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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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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,¹ 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

¹ 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”² 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 § 6204,³ it is

² 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.

³ 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.⁴ 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

(“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.”).

⁴ 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,⁵ 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

⁵ 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.⁶ 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

⁶ 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 Rebuénog*, 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 home¹⁰ 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,⁷ 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 early⁸ 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

⁷ But see *supra* note 5.

⁸ 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.⁹ 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.

⁹ 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 likely¹⁰ 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,

¹⁰ 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.¹¹

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

¹¹ 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 § 6212¹² 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

¹² 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.¹³ 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

¹³ 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).¹⁴
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.

¹⁴ 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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