

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**  
**SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



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**COMMONWEALTH REGISTER**

**VOLUME 40**  
**NUMBER 09**  
**SEPTEMBER 28, 2018**

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# COMMONWEALTH REGISTER

VOLUME 40  
NUMBER 09  
SEPTEMBER 28, 2018

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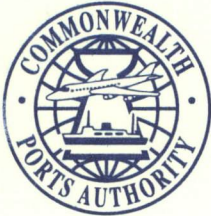
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# COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT

P.O. Box 501055, Saipan, MP 96950-1055

Phone: (670) 237-6500/1 Fax: (670) 234-5962

E-mail Address: cpa.admin@pticom.com

Website: www.cpa.gov.mp



## PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF THE PERSONNEL RULES AND REGULATIONS FOR THE COMMONWEALTH PORTS AUTHORITY (CPA)

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED RULES AND  
REGULATIONS

Volume 39, Number 12, pp 040425-90, of December 28, 2017

### Amendment to NMIAC § 40-40, Commonwealth Ports Authority Personnel Rules and Regulations

**ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:** The Commonwealth of the Northern Mariana Islands (CNMI), Commonwealth Ports Authority HEREBY ADOPTS AS PERMANENT the Personnel Rules and Regulations which were published in the Commonwealth Register pursuant to the procedures of the Administration Procedure Act, 1 CMC § 9104(a). I certify by signature below that as published, such adopted regulations are a true, complete, and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification.

**PRIOR PUBLICATION:** These regulations were published as Proposed Regulations in Volume 39, Number 12, pp 040425-90, December 28, 2017, of the Commonwealth Register.

**AUTHORITY:** The authority for promulgation of regulations for CPA is set forth in 2 CMC § 2122.

**EFFECTIVE DATE:** These amendments will become effective ten days after publication of this Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).

**COMMENTS AND AGENCY CONCISE STATEMENT:** During the 30-day comment period, the Authority received several comments which were considered fully along with recommendations made by the Legal Counsel. No individual requested the Authority issue a concise statement of the principal reasons for and against the adoption of the proposed amendments. At a Personnel Affairs Committee meeting held July 27, 2018, the Committee agreed to recommend to the Board of Directors that the proposed regulations be adopted without further revisions. The Board of Directors adopted them as final at the September 6, 2018, Board of Directors Meeting.

**TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED:** CPA will use these regulations to establish a system of Human Resource administration based on merit principles and generally-accepted methods to govern the classification of positions and employment, conduct, movement and separation of employees. It will also be used to build a career service to attract, select and retain the best-qualified employees who shall hold their offices free from coercion, discrimination, reprisal or political influences, with incentives for opportunities for promotion within CPA. It will also be administered with equal opportunity for all and will cover all employees, including those under contract, if specified herein or in the employee's contract. The adopted regulations are intended to be a complete revision of CPA's current Personnel Rules and Regulations.

COMMONWEALTH REGISTER

VOLUME 40

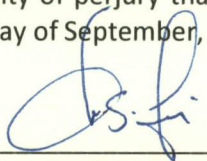
NUMBER 08

AUGUST 28, 2018

PAGE 040924

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 7<sup>th</sup> day of September, 2018, at Saipan, Commonwealth of the Northern Mariana Islands.

Submitted by: \_\_\_\_\_

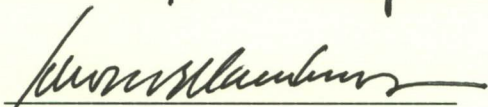
  
CHRISTOPHER S. TENORIO  
Executive Director

Date: \_\_\_\_\_

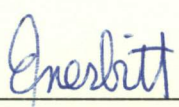
9/20/18

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the certified final regulations, modified as indicated above from the cited proposed regulations (if any), have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published. 1 CMC § 2153(f).

Dated this 24 day of September, 2018.

  
EDWARD MANIBUSAN  
Attorney General

Filed and Recorded by: \_\_\_\_\_

  
ESTHER SN. NESBITT,  
Commonwealth Register

Date: \_\_\_\_\_

9.25. 2018



**Commonwealth of the Northern Mariana Islands**  
**Office of the Governor**  
**DEPARTMENT OF PUBLIC LANDS**



**NOTICE OF ADOPTION OF REGULATIONS  
FOR THE DEPARTMENT OF PUBLIC LANDS**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER  
AS PROPOSED REGULATIONS  
Volume 40, Number 7, pp 040814-040825, as of July 28, 2018

**ACTION TO ADOPT PROPOSED REGULATIONS:** The Department of Public Lands (the "Department") HEREBY ADOPTS AS PERMANENT REGULATIONS the Proposed Regulations which were published in the Commonwealth Register at the above referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Department announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that: as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations and that they are being adopted without the modifications described below.

**PRIOR PUBLICATION:** The prior publication was as stated above.

**THE TERMS AND SUBSTANCE:** The proposed regulations set forth to allow for agricultural homesteading activities on the island of Rota by adopting rules and regulations governing the Rota Agricultural Homestead Program.

**THE SUBJECTS AND ISSUES INVOLVED:** These rules and regulations:

1. Establish procedures for agricultural homestead applications.
2. Establish standards of eligibility.
3. Provide requirements necessary for the homestead program.
4. Regulate the permitting and inspection process.
5. Implement penalties.
6. Establish administrative hearing procedures.

**AUTHORITY:** The Department has the inherent authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to Article IX of the Commonwealth Constitution and 1 CMC § 2801 et. seq.

**DIRECTIONS FOR FILING AND PUBLICATION:** These Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial, both in English and in the principal vernacular (1 CMC § 9104 (a)(1)).

**EFFECTIVE DATE:** These regulations were proposed in July 2018 and are hereby being adopted as Permanent Regulations of the Department of Public Lands pursuant to 1 CMC § 9104. They will become permanent ten (10) days after publication in the June 2017 Commonwealth Register.

**COMMENTS AND AGENCY CONCISE STATEMENT:** Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

P.O. Box 500380, Saipan MP 96950 • 2<sup>nd</sup> Floor, Joeten Dandan Commercial Building

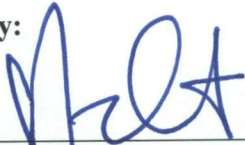
Website: [www.dpl.gov.mp](http://www.dpl.gov.mp) • E-mail: [dpl@dpl.gov.mp](mailto:dpl@dpl.gov.mp)

Tel: (670) 234-3751/52/53/54/56 • Fax: (670) 234-3755

**ATTORNEY GENERAL APPROVAL:** The adopted regulations for the Rota Agricultural Homestead Program were approved for promulgation by the CNMI Attorney General in the above cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153 (e) (to review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including corporations, except as otherwise provided by law).

**I DECLARE** under penalty of perjury that the foregoing is true and correct copy and that this declaration was executed on the 24 day of September, 20 18, at Saipan, Commonwealth of the Northern Marianas Islands.

Submitted by:



MARIANNE CONCEPCION-TEREGEYO  
Secretary, Department of Public Lands

24 SEP 2018

Date

Filed and Recorded by:



ESTHER SN NESBITT  
Commonwealth Register

09.25.2018

Date

P.O. Box 500380, Saipan MP 96950 • 2<sup>nd</sup> Floor, Joeten Dandan Commercial Building

Website: [www.dpl.gov.mp](http://www.dpl.gov.mp) • E-mail: [dpl@dpl.gov.mp](mailto:dpl@dpl.gov.mp)

Tel: (670) 234-3751/52/53/54/56 • Fax: (670) 234-3755



## COMMONWEALTH CASINO COMMISSION

Commonwealth of the Northern Mariana Islands

P.O. Box 500237

Saipan, MP 96950

Tel: 1 (670) 233-1856/57

Email: [info@cnmicasinocommission.com](mailto:info@cnmicasinocommission.com)



### **PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF AMENDMENTS TO REGULATIONS OF Commonwealth Casino Commission**

Juan M. Sablan, Chairman

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER  
AS PROPOSED AMENDMENTS TO REGULATIONS  
Volume 40, Number 06, pp 040807-040813, of June 28, 2018

#### **Regulations of the Commonwealth Casino Commission**

**ACTION TO ADOPT PROPOSED AMENDMENTS TO REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Commonwealth Casino Commission (CCC) HEREBY ADOPTS AS PERMANENT amendments to the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The CCC announced that it intended to adopt them as permanent, and now does so. (Id.). I also certify by signature below that, as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment, except as stated as follows:

(no changes)

**PRIOR PUBLICATION:** The prior publication was as stated above. The CCC adopted the regulations as final in the August 30, 2018 public meeting of the Commission.

**MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:** Modifications were made as specified above. I further request and direct that this Notice of Adoption be published in the Commonwealth Register.

**AUTHORITY:** The CCC is required by the Legislature to adopt rules and regulations regarding those matters over which the CCC has jurisdiction, See Public Laws 18-56 and 19-24.

**EFFECTIVE DATE:** Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

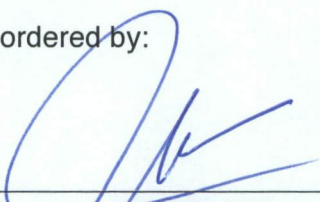
**COMMENTS AND AGENCY CONCISE STATEMENT:** Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. The agency received one comment regarding the proposed amendment to §175-10.1-040(q) which was addressed to the commenters satisfaction at the public meeting referred to above. The agency received no comments regarding the proposed amendment to §175-10.1-535. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the

principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the \_\_\_th day of September, 2018, at Saipan, Commonwealth of the Northern Mariana Islands.

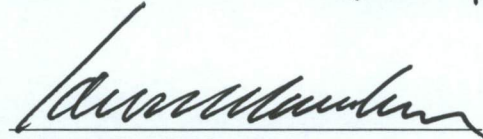
Certified and ordered by:

  
\_\_\_\_\_  
JUAN M. SABLAN  
Chairman, Commonwealth Casino Commission

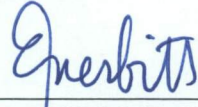
Sept. 18, 2018  
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 20 day of September, 2018.

  
\_\_\_\_\_  
EDWARD MANIBUSAN  
Attorney General

Filed and  
Recorded by:

  
\_\_\_\_\_  
ESTHER SN. NESBITT  
Commonwealth Registrar

09-24-2018  
Date



# STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • E-mail:  [boc.admin@cnmipss.org](mailto:boc.admin@cnmipss.org)



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Non public school rep.  
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*Pionnah Rosej Gregorio*

## **PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS WHICH ARE AMENDMENTS TO RULES AND REGULATIONS REGARDING CHAPTER 60-40 PROCUREMENT RULES AND REGULATIONS**

**PROPOSED RULES AND REGULATIONS:** The Commonwealth of the Northern Mariana Islands Public School System (PSS) finds that:

**INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:** The Commonwealth of the Northern Mariana Islands Public School System intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective ten (10) days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

**AUTHORITY:** The proposed amendments to PSS regulations are promulgated pursuant to the Board's authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

**THE TERMS AND SUBSTANCE:** The proposed amendment set forth to provide amendments to PSS §60-40 Procurement Rules and Regulations.

**THE SUBJECTS AND ISSUES INVOLVED:** The Proposed Regulation sets forth amendments to §60-40 Procurement Rules and Regulations.


**PROPOSED REGULATIONS:** The Proposed Regulation seeks to amend the provisions within PSS § 60-40 in the manner referenced in the document attached

**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations. (1 CMC § 9102(a) (1) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104 (a) (1))

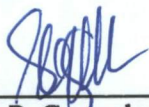
STUDENTS FIRST

**TO PROVIDE COMMENTS:** All interested persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairperson, State Board of Education, via mail at P.O. Box 501370 CK, Saipan, MP 96950, via phone at 670-237-3027 or via email to [boe.admin@cnmipss.org](mailto:boe.admin@cnmipss.org) within thirty (30) calendar days following the date of the publication in the Commonwealth Register of these amendments. (1 CMC § 9104(a) (2))

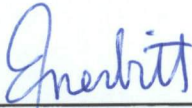
This regulation was approved at the State Board of Education Regular Meeting on June 20, 2018.

Submitted by:   
Janice A. Tenorio  
Acting Chairwoman  
State Board of Education

07/20/18  
Date

Received by:   
Shirley P. Camacho-Ogumoro  
Special Assistant for Administration

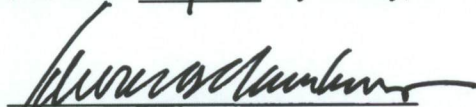
8/29/18  
Date

Filed and  
Recorded by:   
Esther SN. Nesbitt  
Commonwealth Registrar

09.07.2018  
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104 (a) (3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations).

Dated this 4 <sup>September</sup> day of ~~July~~, 2018.

  
Edward E. Manibusan  
Attorney General



# STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • E-mail: [boe.admin@cnmipss.org](mailto:boe.admin@cnmipss.org)



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Janice A. Tenorio  
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Secretary/treasurer

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Herman T. Guerrero  
Florine M. Hofschneider

Teacher representative  
Paul Miura

Non public school rep.  
Galvin S. Deleon Guerrero

Student representative  
Pionnah Rosej Gregorio

## **NUTISIAN PUPBLIKU NI MANMAPROPONI NA AREKLAMENTU YAN REGULASION NI MANMA'AMENDA SIHA PARA I AREKLAMENTU YAN REGULASION PUT PÅTTI 60-40 PARA I AREKLAMENTU YAN REGULASION I PROCUREMENT**

**I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA:** I Commonwealth gi Sangkattan na Islas Mariãnas Sisteman Eskuelan Pupbliku ("PSS") ha sodda' na:

**I MA'INTENSIONA NA AKSION PARA U ADÅPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA:** I Commonwealth gi Sangkattan na Islas Mariãnas i Sisteman Eskuelan Pupbliku ha intensiona para u adåpta kumu petmanienti i regulasion siha i mañechettun na Manmaproponi na Regulasion siha, sigun para i manera siha gi Åkton Administrative Procedure, 1 CMC § 9104(a). I Regulasion siha mu ifektibu gi hålum dies (10) dihas dispues di adåptasion yan publikasion gi hålum Rehistran Commonwealth. (1 CMC § 9105(b))

**ÅTURIDÅT:** I manmaproponi na amendasion siha para i PSS na regulasion manmaho'gui sigun gi åturidåt i Kuetpu kumu mapribeniyi aturidåt ginin i Attikulu XV gi Konstitusion CNMI, Lai Pupbliku 6-10 yan i Åktun i CNMI Administrative Procedures.

**I TEMA YAN SUSTÅNSIAN I PALÅBRA SIHA:** I manmaproponi na amendasion mapega mo'na para u pribeni amendasion para i PSS §60-40 Areklamentu yan Regulasion Procurement siha.

**I SUHETU NI MASUMÅRIA YAN ASUNTU NI TINEKKA SIHA:** I Manmaproponi na Regulasion mapega mo'na i amendasion para §60-40 Areklamentu yan Regulasion Procurement siha.

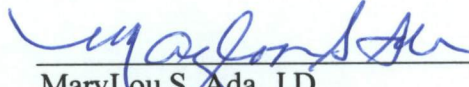
**MANMAPROPONI NA REGULASION SIHA:** I Manmaproponi na Regulasion ha ispiha para u amenda i mantension gi hålum PSS § 60-40 hålum i maneran mariferi hålum i mañechettun na dokumentu.

**DIREKSION PARA U MAPO'LU YAN PUPBLIKASION:** Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi hålum i Rehistran Commonwealth gi seksiona ni manmaproponi yan nuebu na ma'adåpta na regulasion siha. (1 CMC § 9102 (a) (1) yan mapega gi hålum i kumbinienti na lugåt siha gi hålum i civic center yan hålum ufisinan gubietnamentu gi kada distritun senadot, parehu English yan i dos na lingguåhin natibu. (1 CMC § 9104(a) (1))

**PARA U MAPRIBENIYI UPIÑON SIHA:** Todu maninterisã na petsona siña ma'eksamina i manmaproponi na amendasion siha yan u na'hålum i tinigi' upiñon, pusision, pat sinangan siha para pat kinentran i manmaproponi na amendasion siha guatu gi Kabiseyu, State Board of Education, gi P.O. Box 501370 CK, Saipan, MP 96950, pat tilifon gi 670-237-3027 pat email para [boe.admin@cnmipss.org](mailto:boe.admin@cnmipss.org) gi hålum i trenta (30) dihas gi fetchan kalendãriu ni tinattitiyi ni publikasion esti siha na amendasion gi hålum i Rehistran Commonwealth. (1 CMC § 9104 (a) (2))


Esti na regulasion manma'aprueba gi Huntan i State Board of Education gi Huniu 20, 2018.


Nina'hålum as:

  
MaryLou S. Ada, J.D.  
Kabisiyu  
State Board of Education


  
Fetcha

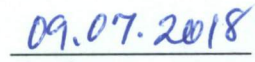
Rinisibi as:

  
Shirley P. Camacho-Ogumoro  
Espisiãt Na Ayudãnti Para I Atministrasion

  
Fetcha


Pine'lu yan  
Ninota as:

  
Esther SN. Nesbitt  
Rehistran Commonwealth

  
Fetcha

Sigun i 1 CMC § 2153(e) (Inaprueba i regulasion siha ni Abugãdu Henerãt ni para u macho'gui kumu fotma) yan 1 CMC § 9104(a) (3) (hentan inaprueban Abugãdu Henerãt) i man maproponi na regulasion siha ni mañechettun guini ni man maribisa yan man ma'apueba kumu fotma yan sufisienti ligãt ginin i CNMI Abugãdu Henerãt yan debi na u mapublikã, 1 CMC § 2153(f) (publikasion i areklamentu yan regulasion siha).

Mafetcha guini gi diha 4 <sup>Septembre</sup> ~~Hunio~~, 2018.

  
Edward E. Manibusan  
Abugãdu Henerãt



# STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • E-mail: [boe.admin@cnmipss.org](mailto:boe.admin@cnmipss.org)



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chairwoman

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Herman T. Guerrero  
Florine M. Hofschneider

Teacher representative  
Paul Miura

Non public school rep.  
Galvin S. Deleon Guerrero

Student representative  
Pionnah Rosej Gregorio

## ARONGORONGOL TOULAP REEL POMMWOL ALLÉGH ME MWÓGHUTUGHUT IKKA RA LIIWELI NGÁLI ALLÉGH ME MWÓGHUTUGHUT IYE E SSÚL NGÁLI CHAPTER 60-40 ALLÉGH ME MWÓGHUTUGHUTÚL PROCUREMENT

**POMMWOL ALLÉGH ME MWÓGHUTUGHUT:** Commonwealth Téél Falúw kka Efáng llól Marianas Public School System (PSS) re schuungi bwe:

**MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI ALLÉGH ME MWÓGHUTUGHUT KKA:** Commonwealth Téél Falúw kka Efáng llól Marianas Public School System re mángemángil rebwe adóptááli Pommwol Mwóghutughut ikka e appasch bwe ebwe lléghló, sáangi Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló Mwóghutughut kkal llól seigh ráál mwiril aar adóptáánil me akkatééwowul me llól Commonwealth Register. (1 CMC § 9105(b))

**BWÁNGIL:** Pommwol liiwel ngáli mwóghutughutúl PSS re arongowow sáangi bwángiir Board iye re ayoorai ngáliir sáangi Article XV reel CNMI Constitution, Alléghúl Toulap 6-10 me CNMI Administrative Procedures Act.

**KKAPASAL ME AWEEWEL:** Pommwol liiwel kkal ebwe tééló mmwal bwe ebwe ayoorai ngáli liiwel ngáli PSS §60-40 Allégh me Mwóghutughutúl Procurement.

**KKAPASAL ME ÓUTOL:** Pommwol Mwóghutughut e ssúluló mmwal reel liiwel ngáli §60-40 Alléghúl me Mwóghutughutúl Procurement.

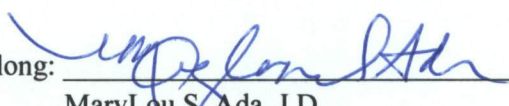
**POMMWOL MWÓGHUTUGHUT:** Pommwol Mwóghutughut kkal ebwe liiweli provision llól PSS § 60-40 llól e ssúl ngáli llól pappid iye e appasch

**AFAL REEL AMMWELIL ME AKKATÉÉWOWUL:** ebwe akkatééwow Pommwol Mwóghutughut kkal me llól Commonwealth Register llól tánil wóól Pommwol me ffél mwóghut ikka ra adótáánil. (1 CMC § 9102(2) (1) me ebwe appaschetá llól civic center me bwal llól Bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch. (1 CMC § 9104 (a) (1))

**ISIISILONGOL KKAPAS:** Schóó kka re mwuschel amuri Pommwol liiwel me isiisilong ischil mángemáng, positions, ngáre kkapasal aweewe ngáli ngáre kontura pommwol liiwel kkal ebwe isiis ngáli Chairperson, State Board of Education, via mail me P.O. Box 501370 CK, Saipan, MP 96950, via tilifon me 670-237-3027 ngáre via email ngáli [bow.admin@cnmipss.org](mailto:bow.admin@cnmipss.org) llól eliigh ráAl mwiril aal akkatééwow me llól Commonwealth Register reel liiwel kkal. (1 CMC § 9104(a)(2))


Aa átirow mwóghutughut kkal me State Board of Education reel aar Yéélágh wóól Unnyo 20, 2018.

Isáliyalong:

  
MaryLou S. Ada, J.D.  
Chairwoman  
State Board of Education

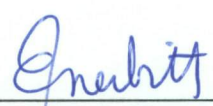
  
Ráál

Bwughiyal:

  
Shirley P. Camacho-Ogumoro  
Special Assistant ngáli Administration

  
Ráál

Ammwelil:

  
Esther SN. Nesbitt  
Commonwealth Register

  
Ráál

Sáangi 1 CMC § 2153(e) (sáangi aal átirow mereel AG bwe aa ffil reel fféerúl) me 1 CMC § 9104 (a) (3) (mwiril aal átirow sáangi AG) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me átirow bwe aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow (1 CMC § 2153(f) (akkatéEwowul allégh me mwóghutughut).

Aghikillátiw ighila



Settembre

~~ráálil Uliyo~~, 2018.

  
Edward E. Manibusan

Soulemelemil Allégh Lapalap

## § 60-40-040 Definitions

As used in this chapter, unless the context otherwise requires, the following meanings apply:

(a)–(g) [no changes]

(h) “Employee” means an individual receiving a salary from the Public School System, including appointive and elective officials and non-salaried individuals, including those on honorarium, performing personal services for the Public School System. ~~This definition extends to Board of Education and members of their staff.~~ Consultants, independent contractors and part-time workers shall be considered employees.

(i)–(r) [no changes]

## § 60-40-115 Contract Oversight

(a)–(f) [no changes]

(g) The Personnel Officer shall approve all contracts for employment ~~or personal~~ services, including excepted services contracts. ~~and contracts for services by an independent contractor in a non-employment status.~~

(h)–(j) [no changes]

## § 60-40-205 Competitive Sealed Bidding

(a)–(h) [no changes]

(i) Notice of Intent to Award. After bid evaluation, a notice of intent to award the contract to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter shall be issued to all bidders. The notice of intent to award is not a promise or guarantee of award, and the intended bidder should not incur any costs based on either the notice of intent to award or reliance of a contract.

~~(j)~~ Award.

(1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. The contract cannot be awarded less than five business days after the issuance of a notice of intent to award pursuant to subsection (i). Unsuccessful bidders shall also be promptly notified.

(2)(i) Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made orally or by letter. No acceptance of an offer shall occur nor shall any contract be formed until a Public School System contract is written and has been approved by all the officials required by law and regulation.

(ii) Public School System contract shall contain a clause which states that the signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required Public School System officials.

(3) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five per cent, and time or economic considerations preclude re-solicitation of work of a reduced scope, the Commissioner of Education may authorize the Chief to negotiate an adjustment of the bid price, including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

#### **§ 60-40-225 Competitive Sealed Proposals**

(a)-(f) [no changes]

(g) Notice of Intent to Award. After proposal evaluation, a notice of intent to award the contract to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Public School System, taking into consideration price and the evaluation factors set forth in the request for proposals, shall be issued to all offerors. The notice of intent to award is not a promise or guarantee of award, and the intended offeror should not incur any costs based on either the notice of intent to award or reliance of a contract.

~~(g)~~(h) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Public School System taking into consideration price and the evaluation factors set forth in the request for proposals. The award cannot be made less than five business days after the issuance of a notice of intent to award pursuant to subsection (g). No other factors or criteria shall be used in the evaluation and the contract file shall contain the basis on which the award is made.

#### **§ 60-40-401 Protests to the Commissioner of Education**

(a) General

(1) Any actual or prospective bidder, offeror, or contractor who asserts a claim or asserts that it has been aggrieved in connection with the solicitation or award of a contract may protest to the Commissioner of Education. The protest shall be received by the Commissioner of Education in writing prior to the award of a contract ~~within ten days after such aggrieved person knows or should have known of the facts giving rise thereto. The Commissioner of Education shall consider all protests or objections to the award of a contract, whether submitted before or after award. For competitive sealed bids and competitive sealed proposals, protests shall not be submitted before the issuance of a notice of intent to award.~~ The written protest shall state fully the factual and legal grounds for the protest;

(2) Other persons, including bidders, involved in or affected by the protests shall be given notice of the protest and its basis in appropriate cases. The protesting party shall provide such notice and a copy of its protest to all other bidders involved in or affected by the protest and shall file a declaration or proof of service with the Commissioner of Education. Proof of notice is

required by the protesting party to other bidders or proposers within three calendar days of filing its protest. These persons shall also be advised that they may submit their views and relevant information to the Commissioner of Education within ten days after receiving notice by the protesting party;

(3) The Commissioner of Education shall decide the protest within thirty calendar days after all interested parties have submitted their views unless the Commissioner certifies that the complexity of the matter requires a longer time, in which event the Commissioner shall specify the appropriate longer time. If the Commissioner of Education fails to render a decision or determination within such period, the protesting party may file its appeal to the Appeal Committee of the State Board of Education by filing such Notice of Appeal with the Chairman through the Board Secretary at the State Board of Education Office, ~~Susupe, Saipan~~. The submission of views may include any factual statements; briefs; memoranda; declarations; and other information that the Commissioner of Education or any party may submit which is relevant and necessary for the determination of the protest;

(4) When a protest, ~~before or after award~~, has been appealed to the Appeal Committee, as provided in these procedures, the Commissioner of Education shall submit a report, and the Commissioner of Education should include with his/her report a copy of:

- (i) The protest;
- (ii) The bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;
- (iii) The solicitation, including the specifications on portions relevant to the protest;
- (iv) The abstract of offers or relevant portions;
- (v) Any other documents that are relevant to the protest; and
- (vi) The Commissioner of Education's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Commissioner of Education's report will include the determination prescribed in subsection (b)(3) below. The foregoing information submitted by the Commissioner of Education shall be considered the complete administrative record on appeal to the Appeal Committee unless the Appeal Committee supplements the record with additional testimony or evidence.

(5) Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of notice that an appeal from the Commissioner's decision has been taken to the Appeal Committee, the Commissioner of Education shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above.

(b) Protest ~~Before Award~~

(1) When a proper protest against the making of an award is received, the award shall be withheld pending disposition of the protest. The bidders whose bids might become eligible for award shall be informed of the protest. In addition, those bidders shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance to avoid the need for re-advertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceeding with an award under subsection (b)(2) below.

(2) When a written protest is received, award shall not be made until the matter is resolved, unless the Commissioner of Education determines that:

- (i) The materials and services to be contracted for are urgently required;

- (ii) Delivery or performance will be unduly delayed by failure to make award promptly; or
- (iii) A prompt award will otherwise be advantageous to the Public School System.
- (3) If award is made under subsection (b)(2) above, the Commissioner of Education shall document the file to explain the need for an immediate award. The Commissioner of Education also shall give written notice to the protester and others concerned of the decision to proceed with the award.

~~(e) — Protest After Award~~

~~Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the Commissioner of Education, at least the contractor shall be furnished the notice of the protest and its basis in accordance with subsection (a)(2) above. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Public School System's interest, the Commissioner of Education should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.~~

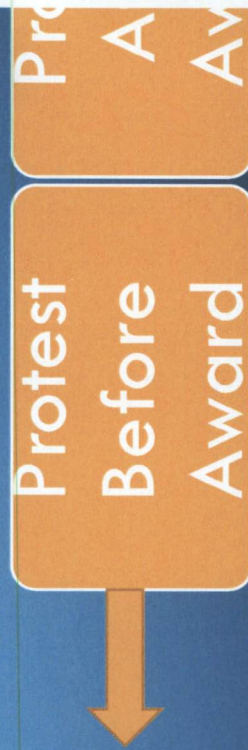
~~(d)~~(c) Computation of Time

- (1) Except as otherwise specified, all "days" referred to in this subpart are deemed to be working days of the Public School System. The term "file" or "submit" except as otherwise provided refers to the date of transmission.
- (2) In computing any period of time prescribed or allowed by these procedures, the day of the act or event from which the designated period of time begins to run shall not be included.

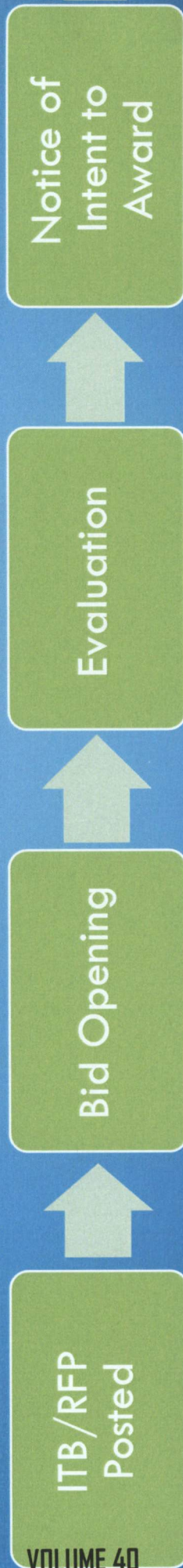
# PROCUREMENT REGULATIONS

REPLACING PROTESTS AFTER AWARD

# CURRENT SYSTEM



# PROPOSED SYSTEM



Pr

**Commonwealth of the Northern Mariana Islands**

**DEPARTMENT OF PUBLIC LANDS**

Marianne Concepcion-Teregeyo, Secretary

P.O. Box 500380

Saipan, MP 96950

Tel. 234-3751

**PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS FOR THE  
DEPARTMENT OF PUBLIC LANDS**

**INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS AFTER CONSIDERING PUBLIC COMMENT:** The Commonwealth of the Northern Mariana Islands, Department of Public Lands ("the Department") intends to adopt as permanent regulations the attached Proposed Regulations pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective ten (10) days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

**AUTHORITY:** The Department has the inherent authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to Article IX of the Commonwealth Constitution and 1 CMC § 2801 et. seq.

**THE TERMS AND SUBSTANCE:** The proposed regulations will allow the Department to implement an agricultural homestead program for the Northern Islands in an effort to allow for homesteading activities to eligible Northern Marianas descent.

**THE SUBJECTS AND ISSUES INVOLVED:** These rules and regulations:

1. Establish procedures for agricultural homestead applications.
2. Establish standards of eligibility.
3. Provide requirements necessary for the homestead program.
4. Regulate the permitting and inspection process.
5. Implement penalties.
6. Establish administrative hearing procedures.

**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and this notice shall be posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1)).

**TO PROVIDE COMMENTS:** Send or deliver your comments to the Department of Public Lands Attn: Secretary, at the above address, fax or email address. Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).

The Department of Public Lands approved the attached Proposed Regulations on the date listed below.


Submitted by:

  
MARIANNE CONCEPCION-TEREGEYO  
Secretary, Department of Public Lands

21 SEP 2018

Date

Received and filed by:

  
SHIRLEY P. CAMACHO-OGUMORO  
Special Assistant for Administration

Date

Filed and  
Recorded by:

  
ESTHER SN NESBITT  
Commonwealth Registrar

Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the 24 day of September 2018.



Hon. EDWARD MANIBUSAN  
Attorney General

**Commonwealth Gi Sangkattan Na Islas Mariãnas**  
**DIPATTAMENTUN TANU' PUPBLIKU**  
Marianne Concepcion-Teregeyo, Sekretaria  
P.O. Box 500380  
Saipan, MP 96950  
Tel. 234-3751

**NUTISIAN PUPBLIKU PUT I MANMAPROPONI NA REGULASION SIHA PARA I  
DIPATTAMENTUN TANU' PUPBLIKU YAN**

**I AKSION NI MA'INTENTSIONA: PARA U ADAPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA DISPUES DI KUNSIDERAN I UPIÑON PUPBLIKU:** I Commonwealth gi Sangkattan na Islas Mariãnas, Dipattamentun Tanu' Publiku ("I Dipattamentu") ha intensiona para u ma'amenda iyon-ñiha regulasion ni kumotfotmi yan i mañechettun na manmaproponi na amendasion siha, sigun para i Akton Atministrasion Procedure, 1 CMC §9104(a). I regulasion siha para u ifektibu gi hulum dies (10) dihas dispues di adaptasion yan publikasion gi hulum i Rehistran Commonwealth. (1 CMC § 9105(b))

**ATURIDAT:** I Dipattamentu gai aturidat para u adapta i Areklamentu yan Regulasion siha ni para u adilanta mo'na i obligasion yan responsabilidat siha sigun para i Article IX gi Commonwealth Konstitusion yan 1 CMC §2801 et. seq.

**I TEMA YAN SUSTANSIAN I PALABRA SIHA:** I maproponi na regulasion siha ha sedi i Dipattamentu para u implimenta i prugraman agrikutturan homestead para i Sangkattan na Islas gi na'siña-ñiha ni para u masedi i aktibidat homesteading siha para kualifikao i mantatatti na Notte Mariãnas.

**I SUHETU NI MASUMARIA YAN ASUNTU NI TINEKKA:** Esti na areklamentu yan regulasion siha:

1. Istablesi i manera para i aplikasion agrikutturan homestead siha.
2. Istablesi i standards i kualifikasion.
3. Pribeni i nisisidat siha ni nisisariu para i prugraman homestead.
4. Gubietna i maneran permitting yan inspeksion.
5. Katga huyung i pena siha.
6. Istablesi i maneran administrative hearing siha.

**DIREKSION PARA U MA PO'LU YAN PARA PUBLIKASION:** Esti i Manmaproponi na Regulasion siha debi na u mapublika gi hulum i Rehistran Commonwealth gi hulum i seksiona ni manmaproponi yan nuebu na ma'adapta na regulasion siha (1 CMC § 9102(a)(1)) yan esti na nutisia debi na u mapega gi hulum mankumbinienti na lugat siha giya i civic center yan gi hulum ufisinan gubietnu gi kada distritun senatorial parehu Inglis yan i prisipat na lingguahin natibu, (1 CMC § 9104(a)(1)).

**PARA U MAPRIBENIYI UPIÑON SIHA:** Na'hãnao pat na'hålum iyo-mu upiñon siha guatu gi Dipåtamentun Tanu' Pupbliku Atn: Sekretària, giya sanhilu' na address, fax pat email address. I upiñon siha debi na u hålum gi hålum trenta (30) dihas ginin esti na nutisian pupblikasion. Put fabot na hålum iyo'-mu data, views pat agumentu siha. (1 CMC § 9104(a)(2)).

I Dipåtamentun Tanu' Pupbliku ma'aprueba i mañechettun na Regulasion siha gi fetcha ni malista papa'.

Nina'hålum as:



MARIANNE CONCEPCION-TEREGEYO  
Sekretària, Dipåtamentun Tanu' Pupbliku

21 SEP 2018

Fetcha

Rinisibi yan  
pine'lu as:



SHIRLEY P. CAMACHO-OGUMORO  
Ispisiât Na Ayudânti Para I Atministrasion

9/24/18

Fetcha

Pine'lu yan  
Ninota as:



ESTHER SN. NESBITT  
Rehistran Commonwealth

09-24-2018

Fetcha

Sigun i 1 CMC § 2153(e) (I Abugâdu Henerât ha aprueba i regulasion siha na para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) (hentan inaprueban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapupblika, 1 CMC § 2153(f) (pupblikasion areklamentu yan regulasion siha).

Mafetcha guini gi diha 24, gi September 2018.



Hon. EDWARD MANIBUSAN  
Abugâdu Henerât

**Commonwealth Téél Falúw kka Efáng llól Marianas  
BWULAI SYOL AMMWELIL FALUWEER TOULAP**

Marianne Concepcion-Teregeyo, Sekkretóoriya  
P.O. Box 5000380  
Saipan, MP 96950  
Til. 234-3751

**ARONGORONGOL TOULAP REEL POMMWOL MWÓGHUTUGHUT NGÁLI BWULAI SYOL  
AMMWELIL FALUWEER TOULAP ME**

**MÁNGEMÁNGIL MWÓGHUT: REEL REBWE ADÓPTÁÁLI POMMWOL ALLÉGH ME**

**MWÓGHUTUGHUT MWIRIL AAR RÁGHIIY MWALIYEER TOULAP:** Commonwealth Téél Falúw kka Efáng llól Marianas, Bwulaisiyol Ammwelil Faluweer Toulap ("Bwulasiyo we") re mángemángil rebwe liiweli mwóghutughutúl ikka e appasch bwe liiwel, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló Mwóghutughut kkal llól seigh ráál mwiril aal adóptááli me akkatééwowul me llól Commonwealth Register. (1 CMC § 9105(b))

**BWÁNGIL:** Eyoor bwángil Bwulasiyo reel rebwe adóptááli allégh me mwóghutughut llól mwóghutughutúl me lemeleml sáangi Article IX reel Commonwealth Constitution me 1 CMC §2801 et.seq.

**KKAPASAL ME AWEEWEL:** Pommol mwóghutughut kkal ebwe tééló mmwal reel igha ebwe lighiti ngáliir mwóghutughutúl progróomal agricultural homestead ngáli Falúw kka Efáng

**KKAPASAL ME ÓUTOL:** Allégh me mwóghutughut kkal:


1. Itittiwel mwóghut ngáli agricultural homestead applications.
2. Itittiwel standards reel ngare re ffil.
3. Ayoora requirements ikka e ffil ngáli progróomal homestead.
4. Lemeli bwángil me inspection process.
5. Ayoorai mwóghutughutúl penalties.
6. Itittiwel mwóghutughutúl administrative hearing.

**AFAL REEL AMMWELIL ME AKKATÉÉWOWUL:** Ebwe akkatééwow Pommwol Mwóghutughut me llól Commonwealth register llól tálil pommwol me ffél mwóghutughut ikka ra adóptááilil (1 CMC § 9102(a)(1)) me ebwe appaschetá arongorong yeel llól civic center me bwal llól bwulaisiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch. (1 CMC § 9104(a)(1)).

**ISIISILONGOL KKPAS:** Afanga ngáre bwughiló yóómw ischil kkapas ngáli Bwulaisiyol Ammwelil Faluweer Toulap Attn: Sekkretóoriya, reel féféfé iye e lo weiláng, fax ngáre email. Ebwe toolong kkapas llól eliigh ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views ngáre angingi. (1 CMC §9104(a)(2)).

Bwulasiyo Ammwelil Faluweer Toulap rá átirow reel Mwóghutughut iye e amwirimwiritiw wóól ráálil iye e lo faal.


Isáliyalong: \_\_\_\_\_

  
MARIANNE CONCEPCION-TEREGEYO  
Sekretóoriya, Bwulasiyol Ammwelil Faluweer Toulap

21 SEP 2018

Ráál

Bwughiyal: \_\_\_\_\_

  
SHIRLEY P. CAMACHO-OGUMORO  
Special Assistant ngáli Administration

9/24/18

Ráál

Ammwellil: \_\_\_\_\_

  
ESTHER SN. NESBITT  
Commonwealth Register

09-24-2018

Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG bwe aa ffil reel fféerúl) me 1 CMC § 9104(a)(3) (sáangi átirowal AG) bwe ra takkal amwuri fischiiy pommwol mwóghutughut ikka e appasch me átirow bwe aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153 (f) (akkatééwowul allégh me mwóghutughut).

Aghikkilátiw wóól 24 ráálil September, 2018.



Hon. EDWARD MANIBUSAN  
Soulemelemil Allégh Lapalap

## **Part 001 – General Provisions**

### **§ 145-20.5-001 Authority**

The regulations in this chapter are promulgated by the Department of Public Lands ("DPL") pursuant to the authority set forth in Article XI of the Commonwealth Constitution, Public Law 16-50, and Public Law 15-2.

### **§ 145-20.5-005 Purpose**

The purpose of these rules and regulations are to set forth the necessary procedures with respect to agricultural homestead applications; to set out in detail the standards of eligibility; to provide for certain requirements necessary to meet the goals and objectives of the agricultural program; to provide for an efficient system of notice and hearing process for applicants whose applications have been denied, and to provide a basic format for applications and other documents and instruments necessary to administer and implement the agricultural homestead program.

### **§ 145-20.5-010 Definitions**

- (a) "Domicile" means that place in which a person maintains a residence with the intention of continuing that residence for an unlimited or indefinite period, and to which that person has the intention of returning whenever absent, even for an extended period.
- (b) "Marriage" A legal status requiring the issuance of a marriage license and a ceremony performed by a person authorized under Commonwealth law, or a customary marriage between citizens that is solemnized in accordance with recognized customs.

## **Part 100 – Northern Islands Agricultural Homestead Program Requirements**

### **§ 145-20.5-101 Designation of Homestead Areas**

DPL may designate areas suitable for farming and agricultural activities, and shall use such designated areas for the distribution of agricultural homestead lots. No applicant may be granted an agricultural homestead lot outside of the designated area without the prior approval of the DPL Secretary.

### **§ 145-20.5-105 Establishment of Area**

All eligible applicants shall be entitled to a maximum area of one hectare or 10,000 square meters of agricultural land.

**§ 145-20.5-110      Persons Eligible to Homestead**

All applicants for agricultural homestead lots must meet and satisfy all of the following criteria:

- (a) An applicant must be 18 years of age, or over, and is a citizen of the Commonwealth of the Northern Marianas, and of Northern Marianas descent as provided for in the CNMI Constitution.
- (b) An applicant must be presently residing in the Northern Islands for at least one year and must be eligible to vote in the Northern Islands elections.
- (c) An applicant or his/her spouse must not own or have an interest in agricultural land within the Commonwealth of the Northern Marianas which equals or exceeds ½ hectare or 5,000 contiguous square meters.
- (d) An applicant or his/her spouse must not have been a recipient of an agricultural homestead lot from a previous agricultural homesteading program.
- (e) An applicant shall not receive more than one agricultural homestead lot.
- (f) If two applicants marry, the applicants must notify DPL of the marriage and one of the applications must be withdrawn. If an applicant marries a permittee, the applicant must notify DPL and withdraw the application. If two permittees marry, the permittees must notify DPL of the marriage and one of the permits must be canceled. If an applicant or permittee marries the recipient of an agricultural homestead lot, the permittee or applicant must notify DPL of the marriage and withdraw his/her application or cancel his/her permit.

**§ 145-20.5-115      Priority of Applicants**

DPL shall prioritize the applications submitted according to the following categories:

- (a) First Priority
  - (1) Married applicants whose primary source of income is derived from farming.
  - (2) Single applicants whose primary source of income is derived from farming.
- (b) Second Priority
  - (1) Married applicants whose primary income is derived from sources other than farming.
  - (2) Single applicants whose primary income is derived from sources other than farming.
- (c) Ineligible Applicants
  - (1) Those applicants who are determined ineligible to receive agricultural lots due to constitutional and statutory restrictions shall be notified in writing of such

determination. The notification shall specify the reasons for ineligibility and inform the applicant of a right to appeal the determination within 30 days from the date of the notice.

In order to verify the information provided in the application and in order to accurately determine the actual need and priority for an agricultural homestead lot, DPL may require the applicant to provide additional documentation as DPL deems appropriate.

DPL shall take into consideration the date of application, so that an earlier applicant shall take precedence over a later applicant, all other factors being equal.

**§ 145-20.5-120      Application Procedure**

- (a) All applicants for agricultural homestead shall fill out an application form provided by DPL. Applications may be submitted to the Saipan Office. Applications shall be date stamped by the DPL when received.
- (b) All applications must be signed and notarized under penalty of perjury.
- (c) All applications must be accompanied by a \$100.00 non-refundable application fee.
- (d) After submission of an application, DPL shall verify the eligibility of the applicant and all essential facts set forth by the applicant and if necessary, require the applicant to appear before the DPL Homestead Director or his/her designee for an interview to clarify or verify the information given in the application. Approval or disapproval of application shall be rendered no later than 90 days after receipt of a completed application.

**§ 145-20.5-125      Issuance of Agricultural Homestead Permit**

- (a) Upon approval of the application, the DPL shall issue a permit to enter upon, use and improve the land once the agricultural tract has been surveyed, monumented, mapped, and is ready for agricultural homesteading. The DPL shall conduct a lottery wherein the eligible applicant will pick their lot by blind draw.
- (b) After an agricultural lot is drawn by an eligible applicant, the DPL shall prepare an agriculture homestead permit for the applicant, and shall give a copy of the map showing the agricultural homestead tract as surveyed and shall also physically show the tract to the homesteaders.
- (c) A permit fee of \$100.00 shall be paid by the homesteaders due and payable at the time the permit is executed.

**§ 145-20.5-130      Conditions of Occupancy**

- (a) The homesteader shall enter upon and commence the use and improvement of the agricultural lot consistent with a land utilization and planting program approved by DPL within 90 days after the receipt of the permit. Upon noncompliance with the foregoing, the permit shall expire and be null and void and the homesteader shall be construed to have waived all rights in and to the land. Upon such occupancy, DPL shall have the right to enter and possess the land.
- (b) The homesteader shall, at all times, maintain all boundaries clear of any and all weeds, trash and underbrush.
- (c) DPL shall show the homesteader the actual boundaries of the homestead lot. However, any subsequent request by homesteader for retracement of boundaries by DPL may be undertaken only after a \$300.00 fee is paid in advance.
- (d) During the period of occupancy, the homesteader shall observe and comply with all rules, regulations, and requirements concerning the use, occupation, and development of the homestead lot.
- (e) No permanent structure, e.g. reinforced concrete or hollow concrete blocked construction is allowed during the term of the permit. All temporary construction for housing of people shall provide sanitation facilities approved by the Division of Environmental Quality.

**§ 145-20.5-135 Homestead Progress Inspection**

- (a) The DPL shall conduct inspections of the homestead at least once a year, or more often as it deems necessary to determine compliance with the homestead requirements. Notice of Inspection shall be given to the homesteader at least ten (10) days in advance.
- (b) After each inspection, the homestead inspection team shall issue a brief report on the progress of and the compliance of the homesteader.
- (c) In the event that a homesteader is not complying with the homestead requirements, the inspection team shall so note in its report and inform the homesteader of the requirement he/she is not complying with. Appropriate written warnings shall be given to the homesteader. Such notice shall contain specific corrective actions to be taken by the homesteader to bring himself/herself into compliance with the homestead requirements.
- (d) All inspection reports shall be signed by the Homestead Inspector.

**§ 145-20.5-140 Deeds of Conveyance**

Deeds of conveyance shall be issued by DPL for homestead lots entered pursuant to the Northern Islands Village and Agricultural Homesteading Act of 2008 upon maturity

of the permit, and only upon execution of a certification by DPL certifying that the homesteader has complied with all laws, rules and regulations appertaining to the homestead. DPL shall issue the deed of conveyance within six months of the time the homesteader becomes eligible to receive the deed of conveyance.

**§ 145-20.5-145      Transfer of Homestead Permit**

No rights in or to a homestead permit shall be sold, assigned, leased, transferred or encumbered. Except that in the event of the death of the homesteader prior to the issuance of a deed of conveyance, all rights under the permit shall inure to the benefit of such person or persons, if any, as the homesteaders shall designate in the permit or letter filed with DPL. In the event that the homesteader makes no designation, then the permit shall be revoked, and the land, together with all appurtenances thereto entered thereunder, shall revert to DPL or its successor.

**§ 145-20.5-150      Penalties**

(a) Grounds for Revocation of Permit

If at any time after the issuance of the homestead permit, and before the expiration of the permit period, the homesteader abandons the land or fails to comply with the laws, then the permit shall be revoked and the land shall revert to DPL or its successor. DPL may at its discretion allow the homesteader an extension of the permit period.

(b) Grounds for Disqualification

- (1) If an applicant knowingly and willfully submits false information to DPL under penalty of perjury, the matter shall be referred to the Attorney General for prosecution and the applicant's permit shall be revoked and disqualified from participation in the agricultural homesteading program.
- (2) If an applicant negligently or recklessly submits false information to DPL or otherwise misleads DPL, the applicant may be disqualified from participation in the agricultural homestead program permanently or for a period of time to be determined by the DPL Secretary.

**§ 145-20.5-155      Notice and Hearing**

An applicant whose application for an agricultural homestead has been received, verified, and found not eligible, shall be informed in writing of such decision, the reason therefore, and a right to appeal the decision within 30 days of the date of the letter. Such hearing shall be held no later than 90 days after receipt of such notice by the applicant. The applicant has the right to be represented by a counsel of his/her choosing and to bring witnesses to the said hearing. No later than 30 days after the hearing, the Hearing Officer, on behalf of the DPL, shall issue his/her decision. If the Hearing Officer denies an application, a written decision to that effect shall be prepared and given to the applicant. Such a decision shall be deemed final.

**§ 145-20.5-160      Waiver**

DPL, upon recommendation of the Homestead Inspector and the Homestead Director, and upon a showing of good cause, may waive a homestead requirement in the regulations in this subchapter and the conditions, imposed on the permit, provided that, no restrictive provisions of the Constitution or by statute shall be waived.



**COMMONWEALTH CASINO COMMISSION**  
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Juan M. Sablan, Chairman  
Joseph C. Reyes, Vice Chairman  
Alvaro A. Santos, Secretary/Treasurer  
Ramon M. Dela Cruz, Commissioner  
Diego M. Songao, Commissioner

## **COMMISSION ORDER NO: 2018-004**

### **Order Continuing Temporary Suspension of Minimum Bankroll Requirement**

For good cause determined at the August 30, 2018 public meeting of the Commonwealth Casino Commission ("Commission"), which was duly publicly noticed, and based on the authority granted by the laws of the Commonwealth (including but not limited to Public Laws 18-56 and 19-24) and the Regulations of the Commission, NMIAC Chapter 175-10.1, the Commission hereby finds and **ORDERS AS FOLLOWS:**

1. WHEREAS, Public Law 4 CMC §2314(b)(2) authorizes the Commission to promulgate regulations as may be necessary to properly supervise, monitor and investigate to ensure the suitability and compliance with the legal, statutory and contractual obligations of owners, operators, and employees of casinos; and
2. WHEREAS, based in part on the foregoing authority, the Commission enacted Section 175-10.1-560 of the Commission Regulations dealing with the minimum bankroll which the casino licensee must maintain. This regulation was suspended in part by prior action of the Commission on or about March 29, 2017; and March 2018. The present period of suspension expires on August 31, 2018; and
3. WHEREAS, Section 175-10.1-021 allows the Commission, for good cause, to suspend any provision of the Regulations.
4. Whereas, for the reasons discussed on or about March 29, 2017, February 22, 2018, March 15, 2018, and/or August 30, 2018, the Commission finds good cause exists to partially suspend the minimum bankroll provision of Section 175-10.1-560 of the Commission Regulations; **NOW, THEREFORE,**
5. **IT IS HEREBY ORDERED** that the casino licensee shall maintain sufficient cash on hand to cover its daily gaming operations; provided, that the casino licensee must maintain no less than Four Million Dollars (US\$4,000,000) cash on hand; and,
6. **IT IS HEREBY FURTHER ORDERED** that the casino licensee's parent company shall continue to guarantee in writing the payment of all its gambling debts in the CNMI without reservations or limitations in a form acceptable to the Executive Director; and

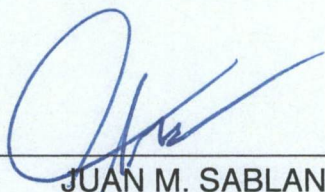
7. IT IS HEREBY FURTHER ORDERED that the continued waiver of the Minimum Bankroll Requirements, as noted herein, shall be valid up to and including December 31, 2019; and

8. IT IS HEREBY FURTHER ORDERED that the Chairman or the Executive Director shall take steps necessary to ensure that this Order is published in the Commonwealth Register; and

9. IT IS HEREBY FURTHER ORDERED that this Order is to take effect immediately or at the earliest time allowed by law, whichever first occurs, shall relate back to August 30, 2018, and shall remain in effect until it is repealed or replaced by subsequent Order of the Commission.

SO ORDERED this 30th day of August, 2018.

Signature: \_\_\_\_\_



JUAN M. SABLAN  
CHAIRMAN



**Commonwealth of the Northern Mariana Islands**  
**Office of the Attorney General**

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**LILLIAN A. TENORIO**  
Deputy Attorney General

**OAG 18-02**

September 21, 2018

*Subject:* Voter Residency and Domicile Requirements, Registration by Mail, and  
Absentee Voting

*Agency:* Commonwealth Election Commission

**Opinion of the Attorney General**

**I. ISSUES PRESENTED**

1. What are the residency and domicile requirements pertaining to voter eligibility? How are they established?
2. Can persons who are residents and domiciliaries of the Commonwealth but who do not currently live in the Commonwealth register to vote and to vote in the Commonwealth? If so, can such persons register to vote by physical or electronic mail?
3. What is the purpose of absentee voting and who is eligible to vote absentee? What precautions exist to prevent the voter fraud in the absentee voting process?
4. When and how does the Commonwealth Election Commission ("Election Commission") challenge unqualified voters? What can members of the public do when they suspect that a person who is not qualified to vote has registered or has applied of an absentee ballot?
5. What are the penalties for registering to vote or filing an absentee ballot when the person is not qualified to vote in the Commonwealth?

**II. SHORT ANSWERS**

1. To be eligible to vote in the Commonwealth, a person must satisfy residency and domicile requirements. Under the Northern Mariana Islands Election Law ("NMI Election Law"), codified at 1 CMC §§ 6101–6706, both residency and domicile focus on the question of where the person considers "home," though establishing residency requires physical presence in the Commonwealth. Presently, Commonwealth law requires a person to reside in the Commonwealth for 120 days before being eligible to register to vote. 1 CMC § 6201(c). Domicile, on the other hand, focuses on the purely subjective question of where a particular person considers "home." 1 CMC § 6202(c). Importantly, a person can only have one domicile. 1 CMC § 6202(b), (d). Once a person satisfies these criteria, he or she may

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**Civil Division**  
Telephone: (670) 237-7500  
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Telephone: (670) 237-7600  
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**Attorney General's Investigation Division**  
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**Victim Witness Advocacy Unit**  
Telephone: (670) 237-7602  
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register to vote with the Election Commission and vote in Commonwealth elections.

2. Yes. Once a person has met the initial residency and domicile requirements, he or she may still be considered a resident and domiciliary of the Commonwealth despite the fact that he or she lives outside of the Commonwealth. For example, a person who has left the Commonwealth to study or to serve the United States or the Commonwealth does not lose his or her residency solely by virtue of not being physically present in the Commonwealth. 1 CMC § 6204(e). This is true even if the absence is “for an extended period.” 1 CMC § 6003(r). As for domicile, a person’s physical absence from the Commonwealth alone is not enough to conclude that he or she has established a new domicile. Simply put, if a person is absent for certain purposes and intends to return to the Commonwealth as soon as those purposes are accomplished, then the person is eligible to vote. As the person is eligible to vote in the Commonwealth, he or she may register to vote by mail or electronic means. 1 CMC § 6205(c).
3. Absentee voting is a process that allows an eligible registered voter to cast his or her ballot in Commonwealth elections when he or she will be physically absent from the district in which he or she is registered on election day, or when he or she is too ill or infirm to travel to the relevant polling place on election day. 1 CMC §§ 6209–6211. While absentee voting provides the necessary flexibility for members of an increasingly mobile society, the system is prone to abuse. For this reason, Commonwealth law requires the Election Commission to institute certain safeguards, including publically publishing a list of all persons who request an absentee ballot online and at least one government office in each senatorial district. 1 CMC § 6209(a). Members of the public can consult the list of absentee ballot requests and can either challenge voters they believe are ineligible or bring the relevant facts to the attention of the Election Commission.
4. The Election Commission uses several tools to ensure the integrity of the voter register. First, the Election Commission is required to remove voters’ names from the register under certain circumstances. 1 CMC § 6206. Second, the Executive Director has the power to make changes to voter registration information when a voter’s name changes or when a voter moves to a different election district. 1 CMC § 6207. Finally, registered voters are empowered to challenge the qualifications of other registered voters both before the election and on election day. 1 CMC § 6215. A registered voter who successfully challenges the eligibility of another voter is entitled to an award of attorneys fees and costs. 1 CMC § 6215(f).
5. Federal and Commonwealth law provide severe penalties for committing crimes that are intended to undermine the integrity of Commonwealth elections. A person that signs a registration affidavit knowing that he or she is not qualified to vote can be prosecuted under 1 CMC § 6704. The same is true of anyone aiding and abetting false registration. Federal criminal law also covers a wide-range of election-related activities. Persons that vote in another State or territory and send in an absentee ballot can also be punished under the laws of that jurisdiction.

### III. ANALYSIS

Voter eligibility in the Northern Mariana Islands is governed by the Commonwealth Constitution and the NMI Election Law. The Commonwealth Constitution provides:

A person is eligible to vote who, on the date of the election, is eighteen years of age or older, is domiciled in the Commonwealth, is a resident of the Commonwealth and has resided in the Commonwealth for a period of time provided by law, is not serving a sentence for a felony,<sup>1</sup> has not been found by a court to be of unsound mind, and is either a citizen or national of the United States. The legislature may require that persons eligible to vote be citizens of the United States.

NMI CONST. art. VII, § 1. The legislature has established the standards for determining and proving eligibility. 1 CMC §§ 6201–6224. Commonwealth Courts have recognized “election statute[s] must be strictly construed.” *Seman v. Aldan*, 3 CR 152, 155 (DNMI App. Div. 1987). When a person meets all the eligibility criteria, he or she has the right to register to vote in the election district in which he or she resides and is domiciled. Under certain circumstances, a person who meets the voter eligibility requirements has the right to register by mail, provided that they included additional proof of identity. 1 CMC § 6205(c). Physical absence from the Commonwealth does not terminate residency under certain circumstances. Importantly, however, registering to vote in another jurisdiction automatically terminates Commonwealth residency. 1 CMC § 6204(g).

Eligible voters can register to vote absentee under a variety of circumstances. These include when a person is outside of the Commonwealth briefly during election day, is serving in the Armed Forces, or is attending college or university outside of the Commonwealth. Such persons remain eligible so long as they properly preserve their voter eligibility. Absentee ballots also allow the sick and infirm, who are unable to make it to the polling place on election day, to cast their ballot.

Importantly, however, a person who has moved away from the Commonwealth and resides elsewhere for a very long period of time, living and working in another jurisdiction, may have lost his or her domicile or residency. Such persons cease to be eligible voters, and are not eligible to vote in the Commonwealth until they reestablish residency and/or domicile. Both the Election Commission and registered voters can challenge the voter eligibility of persons suspected of not meeting voter eligibility criteria. If a person votes or attempts to vote in the Commonwealth and in another jurisdiction, he or she can be prosecuted under Commonwealth, State, and federal law for voter fraud, and under Commonwealth law for committing perjury.

#### A. RESIDENCY & DOMICILE

Residency and domicile are two of the most important eligibility requirements. Residency determinations are objective, focusing on where a person is presently living, but include a strong subjective component. Domicile determinations, by contrast, are far more subjective, and focus on where a particular person considers home. However, the Supreme Court has observed: “the

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<sup>1</sup> The term “serving a sentence for a felony” to “includes persons imprisoned on parole, probation, or under a suspended sentence.” 1 CMC § 6003(t).

resident and domicile definitions provided by the legislature focus mainly on the intent of the [person], and where a person resides when not called elsewhere for other temporary purposes, even when these callings are for an extended period of time.” *Rebuenog v. Aldan*, 2010 MP 1 ¶ 31. Although the concepts both involve the objective and subjective motivations of a particular person in varying degrees, it is necessary consider residency and domicile, and how each is acquired and lost, separately.

Importantly, domicile and residency determinations are just as important for persons inside the Commonwealth as persons outside the Commonwealth. For example, a resident and domiciliary of Election District 5 in Saipan may attempt to falsely register to vote in Tinian (Election District 6) in an attempt to sway the outcome of a particular election. Similarly, a resident of Election District 3 on Saipan may attempt to falsely register to vote in Election District 2 to sway the outcome of a particular election. Both of these hypotheticals constitute the same threat to the integrity of Commonwealth elections as a resident and domiciliary of Texas falsely registering to vote in Rota to sway the outcome of a particular election.

### 1. Domicile

Domicile primarily concerns the location that a person subjectively considers to be “home.” The NMI Election Law defines “domicile” as “that place in which a person maintains a residence with the intention of continuing that residence for an unlimited or indefinite period, and to which that person has the intention of returning whenever absent, *even for an extended period.*” 1 CMC § 6003(i) (emphasis added). Thus, the definition of domicile recognizes that a person may be absent from the Commonwealth for an extended period. The Commonwealth Supreme Court has specifically held that “extended absences do not automatically change one’s domicile.” *Rebuenog v. Aldan*, 2010 MP 1 ¶ 28.

The best way to understand domicile, as distinguished from residency, is by looking to the NMI Election Law’s instructions for determining domicile. *Rebuenog*, 2010 MP 1 ¶ 27. The NMI Election Law provides:

A person’s domicile shall be determined in accordance with the following:

- (a) Each person has a domicile;
- (b) Each person has only one domicile;
- (c) A person’s domicile is the place where the person resides when not called elsewhere to work or for other temporary purposes;
- (d) A person cannot lose a domicile until he or she acquires a new domicile; and
- (e) A person’s domicile may be changed by joinder of acts and intent.

1 CMC § 6202. Therefore, it is clear that a person always has one domicile, and cannot lose domicile unless and until he or she obtains a new domicile. This is consistent with the idea that a person can only have one home. The Supreme Court has observed: “1 CMC § 6202 stresses that a person’s domicile is the place ‘where the person resides when not called elsewhere to work or for other temporary purposes,’ and that the intent of the party to acquire a new domicile is a critical factor in a domicile determination.” *Rebuenog*, 2010 MP 1 ¶ 28. Thus, rather than physical presence, to use the old adage, “home is where the heart is.”

Domicile is the place a person considers home, and the place to which he or she intends to return. Because domicile is inherently about personal intent, a person can spend many years, even decades, away from his or her domicile before returning. In *Rebuenog v. Aldan*, 2010 MP 1, the Supreme Court affirmed the Superior Court's finding that the plaintiff was domiciled in Anatahan despite living on Saipan for almost a decade. The Court noted that Rebuenog had moved to Saipan to care for her ill son-in-law in 2001, and by the time he had passed away, the May 2003 volcanic eruption had made Anatahan uninhabitable. *Rebuenog*, 2010 MP 1 ¶¶ 17–22, 30. Sometimes a person's domicile will change without him or her ever returning to their previous domicile. More than one person has come to the Commonwealth for a few years' worth of work, and over several years has decided to call our islands home. The opposite is true as well: a person may move to Oregon intending to work only for a few years only to establish him or herself there permanently. Importantly, because domicile is so personal, it is a fact-intensive inquiry.

## 2. Residency

Residency primarily concerns where a person is currently residing, or living, long term. In the Commonwealth, like many States, residence is tied to a specific physical habitation or dwelling to which the person intends to return. The NMI Election Law defines "residence"<sup>2</sup> as:

"Residence" means that place in which a person's habitation is fixed, and to which, whenever the person is absent, *the person has the intention to return*; however, a person who is temporarily out of the Commonwealth or the election district for reasons of business, education, government representation, military service, medical referral, medical reasons, natural disaster or environmental conditions, or employment by the Commonwealth, *even for an extended period*, shall be considered a resident of the Commonwealth and the election district if during that period, he maintains a domicile in the Commonwealth and election district.

1 CMC § 6003(r) (emphasis added). Note that as with domicile, the definition of residence contemplates situations in which a person would be absent for "an extended period of time" without losing residency. However, the definition of "residence" includes "fixed habitation," *i.e.*, a specific physical place, such as a house or apartment, that the person maintains.

### a. Fixed Habitation

As with the definition of domicile, it is best to consider the NMI Election Law's instructions on determining residency. However, given the length of the relevant provision, 1 CMC § 6204,<sup>3</sup> it is

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<sup>2</sup> The Supreme Court has noted that "[t]he terms 'residence' and 'residency' are used interchangeably in Commonwealth election statutes, and thus attributing a different meaning to each of these usages is not an effective way to differentiate between the definitions provided in [1 CMC §§ 6001–6204]." *Rebuenog*, 2010 MP 1 ¶ 26 n.14.

<sup>3</sup> Section 6204, like much of the Commonwealth Election Law, appears to be based on Hawai'i's election statutes. Compare 1 CMC § 6204 with Haw. Rev. Stat. Ann. § 11-13. As such, Hawai'i case law interpreting similar provisions is considered to be very persuasive. See, e.g., *Tudela v. Superior Court (Malite, et al.)*, 2010 MP 6 ¶ 8.

best to consider each subsection individually. First, Section 6204 provides:

The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return.

1 CMC § 6204(a). This has two important components. First, the "person's habitation," *i.e.*, dwelling or residence, must be "fixed." In other words, the person must have some place, such as a house, apartment, condominium, etc., that is in an actual, specific location. This differs from domicile, which is often just the general location, rather than an established residential structure. The second component, intent to return, is much like domicile.<sup>4</sup> Taken together, residence depends on the person having a specific, fixed dwelling or habitation, to which the person intends to return. In *Rebuenog*, the Supreme Court noted that the Superior Court had attached a great weight to the fact that Rebuenog had a house, a "fixed habitation" on Anatahan, though it was then covered in volcanic ash. *Rebuenog*, 2010 MP 1 ¶¶ 17–19. The same would likely be true of a person that must move to the mainland for work, but rents his or her house—a fixed habitation—to generate income while away.

*b. Intent to Establish Residency*

The second subsection of Section 6204 concerns the intent to establish a permanent dwelling when changing residency. Section 6204(b) provides:

A person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct

1 CMC 6204(b). This section means a person cannot change the precinct in which he or she votes merely by purchasing or leasing a house or apartment—a "fixed habitation"—in that precinct and claiming that he or she now resides at the address. Rather, a person does not gain residency in an election precinct unless he or she currently intends that he or she will permanently "dwell," *e.g.*, live at or reside, at that "fixed habitation."

*c. Separate Residence from Family*

The third subsection of Section 6204 is a bit curious. Section 6204(c) provides:

If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence; but any person having a family, who established the person's dwelling place other than with the person's

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("Since the language at issue in 1 CMC § 3308—the statute governing disqualification and recusal of judges—is nearly identical to that in 28 U.S.C. § 455, we look to federal case law for guidance.").

<sup>4</sup> Most State laws on voter residency and domicile equate the two concepts. See David J. Canupp, Note, *College Student Voting: A New Prescription for an Old Ailment*, 56 Syracuse L. Rev. 145, 151 (2005) ("state election laws uniformly equate 'residence' to 'domicile.'") (citing statutes). This is because a person can only have one residence for voting purposes, just as a person can only have one domicile. *Id.*

family, with the intention of remaining there, shall be considered a resident where the person has established such dwelling place

1 CMC § 6204(c). This provision means that a person who has a family does not automatically reside with his or her family if he or she has a separate dwelling place, away from his or her family. This subsection appears to take into account situations in which spouses are separated.

*d. Intent and Physical Presence Required to Establish Residency*

Section 6204(d) requires that a person be both physically present *and* possess the intent to establish a place as a new residence before he or she can legally claim a new residence. Section 6204(d) provides:

The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish such place as the person's residence.

This means that both (1) intention to acquire a new residence and (2) physical presence at the place where residence is to be established is required before gaining residency under the NMI Election Law. This prevents a tourist from claiming residence, as he or she may be physically present in the Commonwealth, but lack the concurrent intent to establish a residence.

*e. Government Service and Studying Outside of the Commonwealth*

Subsection 6204(e) provides that absence from the Commonwealth for certain specified reasons does not automatically cause a person to lose their residency. Subsection 6204(e) provides:

A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or this Commonwealth, or while a student of an institution of learning.

This provision ensures that persons who are out of the Commonwealth due to military, government, or educational purposes do not lose their residency. The most significant question with regard to Section 6204(e) is whether the enumerated list is exclusive or if it should be read in conjunction with 1 CMC § 6003(r), which contains a much larger list. Section 6003(r) provides:

[A] person who is temporarily out of the Commonwealth or the election district for reasons of business, education, government representation, military service, medical referral, medical reasons, natural disaster or environmental conditions, or employment by the Commonwealth, even for an extended period, shall be considered a resident of the Commonwealth and the election district if during that period, he maintains a domicile in the Commonwealth and election district.

Section 6003(r) adds business, medical reasons, medical referral, natural disaster or environmental reasons as grounds for absence from the Commonwealth that will not compromise residency. Importantly, no Commonwealth court has considered the interplay between Sections 6003(r) and

6204(e) in considerable depth, even though *Rebuenog* treated absence from Anatahan due to providing medical care for a family member before the May 2003 eruption as a reason against finding that the plaintiff had lost her residency in the Northern Islands. 2010 MP 1 ¶¶ 29–31. As a result, the list or reasons in Section 6003(r) arguably prevails so long as the person simultaneously maintains domicile. However, strictly construing Section 6204(e) may lead a court to hold that the additional grounds set forth in Section 6003(r) are not valid reasons for absence from the Commonwealth. Only a Commonwealth Supreme Court case construing Sections 6003(r) and 6204(e) will be able to clarify this uncertainty.

*f. Special Rules on Establishing Residency for Members of the United States Armed Forces*

Subsection 6204(f) deals with the inverse situation as to members of the military. Section 6204(f) provides:

No member of the armed forces of the United States, the member's spouse or the member's dependent is a resident of this Commonwealth solely by reason of being stationed in the Commonwealth.

Being stationed in the Commonwealth, without more, will not be enough to establish residency. Of course a member of the armed forces stationed in the Commonwealth could take additional steps that would entitle him or her and his or her spouse to Commonwealth residency.

*g. Effect of Registering to Vote in Another Jurisdiction*

Subsection 6204(g) deals with the loss of residency as a result of registering to vote in another jurisdiction. Section 6204(g) provides:

A person loses his residence in this Commonwealth if the person registers to vote in another state or area under the United States or other jurisdiction.

This is a hard and fast rule without any intent requirement. If a person registers to vote in another State or territory,<sup>5</sup> he or she loses his or her residency for voting purposes, and must reestablish residency, including by physically residing in the Commonwealth for the requisite period. This is the case with maintaining voter registration in many States. *See Dupree v. Hiraga*, 219 P.3d 1084, 1105 (Haw. 2009) (individual lost his residency on the island of Lānaʻi by registering to vote in Lahaina); *Klumker v. Van Allred*, 811 P.2d 75, 78–79 (N.M. 1991); *Kauzlarich v. Bd. of Trs.*, 278 P.2d 888, 891 (Ariz. 1955); *see also Del Rio Indep. Sch. Dist. v. Aldrete*, 398 S.W.2d 597, 603 (Tex. Civ. App. 1966) (where a person votes is evidence of whether that person's actions corroborate his stated intention to change his residence for voting purposes).

Importantly, persons may inadvertently register to vote in another jurisdiction as a result of some other administrative application. Many States include the option to register to vote as part of

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<sup>5</sup> This does not pertain to registration under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA").

gaining a driver's license either as an opt-in or opt-out portion of the driver's license application. Commonwealth residents have lost their Commonwealth residency as a result of failing to carefully read State driver's license applications. Again, subjective intent in registering to vote is irrelevant; the only question is whether or not the persons registered to vote in another jurisdiction. As with any legal document, it is vitally important to carefully read the language in driver's license applications. Voters who have failed to do so, and who have registered to vote in another jurisdiction as a result, can have their voter eligibility challenged by the Election Commission's Executive Director or by other registered voters, according to the procedures explained below.

### 3. Registering to Vote

A person registers to vote either physically or through mail. The registration process is governed by the NMI Election Law and the Election Commission's regulations, NMIAC §§ 30-10-201 to 30-10-240. First, a person must be a resident of the Commonwealth for 120 days and must register 60 days before the election. 1 CMC §§ 6201(c), 6205(a). A person must sign an affidavit under oath and subject to the penalty of perjury.<sup>6</sup> 1 CMC § 6205(c). The following rules apply:

1. A person may only register to vote in a precinct in which he or she is a resident. For this purpose: "A person has a residence in, or is a resident of, the election district where that person is factually living and has an abode." 1 CMC § 6205(b)(1).
2. "No person may vote in any election or be listed in any general register who fails to register according to the requirements of this part." 1 CMC § 6205(b)(2).
3. Persons who are domiciled in the Commonwealth, but are physically located outside the Commonwealth are entitled to vote under certain circumstances:

Persons who are domiciled in the Commonwealth as provided in 1 CMC §§ 6202–6204, but who are temporarily out of the Commonwealth for any reason such as business, employment, service in the Armed Forces, or Merchant Marines of the United States, education, training, or medical treatment are considered residents for purposes of this part.

1 CMC § 6205(b)(3). Finally, a person who is changing election districts must re-register. 1 CMC § 6205(e). While the person cannot re-register during the 60 days before the election due to a change in residence, such a change in residence during that period will not disqualify the voter. 1 CMC § 6205(e). A voter is also required to re-register if he or she has changed his or her biographical information, such as through name change, or if he or she has been removed from the voter rolls as discussed in Section III.D. below.

A person physically registering to vote must do so before a duly authorized official. The regulations provide:

The primary method of voter registration shall be in person before a duly authorized

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<sup>6</sup> See *infra* Section III.E.

registration clerk, a Commission staff person, or a Commission member. Any qualified and eligible voter may register at the Commission office in Saipan, at their residence, or other place that the Commission allows for the registration of voters.

NMIAC § 30-10-201. The Election Commission is required to authorize at least one registration clerk on Rota and Tinian. 1 CMC § 6205(c). To complete the registration affidavit, an individual must fill out all of the information required by law. NMIAC § 30-10-205. The information required by law is:

- (1) Full legal name;
- (2) Last four digits of the individual's social security number;
- (3) Date and place of birth;
- (4) Residence, including mailing address;
- (5) That the residence stated in the affidavit is not simply because of the person's presence in the Commonwealth but that the residence was acquired with the intent to make the Northern Mariana Islands the person's legal residence with all the accompanying obligations therein;
- (6) That the person is a citizen of the United States;
- (7) Any other information as may be required by the Commission;
- (8) That the person meets the requirements of the Commonwealth Constitution and this part.

1 CMC § 6205(c)(1)–(8). Importantly, because the Election Commission can require additional information, failure to fill out any item of the registration affidavit means that the affidavit cannot be processed. While such affidavit will not be refused, the individual will be informed that the registration cannot be accomplished until all information is completed.

Any person who is residing outside the Commonwealth but is still a resident and domiciliary of the Commonwealth may register by mail. Such persons must fulfill the additional requirement of submitting a picture identification. 1 CMC § 6205(c). Importantly, failure to include the required picture identification will prohibit the Election Commission from processing the registration.

#### **4. Challenging Registration Affidavits**

Voter registration affidavits can be challenged, but the person filling out the challenged registration affidavit must be allowed to register, as “[a] registration clerk shall not refuse to register a person seeking to register to vote under any circumstances.” NMIAC § 30-10-235(a). If the registration clerk believes that the person is not qualified to vote, he or she informs the Executive Director of the reasons for his or her belief. 1 CMC § 6205(d); NMIAC § 30-10-235(b). If the Executive Director decides to challenge the registrant, then a hearing on the challenge must be held within 30 days. NMIAC § 30-10-240(b). The hearings are informal in nature, and need not be publically noticed, but the challenged registrant must be given notice of the hearing and an opportunity to be heard and submit evidence. 1 CMC § 6205(d); NMIAC § 30-10-240(d). The Election Commission can only deny the challenged registrant the right to vote if three-fourths of the Election Commission members present vote in favor of denial. NMIAC § 30-10-240(e). The decision of the Election Commission is “final agency action” and subject to judicial review under the

Administrative Procedures Act. Importantly, this is only the initial means of challenging a voter's eligibility. As discussed below, the Executive Director can transfer voters to the correct district and effect name changes, 1 CMC § 6207, the Election Commission can remove voters from the register under certain circumstances, 1 CMC § 6206, and individual voters can challenge the right of a person to remain registered in any district, 1 CMC § 6215.

## **B. PROPERLY MAINTAINING COMMONWEALTH DOMICILE AND RESIDENCY WHILE LIVING OUTSIDE OF THE COMMONWEALTH.**

### **1. Maintaining Domicile and Residency Generally**

A person who is physically present outside the Commonwealth can maintain voter eligibility under certain circumstances. Sections 6003(r), 6204(e), and 6205(b)(3) explicitly state that a person who is "temporarily" absent from the Commonwealth can properly register and remain registered if he or she remains domiciled in the Commonwealth. Section 6003(r) provides that a person can be "temporarily" outside the Commonwealth "even for an extended period of time." 1 CMC § 6003(r); *see Rebuenog*, 2010 MP 1 ¶ 28 ("we find that extended absences do not automatically change one's domicile."). Each of these sections lists different grounds for absence from the Commonwealth or an election district, which, in total, include: business, education, government representation, military service, medical referral, medical treatment, natural disaster or environmental conditions, or employment by the Commonwealth. 1 CMC §§ 6003(r), 6204(e), 6205(b)(2).

In light of the multiple permissible grounds for absence in terms of residency, as well as the case law on domicile, it is difficult to draw bright line rules. The fact that the definition of residency includes an intent requirement means that almost every determination must be done on a case-by-case basis. The U.S. Supreme Court has recognized that even the length of time a person has been absent from a jurisdiction is not definitive. *Dist. of Columbia v. Murphy*, 314 U.S. 441, 454–55 (1941). Rather, the Court explained: "the question of domicile is a difficult one of fact to be settled only by a realistic and conscientious review of the many relevant (and frequently conflicting) indicia of where a man's home<sup>10</sup> is and according to the established modes of proof." *Id.* at 455. Other federal courts have explained that "domicile includes a subjective as well as an objective component, although the subjective component may be established by objective factors." *Gaudin v. Remis*, 379 F.3d 631, 637 (9th Cir. 2004). The court in *Lew v. Moss* explained:

The courts have held that the determination of an individual's domicile involves a number of factors (no single factor controlling), including: current residence, voting registration and voting practices, location of personal and real property, location of brokerage and bank accounts, location of spouse and family, membership in unions and other organizations, place of employment or business, driver's license and automobile registration, and payment of taxes.

797 F.2d 747, 750 (9th Cir. 1986). As the foregoing case law illustrates, determining where a person is domiciled is a fact-intensive process that examines the subjective intent of the individual under consideration.

## 2. Specific Rules Regarding Loss of Residency

There are two bright-line rules that will lead to a loss of residency. First, registering to vote in another jurisdiction will cause an automatic loss of Commonwealth residency. The NMI Election Law clearly states: "A person loses his residence in this Commonwealth if the person registers to vote in another state or area under the United States or other jurisdiction." 1 CMC § 6204(g). A person can only vote in one State or territory,<sup>7</sup> and therefore can only have one voting residence. See David J. Canupp, Note, *College Student Voting: A New Prescription for an Old Ailment*, 56 Syracuse L. Rev. 145, 151 (2005). The act of registering to vote signals the person's intent to change their voting residence. *Dupree*, 219 P.3d at 1105-06.

Second, a person risks losing their residency by failing to maintain a "fixed habitation" somewhere in the Commonwealth. The definition of residence provides: "'Residence' means that place in which a person's *habitation is fixed*, and to which, whenever the person is absent, the person has the intention to return." 1 CMC § 6003(r); see also 1 CMC § 6204(a). While a person may be absent from the Commonwealth for certain reasons without losing his or her residency, reading Sections 6003(r) and 6204 as a whole strongly suggests that a person must be able to identify some fixed habitation within the Commonwealth to maintain their residency.

When one of these bright-line rules is not present, the Election Commission or a court would consider all of the circumstances of the individual case. For example, a person who left the Commonwealth for work, but who has not returned for twenty years, has no property in the Commonwealth, and does not maintain contacts with anyone in the Commonwealth most likely is not a resident or domiciliary of the Commonwealth. However, a person who has been absent from the Commonwealth for three years while at college, who returns to the Commonwealth on school breaks, owns and maintains a car in the Commonwealth, and keeps in touch with family and friends in the Commonwealth is likely a resident and domiciliary of the Commonwealth.

### C. ABSENTEE VOTING

Qualified registered voters who are unable to make it to their designated polling place on election day are entitled to vote early<sup>8</sup> or submit absentee ballots to cast their vote. There are two broad classes of absentee voters: (1) sick and disabled voters, and (2) voters who are absent from the district in which a person is registered on election day. Certain persons who will be absent from the senatorial district in which they are registered are also entitled to vote before election day. Absentee and early voting are designed to maximize voter turnout by ensuring that qualified voters are not prevented from voting due to circumstances that are largely beyond their control. However, as absentee and early voting creates a significant opportunity for voter fraud, the Commonwealth

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<sup>7</sup> But see *supra* note 5.

<sup>8</sup> Early voting is technically a form of absentee voting, as it involves being unable to go to the polls on election day. See *Eubanks v. Hale*, 752 So. 2d 1113, 1126-27 (Ala. 1999) (distinguishing between "regular" absentee voting and "on-site" voting absentee); *Forbes v. Bell*, 816 S.W.2d 716 (Tenn. 1991). However, the NMI Election Law treats early voting and absentee voting differently in terms of distinct eligibility and voting procedures.

requires the Election Commission to implement certain safeguards, such as publically publishing a list of all absentee ballot requests for public scrutiny.

## 1. There Is No Absolute Right to Vote Early or Absentee.

Before examining the specific procedures used in absentee and early voting, it is important to note that there is no absolute right to vote absentee or to vote before election day. While the Supreme Court has held that voting is a fundamental individual right, *Charfauros v. Bd. of Elections*, 1998 MP 16 ¶ 39, 5 NMI 188, 195, it has never considered whether there is a constitutional right to vote absentee or to vote before election day. In the absence of written law on the subject the Supreme Court would look to the common law as generally understood and applied in the United States.<sup>9</sup> Most State courts have held that there is no right to cast an absentee ballot. *Bell v. Gannaway*, 227 N.W.2d 797, 802 (Minn. 1975) (“The opportunity of an absentee voter to cast his vote at a public election by mail has the characteristics of a privilege rather than of a right. Since the privilege of absentee voting is granted by the legislature, the legislature may mandate the conditions and procedures for such voting.”); see also *Matter of Protest Election Returns & Absentee Ballots in Nov. 4, 1997 Election for City of Miami, Fla.*, 707 So. 2d 1170, 1173 (Fla. Dist. Ct. App. 1998) (citing *Anderson v. Canvassing and Election Bd. of Gadsden Cty.*, 399 So. 2d 1021 (Fla. Dist. Ct. App. 1981)); *Hallahan v. Mittlebeeler*, 373 S.W.2d 726 (Ky. 1963); *Adkins v. Huckabay*, 755 So. 2d 206 (La. 2000). This is because the legislature must balance the compelling interests of maximizing the turnout of qualified voters against the “preservation of the enfranchisement of qualified voters and of the secrecy of the ballot, the prevention of fraud, and the achievement of a reasonably prompt determination of the result of the election.” *Bell*, 277 N.W.2d at 802. The recognition that there is no right to cast an absentee ballot is critical to understanding the procedures that guarantee transparency of the absentee voter process to members of the public.

## 2. Classes of Absentee Voters

### a. Sick & Disabled Voters

Persons who are sick or disabled and as a result unable to go to the designated polling place on election day are entitled to an absentee ballot. The Commonwealth Code provides:

If a registered voter at any election is confined to a home or hospital due to illness or physical disability and unable to go to the polls, that voter nevertheless may vote in accordance with this part and the rules and regulations promulgated by the Commission. The person or member of his or her immediate family or guardian may make a written request, on a form furnished by the Commission, for an absentee ballot by 12:00 o'clock noon on election day.

<sup>9</sup> When there is no written law on a subject in the Commonwealth, the courts look to “the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States.” 7 CMC § 3401. As there is no restatement of the law on elections, the applicable rule is the majority rule applied in the several States.

1 CMC § 6210. This procedure facilitates infirm or disabled citizens' participation in the Commonwealth's democratic process.

Importantly, however, where a court has ruled that a person's disability has rendered him or her "of unsound mind," he or she is not eligible to vote. The Constitution provides:

A person is eligible to vote who, on the date of the election, is eighteen years of age or older, is domiciled in the Commonwealth, is a resident of the Commonwealth and has resided in the Commonwealth for a period of time provided by law, is not serving a sentence for a felony, *has not been found by a court to be of unsound mind*, and is either a citizen or national of the United States. The legislature may require that persons eligible to vote be citizens of the United States.

NMI CONST. art. VII, § 1 (emphasis added); *see also* 1 CMC § 6201(a). Many State constitutions deny the right to vote to persons who have been adjudicated to be "of unsound mind." *See* ALASKA CONST. art. 5, § 2; MONT. CONST. art. 4, § 2; TEX. CONST. art. 6, § 1. Importantly, everyone is presumed to be of sound mind unless a court finds otherwise. *In re Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hosp.*, 750 A.2d 790, 791 (N.J. Super. Ct. App. Div. 2000); 1992 Alaska Op. Att'y Gen. (Inf.) 123 (1992). While the term "unsound mind" is not defined by the Commonwealth Constitution or the NMI Election Law, State courts considering the issue have held that a person is "of unsound mind" where a court has declared him or her of being "incompetent to manage himself or his estate." *Boyd v. Bd. of Registrars of Voters of Belchertown*, 334 N.E.2d 629, 632 (Mass. 1975) (mere residence at an institution for "mentally retarded persons" was not sufficient to disqualify persons from registering to vote). Furthermore, the individual right to vote is protected by the requirement that a court must find that a person is of unsound mind before he or she loses his or her right to vote. *See* 1992 Alaska Op. Att'y Gen. (Inf.) 123 (1992). Finally, most State courts hold that involuntary commitment falls short of a judicial finding that a person is "of unsound mind." *See, e.g., In re Absentee Ballots*, 750 A.2d at 791. Rather, most States hold that only the appointment of a guardian for a person who is mentally unfit to manage his or her own affairs qualifies as a judicial finding that a person is of unsound mind. *Id.*; *Boyd*, 334 N.E.2d at 632.

*b. Persons Absent from District on Election Day*

The second broad class entitled to an absentee ballot consists of persons who are absent from the district in which they are registered on election day. The Commonwealth Code provides, in relevant part:

Any registered voter of the Commonwealth may . . . vote at any election by absentee ballot if he or she feels it likely he or she will be prevented from personally going to the polls in the senatorial district in which he or she is registered to vote and voting on election day because of:

- (1) The conduct of his or her business;
- (2) The necessity of travel;
- (3) Attendance at an institution of learning;

- (4) Serving in the United States Armed Forces or the Merchant Marine;
- (5) Employment;
- (6) Training;
- (7) Receiving treatment at a medical institution;
- (8) Government representation; or
- (9) Accompanying a member of the household who is engaged in an activity listed above.

1 CMC § 6211(a). This list is exhaustive and would most likely<sup>10</sup> be strictly construed by the Supreme Court. *Seman*, 3 CR at 155. Even if strictly construed, it is important to note that actual absence from the district on election day is not required, only the voter's belief "he or she will be prevented from personally going to the polls in the senatorial district in which he or she is registered to vote and voting on election day." 1 CMC § 6211(a); see *Eubanks v. Hale*, 752 So. 2d 1113, 1149 (Ala. 1999) (dispositive question is whether voter had a "good faith belief that he or she would be outside the county on the day of the election").

In order to receive a ballot, a prospective absentee voter must make an application for an absentee ballot on the form provided by the Election Commission, and must include "the applicant's name, last four digits of their social security number, the applicant's election district, the reason for requesting an absentee ballot, any other information required by the Commission, and the address to which the applicant wishes the ballot forwarded if the applicant is not picking up the ballot in person." 1 CMC § 6211(b). The Election Commission examines absentee ballot applications and checks to ensure that, for example, the prospective absentee voter has not registered to vote in another jurisdiction.

If the Election Commission determines that the prospective absentee voter is qualified to vote, the Commission provides the person with an official ballot, a ballot envelope, an affidavit created by the Commission, and a reply envelope. 1 CMC § 6212(a). The prospective absentee voter fills out the ballot, places the ballot in the ballot envelope and securely seals it, executes the affidavit,

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<sup>10</sup> The Commonwealth Supreme Court has never considered the precise construction to be given to absentee voting statutes. Many courts have held that absentee voter statutes, like other election statutes, must be strictly construed and strictly complied with. *United States v. Brown*, 561 F.3d 420 (5th Cir. 2009); *In re Contest of General Election Held on November 4, 2008, for Purpose of Electing a U.S. Senator from State of Minn.*, 767 N.W.2d 453 (Minn. 2009); *Rogers v. Holder*, 636 So. 2d 645 (Miss. 1994). There is significant authority, however, for the proposition that absentee ballot laws should be liberally construed (*i.e.*, requiring substantial compliance rather than strict compliance) to facilitate their purpose of maximizing voter turnout. *Wells v. Ellis*, 551 So. 2d 382 (Ala. 1989); *Gooch v. Hendrix*, 851 P.2d 1321 (Cal. 1993); *Knight v. State Bd. of Canvassers*, 374 S.E.2d 685 (S.C. 1988). Importantly, there is "written law" on the subject for the purposes of 1 CMC § 3401, namely *Seman v. Aldan*, 3 CR 152 ((DNMI App. Div. 1987). See *Saipan Achugao Resort Members Assoc. v. Yoon*, 2011 MP 12 ¶ 19 ("[W]ritten law includes the Commonwealth Constitution and Commonwealth statutes, along with case law, court rules, legislative rules and administrative rules.").

Whether the absentee voting provisions are strictly or liberally construed is central to properly interpreting absentee voter qualifications. For example, strictly construing the term "[t]he conduct of his or her business" would mean that the absence must be related to the absentee voter's employment or the ownership of a commercial enterprise. Liberal construction of the same term would allow absentee or early voting for a wide variety of reasons. See *Forrest v. Baker*, 698 S.W.2d 497 (Ark. 1985) (finding the following justifications to be acceptable: "unable to get to poll," "sickness in the family," "work," "will not be able to get to the poll before 6:30," "[m]y husband doesn't get home from work in time").

places the ballot envelope and the affidavit inside the reply envelope, and finally mails the reply envelope via U.S. First Class Mail or courier service at the voter's personal expense. 1 CMC § 6212(a). The Election Commission's Executive Director coordinates with the Public Auditor on the procedures used to mail absentee ballots to ensure that the mailed ballots are unmarked and securely sealed. 1 CMC § 6212. The specific procedures used to count absentee ballots is discussed in Section III.C.4. below.

### **3. Early Voting**

Certain persons are entitled to cast their vote before election day. The NMI Election Law provides:

Any registered voter of the Commonwealth may vote early at any election if he/she will be prevented from personally going to the polls and voting on election day because of:

- (1) The conduct of his/her business;
- (2) The necessity of travel;
- (3) Serving in the United States Armed Forces or the Merchant Marine;
- (4) Receiving treatment at a medical institution;
- (5) Government representation; or
- (6) Accompanying a member of the household who is engaged in an activity listed above.

1 CMC § 6217. As with absentee voting, this list is exhaustive and would most likely be strictly construed by the Supreme Court.<sup>11</sup>

A qualified early voter casts his or her ballot by going to the early polling place and requesting a ballot. When the ballot is requested, the potential voter must either bring a copy of his or her photo identification or sign an affidavit under the penalty of perjury that includes his or her name and address. 1 CMC § 6218(b). The person must fill out the ballot on the premises of the early voting polling site in the same manner as if the early voting was casting his or her ballot on election day. 1 CMC § 6220(a). During the early voting period, the Office of the Public Auditor keeps the keys to the ballot box used at each polling place, and the Department of Public Safety must station officers at the polling place at all times that early voting is open to the public. 1 CMC § 6219.

### **4. Procedures Designed to Combat Voter Fraud in Absentee Voting and Early Voting.**

Because of the risk of fraud inherent in early and absentee voting, the NMI Election Law requires the Election Commission to employ procedures to prevent fraud and to ensure transparency in the early and absentee voting process.

For absentee ballots, fraud prevention begins with the Election Commission auditing absentee ballot requests to ensure that the persons requesting a ballot have not registered to vote anywhere else in the United States. Fraud prevention continues with the Executive Director coordinating

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<sup>11</sup> See *supra* note 10.

with the Public Auditor to employ procedures that ensure that the unmarked, sealed ballots are mailed to absentee voters. 1 CMC § 6212(b). When the Election Commission receives ballots at its Post Office Box, it employs a procedure to ensure that only eligible ballots are collected and counted:

- (1) No less than two persons, one of whom shall be designated by the Commission Chairperson and the other of whom shall be designated by the Executive Director, shall go to the designated post office in each senatorial district to collect absentee ballots on the day they are to be counted:
  - (i) once in the morning prior to 11:00 a.m. and once prior to the closure of the post office on the day of the election; and
  - (ii) prior to the closure of the post office on the fourteenth day after a runoff election

1 CMC § 6213(a)(1). The Election Commission then notes the time and date that appears on the reply envelope. 1 CMC § 6213(b). The ballots remain sealed, but the reply envelopes are then opened and Election Commission staff: (1) compare the signature on the absentee ballot affidavit with the signature on the absentee ballot request form and voter registration affidavit to ensure they all appear to be by the same person, (2) ensure that the absentee ballot affidavit is properly completed, and (3) ensure that the envelope is properly sealed and “does not appear to have been tampered with.” 1 CMC § 6213(c). Absentee ballots may be rejected if one of the following deficiencies is found:

- (1) After comparing the signature of the voter on the application for absentee ballot with that on the affidavit and registration, it appears the signatures were not made by the same person; or (2)
- (2) The affidavit is not properly completed; or
- (3) The return envelope is not sealed; or
- (4) The seal appears to have been tampered with; or
- (5) The Commission has already received an absentee ballot from that person; or
- (6) The absentee voter has died or has otherwise become ineligible to vote on the election day; or
- (7) The ballot has been received after the deadline; or
- (8) The voter has not complied with 1 CMC § 6212<sup>12</sup> of this part.

1 CMC § 6213(d). If any discrepancy is found, the return envelope is marked “rejected” along with an explanation of the reason or reasons for rejection. 1 CMC § 6213(e). A return envelope containing an absentee ballot is only rejected if five Election Commission members sign a form verifying that the discrepancy. 1 CMC § 6213(e). Rejected ballots are kept in a secure place by the Election Commission for six months. 1 CMC § 6213(e). If no discrepancy is found, and five Election Commission members add their initials to verify that no discrepancy exists, then the return envelope is marked “OK.” 1 CMC § 6213(h). All return envelopes marked “OK” together with absentee voter application are sent to the Election Commissions accounting and tabulation

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<sup>12</sup> The Commonwealth Code section detailing the procedure for marking and mailing absentee ballots.

committee on the day of the election, and are counted together with all other ballots that have been cast normally or during early voting. 1 CMC § 6213(h).

As early voting is conducted in much the same manner as voting on election day, most of the fraud prevention tactics are identical to those used on election day. This includes the ability of voters lawfully at the polling place during early voting to challenge the qualifications of a voter. *Compare* 1 CMC § 6215(b) *with* 1 CMC § 6220(a). There are some additional protections, however. As noted above, the Office of the Public Auditor keeps the only set keys to the ballot boxes used during early voting. 1 CMC § 6219(a). This is a greater degree of involvement by the Office of the Public Auditor than is required by statute on election day. Furthermore, the Department of Public Safety is required to station officers at all early voting locations. 1 CMC § 6219(b). The Department of Public Safety is not required by statute to be present at polling places on election day.

Importantly, the Election Commission has a duty to keep a detailed list of persons who have requested absentee ballots and to make the information available at one government building in each senatorial district and on a freely accessible website. 1 CMC § 6209(a). Section 6209(a) provides, in pertinent part:

The Commission shall compile and keep immediately current a list of persons requesting an absentee ballot pursuant to 1 CMC §§ 6210 and 6211, including the date such request was made; shall make and keep immediately current a list of persons to whom an absentee ballot was personally delivered or mailed, including the dates the ballots were delivered or mailed; and shall make each list immediately available for public inspection:

- (1) At one government building in each senatorial district which maintains regular business hours; and
- (2) On a website accessible without requiring user registration or the use of a password.

1 CMC § 6219(a). The Election Commission is required to prepare a duplicate list for each election district, and must preserve such lists for one year. 1 CMC § 6213(g). Maintaining these lists ensures transparency in the absentee voting process, allowing members of the public to consult the list and take appropriate action when they believe that a person who has requested an absentee ballot does not meet the voter eligibility requirements. A list is also made for persons voting early, but there is no requirement that the Election Commission make such a list publically available.<sup>13</sup> Eligible voters can use this information to challenge the qualifications of prospective absentee voters under 1 CMC § 6215 or to request that the Election Commission take appropriate action.

#### **D. CHALLENGES TO VOTER ELIGIBILITY**

The NMI Election Law includes multiple avenues for the Executive Director, the Election

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<sup>13</sup> This is one area that the law could be amended to facilitate more complete public oversight of early, *i.e.*, absentee, voting.

Commission, and qualified voters to challenge or otherwise address ineligible voters. These include ranging from transferring a registered voter to the proper district to removing the voter from the register entirely. Section 6206 involves removing voters from the register, Section 6207 involves transfers and name changes, and Section 6215 involves registered voters' challenges to another registered voter. Each of these sections will be addressed in turn.

Pursuant to 1 CMC § 6206, the Election Commission is required to remove the names from the register under specified circumstances. The Election Commission must remove a voter's name from the register when:

1. The person registered requests for his or her name to be removed. 1 CMC § 6206(a)(1).
2. The insanity of a person is established by a court. 1 CMC § 6206(a)(2).
3. The Superior Court certifies that the voter is serving a sentence for a felony. 1 CMC § 6206(a)(3).
4. The person's death certificate is submitted to the Election Commission. 1 CMC § 6206(a)(4).
5. When the Election Commission finds, after notice and opportunity to be heard, that the person registered in an election, senatorial district, or municipality in which he or she is not a resident. 1 CMC § 6206(a)(5). This is the only situation in which a pre-deprivation hearing is required by statute.
6. The person is confined to a mental institution. 1 CMC § 6206(a)(6).<sup>14</sup>
7. When the person has not voted in the past two general elections. 1 CMC § 6206(7).
8. When the person registered to vote in another jurisdiction. 1 CMC § 6206(8).

Importantly, although other government institutions, such as the Commonwealth Healthcare Corporation and the Superior Court, are required to report disqualifying events to the Election Commission, this is not always the case in practice. Furthermore, other U.S. jurisdictions are not required to report disqualifying events to the Election Commission. If a member of the public knows or suspects that the Election Commission is required to remove a person's name from the register, he or she can report the pertinent facts to the Election Commission or file a challenge to that person's right to remain registered pursuant to 1 CMC § 6215.

Section 6207 empowers the Executive Director to change a voter's registration information. Most often this involves name changes or the transfer of a voter to a different district after the voter moves. When the Executive Director believes that a voter's registration information should be changed, the Executive Director mails notice to the voter that explains the ground for the change or transfer and a reply form. 1 CMC § 6207(b). If the person does not reply within 15 days, the change is automatically processed. As with Section 6206, members of the public that believe that a change must be made to a voter's registration should report the pertinent facts to the Election Commission.

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<sup>14</sup> The constitutionality of this provision is dubious. The Constitution only disqualifies a voter after a court has found him or her to be of "unsound mind." NMI CONST. art. VII, § 1. This is not synonymous with being confined in a mental institution. See *In re Absentee Ballots*, 750 A.2d at 791.

Finally, Section 6215 empowers voters to challenge the eligibility of another registered voter. A registered voter can make a challenge either prior to election day or on election day. To make a challenge before election day, the registered voter issuing the challenge must set forth the reasons for the challenge in writing and sign the challenge under the penalty of perjury. 1 CMC § 6215(a). The registered voter making the challenge must then serve the challenge on the Executive Director, who must investigate and rule on the challenge. 1 CMC § 6215(a). If the Executive Director does not rule on the challenge by election day, then the person is given a provisional ballot on election day, which is set aside until the Executive Director rules on the challenge. The Executive Director's ruling is immediately appealable to the Election Commission, and ultimately the Superior Court. 1 CMC § 6215(c), (e). The prevailing party is entitled to attorney's fees and costs. 1 CMC § 6215(f).

On election day, a voter "rightfully in the polling place" may challenge the qualifications of anyone who comes to the polling place to cast a ballot. 1 CMC § 6215(b). Election day challenges are limited to the following grounds: (1) "that the voter is not the person the voter alleges to be," (2) "that the voter is not entitled to vote in that election district," or (3) "that the voter does not meet the CNMI residency and domiciliary requirements." 1 CMC § 6215(b). A voter who has been challenged is entitled to make any necessary correction. 1 CMC § 6215(b). If no correction is made, an Election Commission staff member must immediately consider and decide the challenge. 1 CMC § 6215(b). Appeal from election day challenges must be made immediately in the form of a written notice of appeal, which must be physically delivered to a staff member. 1 CMC § 6215(d). If appeal is taken, the challenged voter is allowed to vote and the ballot is placed in a sealed envelope until the challenge is appeal is decided. 1 CMC § 6215(c). The prevailing party is entitled to attorney's fees and costs. 1 CMC § 6215(f).

#### **E. CIVIL AND CRIMINAL PENALTIES FOR VIOLATING ELECTION LAW**

There are significant civil and criminal penalties for violating the NMI Election Law. There are both federal and Commonwealth criminal provisions related to violation of election law. In particular, The Commonwealth Code punishes the creation of counterfeit ballots, unlawfully registering to vote, and inducing or causing another person to unlawfully register. 1 CMC §§ 6701, 6704. A person who signs a false affidavit or gives a false oath can also be prosecuted for perjury. 6 CMC § 3306.

Federal election crimes cover a broad range of activities. Persons that conspire to deprive a person of the right to vote can be charged with conspiring "to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States." 18 U.S.C. § 241. When public officials are involved, their actions can be prosecuted under 18 U.S.C. § 242. Additionally, voting in more than once, fraudulent registrations, and voting by noncitizens are all punishable under federal law. 18 U.S.C. § 611; 52 U.S.C. §§ 10307(e), 20511(2). A more detailed review of federal criminal law is beyond the scope of this Opinion, but the Department of Justice's *Federal Prosecution of Election Offenses* is an excellent recourse for those who wish to learn more about the criminal aspects of federal election law. *See* U.S. DEP'T OF JUSTICE, *FEDERAL PROSECUTION OF ELECTION OFFENSES* (Richard C. Pilger ed., 8th ed. 2017), <https://www.justice.gov/criminal/file/1029066/download>.

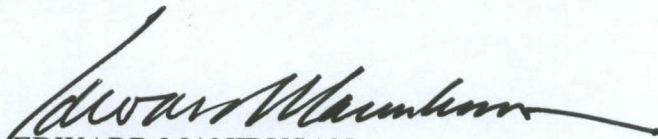
#### IV. CONCLUSION

To be eligible to vote, a person must be both a resident and domiciliary of the Commonwealth. Domicile is concerned with where a person subjectively considers home, while residency is more concerned with physical presence. Under certain circumstances, such as attending school, a person does not automatically lose his Commonwealth residency and domicile by leaving the Commonwealth even for an extended period of time. If a person outside the Commonwealth is qualified to vote, then he or she may register by mail.

Absentee voting is a process that allows an eligible registered voter to cast his or her ballot in Commonwealth elections when he or she will be physically absent from the district in which he or she is registered on election day, or when he or she is too ill or infirm to travel to the relevant polling place on election day. Absentee voting increases voter turnout by allowing qualified persons to vote even when they are unable to reach the polling place. However, absentee voting is prone to abuse and election fraud. Therefore, the NMI Election Law implements many important safeguards that prevent fraud and allow public oversight of the absentee voting process.

The Election Commission is empowered to take corrective action to maintain the integrity of the voting register. First, the Election Commission is required to remove a voter's name from the registry upon the occurrence of specific qualifying events. Second, the Executive Director can make necessary changes to the registry to update biographical information or transfer a voter's name to a new election district after a change of residence. Finally, the Commission must hear and decide challenges to a person's registration brought by registered voters.

Finally, federal and Commonwealth law severely punish violations of election law. This includes filing false registration affidavits or aiding and abetting false registrations. Federal criminal law covers a wide array of offenses, including paying for votes, voting in two different jurisdictions in the same election, and voting by noncitizens.



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