Voter Information: I swear or affirm that I submitted my voter application to the checklist before the deadline and that I am qualified to vote in this polling place in Town/City of _____. _____ Signature of Voter	Reason for Provisional Ballot: ? Name not on checklist and not qualified for sworn affidavit for regular ballot. ? 1 st time VT voter registered by mail and cannot provide identification at polls or voted absentee without identification. ? Voter arrived after polls closed with court order to vote.
DOB: _____ Day Phone _____	Town Clerk Verification after election:
Driver's License # _____ or, if none, last 4 digits of SSN _____	Date of Election: _____ ? Court order so ballot can be counted.
Legal Address: (Actual Physical Location) _____	? Voter is qualified to vote at this polling place so ballot can be counted and name has been added to checklist.
Mailing Address: _____	? Voter provided identification after polls were closed so ballot can now be counted.
I submitted my registration through: ? application to Town Clerk. ? with DMV license renewal. ? with DMV car registration. ? with another state agency form. ? gave voter registration form to person who helped me register.	? Person is not qualified to vote at this polling place. Do not count ballot. Person is not qualified because: ? is not a town resident, ? not U.S. citizen, ?age, ? no identification provided, ? did not register before deadline.