



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Jason S. Miyares  
Attorney General

202 North Ninth Street  
Richmond, Virginia 23219  
804-786-2071  
Fax 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

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The Honorable Kathy J. Byron  
Member, House of Delegates  
Post Office Box 900  
Forest, Virginia 24551

Dear Delegate Byron:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether Virginia law permits a third party to collect mailed absentee ballots from voters in order to then return the ballots to the general registrar via mail or designated drop-off locations.

## Response

It is my opinion that, under § 24.2-707 of the *Code of Virginia*, a mailed absentee ballot may be returned, at the request of the voter, by a third party through the mail or at a drop-off location.

## Applicable Law and Discussion

Virginia law provides several methods by which a qualified voter may cast a ballot in an election conducted in the Commonwealth. In addition to voting in person, either at the polls on election day or at a designated location within 45 days of election day,<sup>1</sup> Virginia voters may cast a “mailed absentee ballot.”<sup>2</sup> To vote via mailed absentee ballot, a voter first must submit an application for such ballot to the local general registrar.<sup>3</sup> “If the application has been properly completed and signed and the applicant is a registered voter of the precinct in which he offers to vote, the general registrar shall . . . send” to the voter an unmarked absentee ballot and other required materials.<sup>4</sup> The voter is then entitled to fill out the mailed

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<sup>1</sup> See VA. CODE ANN. §§ 24.2-643 (Supp. 2023) (providing that, after the polls open on the day of the election, “qualified voter[s] at a precinct shall be permitted to vote”); 24.2-701.1(A) (Supp. 2023) (authorizing in-person absentee voting prior to any election). I note that this Opinion does not address special provisions that may apply to military or overseas voters.

<sup>2</sup> See generally §§ 24.2-700 to -713 (Supp. 2023).

<sup>3</sup> See § 24.2-701 (application for absentee ballot).

<sup>4</sup> Section 24.2-706(B). A “mailed absentee ballot” thus is one that is sent to the voter by mail from the general registrar of the voter’s jurisdiction. *Id.* See also §§ 24.2-706(C) & (D); 24.2-707; 24.2-701(C)(3).

absentee ballot with his choice of candidates.<sup>5</sup> The voter is then instructed to “(a) enclose the [mailed absentee] ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the [voter compliance affirmation] statement printed on the back of the envelope, (d) enclose the ballot envelope and any required assistance form . . . , and (e) seal that envelope.”<sup>6</sup>

Code § 24.2-707 governs the return of mailed absentee ballots to the general registrar. Ballots returned outside “the procedures set forth in this section” are void.<sup>7</sup> Prior to 2021, the law expressly directed the voter, after sealing the ballot envelope, to “mail it to the office of the general registrar or deliver it personally to the general registrar.”<sup>8</sup> Current law provides that “[a] mailed absentee ballot shall be returned” in one of three ways: “(i) by mail to the office of the general registrar, (ii) by the voter in person to the general registrar, or (iii) to a drop-off location established pursuant to § 24.2-707.1.”<sup>9</sup> Regardless of which return method is used, the general registrar, upon receipt of every returned mailed absentee ballot, is required to mark the date of receipt in the voter’s record and verify completion of the required voter affirmation statement; all returned mailed absentee ballots are subject to this review prior to being unsealed, scanned, or counted.<sup>10</sup>

You ask whether Virginia law thus permits someone other than the voter to deliver completed mailed absentee ballots to the mail carrier or drop-off location on the voter’s behalf.<sup>11</sup>

“When the language of a statute is unambiguous, we are bound by the plain meaning of that language. Furthermore, we must give effect to the legislature’s intention as expressed by the language used unless a literal interpretation of the language would result in a manifest absurdity.”<sup>12</sup> “[W]here possible, every word of a statute must be given meaning.”<sup>13</sup> In applying the plain language of a statute, “we must give ‘proper grammatical effect . . . to the arrangement of words in a sentence of a statute,’ and we must

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<sup>5</sup> “On receipt of a mailed absentee ballot, the voter shall (i) open the sealed envelope marked ‘ballot within’ and (ii) mark and refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704 [for voters requiring assistance].” Section 24.2-707(A).

<sup>6</sup> *Id.* A voter’s failure to satisfy these requirements will render the ballot void. Section 24.2-707(C).

<sup>7</sup> Section 24.2-707(C); *see* § 24.2-709(A).

<sup>8</sup> *See* 2021 Va. Acts ch. 522 (Spec. Sess. I).

<sup>9</sup> Section 24.2-707(B). Section 24.2-707.1(A) directs that each office of the general registrar and any voter satellite office in operation for an election shall serve as a drop-off location for absentee ballots; in addition, on election day, all polling places in operation also serve as drop-off locations. General registrars have the authority to establish additional drop-off locations within their jurisdiction as they deem necessary. Section 24.2-707.1(A). *See* § 24.2-706(C)(3) (requiring a registrar, upon approval of an application to vote by mailed absentee ballot, to send the qualified voter “[a]n envelope . . . for the return of the ballot to the general registrar by mail or by the applicant in person, or to a drop-off location.”). “Mail” continues to include a commercial delivery service but not “a personal courier service or other individual except as provided by §§ 24.2-703.2 and 24.2-705.” Section 24.2-707(B).

<sup>10</sup> Section 24.2-709.1.

<sup>11</sup> It generally has been understood that “[a]n absentee voter who votes other than in person shall be deemed to have cast his ballot at the moment he personally delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the U.S. Postal Service or other authorized carrier for returning the ballot as required by law.” 1 VA. ADMIN. CODE § 20-60-40.

<sup>12</sup> *Manu v. GEICO Cas. Co.*, 293 Va. 371, 379 (2017) (quoting *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007)).

<sup>13</sup> *McLean Bank v. Nelson*, 232 Va. 420, 427 (1986). Courts “disfavor a construction of statutes that renders any part of the statute useless or superfluous.” *Shoemaker v. Funkhouser*, 299 Va. 471, 487 (2021).



presume that the General Assembly understood basic rules of grammar when drafting the statute[.]”<sup>14</sup> Moreover, when an amended statute is at issue, it is presumed that the General Assembly intended its statutory amendments to effectuate a change in law.<sup>15</sup>

Unlike its previous iteration, which directed “the voter” to “mail . . . or deliver [his ballot] personally” to the registrar, current § 24.2-707 is written in the passive voice, whereby the statute initially refers to ballot returns more broadly and not specifically to any agent *who* is to facilitate the return.<sup>16</sup> Per the terms of the current statute, the execution of none of the return methods, other than in-person delivery, is limited to being performed “by the voter.”<sup>17</sup> The *Code* does not otherwise restrict how a completed ballot is to be transferred from the voter to the mail service or drop-off location for ultimate return to the general registrar.<sup>18</sup> As the Supreme Court of Virginia has observed, when the law intends for a specific action to be taken by a voter personally, such intent can be incorporated with ease.<sup>19</sup> I therefore conclude that there is no general prohibition under Virginia law against the employment of a third party to assist a voter in returning his ballot via mail or drop-off location.<sup>20</sup>

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<sup>14</sup> *Kelso v. Commonwealth*, 57 Va. App. 30, 38 (2010), *aff’d*, 282 Va. 134 (2011) (ellipsis in original) (quoting *Harris v. Commonwealth*, 142 Va. 620, 624 (1925)).

<sup>15</sup> *Hartford Underwriters Ins. Co. v. Allstate Ins. Co.*, \_\_ Va. \_\_, \_\_, 880 S.E.2d 786, 790-91 (Dec. 8, 2022).

<sup>16</sup> “Voice shows whether the subject acts (active voice) or is acted on (passive voice)—that is, whether the subject performs or receives the action of the verb.” *Morris v. Commonwealth*, 77 Va. App. 510, 518 n.3 (2023) (quoting THE CHICAGO MANUAL OF STYLE § 5.115 (16th ed. 2010)).

<sup>17</sup> “[W]hen the General Assembly has used specific language in one instance but omits that language or uses different language when addressing a similar subject elsewhere in the Code, [we] must presume that the difference in the choice of language was intentional.” *Morgan v. Commonwealth*, \_\_ Va. \_\_, \_\_, 881 S.E.2d 795, 799 (Dec. 29, 2022) (quoting *Zinone v. Lee’s Crossing Homeowners Ass’n*, 282 Va. 330, 337 (2011)). In “‘these circumstances, it is evident that the General Assembly ‘knows how’ to include such language in a statute to achieve an intended objective,’ and therefore, omission of such language in another statute ‘represents an unambiguous manifestation of a contrary intention.’” *Id.* (quoting *Brown v. Commonwealth*, 284 Va. 538, 545 (2012)).

<sup>18</sup> *See generally* §§ 24.2-707.1 (provisions related to returns via drop-off location); 24.2-709 (regulating certain aspects of the return of absentee ballots). Section 24.2-707.1(B) directs the Department of Elections to “set standards for the establishment and operation of drop-off locations, including necessary security requirements.” The current standards are silent on the role of third parties in the delivery process. *See* VA. DEP’T OF ELECTIONS, Official Guidance re: Security standards for drop-off locations (revised) (Sept. 9, 2020). Code § 24.2-709(A) contains a limited caveat to this conclusion: it provides that “[a]ny voter who is in line to return an absentee ballot at a drop-off location by 7:00 p.m. on the day of the election shall be permitted to deposit *his* absentee ballot.” (Emphasis added.) This limited exception simply mirrors the rule that applies to individual voters waiting in line to cast their votes in-person at the polls on election day. *See* § 24.2-603 (Supp. 2023). More generally, the Code otherwise simply directs that “[a]bsentee ballots shall be returned . . . to a drop-off location before the closing of the polls.” Section 24.2-709(A).

<sup>19</sup> *Moore v. Pullem*, 150 Va. 174, 190 (1928) (upholding, under a prior constitution, a statutory scheme permitting voters to cast their votes via absentee ballots in addition to casting them in person on election day and, in upholding the scheme, highlighting that “[t]he framers of the Constitution certainly realized the significance of the words ‘personal’ and ‘personally’”).

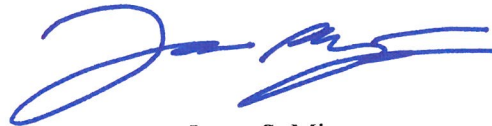
<sup>20</sup> Although a third party generally is precluded from personally delivering a voter’s completed ballot to the registrar, *see* § 24.2-707 (providing for “in person” delivery by the voter and excluding delivery by “personal courier service or other individual” from the definition of “mail”), the Code permits, in very narrowly prescribed circumstances, a qualified authorized designee to return a ballot directly to the registrar on a voter’s behalf. *See* §§ 24.2-703.2 (providing for issuance and casting of replacement absentee ballots under specified conditions when necessary due to illness or disability of the voter); 24.2-705 (providing for issuance and casting of emergency absentee

**Conclusion**

Accordingly, it is my opinion that, under current Virginia law, a third party, upon request of the voter, may return a mailed absentee ballot through the mail or at a drop-off location.<sup>21</sup>

With kindest regards, I am,

Very truly yours,



Jason S. Miyares  
Attorney General

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ballots under specified conditions when necessary due to medical emergencies of the voter or his close family members).

<sup>21</sup> In reaching this conclusion I render no opinion on the wisdom of the current statutory framework governing mailed absentee ballots. This Office recognizes that “[t]he wisdom and propriety of [] statute[s] come within the province of the legislature.” 2021 Op. Va. Att’y Gen. 79, 80 (second and third alterations in original) (quoting *Newport News v. Elizabeth City Cnty.*, 189 Va. 825, 831 (1949)). *See also* 2015 Op. Va. Att’y Gen. 87, 90; 2013 Op. Va. Att’y Gen. 29, 33.