

Provisional Ballots

AW7-15-53, 7/12 Prescribed by Secretary of State Sec. 63.011, Election Code	Type of Election / Tipo de Elección	Precinct No. where voted Núm. de Precinto-lugar de votación	Precinct No. where registered (if known) Núm. de Precinto-inscrito para votar (si se sabe)	Date of Election / Fecha de la Elección	Authority Conducting Election / Autoridad Administrando la Elección
Affidavit of Provisional Voter (Declaración Jurada de Votante Provisional) (Ballot number if using DRE _____)					
<p>TO BE COMPLETED BY VOTER: I am a registered voter of this political subdivision and in the precinct in which I'm attempting to vote and have not already voted in this election (either in person or by mail). I am a resident of this political subdivision, have not been finally convicted of a felony or if a felon, I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned. I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote. I understand that giving false information under oath is a misdemeanor, and I understand that it is a felony of the 2nd degree to vote in an election for which I know I am not eligible.</p> <p>PARA QUE EL VOTANTE LO LLENE: Estoy inscrito como votante en esta subdivisión política y en el precinto en cual estoy intentando a votar y aun no he votado en esta elección (en persona o por correo). Soy residente de esta subdivisión política, no he sido definitivamente declarado culpable de un delito grave o si soy el autor de un delito grave, he cumplido toda mi condena inclusive el período de encarcelamiento, la libertad condicional, la libertad supervisada, la libertad vigilada, o he sido indultado. No me han determinado por un juicio final de una corte de la legalización de un testamento, ser totalmente incapacitado mentalmente o parcialmente incapacitado sin el derecho de votar. Entiendo que dar información falsa bajo juramento es un delito menor y también entiendo que es un delito grave de 2º grado votar en una elección sabiendo que no cumpla con los requisitos necesarios.</p>					
Last Name /Apellido usual		First Name / Su nombre de pila		Middle Name (if any) / Segundo nombre (si tiene)	Former Name / Nombre anterior
Residence Address: Street Address and Apartment Number, City, State, and ZIP. If none, describe where you live (Do not include P.O. Box, Rural Rt. Or Business Address) Domicilio: calle y número de apartamento, Ciudad, Estado, y Código Postal: A falta de estos datos, describa la localidad de su residencia. (No incluya el apartado de correos, camino rural, ni dirección comercial.)					Gender: (Optional) / Sexo (Optativo) <input type="checkbox"/> Male (Hombre) <input type="checkbox"/> Female (Mujer)
Mailing Address: City, State, and ZIP. If mail cannot be delivered to your residence address. / Dirección postal: Ciudad, Estado y Código Postal (si es imposible entregarle correspondencia a su domicilio).					Date of Birth: Month, Day, Year Fecha de nacimiento: mes, día, año <input type="text"/> / <input type="text"/> / <input type="text"/>
TX Driver's License No. or Personal I.D. No. (Issued by Dept of Public Safety) Número de su licencia de conducir de Texas o de su Cédula de Identidad expedida por el Departamento de Seguridad Pública de Texas.		Social Security No. (last 4 digits required if you do not have a driver's license or I.D. number) / Número de Seguro Social. (Si no tiene licencia, de conducir ni identificación personal, se requiere los últimos 4 números de su seguro social)		<input type="checkbox"/> I have not been issued a TX driver's license/ personal identification number or Social Security Number. Yo no tengo una licencia de conducir de Texas/Cédula de identidad personal de Texas ni un Número de Seguro Social.	
Check appropriate box: ARE YOU A UNITED STATES CITIZEN? Marque el cuadro apropiado: Soy ciudadano/a de los Estados Unidos		Yes <input type="checkbox"/> NO <input type="checkbox"/> Si No		Signature of Voter / Firma del votante X _____	

Ashley Fischer and Melanie Best

33rd Annual Seminar – County Elections Officials



Why are provisional ballots important?

THEY ARE THE LAW!!!



HAVA Requirements

- In 2002, the Help America Vote Act required that provisional ballots be offered to:
 1. Any voter that declares that they are a registered and eligible voter of the precinct in which they are appearing, and
 2. Any voter whose eligibility is called into question by an election official, e.g. shown have to have voted early by mail.

52 U.S.C. § 21082



Texas Election Code Requirements

- Texas law echoes the federal requirements, but also adds that a voter may vote provisionally if they do not have the required identification.

Tex. Elec. Code § 63.011



Why are provisional ballots important?

THEY HELP THE VOTER!!!



Why are provisional ballots important?

- We often hear from voters that provisional ballots “do not matter.”
- We also have heard stories of election workers telling voters that their provisional ballot “will not count.”
- However, this is not true. Provisional ballots often end with a voter’s ballot being counted, when it otherwise wouldn’t have counted.



Why are provisional ballots important?

A provisional ballot **helps** the voter when...

- An error occurred when they went to DPS to obtain/update a license and the registration information was not transmitted to SOS.
- When an error occurred on the list of registered voters, e.g. city annexed land and did not provide an updated map.
- The voter's registration application is smudged/poor-handwriting.
- When an registration update was timely post-marked but was delivered to VR after the OLRV was printed.
- When a voter registered through a VDR, but the VDR did not turn in the application.



Why are provisional ballots important?

THEY REGISTER THE VOTER!!!



Why are provisional ballots important?

- By casting a provisional ballot-even if it's not accepted- the person will become a registered voter.



Moral of the Story

Provisional ballots **must** offered
to voters when required!!!



General Procedures

Voter – Executes Affidavit Envelope and Casts Provisional Ballot at Polling Place

Election Judge/Early Voting Clerk – Completes Portion of Envelope and Transfers Ballot to General Custodian

General Custodian of Election Records – Prepares Ballots for Transfer to Voter Registrar

Voter Registrar – Reviews Voter's Status and Completes Portion of Envelope

General Custodian of Election Records/Presiding Judge of Ballot Board – Prepares for counting.

Early Voting Ballot Board – Determines to Accept/Reject Provisional Ballot and Provide Notice to Voter

General Custodian of Election Records – Preserves Records



Polling Place Procedures



Note

- Provisional voting occurs both during early voting in person and on election day.
- The following procedures apply to both early voting in person and election day.



Preparing the Polling Place

- The supplies sent to the polling place must include.
 - The green Affidavit of Provisional Voter envelope.
 - The white Secrecy Envelope.
 - The Notice to Provisional Voter.
 - The List of Provisional Voters.
 - Secured container for provisional ballots.



Preparing the Polling Place

- The election judge/deputy early voting clerk should setup the polling place to allow for provisional ballots. The setup will depend on if you are using:
 - Paper or optical scan ballots
 - DREs



Paper and Optical Scan Ballots

- The election judge should set aside a sufficient number of regular ballots, and stamp or mark them “provisional” on the back of the ballot.
- The ballots should be disarranged as to allow for a random numerical order.
- The provisional ballots should be kept separate from regular ballots to avoid a voter getting the incorrect ballot.



DREs

- If your DRE system is capable of segregating provisional ballots from the regularly-cast ballots, and adding accepted provisional ballots to the vote total, you may use your DRE for voters casting a provisional ballot. (This oftentimes involves the equipment providing a code that can be used later to count the ballot.)
- If you are using DREs, the election judge needs to be prepared to setup and operate the system for provisional voting.



DREs

- All DREs currently certified in Texas can be used for provisional voting:
 - ES&S iVotronic
 - Hart e-Slate
 - Premier Accu-Vote



DREs

- You are not required to use DREs for provisional ballots, and may use optical scan ballots.
- However, you will need to make sure:
 - A voting booth is provided for voters to have privacy while marking their ballots, and indelible ink.
 - If you are participating in the countywide polling program you will need ensure that all ballot styles will be available. (In these cases, likely easier to use DREs.)



Texas Administrative Code

- The Secretary of State has prescribed rules for provisional voting:
 - §81.172- Eligibility to Vote a Provisional Ballot at the Early Voting or the Election Day Polling Place
 - §81.173 - Provisional Voting Procedures at the Polling Place
 - §81.174 - Provisional Ballot Affidavit Envelope Transfer Procedures
 - §81.175 - Voter Registrar Review of Provisional Ballot Affidavit Envelopes
 - §81.176 - Early Voting Ballot Board Provisional Ballot Review



Polling Place Procedures (T.A.C. 81.172)

- A provisional ballot **must** be offered to...
 - 1) A voter who does not provide an acceptable form of identification.
 - 2) A voter whose name not an exact match or not substantially similar.
 - 3) A voter whose identity cannot be verified by the identification presented.
 - 4) A voter who has received a disability exemption under, but does not have voter registration certificate indicating such exemption.
 - 5) A voter whose name does not appear on the list of registered voters and does not have a registration certificate, but states they are a registered and eligible voter of the precinct.



Polling Place Procedures (T.A.C. 81.172)

- A provisional ballot **must** be offered, cont.
 - 6) A voter who has applied for a ballot by mail, but has not yet properly cancelled the mail ballot application.
 - 7) A voter who votes during the polling hours that are extended by a state or federal court.
 - 8) A voter who is registered in another precinct other than the one the voter is registered.
 - 9) A voter who is on the precinct list of registered voters, but whose registered residence address is outside the political subdivision for which the voter is seeking to vote.
 - 10) Other _____ (with an explanation).



Polling Place Procedures (T.A.C. 81.173)

- If a voter fits into one of these categories, the election worker shall inform the voter of their right to cast a provisional ballot.
 - If the voter is not appearing on the list of registered voters, the election worker may assist the voter in determining if they are registered in another precinct.
 - Using an e-pollbook, or calling Voter Registrar.



New Procedure

- If the voter believes they are registered, the election judge **must** ask if the voter registered or updated their registration at DPS.
- If voter did go to DPS, the election judge **must** note this and the approximate date the voter went to DPS on the green Affidavit of Provisional Voter envelope.



Recommended Procedure

- In addition to asking about DPS, it is okay for the Election Judge to ask additional information about when/how the voter believes they have registered:
 - When did you mail in your card?
 - What was the name and/or location for which you registered through a VDR?

All of these help the voter!!!



Polling Place Procedures (T.A.C. 81.173)

- If the voter is not appearing on the list of registered voters, the election worker should inform the voter that the ballot will only be counted if it is determined they are registered voter of the precinct.
- If voter is casting a ballot due to lack of an acceptable ID, the election worker should inform the voter that the ballot will only be counted if the voter appears at the Voter Registrar and shows ID, or executes a temporary affidavit (if applicable), or permanent exemption (if applicable).



Polling Place Procedures (T.A.C. 81.173)

- After notifications...
 1. Voter should complete a green Affidavit of Provisional Voter envelope on the front side.
 2. Election Judge should complete their portion on the reverse side, and **sign it**.
 3. Election Judge should add voter's name to List of Provisional Voters/Early Voting List of Provisional Voters.
 4. Election judge should add name of voter to combination form/poll list, and indicate they are a provisional voter.
 5. Voter should sign the combination form/poll list.
 6. The election judge should provide a Notice to Provisional Voter to the voter.



New Procedure

<u>TO BE COMPLETED BY ELECTION JUDGE:</u>	<u>TO BE COMPLETED BY THE COUNTY VOTER REGISTRAR FOR STATUS:</u>
<p>VOTER PRESENTED ACCEPTABLE FORM OF IDENTIFICATION</p> <p style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p>REASON FOR VOTING PROVISIONAL</p> <ol style="list-style-type: none"> 1. _____ Failed to present acceptable form of identification or voter certificate with exemption. 2. _____ Voter not on list of registered voters. 3. _____ Voter not on list, registered in another precinct. 4. _____ Voter on list of people who voted early by mail, and voter has not cancelled mail ballot application. 5. _____ Voting after 7:00 p.m. due to court order. 6. _____ Voter on list, but registered residence address outside the _____ political subdivision. 7. _____ Other: _____ (Please explain) <p>Sworn and subscribed to before me this date: _____</p> <p>_____ Signature of Election Judge</p>	<p>I, the voter registrar/deputy registrar, did research the records of my office and the following conclusion(s) was made:</p> <p>FOR VOTERS WHO DID NOT PRESENT ACCEPTABLE PHOTO IDENTIFICATION AT THE POLLING PLACE</p> <ol style="list-style-type: none"> 1. _____ Voter presented acceptable form of identification within 6 days of election day. 2. _____ Voter met disability exemption within 6 days of election day. 3. _____ Voter executed religious objection affidavit within 6 days of election day. 4. _____ Voter executed natural disaster affidavit within 6 days of election day. 5. _____ Voter did not satisfy identification or affidavit requirements, listed in categories 1-4 above, within 6 days of election day. <p>FOR VOTERS WHO VOTED PROVISIONALLY FOR OTHER REASONS</p> <ol style="list-style-type: none"> 6. _____ Not a registered voter or registration not effective in time for this election. 7. _____ Registered to vote, erroneously listed in wrong precinct. 8. _____ Registered to vote in a different precinct within the county. 9. _____ Information on file indicating applicant completed a voter registration application, but it was never received in the voter registrar's office. 10. _____ Voter erroneously removed from the list. 11. _____ Voter is not registered to vote in _____ political subdivision. 12. _____ Other: _____ (Please explain) <p>_____ Signature of Voter Registrar</p> <p style="text-align: right;">_____ Date</p>
<p>Action taken by the Early Voting Ballot Board: <input type="checkbox"/> ACCEPTED <input type="checkbox"/> REJECTED Signature of Ballot Board Judge: _____</p>	

If a voter states that they have updated their registration at DPS use the “Other” line to indicate that, and the approximate date they went to DPS.



Voting a Provisional Ballot (T.A.C. 81.173)

- Optical Scan/Paper Ballots:
 - Voter should pick their own ballot from disarranged supply of provisional ballots.
 - Voter should mark their ballot, and then place inside the white Secrecy Envelope.
 - Voter should place white Secrecy Envelope into the green Affidavit of Provisional Voter envelope.
 - Voter should then deposit into separate and secured container for provisional ballots.



Voting a Provisional Ballot (T.A.C. 81.173)

- DREs:
 - The election judge shall prepare voting system for provisional voting in accordance with instructions provided by you and vendor.
 - If there is a code that needs to be written on the green Affidavit of Provisional Voter envelope, or slip of paper with code needs to be placed inside by the voter, this will need to be done.
 - After submitting their ballot on the DRE, voter should then deposit into separate and secured container for provisional ballots.



Separate and Secured Container

Q: Why is it important that provisional ballots be placed in a separate, secured container?

A: Provisional ballots do not get counted on election night, and take a different route than all other ballots. You may use a securable ballot box or ballot bag.



Transfer Procedures to the General Custodian of Election Records



Early Voting (T.A.C. 81.174)

- The transfer of early voting provisional ballots is the same as election day ballots, except:
 - The Voter Registrar may make requests throughout the period for early voting for the provisional ballots to be transferred from the Early Voting Clerk/Deputy Early Voting Clerk to the General Custodian.
 - If Voter Registrar does not make any requests, the provisional ballots must be delivered at the end of the period for early voting.
- NOTE: Oftentimes, the Early Voting Clerk = General Custodian of Election Records.



Election Day (T.A.C. 81.174)

- After the polls close on election night, election judge should enter the number of provisional ballots on the Register of Official Ballots and the List of Provisional Voters.
- Election judge should place a copy of the List of Provisional Voters in Envelope No. 2 (which goes to the General Custodian). (If for Early Voting, the Early Voting Clerk will only deliver the Early Voting List of Provisional Voters.)



FAQ

Q: What if the election judge returns voted ballots marked “provisional” that are not in the green Affidavit of Provisional Voter envelopes?

A: If ballots are not with their affidavits, the voter’s registration/identification cannot be verified. These cannot be counted, and must be treated as “irregularly marked” ballots.



Election Day (T.A.C. 81.174)

- The judge should then deliver the secured container with provisional ballots, and Envelope No. 2 to the General Custodian.
- The General Custodian (or central counting station personnel) should open the container and confirm that the number of provisional ballots matches the number of voters on the List of Provisional Voters.
- The General Custodian will sign the List of Provisional Voters after confirming the number.



FAQ

Q: What happens if you discover the election judge has not signed the envelope?

A: We recommend that the election worker receiving the ballots, also look to see if the election judge has signed in the appropriate place before the judge leaves. If not, ask them to sign at that time. You may also contact the judge ask them to come back and sign the envelopes.



Election Day (T.A.C. 81.174)

- General Custodian prepares the Summary of Provisional Ballots, and then places the following into the transfer case:
 1. Provisional Ballots (green envelopes)
 2. List of Provisional Voters
 3. Blank Verification of Provisional Ballots and Serial Numbers forms
 4. Seals to allow Voter Registrar to seal transfer case for return to General Custodian.
- After the transfer case is sealed, the General Custodian writes the seal number on the Summary of Provisional Ballots.
- If present, a poll watcher may also sign.



Transfer Procedures to the Voter Registrar



Early Voting & Election Day (T.A.C. 81.174)

- The General Custodian will deliver the secured transfer case with the ballots, Lists of Provisional Voters, blank Verification of Provisional Ballots and Serial Numbers, and seals to re-seal the transfer case to the Voter Registrar.

