

INSTRUCTIONS

of the

Attorney General

For the Use of the Voter Registration and Election Officials of Maryland

TO: The Voter Registration and Election Officials of Maryland

FROM: Douglas F. Gansler, Attorney General

For your guidance in voter registration and election matters, my office has prepared the instructions that appear on the following pages.

These instructions reflect the law codified in the Election Law Article of Michie's™ Annotated Code of Maryland (2003 Volume and 2009 Supplement), including statutory changes made at the 2010 Session of the Maryland General Assembly.

Please read these instructions carefully, because the election laws are constantly being changed and revised. If you are in doubt about the proper course to follow in any instance, consult the election law referred to in the instructions. You may also obtain advice from your local board of elections and its attorney. The Attorney General is the advisor to the Board of Elections for Baltimore City, and any inquiries of that board may be addressed to the Attorney General. In the counties, if a question concerns uniform practice in the conduct of voter registration and elections, the Attorney General will give advice to and on request of the State Board of Elections or the State Administrator of Elections.

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PART I
VOTER REGISTRATION

SECTION 1

GENERAL INFORMATION

State Election Law Generally Inapplicable to Municipal Elections

As a general rule, State election law is inapplicable to municipal elections other than in Baltimore City. (§1-101(v)(3).) Municipal elections are governed by the municipal charter and municipal laws, which may (but need not) adopt State law provisions by reference. Provisions of the Election Law Article regarding “universal registration” state that a voter who resides in a municipal corporation is considered to be registered for municipal elections if that voter is included on the statewide voter registration list at an address within the municipal corporation. However, the municipality may maintain a supplemental list of municipal voters. (§3-403.)

Dates and Hours for Registration and Registration Changes

A qualified individual may register to vote, or may change his or her voter registration record, at the office of the local board of elections whenever the office is open, except during the period beginning at 9 p.m. on the twenty-first day before an election and extending through the tenth day following that election. (§ 3-302.)¹ A registered voter may change party affiliation at any time registration is open. Registration changes submitted when registration is closed will be accepted but will not be processed or become effective until registration re-opens. If there is sufficient evidence that a change was requested before the close of registration, the change will become effective for the next election. (§ 3-303, as amended by Chapter 271, 2010 Laws of Maryland).

Each local board of elections is open for business during the same hours as the local government unless other, equivalent and more convenient, hours are established by the local board. Each local board is open for business on each local government workday and on election day. Each local board is open until 9 p.m. on the last day for filing a certificate of candidacy, for registering to vote, or for changing party affiliation. (§ 2-302.)

¹ Unless otherwise indicated, all section references are to the Election Law Article of Michie's™ Annotated Code of Maryland (2003 Vol. and 2009 Supp.).

2010 Election Dates

Final Day to Register before Primary Election	August 24, 2010
Primary Early Voting begins	September 3, 2010
Primary Early Voting ends	September 9, 2010
Primary Election	September 14, 2010
Registration Re-opens	September 27, 2010
Final Day to Register before General Election	October 12, 2010
General Election Early Voting begins	October 22, 2010
General Election Early Voting ends	October 28, 2010
General Election	November 2, 2010
Registration Re-opens	November 15, 2010

Where to Obtain Voter Registration Application

A uniform, statewide voter registration application form is available to any person who wishes to register in Maryland. This form may be obtained from the State Board of Elections or its Internet web site, www.elections.state.md.us; from any local board of elections; from any office of the Motor Vehicle Administration (MVA); from a designated voter registration agency (see below); or from most post offices and public libraries.

Registration by Mail

Registration by mail is available throughout the State. (§ 3-201.)

Registration or Change of Name/Address at MVA Office

When a person applies to the MVA for the issuance or renewal of a driver's license or identification card, the person may simultaneously apply to register to vote; and a notice of change of name/address for MVA purposes serves to change the name/address for voter registration purposes, unless the applicant checks a box on the voter registration portion of the MVA application or notice form instructing to the contrary. (§ 3-203.)

Voter Registration Agencies

In addition to the MVA, the following offices in Maryland are designated voter registration agencies: local department of social services offices that provide public assistance, local offices of the Maryland Children's Health Program administered by the Department of Health and Mental

Hygiene, offices that provide State-funded programs primarily for individuals with disabilities, recruitment offices of the armed forces of the United States, Offices on Aging, offices for students with disabilities at private and public colleges and universities, marriage license offices of the clerks of court, and public institutions of higher education. These agencies must generally distribute, with each application for service and each re-certification, renewal, or change of address form, a voter registration application and declination form. (§ 3-204; Code of Maryland Regulations [COMAR] 33.05.03.02.).

Processing Voter Registration Applications

Voter registration applications are processed under § 3-301 and COMAR 33.05.04.

SECTION II

GENERAL REGISTRATION INSTRUCTIONS

Oath

The statewide voter registration application requires the applicant to swear or affirm, under penalty of perjury, that all information contained on the application is true and that the applicant meets all of the qualifications to become a registered voter. (§ 3-202(a)(i).) As a matter of State Board policy, each approved local voter registration application form must require the same oath.

Statewide Registration; Change of Address within Maryland

If a registered voter moves within Maryland, whether within one county or from one county to another, the voter need not re-register, but is responsible for notifying voter registration authorities. The voter may do this by filing a change of address notice with the MVA or by notifying the appropriate local board of elections directly. (§ 3-304.)

Party Affiliation

In voter registration records, local boards of elections must enter the name of the political party, if any, with which each voter wishes to be affiliated. This party affiliation does not bind the voter to vote for any candidate of the designated party at any general election, and the voter has the right to decline to state any party affiliation. However, a party may choose to permit only voters registered as affiliated with that party to vote in the party's primary elections.

Whenever a voter declines to state a party affiliation, an appropriate entry (“declined” or “unaffiliated”) is recorded in the voter registry opposite his or her name. Accordingly, for every registered voter, either a party affiliation or this entry is recorded. The term “independent” is not used in Maryland for a non-affiliated voter.

A registered voter may change party affiliation at any time registration is open. Registration changes submitted when registration is closed will be accepted but will not be processed or become effective until registration re-opens. If there is sufficient evidence that a change was requested before the close of registration, the change will become effective for the next election. (§ 3-303, as amended by Chapter 271, 2010 Laws of Maryland).

Ordinarily, only voters who are affiliated with a party are permitted to vote in that party’s primary elections, even for circuit court judge candidates, who usually choose to run in the primaries of both major parties. However, a party may, by its constitution and by-laws, permit voters who are not affiliated with that party to vote in its primary. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986). If a party chooses to open its primary to voters not affiliated with the party, it must notify the State Board at least 6 months in advance. (§8-202(c).)

Inspection of Registration Records

Voter registration records are open to public inspection, subject to reasonable regulations, whenever the office of a local board of elections is open for business. (§ 3-506.)

SECTION III

QUALIFICATIONS FOR REGISTRATION AND VOTING

Who Is Eligible?

With certain narrow exceptions, every citizen of the United States who is at least 18 years old, and who is a resident of Maryland and of the county in which he or she will vote on the date registration closes before an election, is entitled to register and vote in the precinct or election district in which he or she resides. (§ 3-102; Constitution of Maryland, Art. I, §1; U.S. Constitution, Amendment XXVI; *Dunn v. Blumstein*, 405 U.S. 330 (1972)). A person aged 16 or 17 years old and not otherwise ineligible may register but cannot vote in a general or special election until reaching the age of 18. (§ 3-102, as amended, Chapter 271, 2010 Laws of Maryland).

Citizenship

Citizenship may be acquired in two ways: by birth under certain circumstances, or by naturalization in accordance with federal law. The oath that is part of a voter registration application requires the applicant to swear or affirm United States citizenship. There is also a check-off box near the top of the statewide voter registration application requiring the applicant to confirm citizenship.

Persons Becoming 18 Years of Age

In a primary election, a person who has registered is entitled to vote if the registrant will be 18 years old on or before the day of the relevant general or special election. A person may not vote in the primary if he or she is unaffiliated with a principal political party; a person under 18 may not vote in a nonpartisan election. (Constitution of Maryland, Art. 1, §§1, 2; *Lamone v. Capozzi*, 396 Md. 53 (2006; Letter from Attorney General Gansler dated December 19, 2007).). In Maryland, a person becomes 18 years old on the day *before* his or her 18th birthday. (*Mason v. Board of Education*, 375 Md. 504 (2003)(Maryland subscribes to common law rule regarding age).) The person's date of birth must be shown in the voter registry.

Residence Defined

A person's residence for voting purposes means a person's domicile, his or her "true, fixed, permanent home." Ordinarily, this is where the person actually resides. However, residence is a matter of intent, and where the intent is not clear – as where a person spends time in several different dwellings – other factors (such as ownership of property, banking arrangements, or the address given for receiving mail) are considered in determining the person's true intent. See *Oglesby v. Williams*, 372 Md. 360 (2002); *Stevenson v. Steele*, 352 Md. 60 (1998); *Blount v. Boston*, 351 Md. 360 (1998). A voter retains his or her domicile at a particular address, and remains eligible to vote there, until a new domicile is established.

Who Is Not Qualified?

An individual is not qualified to be a registered voter if the individual: (1) has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment, including any term of parole or probation for the conviction; (2) is under guardianship for mental disability and a court has specifically found that the individual cannot communicate a desire to participate in the voting process; or (3) has been convicted of buying or selling votes. (See § 3-102(b)(1)-(3), as amended, Chapter 204, 2010 Laws of Maryland; see also Constitution of Maryland, Art. I, Sec. 4.)

A conviction for any of the following offenses permanently disqualifies an individual from voting: illegal voting; procuring illegal voting; or offering, giving, or receiving a bribe in connection with voting. (Constitution of Maryland, Art. I, Sec. 6.)

An individual is not disqualified based on a felony conviction unless the individual is actually serving a sentence. An individual is not disqualified until the conviction is final; therefore, the individual is not disqualified while a direct appeal is pending.

Restoration of Voting Rights

The voting rights of an individual are restored if the Governor grants a pardon or when the individual has completed all court-imposed sentences, including probation, parole, community service, restitutions, and fines. The voter must re-register to vote upon restoration of voting rights and must certify, under penalty of perjury, that he or she is qualified. (§3-102.)

SECTION IV

MAINTENANCE OF VOTER REGISTRY

Clerical Errors

If the staff of a local board of elections has made an inadvertent mistake in a voter registration record, the election director may determine that the error is a “clerical error,” cause the error to be corrected, and promptly notify the voter of the correction. On election day, if it is alleged that the name of a registered voter is missing from the precinct register because of a clerical error, the chief election judge must contact the state board or local board, who may authorize the chief election judge to issue the voter a blank voter authority card and allow the voter to vote a regular ballot. (§3-601.1.) If it cannot be readily established that the absence of the voter’s name from the precinct register is the result of a clerical error, the voter should be given a provisional ballot.

Administrative Complaints

A person who feels aggrieved by an action of a local board regarding voter registration or a local board with reason to believe that a registration has been erroneously added to or omitted from the statewide voter registration list other than by clerical error may file an administrative complaint. (§ 3-602(a).)

A party aggrieved by the local board's decision regarding the eligibility of an individual to register to vote or remain registered to vote on an administrative complaint may appeal to the Circuit Court for Anne Arundel County and then to the Court of Special Appeals. An appeal to the circuit court may be brought at any time up to the third Tuesday before the next election, and an appeal to the Court of Special Appeals must be taken within 5 days after the circuit court decision. (§ 3-602(d)).

A petition that will affect the right of a candidate to appear on the ballot should be filed in accordance with § 5-305 in the circuit court for the relevant district or geographic area in which the candidate is running. That statute requires challenges to the residency of a candidate to be filed 9 weeks before an election in a non-presidential election year or 11 weeks before an election in a presidential election year.

Uniform List Maintenance

Each local board of elections must periodically identify and, when appropriate, remove from the voter registry the names of individuals who have become ineligible by reason of moving out of Maryland. The State Board of Elections has prescribed procedures for doing this in COMAR 33.05.07. (§§ 3-501 to 3-505.)

PART II

VOTING

Scope

Part II relates to the use of voting machines or voting systems at polling places. Absentee voting is discussed in Part III.

SECTION I

UNIFORM STATEWIDE VOTING SYSTEM

The State Board of Elections is directed by statute to select and certify a uniform voting system for voting in polling places and a voting system for absentee voting. (§ 9-101.) The selected voting system for voting at polling places is a direct recording electronic ("DRE") voting system, and has been implemented in all Maryland jurisdictions beginning with the 2006 elections. The

voting system for absentee voting is an optical scan system that reads paper ballots. No other types of voting systems have been certified for use in Maryland elections.

SECTION II

APPOINTMENT AND QUALIFICATION OF ELECTION JUDGES

Election judges for a particular precinct are ordinarily appointed from among the registered voters who reside in the county where that precinct is located. However, if a qualified individual residing in that county cannot be found with reasonable effort, the local board of elections may appoint a registered voter residing in any part of Maryland. A minor at least 17 years old and otherwise qualified to register to vote may also be appointed. (§ 10-202(a).)

Every election judge must be able to speak, read, and write the English language. While holding the position of election judge, an individual is generally prohibited from engaging in certain partisan or political activity, including holding or being a candidate for office, using the individual's official authority to influence or affect election results, or being a campaign manager, treasurer, or taking any other active part in a political campaign. However, an election judge is specifically permitted to engage in activities of a political campaign, other than serving as a campaign manager or as treasurer for a campaign finance entity, when the individual is not performing official duties on election day. Each local board of elections may adopt guidelines, consistent with the law, for determining the qualifications of prospective election judges and for the appointment process. (§§ 2-301(b), 10-202(b), (c).)

The local board of elections must appoint at least four election judges to staff each precinct having 200 or more registered voters, and two election judges to staff each smaller precinct. An equal number of these judges must be selected from Maryland's majority party and its principal minority party.² In a precinct in which six or more judges are appointed, the local board may appoint as judges one or more registered voters not affiliated with the State's majority or principal minority party. However, the number of these unaffiliated appointees may not exceed the lesser of the number of judges who belong to the majority party or the number of judges who belong to the principal minority party. (§ 10-201.)

If there is a vacancy in the polling place staff during voting hours, the local board of elections may appoint a substitute election judge, or an election judge present at the polling place may appoint

² The "majority party" is the party of the incumbent Governor; the "principal minority party" is the party whose gubernatorial candidate received the second highest vote total in the preceding general election. (§ 1-101(dd), (jj)).

as a substitute any person of the same political party as the absentee. The local election director, the election director's designee, or the polling place election judge making the appointment must administer to the substitute the oath required of all election judges. (§ 10-305.) Despite a vacancy creating an imbalance in the number of judges from the principal political parties, the polls must open and remain open.

State employees who serve as election judges in elections covered by the Election Law Article are entitled to administrative leave, and some counties offer similar programs for their employees.

SECTION III

GENERAL INSTRUCTIONS FOR ELECTION JUDGES

(Further instructions are available in Election Judge Instruction Manuals prepared periodically by local boards of elections and distributed by the local boards after approval by the State Board of Elections.)

Early Voting

Early voting is available in Maryland for the first time during the 2010 primary and general elections. In general, all statutes and regulations that apply to voting on Election Day apply equally to early voting. (§10-301.1(g)).

For the 2010 gubernatorial primary and general elections, Early Voting Centers will be open between the hours of 10 a.m. and 8 p.m. beginning the second Friday before each election through the Thursday before Election Day, but excluding Sundays. (§10.301.1(d)(1)). For the 2010 elections, these dates are:

September 3-4, 6 (Labor Day), 7-9, 2010 . . Primary Election
October 22-23, 25-28, 2010 General Election

Voters in line at 8 p.m. will be allowed to vote. All Early Voting Centers are required to be fully accessible to individuals with disabilities. (§§ 10-301.1(e), 10-101). No voting will occur at Early Voting Centers on Election Day.

Hours

Polling places throughout Maryland open at 7 a.m. and close at 8 p.m. on election day. Any person waiting in line at 8 p.m. is permitted to vote. (§ 10-301.) If the hours of poll opening are extended for any reason by a court or other order, all individuals who vote during the extension period must do so by provisional ballot. (§9-404(c).)

As instructed by the local election director, election judges must arrive at the polling place sufficiently before 7 a.m. to insure that the polling place is open and operational by 7 a.m. (§ 10-309(a).)

What Must Be Done Before A Voter Is Allowed to Vote?

When an individual appears to vote, the individual must state his or her name to the judges operating the electronic poll book. The poll book judges must locate the voter's name in the election register. If the voter is shown as an active voter, a judge should ask for the month and day of the voter's birth, as well as the voter's residence address. If the information given by the voter matches that in the election register, the book judges should provide the voter with a pre-printed voter authority card and ask the voter to sign the card. The individual may vote after signing. (§ 10-310).

If the voter is shown as an inactive voter, a judge should ask the voter to verify that the registration information is correct (as above), and if so, authorize the individual to vote a regular ballot. If the current address given is different from the address in the election register, a book judge should make the change on the pre-printed voter authority card, have the voter sign the card, and offer the voter a supplemental form that enables the voter to affirm that the change of address occurred after the close of registration. If the voter completes this affidavit, the voter may vote a regular ballot. If not (*i.e.* the change of address occurred *before* the close of registration and was not reported to election officials), the voter may vote only by provisional ballot; the voter should be instructed that he or she may vote a full provisional ballot at the correct precinct or Early Voting Center for the current address, or a partial provisional ballot (those races that would appear on the ballot at the correct polling place) at a different precinct or Early Voting Center. (§ 10-310.) After appearing to vote, the voter is restored to the roll of active voters. (§ 3-503(b)(5).) If the individual has moved to another county, the registration should be transferred to the new county.

If an individual appears at a polling place and the individual's name is not on the election register (active or inactive), but the individual declares that he or she is registered in Maryland and eligible to vote, the individual should be permitted to cast a provisional ballot. (See "Provisional Ballot Voting" in Section VI below.)

If a voter has changed his or her name or address after the close of registration, or after the last time he or she voted, the voter must disclose that fact to the electronic poll book judges when the voter appears at the polling place. The voter will then be asked to complete a Voter Update Form and will be able to affirm that the change of address occurred after the close of registration. If the voter completes this affidavit, the voter may vote a regular ballot. If not, the voter may vote only by provisional ballot; the voter should be instructed that he or she may vote a full provisional ballot at the correct precinct or Early Voting Center for the current address or a partial provisional ballot (those races that would appear on the ballot at the correct precinct) at a different precinct or Early Voting Center. (§ 10-310.)

Identification Requirement for Certain First-Time Voters

The Help America Vote Act of 2002 (HAVA), 42 U.S.C. §15301 *et seq.*, added a new requirement that certain voters provide identification before voting for the first time in Maryland. The identification requirement applies to individuals who register to vote by mail on or after January 1, 2003, and are voting in Maryland for the first time (whether in person or absentee) after January 1, 2004.

An individual can meet the HAVA identification requirement in a number of ways: (1) by providing a driver's license or MVA identification card number, or (if the individual has no driver's license or MVA identification card) the last four digits of his or her social security number, and having that number verified by the local election board before the election; (2) by submitting a copy of an unexpired, valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the individual's name and address, to the local election board before the election; (3) by presenting at the polls on election day an unexpired, valid photo identification or a current utility bill, bank statement, government check, paycheck, or other government document showing the individual's name and address; or (4) by submitting with an absentee ballot a copy of an unexpired, valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the individual's name and address. For purposes of the ID requirement, a "current" utility bill, bank statement, government check, paycheck, or other government document means one that shows the individual's current address and is dated within the last three months.

A voter who appears at the polls on election day and who has not yet satisfied the identification requirement must satisfy it at the polling place to cast a regular ballot; if the requirement is not satisfied, the voter will be permitted to cast a provisional ballot, but the provisional ballot will not be counted unless the voter provides appropriate identification before the canvass of provisional ballots begins. (§ 11-303(d)(4)(ii)). Likewise, if an absentee voter required to provide identification has not provided it before the election and does not submit it with the

absentee ballot, the absentee ballot will be treated as a provisional ballot and will not be counted unless the voter provides appropriate identification before the canvass of provisional ballots begins.

Arrest Power

Each election judge is responsible for keeping the peace, and is required to order the arrest of any person who breaches the peace, violates election laws, or interferes with the conduct of the election. It is not necessary that a majority of the election judges assigned to a polling place concur in the order. A police officer on duty at a polling place must obey the order of an election judge; and an officer making an arrest by order of an election judge is protected in doing so as fully as if an arrest warrant had been issued. (§§ 10-303(c), 10-304.)

SECTION IV

CHALLENGERS AND WATCHERS

Designation of Challengers; Accreditation by Candidate or Party

The State Board of Elections may designate a registered voter as a challenger or watcher at any polling place in Maryland, and a local board of elections may similarly designate a registered voter as a challenger or watcher at any polling place within the county.

Each candidate (including each write-in candidate who has filed a certificate of candidacy), each political party, and any other group of voters supporting or opposing a candidate, principle, or proposition on the ballot, has the right to designate a registered voter as a challenger or watcher at each relevant polling place. (§ 10-311(a).) A candidate or party should issue to each of its designated challengers or watchers a certificate, in the form prescribed by the State Board of Elections, as evidence of the designation. (§ 10-311(c).)

Removal of Challengers

A challenger or watcher may be removed at any time by the person or entity that made the designation. (§ 10-311(a).)

Right of Challengers To Be Present at Polling Place

A challenger or watcher ordinarily has the right to enter a polling place ½ hour before the polls open. If the preparation of voting machines will begin earlier than that, election judges are encouraged to notify challengers and watchers and to permit them to enter the polling place to

witness the entire preparation process. However, if a majority of the election judges present finds that the presence of challengers and watchers in the polling place before it opens will prevent the timely opening of the polls, the judges may direct all challengers and watchers to leave the polling place until it opens.

Before the polls open, election judges are not required to admit any challenger or watcher who was not present at least ½ hour before opening. A challenger or watcher has the right to enter or be present at the polling place at any time the polls are open, and may remain after the polls are closed, until the returns are completed and the election judges leave. (§§ 10-311(b), 10-303(d).) Challengers and watchers may enter and leave a polling place to take out information that identifies voters who have cast regular and provisional ballots. (§ 10-311(b)(5).)

Position of Challengers in Polling Place

From the time the polls open until they close, challengers and watchers must be positioned in the polling place near the election judges, so that they can see and hear every individual who offers to vote. From the time the polls close until the work of the election is completed, challengers and watchers have the right to observe everything that is done and how it is done. (§§ 10-311(c), 11-202(c).)

Protection of Challengers

Election judges and the police are responsible for protecting challengers and watchers in the discharge of their duties. (§§ 10-303(d), 10-304(b).)

Penalty for Obstructing or Excluding Challengers

To interfere with a challenger or watcher who is lawfully present at a polling place is a misdemeanor punishable by a fine of from \$50 to \$1,000, or by imprisonment for from 3 months to one year, or both. (§ 16-205.)

What Challengers May Not Do

A challenger or watcher may not attempt to find out how a voter voted or intends to vote, may not converse in the polling place with any voter, may not assist any voter in voting, and may not handle any original election document. Challengers and watchers may not interfere with or obstruct the election judges in the proper performance of their duties. If a challenger or watcher commits any of these prohibited acts, an election judge may eject the challenger or watcher from the polling place or order the arrest of the challenger or watcher. (§§ 10-303(c)(2)(iii), 10-311(d).)

When Undesignated Person May Come into Polling Place To Challenge

Election judges must permit an individual who is not an accredited challenger or watcher, but who desires to challenge the right of another individual to vote, to enter the polling place for that purpose. The non-accredited challenger is subject to the same restrictions as an accredited challenger. A majority of the election judges may place a limit on the number of non-accredited challengers in the polling place at any one time. A non-accredited challenger must leave the polling place as soon as the challenge has been decided by a majority of the election judges. (§ 10-311(e).) The challenged voter will cast a provisional ballot, and the local board will determine during the canvass of provisional ballots whether to count the challenged voter's provisional ballot. (§10-312(c), (d).)

SECTION V

CHALLENGED VOTERS

How Challenges are Decided

If an individual's name appears on the election register, that individual's right to vote may be challenged at the polls only on the grounds of identity. The challenger must state, under penalty of perjury, the reasons for the challenge. The challenged voter is entitled to vote a regular ballot if the voter presents the required identification. If the challenged voter fails to present the required identification, the voter must submit an attestation, witnessed by the election judge who receives the challenge, of the individual's identity, and may then cast a provisional ballot. The challenged voter may submit the required identification to the local election board at any time prior to the canvass of provisional ballots. During the provisional ballot canvass, the local board must determine, based on the information submitted by the challenger and the challenged voter, whether to count the provisional ballot. Election judges may not question whether a registered voter is entitled to be registered. Under the State Constitution, the fact of registration is conclusive as far as election judges are concerned. (§ 10-312; Constitution of Maryland, Art. I, Sec. 2.)

Duty of Election Judge to Challenge

If an election judge has reason to believe that an individual offering to vote is not the person registered, the judge must challenge the voter. Failure to do so is a misdemeanor punishable by imprisonment for from 3 months to 2 years. (§ 16-303.)

Clerical Errors Do Not Disqualify Voter

The fact that a voter's name is wrongly spelled in the voter registry, or that the voter has given different initials than those shown in the registry, or that the voter states his or her name differently than it appears in the registry, or that there is an error in the number of the voter's residence address in the registry, does not affect the right to vote, if a majority of the election judges is satisfied that the voter is in fact the person registered.

SECTION VI

ELECTION DAY

Illegal Electioneering

No person may canvass, electioneer, or post any campaign material in the polling place or within the area enclosed by a line, established by the election judges through the posting of signs, as near as practicable to 100 feet from the entrance and exit used by voters. A violator is guilty of a misdemeanor and, if convicted, may be fined from \$50 to \$500, imprisoned for not more than 60 days, or both. (§ 16-206). If political signs are posted on private property within the no-electioneering zone, or other electioneering activity is occurring on such property, an election judge should immediately notify the local board.

A voter may wear into the polling place a button, shirt, hat, or other article of clothing bearing a campaign message, as long as the voter leaves the polling place promptly after voting. However, no challenger, watcher, or election judge may wear such campaign paraphernalia in the polling place or within the "no electioneering" zone.

Voter Authority Cards

Before being allowed to vote a regular ballot, each registered voter must identify himself or herself and sign a voter authority card. If changes are necessary to the name or address shown on the pre-printed voter authority card, the voter should indicate those changes, and an election judge should mark them on the card or on another appropriate form. (§ 10-310(a).)

If the registered voter cannot sign his or her name, the voter must, if possible, make an "X" or other mark on the signature line of the voter authority card. If the voter cannot make an "X" or other mark, the signature line should be left blank. On the reverse side of the voter authority card, an election judge should make the following endorsement:

“ ___[Name of Voter]___, who was qualified by me to vote in this election,
is unable to sign his/her name.

_____”
Date

_____”
Election Judge

Instructing Voter

If any voter makes a request before voting, an election judge must instruct the voter about the operation of the voting system and must allow the voter to operate a model voting device. (§ 10-310(c).)

A voter may receive further instruction on the operation of the voting device after he or she begins the voting process, from two election judges of different political parties. However, no election judge may suggest how the voter should vote, and after instructing the voter, the election judges must allow the voter to vote privately. (§ 10-310(c).)

Voter’s Use of Sample Ballot

A voter may take into the polling place, and may keep during the voting process, any written or printed material to assist in casting his or her vote. (§ 10-311(c)(2)(ii).) Election judges should take care to remove from the voting area any sample ballot or other such material that a voter leaves behind.

Assistance to Voter

A voter who needs assistance in voting because of a physical disability or inability to read the English language may choose any individual (except the voter’s employer, an agent of that employer, or an officer or agent of the voter’s union) to provide the assistance. If the voter declines to choose another individual, the voter may be assisted by two election judges of different political parties. The individual assisting the voter must assist in the manner prescribed by the voter, but the assistant may not suggest how the voter should vote. If a voter receives assistance, an election judge who is present must record the voter’s name and the name of the individual(s) who assisted the voter. (§ 10-310(c).) Except under these circumstances, a voter may not be accompanied while voting by any person over the age of 12 years. (§ 10-310(c)(7).)

General Write-In Instructions

In any general or special general election, a voter may write in a name for any office. (§§10-313(a), 9-210(f).) A voter may not cast a write-in vote in a primary election. (§ 8-205.) Votes are

canvassed and reported only for those write-in candidates who have filed certificates of candidacy. (§ 11-401(b).)

Election judges may not volunteer information on write-in voting. If any voter makes a request before voting, an election judge must instruct the voter about write-in procedures. A voter who cannot write is entitled to assistance in casting a write-in vote.

Provisional Ballot Voting

An individual is eligible to cast a provisional ballot if the individual declares in writing that he or she is a registered Maryland voter and is eligible to vote in the particular election, and if the individual also satisfies one of these three requirements: the individual's name does not appear on the **election register**; an election official asserts that the individual is not eligible to vote;³ or the individual does not have the identification required by HAVA. The "election register" is the list of eligible voters at a given polling site or Early Voting Center. (§ 1-101(x)). During early voting, the "election register" is the list of registered voters in the county (or Baltimore City). On election day, the "election register" is the registration list for the precinct in which the polling site is located.⁴ Thus, a registered voter will meet the requirements for provisional ballot voting during early voting if the voter appears at an Early Voting Center in a county in which the voter does not reside and on election day if the voter appears at a polling site in a precinct or election district in which the voter does not reside.

A provisional ballot may be issued and cast at a polling place on election day, at an Early Voting Center during early voting, or at the local board office where the individual resides after the close of registration and before the polls close on election day. (§9-404(a)). To obtain a provisional ballot, an individual must complete an application in writing, and sign the application under penalty of perjury. The applicant must affirm his or her current address and that the applicant has not voted elsewhere in the current election. A provisional ballot cast outside a voter's precinct or election district will be counted for those contests common to both the actual (provisional) ballot voted and to the regular ballot the voter would have voted in the correct precinct.

³A 17 year old who will be 18 by the general election is ineligible to vote in nonpartisan races in the primary. Because of the design of the ballot, that individual must be issued a provisional ballot if nonpartisan races are on the ballot for the primary.

⁴The electronic poll books used by election judges contain entries for all voters on the statewide registration list (MDVOTERS), but regular ballots will be issued only to voters whose names appear on the appropriate election register (whether active or inactive).

Election officials must give each individual who casts a provisional ballot written information advising the individual that, and describing how, the individual will be able to ascertain whether the provisional ballot was counted, and if not, why not. (§9-405.) The State is required to establish a free access system for this purpose, and the State Board provides an Internet process for checking provisional ballot status. A voter may also call the State Board to determine whether the provisional ballot was counted. (§11-303(f).)

The content of a provisional ballot is identical to the content of the ballot used in the polling place, and the procedures for receiving and canvassing provisional ballots are like those described in Part III below for absentee ballots. (§§ 9-213, 9-401 to 9-408, 11-303; COMAR 33.16.03.03, 33.16.04, 33.16.05.) Each local board of elections must maintain a full record of provisional ballot voting, including the action taken with regard to registration of each provisional voter, the ballot style used, and any other relevant information specified by the State Board of Elections. (§ 9-402.)

Following each election, each local board must meet at its designated counting center to canvass provisional ballots. (§11-303(a).) The canvass begins at 10 a.m. on the first Monday after the election. (COMAR 33.16.04.03A.) The local board may not open an envelope of a provisional ballot until the local board has approved the provisional ballot application. A local board of canvassers must reject a provisional ballot if it determines, by unanimous vote, that the individual who submitted the provisional ballot is not qualified to vote the provisional ballot, that the individual did not sign the oath on the provisional ballot application, that the individual cast more than one ballot for the same election, or that the provisional ballot was intentionally marked for the purpose of identification. (§ 11-303.)

Any person asserting that an election official has violated election law provisions relating to provisional ballots may file an administrative complaint under procedures set out in State Board regulations. (§ 11-305; COMAR 33.01.05.)

SECTION VII

ADMINISTRATIVE COMPLAINTS

Any person who believes that there has been a violation of any provision of Title III of the Help America Vote Act of 2002, 42 U.S.C. §§15481-15485, or anyone who asserts that an election official has violated provisions of the Election Law Article relating to provisional ballots may file a complaint under procedures set out in COMAR 33.01.05.

PART III

ABSENTEE VOTING

Who May Obtain an Absentee Ballot?

A registered voter may vote by absentee ballot except to the extent preempted by an applicable federal law. (§9-304)

Obtaining an Absentee Ballot

An application for an absentee ballot may be made on a form available from the State Board of Elections or its Internet web site, www.elections.state.md.us, or from the local board of elections, on a form provided under federal law, or in a written request that includes the voter's name and residence address, and any different address to which the ballot is to be sent. (§ 9-305(a).) The postcard application provided by the United States Government is a sufficient application for an absentee ballot. Voters may also request that the absentee ballot application be transmitted to them electronically, by fax or by email signed by the voter. (COMAR 33.11.02.02B). Applications may be returned to the local boards by these additional methods as well.

Applications for absentee ballots must ordinarily be received by the local board of elections no later than the Tuesday before the election. After that date, a registered voter or the voter's agent must apply for an absentee ballot in person at the office of the local board. (§ 9-305.)

Each local board must keep a record of the date and time it receives each application for an absentee ballot, the action taken on the application, and the date and time it receives each voted absentee ballot. The record must include the ballot style used, the date the ballot was mailed or otherwise issued, the address to which the ballot was sent, and any other relevant information specified by the State Board of Elections. (§ 9-302.) If an absentee ballot has been issued to a voter and the voter appears at the polls on election day, the voter may cast a provisional ballot, which will be counted only if the voter has not returned the absentee ballot. (COMAR 33.11.03.02B.)

No more than one absentee ballot may be issued to a voter, unless the local election director has reasonable grounds to believe that the absentee ballot previously issued has been lost, destroyed, or spoiled. (§ 9-306(d).)

Use of Agent

A voter may designate an agent to assist in obtaining and returning an absentee ballot. The agent must be at least 18 years old and may not be a candidate on the ballot. The voter must designate the agent in a writing signed by the voter under penalty of perjury. The agent must also sign an affidavit, under penalty of perjury, that the ballot was delivered to the requesting voter, was marked and placed in an envelope by the voter (or by an assistant, if permissible) in the agent's presence, and was returned to the local board by the agent. (§ 9-307.) Assistance may be provided to a voter who is disabled, unable to write, or unable to read the ballot. This assistance may be provided by any individual (except a candidate on the ballot, the voter's employer or an agent of that employer, or an officer or agent of the voter's union). The assistant must execute a certificate of assistance prescribed by the State Board of Elections. (§ 9-308.)

Deadline for Receipt of Absentee Ballots

The State Board of Elections has established guidelines setting forth deadlines for receipt of absentee ballots. (§ 9-303(b)(4); COMAR 33.11.03.08.) Local boards of elections must follow those guidelines in canvassing absentee ballots. (§ 11-302(c).) The guidelines generally provide that an absentee ballot is timely if it is received at the office of the local board of elections before the polls close on election day, or if it is received by domestic mail by 10 a.m. on the second Friday after the election (except a gubernatorial primary election, when it must be received by 10 a.m. on the second Wednesday after the election). Mailed absentee ballots are timely only if there is evidence that they were mailed on or before election day.

Counting Procedure for Absentee Ballots

The State Board of Elections has established guidelines for counting or canvassing absentee ballots. (§ 9-303(b)(5); COMAR 33.11.04 and .05.) Following each election, each local board must meet at its designated counting center to canvass absentee ballots in accordance with those guidelines. (§ 11-302(a).)

Absentee ballots may not be opened before 8 a.m. on the Wednesday after an election. However, the canvass may not be delayed to await the receipt of late-arriving, yet timely, absentee ballots. (§ 11-302(b).) To preserve the secrecy of provisional ballots and overseas absentee ballots, the local board must withhold from the initial canvass at least five absentee ballots of each ballot style; these withheld ballots are included and canvassed with the provisional ballots and timely absentee ballots received from outside the United States. (COMAR 33.11.04.05.)

Regulations and guidelines adopted by the State Board of Elections must reflect the policy that the primary consideration in determining whether to accept or reject an absentee vote is the

clarity of the voter's intent. (§ 11-302(d)(1).) A local board of canvassers must reject an absentee ballot if the board determines, by unanimous vote, that the voter died before election day, the voter failed to sign the oath on the ballot envelope, the local board received more than one ballot from the voter in the same envelope, or the ballot was intentionally marked for the purpose of identification. (§ 11-302(d)(3).)

Any candidate or any absentee voter aggrieved by a local board's decision to accept or reject an absentee ballot may appeal to the proper circuit court and then to the Court of Special Appeals. Strict time limits apply to these appeals. (§ 11-304.)

An absentee voter may be subject to HAVA identification requirements (see Identification Requirement for Certain First-Time Voters, in Part II, Section III above). If such a voter has not provided required identification before the election and does not submit it with the absentee ballot, the absentee ballot will be treated as a provisional ballot and canvassed with the provisional ballots. (COMAR 33.16.05.03B.) The provisional ballot will not be counted unless the voter provides the required identification before the beginning of the provisional ballot canvass. (§11-303(d)(4)(iii).)

PART IV

PRIMARY AND GENERAL ELECTIONS

Nominations

Maryland law requires the principal political parties (the majority party and the principal minority party) to nominate their candidates for public office, and to elect members of their local central committees, by primary election. (§§ 1-101(kk), 8-202(a).)

At the same primary elections, the registered voters of certain counties select nominees for their non-partisan boards of education. (§ 8-804(a).)

Recognized political parties other than the principal political parties nominate their candidates and elect party officers in accordance with party rules. (*Maryland Green Party v. Maryland Board of Elections*, 377 Md. 127 (2003).)

Dates and Hours; Conduct of Primary Elections Generally

Primary elections of the principal political parties are held throughout Maryland in every even-numbered year. In 2006 and each 4 years thereafter (in each gubernatorial election year), the primary will be held on the second Tuesday after the first Monday in September. (§ 8-201.) In 2008 and each 4 years thereafter (in each presidential election year), the primary will be held on the second Tuesday in February. In addition, if there is a vacancy in the office of representative in Congress, a special primary election is held on the date the Governor sets under § 8-710. Baltimore City municipal elections have their own schedule.

Unless otherwise provided in the Election Law Article, and except where it would be inappropriate, primaries are conducted in the same manner as general elections. (§ 8-101(b).) Similarly, except where expressly provided otherwise, all statutes and regulations that apply to voting on Election Day apply equally to early voting.

Control

Both primary and general elections are conducted by local boards of elections, under the supervision of the State Board of Elections. (§ 8-101(a).) Polling places are selected as provided in § 10-101.

Unopposed Candidates

If there is only one candidate for a particular nomination or elective position, that candidate's name must be printed on the ballot, with the word "unopposed" next to it. (§§ 8-204, 9-210(e).) Votes for unopposed candidates are counted and reported.

Arrangement of Ballots

Section 9-210(a) specifies the order in which the offices to be voted on are to be arranged on the ballot. The State Board of Elections certifies the content and arrangement of all ballots in federal, State, and county elections. (§ 9-202(a).)

In both primary and general elections, when there is more than one candidate of the same political party for nomination or election to an office, the names of the candidates are listed alphabetically by surname. (§ 9-210(j).)

Who May Vote in Primary Election

Unless provided otherwise in the constitution or by-laws of a political party, no person who has declined to affiliate with that party may vote at the party's primary election, even for the office of circuit court judge. However, all registered voters, irrespective of party affiliation, may vote in a primary election to nominate board of education candidates. (§ 8-802(a)(1)(ii).)

Notice of Election; Publication of Names of Candidates

A local board of elections must provide notice of each election in the county by (1) mailing a specimen ballot at least one week before the election, or (2) publishing or disseminating a notice by mass communication during the calendar week immediately before the election. The names of all known candidates must be included in the notice. (§ 8-102.)

Expenses of Election

All expenses of elections in Baltimore City are paid by the Mayor and City Council; and all expenses of elections in each other county are paid by the County Commissioners or County Council. (§ 2-203.)

PART V

ELECTION LAW OFFENSES

Campaign Finance Provisions

Title 13, the campaign finance title of the Election Law Article applies to all elections in which ballots are cast under the Election Law Article, including all federal, State, and county elections. (§13-201). In general, however, federal law governs most aspects of campaign finance relating to contests for federal office. Beyond providing for criminal sanctions for campaign finance violations, Title 13 also authorizes the Secretary of State to seek injunctions against violations. (§ 13-605.) A separate summary of campaign finance provisions is prepared by the State Board of Elections and distributed, together with required reporting forms, to all local boards of elections and to all candidates. (§ 13-103.)

Election Judges Have Power to Arrest

Each election judge has authority to keep the peace and to order the arrest of any individual who breaches the peace, violates an election law, or interferes with the conduct of an election. (§ 10-303(c).)

Election Officials and Officials of Political Parties Liable to Prosecution

If an election official, or an official of a political party, willfully neglects official duties or engages in corrupt or fraudulent acts, the official is subject to prosecution and, if convicted, may be fined from \$50 to \$1,000, imprisoned for from 30 days to 3 years, or both. (§ 16-301.)

Tampering with Election Records

Any person who fraudulently tampers with election records is guilty of a felony and, if convicted, may be imprisoned for from 1 to 5 years. (§ 16-302.)

Damaging, Destroying, or Tampering with Voting Equipment

Any person who willfully conceals, damages, or destroys voting equipment, or willfully removes voting equipment from the custody of election officials, or willfully and knowingly tampers with, damages, or attempts to damage voting equipment, or willfully and knowingly prevents or attempts to prevent the correct operation of voting equipment, or any unauthorized person who makes or has in his or her possession a key to voting equipment, or any person who removes, defaces, or destroys equipment or supplies placed in a polling place during an election, is guilty of a felony and, if convicted, is subject to a fine up to \$10,000 or imprisonment for up to 3 years, or both. (§§16-801 through 16-803.) When an electronic voting system is used, a person who willfully and knowingly accesses the system without authority to do so or tampers with or alters the system for the purpose of affecting the vote count is guilty of a felony and, if convicted, may be fined up to \$50,000 or imprisoned for up to 10 years, or both. (§16-804.)

False Reports

An election judge or other election official who willfully and knowingly makes, signs, publishes, or delivers a false certificate or statement of election results or any other false report, or who willfully and knowingly defaces, destroys, or conceals any document in his or her care and custody, is guilty of a felony and, if convicted, may be imprisoned for from 1 to 10 years. (§ 16-601.)

Improper Conduct by Election Judge at Polling Place

An election judge who, while on duty at a polling place, willfully and knowingly interferes with voting by a person who the election judge knows is lawfully entitled to vote, fails to challenge a person who the election judge has reason to believe is not entitled to vote, refuses to follow instructions of the election director with respect to the qualification of voters, the use of voting equipment, or the casting of votes, or obstructs the view of any individual lawfully present to see voting equipment, is guilty of a misdemeanor and, if convicted, may be imprisoned for from 3 months to 2 years. (§ 16-303.)

Defacing or Removing Records

A person who has custody of election records and who willfully and knowingly (1) destroys, defaces, falsifies, removes, or conceals any record related to voting, (2) makes a fraudulent entry or alteration in a record related to voting, or (3) permits another person to commit one of these prohibited acts, as well as any person not in custody of election records who commits a prohibited act or advises, procures, or abets the commission of a prohibited act, is guilty of a felony and, if convicted, may be imprisoned for from 1 to 10 years. (§ 16-701.)

Disobedience to Lawful Command of Election Official

A person who willfully disobeys any lawful command of an election official at a polling place on election day is guilty of a misdemeanor and, if convicted, may be fined from \$10 to \$250, imprisoned for from 30 days to 6 months, or both. (§ 16-203.)

Interfering with Election Officials

A person who interferes with an election official in the performance of official duties, or who interferes with an individual lawfully present at a polling place or at the canvass of votes, is guilty of a misdemeanor and, if convicted, may be fined from \$50 to \$1,000, imprisoned for from 3 months to 1 year, or both. (§ 16-205.)

Alcoholic Beverages

A person who, on election day during the hours that the polls are open, brings, sends, or attempts to bring or send alcoholic beverages into a polling place is guilty of a misdemeanor and, if convicted, may be fined from \$10 to \$100. (§ 16-207.)

Offenses Related to Ballots and Balloting

A person who (1) places a distinguishing mark on any ballot for the purpose of identification, (2) misrepresents the person's ability to mark a ballot or operate voting equipment, (3) interferes or attempts to interfere with any voter while the voter is inside the polling place or in the process of voting, (4) induces or attempts to induce a voter to mark the voter's ballot in a certain way, (5) without authority, unlocks any voting device, (6) destroys or defaces any ballot, (7) removes any ballot from a building in which voting occurs, except as provided in the election laws, (8) delays the delivery of any ballot, or (9) on or before election day, possesses any official ballot, except as necessary and appropriate for carrying out the election process, is guilty of a misdemeanor and, if convicted, may be fined from \$50 to \$500, imprisoned for not more than 60 days, or both. (§ 16-206.) Any person convicted of violating provisions dealing with absentee or provisional voting may be fined up to \$1,000, imprisoned for up to 2 years, or both. (§§ 9-312, 9-408.)

Electioneering

A person who canvasses, electioneers, or posts any campaign material in a polling place or within the "no electioneering" zone around it is guilty of a misdemeanor and, if convicted, may be fined from \$50 to \$100, imprisoned for not more than 60 days, or both. (§ 16-206.)

Enforcement Duties of Election Boards

It is the duty of each local board of elections to aid in the prosecution of offenses proscribed by the Election Law Article, and when, in the judgment of board members, there is probable cause to believe that an offense has been committed, it is their duty to refer the matter to the appropriate prosecutor. (§ 2-202(b)(9).)

Prosecution

The prosecution of election law violations is the responsibility of the State's Attorneys in the various counties and of the State Prosecutor. (§§ 13-602(c), 13-604(b); Annotated Code of Maryland, Art. 10, § 34, State Government Art., §§ 9-1203 to 9-1205.)