

The State of Texas




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ELECTION ADVISORY **NO. 2018-09**

TO: All Texas Election Officials

FROM: Keith Ingram, Director of Elections 

DATE: February 9, 2018

RE: Laws and Procedures for Annual and Regular ABBMs

This advisory provides information on the laws and procedures regarding submission, processing, and retention of Annual and regular (single-use) Applications for Ballot by Mail (ABBM), as well as FAQs. All references are to the Texas Election Code, unless otherwise indicated.

- **Eligibility for Early Voting by Mail**
- **Submittal Period for ABBMs and Length of Validity**
- **Methods of Submission of the ABBM - NEW LAW**
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Eligibility for Early Voting by Mail

A qualified voter of the political subdivision may apply for a ballot by mail if the individual falls into one of the categories listed below. The voter:

- Will be 65 years of age or older on election day;
- Has a disability, defined as a sickness or physical condition that prevents the voter from voting in person without a likelihood of needing personal assistance or injury to the voter's health;
- Expects to be out of the county during the hours that voting is conducted during early voting in person and on election day; or
- Is confined in jail 1) serving a misdemeanor sentence and will not be released prior to election day, 2) pending trial or an appeal of a conviction after denial of bail or without bail, or where release on bail before election day is unlikely.

NOTE: Only those in the first two categories are eligible to submit an Annual ABBM.

An Annual ABBM is one in which a voter either has not specified the election for which a ballot is requested or affirmatively indicates it is an application for more than one election (by checking the box for “Annual” or otherwise indicating it is to be an Annual ABBM). An Annual ABBM may be submitted to an Early Voting Clerk (“EV Clerk”) of any political subdivision, not just to the county EV Clerk. Note that an Annual ABBM is considered to be an application for each election, including an ensuing runoff (regardless of whether the voter explicitly requested the runoff ballot), and the Annual ABBM is good for all elections held before the earlier of:

- The end of the calendar year; or
- The date the voter’s registration is cancelled.

Any voter eligible to vote by mail may submit a single ABBM requesting ballots for both the main election and any ensuing runoff (even if it is not an Annual ABBM). Section 84.001(e) provides that such an ABBM, if received past the deadline for the main election, will still be considered good for the runoff as long as it is received by the deadline for the runoff election.

Eligibility FAQ:

Q: Who may apply for an Annual ABBM?

A: Only voters that are voting by mail on the grounds of **age or disability** may submit an Annual ABBM. If a voter is voting by mail due to confinement in jail or an absence from the county during the election period, the voter may only submit an ABBM for a single election. [§ 86.0015(a)(1)]

Q: May a voter under 65 years of age submit an Annual ABBM if the voter will turn 65 before the first election in which they will vote by mail?

A: Yes. Under the Texas Election Code, a voter must be “65 years of age or older on election day” to vote early by mail. [§ 82.003]

Submittal Period for ABBMs and Length of Validity

The deadline to submit an ABBM is: Before the close of regular business in the EV Clerk’s office, or 12 noon, whichever is later, on the 11th day before election day, unless that day is a Saturday, Sunday, or legal state or national holiday, in which case the last day is the first preceding regular business day. An ABBM may be submitted at any time in the calendar year of the election for which the ballot is requested. Similarly, the first day to submit an Annual ABBM is January 1 of the calendar year it is intended to apply to, **unless the following exception applies:**

An Annual ABBM is considered to be submitted in (and good for) the following calendar year if the voter is eligible to vote in a January or February election to be held in the next calendar year, and the Annual ABBM is submitted not earlier than the 60th day before the date of the January or February election.

Submittal Period FAQ:

Q: May voters submit an ABBM or an Annual ABBM anytime throughout the calendar year?

A: Yes. Voters may submit an ABBM or an Annual ABBM anytime during the calendar year. [§ 86.0015(b)] However, any ABBM **must be received at least 11 days before the first election** in which the voter seeks to request a ballot by mail. [§84.007(c)]. Note that for elections held on a Tuesday, the

11th day falls on a weekend, and the deadline to submit the application would be the previous business day.

Q: How long is the Annual ABBM valid?

A: The Annual ABBM is valid from the time the EV Clerk receives it until the earlier of the end of the calendar year or until the voter's registration in the county is cancelled. [§ 86.0015(b)]

Methods of Submission of the ABBM - NEW LAW

An ABBM, including an Annual ABBM, may be submitted by mail via the U.S. postal service, by common or contract carrier (such as UPS, DHL, UPS, or a local courier service), in person by the voter themselves (before early voting in person begins), by fax, or by email. However, please note that **if an ABBM is faxed or emailed to the EV Clerk, it must be followed up by the original within 4 business days.** See **NEW LAW, Senate Bill 5 (85th Legislature, 1st CS, 2017)**, below.

- A list of email address for the county EV Clerks is available on our website, at this link: <http://www.sos.state.tx.us/elections/voter/county.shtml>. Voters may obtain email addresses for the EV Clerks of political subdivisions other than counties by contacting those EV Clerks directly.

NEW LAW: Senate Bill 5 (85th Legislature, 1st CS, 2017), effective December 1, 2017, amended Section 84.001 to provide that an electronic signature is not permitted on an ABBM; Section 84.007 was also amended to provide that if an ABBM is faxed or emailed or if an FPCA is faxed, then the voter must submit the ORIGINAL application BY MAIL to the EV Clerk so that the EV Clerk receives the original no later than the **4th business day** after receiving the emailed or faxed ABBM or faxed FPCA. Sections 84.001(b) and 84.007(b-1). If the EV Clerk does not receive the original ABBM or FPCA by that deadline, then the emailed or faxed ABBM or faxed FPCA will be considered incomplete, and the EV Clerk may not send the voter a ballot based on the faxed or emailed ABBM or faxed FPCA. However, if the original is still received prior to the deadline to apply for a ballot by mail, the EV Clerk may process that ABBM/FPCA as a new application. See FAQ, below.

- **NOTE:** An FPCA rejected for ballot purposes would still serve to register the voter (if the voter is eligible to be registered), even though it will not allow the voter to be sent ballots. The EV Clerk should still retain a copy of the FPCA for their own records, but should send the FPCA submitted by the voter to the Voter Registrar for registration purposes.

If a voter faxes or emails the ABBM or faxes the FPCA, the date the EV Clerk receives the fax or email is considered the date of submission. Essentially, the faxed or emailed form serves as a place-holder for the voter. Therefore, a voter whose application was faxed or emailed by the 11th day before election day (the deadline), and whose original application is received on or before the 4th business day after that date, would still be entitled to receive a ballot for the election (if otherwise eligible). The EV Clerk will have to hold the faxed or emailed ABBM or faxed FPCA until the clerk receives the original, and would only send the voter a ballot (and mark the list) if the original is received by the 4th business day after the faxed or emailed ABBM or faxed FPCA was received. The requirement to mail the original application does not apply to an emailed FPCA. An FPCA has independent authority for email delivery under Section 101.052.

Submission FAQ

Q. What if the EV Clerk receives a faxed or emailed ABBM and the voter subsequently hand-delivers the ABBM by the 4th business day after the faxed or emailed ABBM was received OR the voter mails the ABBM, but it is received after the 4th business day?

A. Assuming the hand-delivered ABBM was delivered prior to the start of Early Voting in Person, the EV Clerk may disregard the faxed or emailed ABBM (but maintain it as part of the election records), and treat the hand-delivered as a new application. Similarly, if a voter mails the original ABBM after faxing or emailing the ABBM, but the original is not received until after the 4th business day after the faxed or emailed ABBM was received, then the EV Clerk may disregard the faxed or emailed ABBM (but maintain it as part of the election records), and treat the mailed ABBM as a new application. The mailed ABBM would still have to arrive prior to the deadline to apply for a ballot by mail (the 11th day before election day). Note that an FPCA cannot be hand-delivered.

Witnessing of and Assistance with ABBMs

Pursuant to Section 1.011, the application may be signed by a witness if the voter themselves cannot sign due to physical disability or illiteracy. The person who cannot sign must put their mark on the ABBM, but if they cannot make a mark, the witness must indicate that fact on the ABBM. The witness must then write their own name, residence address, and signature on the ABBM (unless the witness is an election official, in which case the residence address is not required and instead the witness must include their official title). The witness must also indicate their relationship to the voter, if a relative of the voter. Finally, the witness must indicate on the ABBM that they are serving as a witness (or assistant, or both). On the official state ABBM, this means the witness must complete Box 11. Note that all of these actions must be conducted in the presence of the voter.

Section 84.004(a) provides that a person commits an offense if the person witnesses more than one Annual ABBM per year or one single-use ABBM per election. However, the prohibition does not apply if the additional voters are related to the witness as a parent, grandparent, spouse, child, or sibling, or if the witness is an EV Clerk or deputy EV Clerk. Note that a violation of this rule does not affect the validity of the ABBM.

A voter also may be assisted with completing and submitting an ABBM. Note that an assistant may submit an ABBM for a voter through any of the approved methods, except hand-delivery. Only the voter themselves can hand-deliver their ABBM, and this must be prior to the start of early voting by personal appearance. Any individuals who assist a voter in completing or submitting an ABBM must complete the assistant information on the ABBM, by checking the appropriate box (to indicate if they are serving as an assistant, witness, or both), and providing their own name, residence address, and signature. On the official state ABBM, this means the assistant must complete Box 11.

Witness/Assistance FAQ:

Q: How many Annual ABBMs may a person witness in a calendar year?

A: Unless a close relative, a person may witness one regular ABBM per election in a calendar year, or **one Annual ABBM for the entire calendar year**. Violation of this law does not invalidate the ABBM. [§ 84.004]

Q: May an assistant fax or email a voter's ABBM?

A: Yes, if the assistant completes the Assistant portion of the application (remember that the original hard copy must also be mailed in). [§ 84.003, § 84.007]

Q: May ABBMs be faxed from a political campaign building/headquarters?

A: Yes. While there are legal prohibitions on mailing a ballot carrier envelope, there are no legal prohibitions on faxing or emailing applications from campaigns. However, a campaign worker faxing or emailing the applications on behalf of the voters must complete the assistance portion of the ABBM (remember that the original hard copy must also be mailed in). [§ 84.003, § 84.007]

Processing an ABBM by Early Voting Clerk and Receiving Multiple Applications from a Single Voter

The EV Clerk must review each ABBM submitted and make a determination as to whether the voter is a qualified voter in the EV clerk's territory and otherwise eligible to vote by mail. If the voter is eligible to receive a ballot, then the EV Clerk must mail the balloting materials to the voter not later than the 7th calendar day after the EV clerk accepts the application, or the date the ballots become available for mailing, whichever is later. If that mailing date is more than 45 days before election day, the balloting materials must be mailed no later than the 39th day before election day. An EV clerk will be receiving ABBMs on a rolling basis and must continue to send ballots out as expeditiously as possible for all ballots received prior to the deadline for the given election.

NEW LAW: House Bill 4034 (85th Legislature, RS, 2017) added new Section 84.014 to the Election Code, which requires the EV Clerk to notify the Voter Registrar ("VR") if the date of birth, driver's license number, or social security number on an ABBM is different from the information on the list of registered voters. Note that the ABBM does not contain spaces for the voter to provide a driver's license number or a social security number. There is space for the voter to put their date of birth, but that information is listed as optional on the ABBM form. Therefore, it is likely that the EV Clerk will not often be in the position of having to forward new information to the VR. If the EV Clerk does have to forward such new information, we recommend that the clerk make a copy of the ABBM in question, and forward that copy to the VR, with a note explaining the reason the ABBM is being forwarded. The VR may then update the voter's record without having to send any further correspondence to the voter.

Note that in an election of a political subdivision located in a county in which the county clerk is **not** serving as the EV Clerk, the county clerk shall provide the EV Clerk of the political subdivision that is holding the election a list of voters in the portion of the political subdivision located in the county who have Annual ABBMs on file with the county. The EV Clerk of the political subdivision shall provide a ballot to be voted by mail to each voter on the list. This list will be referred to as the "List of Annual ABBM Voters."

Processing ABBMs and Receiving Multiple ABBMs FAQ:

Q. What if the residence address the voter writes on the ABBM is different from the residence address at which the voter is registered?

A. As long as the voter is registered in the political subdivision holding the election, **and** as long as the address on the ABBM is also within that political subdivision, then the EV Clerk should process the ABBM (if the voter is otherwise eligible to vote in the election) and send the voter a Statement of Residence ("SOR") along with the balloting materials. If the addresses do not meet this criteria, then the EV Clerk must reject the ABBM (or forward it to the correct EV Clerk, if applicable). If mailing the voter a ballot, the EV Clerk must make a notation on the Carrier Envelope that an SOR is included so that the Early Voting Ballot Board ("EVBB") knows to look for the SOR with the marked ballot; the EVBB cannot count that ballot if the SOR is not returned by the voter.

Q. What if the address on an ABBM to which the voter wants their ballot mailed is not the same as the voter's registration address, is not the voter's official mailing address per the voter registration roll, and is not one of the acceptable categories for a mailing address on the ABBM (nursing home, residential care facility, address of a relative for voters 65 or older or with a disability, an address outside the county for a voter voting due to being outside the county, etc.)?

A. The EV clerk must reject the application and send the voter a notice of rejection. If the rejection is made by the 18th day before election day, the EV Clerk must include a new, blank ABBM for the voter's convenience. [§86.008]

Q: What if a voter does not check any boxes indicating for which election(s) they wish to receive a ballot (Box 6a on the official state ABBM form)?

A: It depends on the elections within that calendar year. If it is a primary election year, e.g. 2018, and the voter did not select which party's ballot they would like to receive, the EV Clerk should reject the ABBM for purposes of the primary election, but otherwise treated as an Annual ABBM. The EV Clerk should notify the voter of the rejection of the ABBM as it applies to the primary election, but also check the box that indicates the application will be considered an Annual ABBM (see reason #9 on the Notice of Rejected ABBM). [§ 86.0015, § 86.001] If it's an odd-numbered year, e.g. 2019, and the voter did not select any elections, the application would be considered an Annual ABBM and processed accordingly. [§ 86.0015(a)]

Q: If a voter "requests" all ballots for the year by failing to mark any election in odd-numbered years, or only marking a primary in even-numbered years, does the EV Clerk need to send the voter any notice letting them know that their application will be treated as an Annual ABBM?

A: No. However, if the EV Clerk would like to send the voter such a notice, they may do so. [§ 86.0015]

Q: What if a voter checks boxes for multiple elections on the ABBM form (for example, all of the boxes in Box 6a on the official state ABBM form)?

A: It depends on if the voter declared one political party or checked the boxes for both the Democratic and Republican primaries. If the voter checks all the boxes, and correctly declares only one party for receipt of a primary ballot, this should be considered an Annual ABBM. If the voter checks all boxes and both political parties, the EV Clerk should reject the application for purposes of the primary (as it is not possible to tell which primary the voter wishes to vote in), but should accept the ABBM as an annual ABBM (if the voter is otherwise eligible for an Annual ABBM). The EV Clerk should notify the voter of the rejection of the ABBM as it applies to the primary election also check the box that indicates the application will be considered an Annual ABBM (see reason #9 on the Notice of Rejected ABBM) and provide guidance on how to properly re-apply. [§ 86.0015, § 86.001]

Q: What happens when the county receives multiple applications from an individual?

A: If the information on each is the same, then the latter ABBM should merely be considered a duplicate. If the information on the later-filed ABBM is different, then we recommend that the most recent ABBM received be considered the current one, and that any previously-submitted ABBMs are considered cancelled by the most recently submitted one. There is one exception to this general rule, and that is when the voter has sent a "single-use" ABBM (directly to the county or to a political subdivision) with the reason for voting being due to being outside the county, and the county or political subdivision has already sent a ballot to the out-of-county address provided by the voter on the ABBM. If a voter later submits an Annual ABBM, with a different address to mail the ballot, then we believe the county or political subdivision should NOT send another ballot to the voter unless the voter explicitly cancels the ballot using the procedures under Section 84.032.

Please see below for various other possible scenarios:

Scenario 1: A voter who is eligible for an Annual ABBM sends in multiple applications for a ballot by mail. The first one has only one boxed checked for “Republican Primary,” and the second application has only one boxed check for “Democratic Primary” (or vice versa).

Answer: In the case where the voter provides two applications with different primaries checked, the second application for ballot by mail will cancel the first application. A letter may be sent to the voter informing them of this action. The second application submitted will be considered the valid one, and the EV Clerk should send the voter a ballot for the primary indicated on that second-in time ABBM. This is the case even if the EV Clerk has already mailed the voter a ballot based on the first ABBM. If the voter returns the first mailed ballot, it should be treated as cancelled and not sent to the early voting ballot board.

Scenario 2: A voter who is eligible for an Annual ABBM sends in multiple applications for a ballot by mail. The first one reflected a single choice for an election, and the second application selects “Annual Application.”

Answer: In this case, the first application would be valid for one election. Once the second application was received for an Annual ABBM, the voter should receive all ballots for the remainder of the calendar year. NOTE: If the second application would be considered an Annual ABBM because the voter marked all boxes or no boxes as described in the other Q&As in this section, the second application would still be an Annual ABBM and the voter would be entitled to receive ballots for the remainder of the calendar year.

Scenario 3: A voter who is eligible for an Annual ABBM sends in multiple applications for a ballot by mail. The first one did not reflect any choice for any elections, and the second application reflects a choice for a single election.

Answer: In this case, if the voter first submitted an Annual ABBM they are entitled to receive all ballots in the calendar year. As long as all of the remaining information on the second application (such as the voter’s reason for voting, residence address, etc.) are the same, the second application should be treated as a duplicate. The EV Clerk may send a note that the voter is already set to receive the ballot due to their Annual ABBM.

Cancellation of ABBMs

If a voter’s registration is cancelled in the county, then the voter’s ABBM or Annual ABBM would also be cancelled. If the VR informs the EV Clerk that a given voter’s registration has been cancelled (e.g., the voter no longer appears on the official list of registered voters for that election), then the EV Clerk should note on the ABBM that it has been cancelled.

It is also possible for voters themselves to cancel their own ABBM. As noted previously in this advisory, submitting multiple ABBMs may result in the cancellation of the originally submitted ABBM. For more details and examples, please refer to the section entitled “Processing an ABBM by EV Clerk and Receiving Multiple Applications from a Single Voter,” above.

Section 84.038 provides that a cancellation made in person under Section 84.032(c), (d), or (e) is effective for a single election only and will not serve to cancel an ABBM for purposes of other elections held by the EV Clerk that year. Thus if a voter cancels his ballot by mail in one of the ways detailed below, the cancellation is deemed to be for that specific ballot only, and does not serve to cancel the voter’s Annual

ABBM for other elections held in the year OR any other ballot for an election held on the same day by a different EV Clerk.

- Cancellation under Section 84.032(c): An voter may submit a request to cancel an ABBM after the close of early voting by personal appearance by appearing in person and either returning the ballot to be voted by mail to the EV Clerk or executing an affidavit that the voter has not received the ballot to be voted by mail.
- Cancellation under Section 84.032(d): An voter may submit a request to cancel an ABBM by appearing in person and returning the ballot to be voted by mail or presenting a notice received under Section 86.006(h) (Notice of Improper Delivery) to the EV Clerk or deputy EV Clerk at any polling place that is open for early voting by personal appearance or to the presiding election judge on election day at the voter's precinct polling place.
- Cancellation under 84.032(e): An voter may also submit a request to cancel an ABBM at any time after the early voting ballot is returned to the EV Clerk as a marked ballot and before the ballot is delivered to the early voting ballot board by appearing in person and executing an affidavit that the voter did not mark the ballot.

The legislature specifically did not include cancellation under Section 84.032(a) as one that would only serve to cancel the single ballot and not the Annual ABBM. Thus, it is possible for a voter to send a written, signed communication (in person or by mail, fax, or a signed, scanned, and emailed letter) to the appropriate EV Clerk requesting that their Annual ABBM be cancelled, and this would serve to cancel the Annual ABBM for the remainder of the year. This would also cause the county EV Clerk to update the List of Annual ABBM Voters, to remove that voter from the list. Note that such a communication would also serve to cancel the current ballot, as long as that communication was submitted to the EV Clerk not later than the third day before election day and before the carrier envelope is received by the EV Clerk. In order to illustrate the cancellation process, we have provided two cancellation scenarios, below.

Scenario 1: Cancellation under Section 84.032(a)/Cancellation of Annual ABBM.

A county, city, and school district are holding a joint election on November 6, 2018. The county is serving as the EV Clerk for all three entities (county, city, and school district), through a joint election agreement. A hospital district is also holding an election, but does not have a joint election agreement with the county or other entities and thus has its own EV Clerk. As required by law, the county has sent the hospital district the List of Annual ABBM Voters for the district to use in its election. Mr. John Q. Voter, who is on the List, is eligible to vote in the county, city, school, and hospital district elections. On October 1, the county sends Mr. Voter a ballot for the county, city, and school elections (as the county is the EV Clerk for each of these elections), and the EV Clerk for the hospital district sends Mr. Voter a ballot for the hospital district election. What if Mr. Voter submits a letter to the county EV Clerk on October 16 explicitly requesting that his Annual ABBM be cancelled for the remainder of the year? Note that this request is submitted in time for it to cancel Mr. Voter's current ballots (as it was submitted at least three days before election day and before the carrier envelope arrives back at the appropriate EV Clerk's address). Assuming Mr. Voter did not separately submit a single-use ABBM directly to the Hospital District, what is the result?

- The Annual ABBM will be cancelled for the remainder of the year. (Secs. 84.032, 84.038)
- The county will update the List of Annual ABBM Voters accordingly (Sec. 86.0015)

- The county must inform the hospital district of the cancellation by sending an update to the List of Annual ABBM Voters to the hospital district (Sec. 86.0015)
- All ballots sent by all EV Clerks to that voter for that election date will be cancelled (Secs. 84.032, 84.038)
- The word “cancelled” should be written on the original and any copies of the Annual ABBM (Sec. 84.033)
- Both the county and the hospital district must remove the voter’s name from their early voting roster and precinct early voting list, and make any other changes necessary to prevent the ballot(s) from being counted if returned. (Sec. 84.035)
- Any ballot returned after such cancellation in a sealed carrier envelope must be treated as a marked ballot not timely returned and not forwarded to the EVBB. (Secs. 84.035, 86.011(c)).
- If there is a runoff election (e.g., for the city), the voter should not be sent a ballot for that election, because the Annual ABBM has been cancelled outright.

Scenario 2: Cancellation under Section 84.032(c)/Cancellation of Single Ballot.

Same fact pattern as Scenario 1, except that rather than sending a letter explicitly requesting that the Annual ABBM be cancelled, the voter instead shows up at the county EV Clerk’s office on Monday, November 5, 2018, with his ballot (which contains the county, city, and school district elections). The voter wishes to cancel this ballot under Section 84.032(c). Accordingly, the voter hands the ballot to the EV Clerk, and completes Part A of the Request to Cancel Application for Ballot by Mail form. What is the result?

- The County/City/School district ballot is cancelled and not sent to the EVBB.
- The County EV Clerk must write on the ballot itself that it is cancelled (Sec. 84.033)
- The Hospital District ballot is not cancelled and should be counted if returned.
- The county EV Clerk must remove the voter’s name from their early voting roster and precinct early voting list. (Sec. 84.035)
- The Annual ABBM is left intact and is not cancelled.
- The List of Annual ABBM Voters need not be updated as the Annual ABBM is still good.
- If there is a runoff election (e.g., for the city), the voter must be sent a ballot for that election as the Annual ABBM is still good.

Note that if a voter votes **provisionally** in a given election due to a by-mail ballot issue, this will not have the effect of cancelling the Annual ABBM, but rather will be viewed as a cancellation for a single election only. Whether the provisional ballot can be counted depends upon whether the EVBB determines it has already qualified and counted a by-mail ballot from that voter. We do not recommend that you immediately cancel the by-mail ballot of a voter who votes provisionally even if your system allows immediate cancellation of that ballot, but rather wait to let the EVBB do its work.

Cancellation FAQ:

Q: What if a voter submitted an Annual ABBM, but then brings his or her ballot to the polling place and cancels the mail ballot? Does that cancel the Annual ABBM for the rest of the calendar year or just for that election?

A: No, this would be considered a cancellation of that ballot only, and not a cancellation of the Annual ABBM. The Annual ABBM will be cancelled for the rest of the year. [§ 84.032(d)]

Q. What do we do with a ballot that is returned by a voter whose application for that ballot has been cancelled?

A. That ballot should be treated as though it is a ballot that was not timely returned. As such, we suggest that the EV Clerk make a notation on the carrier that it was returned after the ABBM was cancelled, and be sure that the ballot is not forwarded to the EVBB. See Sections 84.036 and 86.011.

Voter Registrars and ABBMs

Typically, if the VR is not an EA or otherwise tasked with running elections for the county, the VR will not interact with ABBMs. However, under new Section 84.014 (added by House Bill 4034, 85th Legislature, RS, 2017), the EV Clerk must notify the VR if an ABBM from a voter gives a date of birth, driver's license number or social security number that is different from what shows on the list of registered voters. The EV Clerk should provide the VR with a copy of the ABBM, and the VR should update the voter's information accordingly, without further correspondence with the voter.

Q: How should VRs notify EV Clerks of changes in registration that may cancel an Annual ABBM?

A: Before **every election**, the VR should provide an updated List of Registered Voters to the EV Clerk. The EV Clerk should compare the list of Annual ABBM voters to the List of Registered Voters, and work with the VR to resolve any discrepancies.

Q: What if the EV Clerk receives information that a voter may have been convicted of a felony, deemed mentally incompetent, or has registered in a new county?

A: As stated above, prior to every election the VR should provide an updated List of Registered Voters to the EV Clerk. The EV Clerk should compare the list of Annual ABBM voters to the List of Registered Voters, and work with the VR to resolve any discrepancies. It is possible that a voter may no longer be a qualified voter under § 11.002. If, after the investigation, the voter is not entitled to vote by mail, the EV Clerk should reject the application under § 86.001.

Q: What if the EV Clerk receives information that a voter may be ineligible due to death, but the VR has not yet officially received an abstract of death?

A: As stated above, prior to every election the VR should provide an updated List of Registered Voters to the EV Clerk. If the voter is still on the List of Registered Voters, but the EV Clerk believes this is incorrect, they should notify the VR and initiate an investigation. If, after the investigation, the voter is not entitled to vote by mail, the EV Clerk should reject the application under § 86.001.

Public Information Requests for ABBMs or Rosters

NEW LAW: House Bill 2559 (85th Legislature, RS, 2018) amended Section 86.014 to provide that a **copy** of an ABBM, including an Annual ABBM, becomes public information on the first business day after the election day of the **FIRST** election for which the application is valid (as opposed to prior law, which provided the copy was not available until the last election for which the ABBM was valid).

The **original** ABBMs are not available for public inspection until those materials are delivered to the general custodian of records after the election. [§ 86.014].

However, note that the information pertaining to a voter who has been entered onto the Roster for Early Voting by Mail must be made available for public inspection on the **earlier** of the day following the day the EV Clerk receives the ballot from that voter, or on the next business day after election day. See Section 77.121(f) & (h). There is an exception to this general rule that allows the voters themselves to review the Roster at any time to verify that their own information is accurate. The information on the Roster for Early Voting by Mail includes the by-mail voter's name, residence address, voter registration number, precinct number, the date the ballot was mailed to the voter, and the date the EV Clerk received the ballot back from the voter, if applicable.

Q. If a voter cancels their ABBM, do we remove their name from the Roster?

A. Yes, and the EV Clerk must make any other entries on election records or take any other action necessary to prevent the ballot from being counted, if the ballot is returned. Section 84.035.

KI:CG