

LOSE YOUR HOME, KEEP YOUR VOTE

*How to Protect Voters
Caught Up in Foreclosure*



Notice of Foreclosure

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FAIR ELECTIONS LEGAL NETWORK

ACKNOWLEDGEMENTS

The **Fair Elections Legal Network (FELN)** is a national, nonpartisan advocacy organization based in Washington, D.C. whose overall mission is to remove barriers to registration and voting for traditionally underrepresented constituencies and improve overall election administration through administrative, legal, and legislative reform. In addition to our in-house staff, we have access to a network of experienced election lawyers in key states that we mobilize to remove impediments to voting well in advance of Election Day. **FELN** lawyers include private practitioners, nonpartisan advocates, and labor or other organizational counsel.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
U.S. FORECLOSURE MARKET DATA BY TOTAL PROPERTIES WITH FILINGS FOR 2009 AND JANUARY-JUNE 2010	3
PART ONE: HOW FORECLOSURE CAN DISRUPT VOTING	4
PART TWO: HOW TO REDUCE THE IMPACT OF FORECLOSURE ON VOTING	7
PART THREE: A MODEL APPROACH	11
CONCLUSION	12
APPENDIX A: STATE-BY-STATE OVERVIEW OF FORECLOSURE AND ELECTION LAWS AND RULES	13
APPENDIX B: 2008 ADVISORY BY OHIO SECRETARY OF STATE JENNIFER BRUNNER	21
APPENDIX C: 2008 ADVISORY BY CALIFORNIA SECRETARY OF STATE DEBRA BOWEN	24
ENDNOTES	26

EXECUTIVE SUMMARY

Foreclosure¹ is a serious problem in the United States. According to RealtyTrac, there were 2.3 million foreclosure filings in 2008, another 2.8 million foreclosure filings in 2009, and there will be an estimated 3.1 million foreclosure filings in 2010.² With almost two voting-age adults on average per household,³ this increasing problem – which often takes months, or even years, to sort out for each homeowner⁴ – could affect the ability of millions of people to vote if steps are not taken to minimize its impact.⁵

Foreclosure affects voting because, in each state, one must reside or be deemed to have a residence in the state in order to vote.⁶ The foreclosure process throws a voter's residency into doubt, leading to confusion on the part of voters and even election officials. Voters who have received foreclosure notices may (a) continue to live in the home, (b) be forced out but be legally entitled to return under a right of redemption,⁷ (c) be permanently displaced and forced to live in temporary housing, or (d) find a new permanent home. Each residency situation may be treated differently under state election law, often making it unclear what a person's voting domicile or residency is during this uncertain period.⁸

Voters in the foreclosure process who remain in their homes have, in past elections, been put at risk by partisans filing or threatening to file direct challenges to their voting rights, or by attempts to intimidate them into staying away from the polls.⁹ In the charged political atmosphere of 2010, such threats could arise again.

Voters should not lose their right to vote simply because they have lost their homes.

Voters who have been forced out of their foreclosed home can have difficulty documenting their residency if they need to update or change their registration on or before Election Day.¹⁰ If the voter has no stable new residence – for example, if he or she has been forced to stay with in-laws or friends – it may be difficult to obtain the types of official documents with the voter's name and current address that is often required to update their registration at the address of the temporary housing.¹¹ Documentation problems are further complicated by voter registration deadlines that may expire while foreclosed homeowners deal with residential uncertainty.¹² For example, voters forced to move to a new state may be required to update their registration up to 30 days before Election Day – a deadline that could disenfranchise voters who move within that time frame.¹³ Voters forced to move within a state may face similar deadline challenges.¹⁴

The impacts from foreclosure are not spread equally among the electorate. Foreclosure disproportionately affects minority homeowners, and thus, minority voters.¹⁵ Minority home loan applicants have been far more likely to be steered into sub-prime loans, even if their credit scores and other financial means were comparable to non-minority applicants.¹⁶ A 2008 study, for example, found that middle and upper-income African Americans were at least twice as likely as middle and upper-income whites to receive high-cost loans in 155 metro areas across the country.¹⁷ Sub-prime home loans are much more likely to default and be subject to foreclosure because interest rates and payments are higher and more likely to balloon after an introductory period.¹⁸

Foreclosures are also not spread equally throughout the country. The most heavily-impacted states – like Florida, Nevada, Arizona, California, Illinois, Colorado, and Michigan – are several times worse off than the average state.¹⁹ If some of the voters in foreclosed homes are disenfranchised, it could affect numerous elections in 2010.

The solution to this crisis is to establish clear guidelines in every state that will protect the franchise of citizens thrown into residential uncertainty by the foreclosure process. We offer several recommendations. *Voters should not lose their right to vote simply because they have lost their homes.*

First, Secretaries of State should make it clear that voters in the foreclosure process who retain any connection to their foreclosed home at the time of the election may vote from that address if registered and cannot be challenged at the polls. Confusion and partisan threats of voter challenges ought to be eliminated by forceful and clear action.

Second, states should consider ways to accommodate voters forced from their homes as elections approach. There are millions of other Americans who face residential uncertainty on Election Day, but whose franchise we protect. For example, members of the military, and voters living overseas, are allowed under federal law to register to vote in the jurisdiction of their last U.S. residence, whether or not they maintain a current U.S. residence or address, and even if their intention to return is uncertain.²⁰ Voters away from a jurisdiction, due to work or other reasons, are permitted to cast absentee ballots, even if they are absent for an extended period.²¹ College students are also permitted to register and vote where their parents reside, regardless of whether they are in that jurisdiction on or near Election Day.²²

Our election system should apply these same accommodations to voters affected by foreclosure. The residency, identification, and registration deadline problems for those in foreclosure could be solved if we treated them like military and overseas voters and allowed them to continue to vote in the precinct where their foreclosed home is located until they have established a new permanent residence and changed their voter registration. Having once registered at their foreclosed home's address, a voter's franchise would be protected during the period of uncertainty that foreclosure entails. When their financial circumstances have stabilized enough to establish permanent residency at a new location – where they can also obtain new identification and meet state voter registration deadlines – they can update their registration and vote from that new home. This is the simplest, and fairest, solution.

In many states, this approach is already the law. In California, for example, voters are entitled to retain their “domicile” at their former address until they have established a new domicile. If they are temporarily residing at a location where they do not intend to remain, that does not necessarily become their domicile for voting purposes. Only when they have found a more permanent new address will it become their domicile and supplant their former domicile at their foreclosed home.²³ At least 16 additional states – Alabama,²⁴ Arkansas,²⁵ Colorado,²⁶ Georgia,²⁷ Illinois,²⁸ Indiana,²⁹ Kentucky,³⁰ Maryland,³¹ Mississippi,³² Montana,³³ North Carolina,³⁴ North Dakota,³⁵ Oklahoma,³⁶ Oregon,³⁷ Pennsylvania,³⁸ and Tennessee³⁹ – appear to define domicile or residency for voting purposes similar to the way California does. If those laws are clarified, as California's law has been, it would enable foreclosure victims to vote using their old home address while they face residential uncertainty. Several additional states, including Iowa, Nevada, and Vermont, allow grace periods or other considerations that help foreclosure victims.⁴⁰ Unfortunately, this fair and simple solution to the crisis facing millions of voters dealing with foreclosure does not yet apply everywhere.

States should consider ways to accommodate voters forced from their homes as elections approach.

This report identifies the voting problems faced by those in foreclosure, recommends solutions, and lays out what can be done by voters and election officials to protect the franchise of persons in this predicament. Part One explains how foreclosure will make the simple act of voting a challenge for millions, thereby threatening their ability to vote. Part Two identifies steps that could be taken to reduce or eliminate the impact of foreclosure on voting. Part Three offers a model approach to Secretaries of State and other election officials to minimize the disenfranchisement of foreclosure victims in 2010 and beyond. Appendix A provides a state-by-state table of deadlines and definitions. Appendix B is a 2008 directive issued by Ohio Secretary of State Jennifer Brunner that makes it clear anyone with a connection to their home can still vote from that location. It also explains how voters can update their registrations. Appendix C is a 2008 directive issued by California Secretary of State Debra Bowen explaining that under California law, voters do not lose their old domicile – even from a foreclosed home they cannot return to – until they have obtained a new domicile where they intend to remain.

Additional materials can be found on our website, www.fairelectionsnetwork.com.

U.S. Foreclosure Market Data by Total Properties with Filings for 2009 and January-June 2010⁴¹

State	Total Properties with Filings (2009)	Rate Rank (2010)	Total Properties with Filings (Jan-June 2010)
United States	2,824,674	--	1,654,634
California	632,573	4	340,740
Florida	516,711	3	277,073
Arizona	163,210	2	91,484
Illinois	131,132	9	85,223
Michigan	118,302	8	78,509
Georgia	106,110	6	71,949
Texas	100,045	28	64,883
Nevada	112,097	1	64,429
Ohio	101,614	14	59,927
New Jersey	63,208	15	36,542
Colorado	50,514	10	30,177
Virginia	52,217	18	30,063
Maryland	43,248	13	28,293
Pennsylvania	44,732	36	27,684
Indiana	41,405	17	25,524
New York	50,369	42	24,506
Tennessee	40,733	23	23,100
Massachusetts	36,119	22	22,933
Wisconsin	35,252	19	22,640
Oregon	34,121	11	21,538
Washington	35,268	25	20,960
North Carolina	28,384	37	20,097
Utah	27,140	5	18,058
South Carolina	25,163	20	17,616
Missouri	28,519	30	17,242

State	Total Properties with Filings (2009)	Rate Rank (2010)	Total Properties with Filings (Jan-June 2010)
Minnesota	31,697	26	17,109
Connecticut	19,679	16	13,315
Alabama	19,896	35	11,419
Arkansas	16,547	21	11,093
Idaho	17,161	8	10,799
Oklahoma	12,937	31	10,343
Louisiana	11,750	38	8,137
Kentucky	9,682	40	6,653
Kansas	9,056	34	6,602
Hawaii	9,002	12	6,482
New Mexico	7,212	27	6,338
New Hampshire	7,210	24	4,528
Iowa	5,681	44	3,248
Rhode Island	5,065	29	2,979
Delaware	3,034	32	2,386
Mississippi	5,402	46	2,243
Maine	3,178	43	1,965
Nebraska	1,845	45	1,708
Alaska	2,442	33	1,529
Montana	1,373	41	1,507
District of Columbia	3,235	39	1,221
South Dakota	765	47	576
West Virginia	1,479	50	549
Wyoming	717	48	359
North Dakota	390	49	278
Vermont	143	51	78

PART ONE: HOW FORECLOSURE CAN DISRUPT VOTING

Voters living in homes under foreclosure face challenges

Voters in the early stages of foreclosure who remain in their homes should be confident that their voting rights have not been affected by the foreclosure process. As long as they retain a legal right to the home as a residence and have not adopted a new domicile, under every state's laws they would be allowed to vote in the precinct where that residence is located if they remain registered there.⁴²

Unfortunately, this has not always been clear to voters, or even election officials. People seeking to suppress the vote have often spread misinformation suggesting that these voters – whose homes will often appear on foreclosure lists – can be challenged at the polls. Such misinformation can confuse and intimidate people into not voting. By way of illustration, we offer two case examples of attempts at intimidation of voters faced with foreclosure.⁴³

Case One: Foreclosure Forces Couple to Seek Court Order Clarifying Voting Status

A couple in Indianapolis, Indiana fell behind in their home payments and faced the threat of foreclosure for the two years leading up to the 2008 election. They were aware of statements made by a political party chairman that foreclosure was a “solid basis” for having their ability to vote at their home's location challenged and were aware of the opinion of the Circuit Clerk, who disagreed. With the assistance of the NAACP Legal Defense Fund and local lawyers, these voters successfully sought an Order from the Marion County Superior

Court. It provided that “[t]he appearance of a name or property on any list or directory of purported foreclosures or eviction notices cannot serve as the sole basis for the challenge to any voter whose name appears in the precinct poll list and any challenge on that basis is contrary to Indiana law.”⁴⁴

Case Two: Statements Can Lead to Fear in the Electorate

Three residents of Macomb County, Michigan, who had lived in their homes 9, 30 and 15 years respectively, had their houses placed into foreclosure one or more times in the months leading up to the 2008 election, but none of them was forced from their homes before Election Day.⁴⁵ As the general election approached, a political party indicated it planned to take lists of properties in foreclosure to the polls on Election Day and use them as a basis to challenge the right of certain citizens to vote. Even though the Party subsequently stated that it would not use foreclosure lists as a basis for voter challenges, the effect of the original statement continued to intimidate voters from even going to the polls for fear that they would face scrutiny about their financial situation and the status of their mortgage payments.⁴⁶

Voters forced from their homes face more significant challenges

The most serious voting problems for citizens whose homes have been foreclosed begin when they have been forced from their homes permanently. From this point until the next election, it can be challenging for them to establish what is needed to vote – residency and documentation – within the deadlines required for new or changed voter registrations.

Voters in the early stages of foreclosure who remain in their homes should be confident that their voting rights have not been affected by the foreclosure process.

Establishing residence or domicile

The first challenge to voting is establishing residency or domicile somewhere. For many voters forced out by foreclosure, this might change on a daily, weekly, or monthly basis from the time the voter is forced from their home until they are able to establish a new semi-permanent residence.⁴⁷ If this period of moving from one temporary residence to another overlaps with the deadlines for registering to vote and Election Day, a voter may have no idea what to list as their residence on a voter registration form. If the voter is actually homeless, they may not know that they can register to vote as a homeless person, or they may feel too stigmatized listing themselves as homeless on a voter registration form to follow through with the process.

Showing residence with current documentation

Further, even if a voter has a physical address they can list when updating their registration, he or she will usually need to show that they live at that address with some form of official documentation listing their name and current address. Most voters establish this using their driver's license. Other forms of legitimate documentation include: utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. Many states have expanded this list of acceptable documentation.

The problem with these types of documents is that recently-displaced homeowners will not likely have copies that link them to their new temporary residence during the times available to update their registration on or before Election Day. The voter's name and address may not be on a utility bill, bank statement, government check, or other government document at the temporary residence, and it could prove challenging or cumbersome to obtain such documentation.

Deadline issues

The third element complicating matters is voter registration deadlines. These range from 30 days before the election to Election Day itself in the handful of states that allow Election Day registration. Not only do these deadlines vary from state to state, but they vary within

Foreclosure Affects Millions of Voters

- By October 2009 one in eight mortgages was already in foreclosure or default.⁴⁸
- There were 2.8 million foreclosure filings in 2009.⁴⁹
- The foreclosure problem will be worse this year. Foreclosure activity jumped 19% to a monthly record in March, 2010, up 7% from the prior quarter and 16% from a year ago, to a first quarter record of more than 932,000 properties. Overall, an estimated 3.1 million foreclosure filings are expected in 2010.⁵⁰
- Additional homes remain with negative equity,⁵¹ or are subject to delinquent mortgages,⁵² and foreclosure inventory continues to rise.⁵³
- Minority home loan applicants have been far more likely to be hit by foreclosure than non-minority applicants.⁵⁴
- Over 10 million voters will have been affected by foreclosure in the last two years.⁵⁵

states depending on whether the voter is registered in the state, and whether they have moved within or outside the county where they were registered. *See* Appendix A.

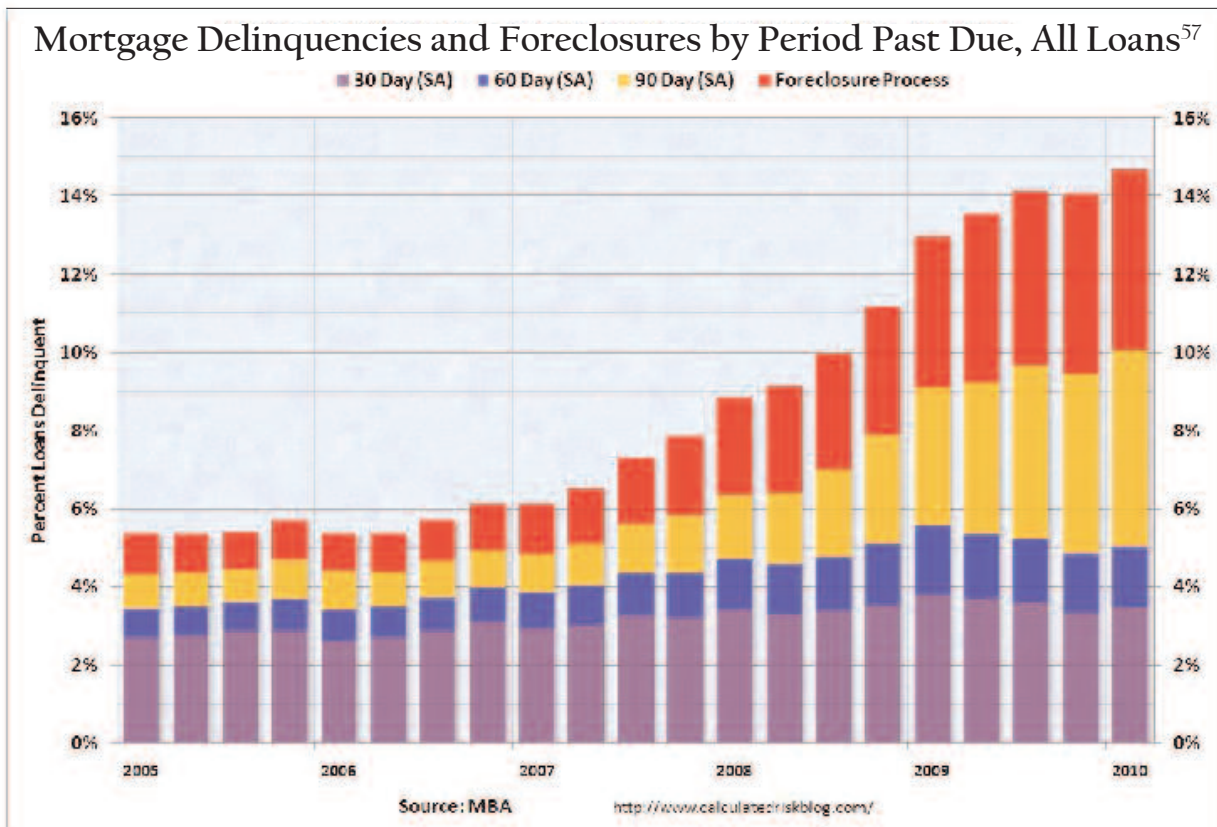
Deadlines can thus be extremely confusing for voters who have lost their homes to foreclosure. If a registered voter has moved within the county to new temporary housing, he or she will be able, in most cases, to update that registration right up until Election Day. However, if the voter was not previously registered or has moved to a different county, he or she may have to file a new registration up to 30 days before Election Day. When you overlay this against the twin challenges discussed above, it adds to the confusion and possible disenfranchisement brought on by the financial calamity of home foreclosure.

States with Ten Highest Percentages of Housing Units in Foreclosure Projected for 2010 compared with 2009⁵⁶

Rate Rank (Jan-June 2010)	State	% Housing Units (2010 Projected Total)	Total Properties with Filings (2010 Projected Total)	% Housing Units (2009)	Total Properties with Filings (2009)
1	Nevada	10.58	119,194	10.17	112,097
2	Arizona	6.22	169,245	6.12	163,210
3	Florida	5.82	512,585	5.93	516,711
4	California	4.71	630,369	4.75	632,573
5	Utah	3.54	33,407	2.93	27,140
6	Georgia	3.31	133,106	2.68	106,110
7	Michigan	3.20	145,242	2.61	118,302
8	Idaho	3.11	19,978	2.72	17,161
9	Illinois	2.99	157,663	2.5	131,132
10	Colorado	2.59	55,827	2.37	50,514

An additional problem caused by voter registration deadlines is what might be called a “voter registration gap.” Such a gap occurs when a voter moves from one state to another within 30 days of an election and is unable to register to vote in their new state, yet cannot vote in their old state. This is caused by differing voter registration deadlines in the two states. Unless there is a

grace period or other legal protection offered by the state the voter leaves that would enable them to vote in their old state by absentee ballot, the voter may be disenfranchised because they will not have enough time to register and vote in their new state. See Appendix A. Most states have no grace periods at all.



PART TWO: HOW TO REDUCE THE IMPACT OF FORECLOSURE ON VOTING

All eligible citizens should be allowed to vote, no matter where they live or are located on Election Day. The question should therefore not be *whether* a voter whose home has been foreclosed can vote, but *in what jurisdiction* that vote should be cast.

For voters still within the foreclosure process – no matter how long that process takes – the answer is relatively straightforward. As long as they retain ownership of their property and have no intention to live permanently at some other residence, they can remain registered to vote at the address of the foreclosed property, or even register to vote at that address if they have not already done so.

For voters who have been forced by foreclosure from their homes, the answer is less clear. In at least 17 states, we believe that state law could be interpreted to allow such voters to continue to vote using their foreclosed home address if they have not established a new permanent domicile before Election Day.⁵⁸ In the remaining states, voters will need to update their registrations despite the challenges they face with residency, documentation, and deadlines.

How to treat voters that are still in their homes

The proper way to treat a voter who either still lives in a property in foreclosure proceedings, or who has a right of appeal or redemption to keep the property after he or she has vacated it, is to allow him or her to list that property as their voting residence and to vote by regular ballot if they remain registered at that address. Ohio Secretary of State Jennifer Brunner issued an advisory in 2008 explaining this in detail. (It is reprinted in full in Appendix B.)

“ In response to numerous questions received by the Secretary of State’s office, this advisory addresses how Ohio election law may affect persons who are the subject of foreclosure actions...

As a preliminary matter, boards of elections are advised that they may **not** cancel an Ohioan’s voter registration based **solely** on the fact that the person is involved in the foreclosure process. The filing of a foreclosure action is not determinative until there is a final judgment entry, including the passage of at least 30 days from the date of the entry because of the right of appeal, and the person no longer resides at the property. Due to the protracted nature of legal foreclosure proceedings, mere involvement in a foreclosure action does not, by definition, mean that an elector no longer resides at the address that is the subject of the foreclosure. An elector might continue to reside at an address throughout the pendency of a foreclosure action, a legal process that may take several months or even more than a year.

Therefore, boards are advised that evidence of a foreclosure action is, on its own, insufficient to sustain a voter registration challenge.⁵⁹ ”

As can be seen from Appendix A of this report, foreclosure laws vary greatly between the states. Thus, a borrower who has been issued with a notice of default may enter a period of residential uncertainty for a period from a few weeks, if the default payments are made and the home taken out of foreclosure, to many years, if there is a lengthy right of redemption after a forced sale. During this period, as long as the voter has a present intention to remain in or return to the jurisdiction, he or she can vote from the “foreclosed” home.

All eligible citizens should be allowed to vote, no matter where they live or are located on Election Day.

Foreclosure Can be a Lengthy Process

Foreclosure is often used to describe the event where a person's home is repossessed by a lender due to a number of defaults on the loan. However, the foreclosure process is much longer than simply a default and then immediate repossession. The time from a first default to repossession may take many months or even years.⁶⁰ During this foreclosure period, a homeowner's living arrangements may be uncertain, as they face a multitude of problems, such as trying to refinance or taking other steps to keep their home, being forced to move out permanently, or being forced out but then buying back their home during a redemption period.

The foreclosure process begins when a borrower defaults on the loan. A right of foreclosure is usually triggered after two or three months of default, depending on the terms of the mortgage. The first step is for the lender to issue a Notice of Default, which puts the borrower on notice that he or she is facing home repossession by the lender. This starts a reinstatement period, which may run for weeks or months depending on the mortgage and state laws. During the reinstatement period, a borrower may make default payments to avoid foreclosure. If the outstanding loan payments are not made, a Notice of Sale can be issued by the lender, after which the property may be re-sold by the lender.

The time period for the entire foreclosure process varies considerably between states. For example, in Alabama, Mississippi and Louisiana the property may be sold 30 to 60 days after the Notice of Sale, while in Illinois and Maine the property cannot be sold for 180 days or more. In addition, some states include a redemption period, which gives the borrower a right to re-purchase the property in the period following the foreclosure sale. This varies from no redemption period – e.g., Alaska, Louisiana and Maryland – to 10 days – e.g., New Jersey – to three years – e.g., Rhode Island. See Appendix A for a state-by-state table.

How to treat voters that have been permanently forced from their homes

Voters that have been permanently forced to vacate a foreclosed property do not necessarily lose their right to vote using that address. It depends on how the state defines domicile or residence for voting purposes. Below, we divide the states into those that appear to allow voters to retain their domicile or residence for voting purposes until they have established a new, permanent address where they intend to remain, and those that appear not to.

States that allow voters to retain their voting residence until a new permanent voting residence is established

One of the clearest articulations of a state policy that protects voters forced from their homes by foreclosure is provided in California. In *Walters v. Weed*,⁶¹ the Supreme Court of California was presented with the question whether college students, who had left their domiciles, or voting residences, with no intention of returning, lost their votes in the precinct where their domiciles were located even though they resided elsewhere but had not yet established new domiciles. Reading the California Election Code⁶² broadly, the Court held that because “everyone must have a domicile somewhere ... such individuals retain their right to vote in the precincts of their former domiciles.”⁶³ Reversing the Court of Appeal, the Supreme Court added:

“[T]he Court of Appeal has disenfranchised the students by creating an implied presumption that a new domicile is created whenever a person intends to abandon his or her former domicile.... The problem with the Court of Appeal's analysis is that the students in this case had not in fact acquired domiciles elsewhere. They had merely established residences. The acquisition of a new domicile requires the union of act and intent. Even if the students intended to acquire new domiciles in the abstract, they had not yet moved to a place they intended to remain.

The result of the Court of Appeal's presumption is that the students cannot vote in their former domiciles because they have abandoned them; they cannot vote in the precincts of their current residences, because they do not have the intentions to remain and hence cannot qualify their new residence as their domicile; and they cannot vote in their future domiciles, because they do not yet reside there. Such a disenfranchisement cannot be sustained.

Our holding in this case is narrow in its scope. We hold that when a person leaves his or her domicile with the intention to abandon it, and when that person currently resides in a place which he or she does not intend to remain, that person may vote in the precinct of his or her former domicile until a new domicile has been acquired.⁶⁴”

Based on this decision, Secretary of State Debra Bowen issued a memorandum to all County Clerks and Registrars of Voters in 2008 indicating that voters forced to move due to foreclosure could continue to use the foreclosed home as their voting address as long as they lived in a temporary address that they did not intend to use as a permanent address.⁶⁵ We have attached it as Appendix C.

This policy is the best way to protect the voting rights of persons whose homes have been foreclosed, because it leaves matters within the control of the voter. If a voter has established a new domicile or voting residence after foreclosure, he or she can register and vote there. But if the voter is forced into temporary housing with no intent to stay, he or she will not have lost the right to vote at his or her former domicile.

Fair Elections Legal Network has reviewed state election codes and court decisions in all 50 states and concluded that an additional 16 states appear to apply essentially the same principle as California, i.e., that a person retains his or her former domicile or voting residence until a new domicile or voting residence has been acquired.⁶⁶ The 17 states are: Alabama,⁶⁷ Arkansas,⁶⁸ California,⁶⁹ Colorado,⁷⁰ Georgia,⁷¹ Illinois,⁷² Indiana,⁷³ Kentucky,⁷⁴ Maryland,⁷⁵ Mississippi,⁷⁶ Montana,⁷⁷ North Carolina,⁷⁸ North Dakota,⁷⁹ Oklahoma,⁸⁰ Oregon,⁸¹ Pennsylvania,⁸² and Tennessee.⁸³ To protect the voting rights of foreclosure victims, Secretaries of State in those states – and any others where the law might be interpreted that way – should issue guidance to voters and election officials along the same lines as California Secretary Bowen offered in 2008.

States that do not appear to allow voters to retain their voting residence at a location where they can no longer live

States that have *not* adopted an approach that protects a person's voting residence until a new voting residence is established by the voter should do so, for the reasons stated above. Absent a change in policy, Secretaries of State should offer clear guidance to voters affected by foreclosure on steps they can take to improve their prospects of voting and having those votes count. Ohio Secretary of State Jennifer Brunner's advisory from 2008, attached as Appendix B, offers such guidance. The guidance explains:

- The deadlines for updates to voter registration;
- How voters can change registration up through Election Day;

- The different procedures involved if an elector moves within the same precinct, within the same county but to a different precinct, or to a different county in the state.

Depending on the state, there may be additional guidance that could be offered. For example, states with early voting or a grace period, such as Iowa, Nevada, or Vermont, may enable displaced voters to vote at their old address depending on how the deadlines coincide with a voter's foreclosure timeline. In every state, chief election officials should reinforce the message that foreclosure is not, by itself, the reason to disenfranchise any voter.

States should grant the same consideration to foreclosure victims as has been extended to other voters

Foreclosure is not the only issue that affects voters' residency and documentation for which our society has adopted special rules to protect the voting rights of citizens. Military and overseas voters, absentee voters, college students, homeless people, and even some prisoners, all enjoy special protections under election law. These protections should be applied to voters affected by foreclosure.

Military Personnel and Overseas Voters

Overseas and military voters would not be able to vote according to the residency requirements of most states if it were not for the intervention of the federal government. The *Uniformed and Overseas Citizens Absentee Voting Act* of 1986 ("UOCAVA") allows military and overseas voters to register to vote in the jurisdiction of their last U.S. residence, whether or not they maintain a U.S. residence or address, and even if they have no intention of returning to the state. In 2008, this solution permitted 637,216 UOCAVA voters to have their ballots counted in various states.⁸⁴

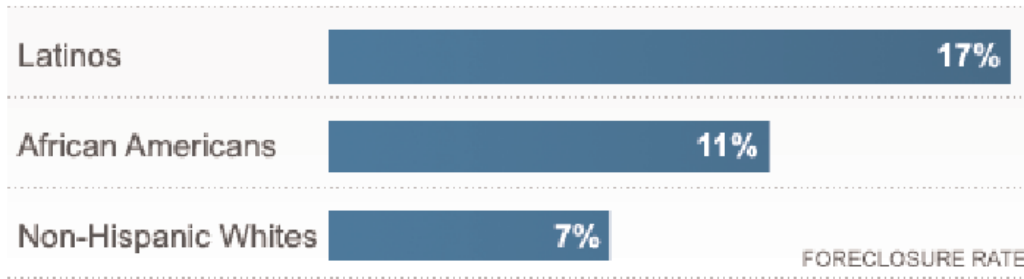
In addition, 17 states allow citizens who have never resided in the U.S. to vote for federal offices in the jurisdiction where a parent would be eligible to register and vote.⁸⁵ This is another legal accommodation that is made for voters faced with residency challenges.

College Students

All states make provision for college students to remain registered to vote where they lived before attending school. Their registration and ability to vote in that jurisdiction is not affected by their actual residency or

Foreclosure is not the only issue that affects voters' residency and documentation for which our society has adopted special rules to protect the voting rights of citizens.

Foreclosure Rate⁸⁶



SOURCE: CENTER FOR RESPONSIBLE LENDING

domicile. Students may, in fact, never reside at that location after leaving for college. They may stay at college or travel elsewhere during summer and other breaks. They may serve semesters abroad. They may not return, or have any intention of returning, after graduation. In short, their actual residency during election years is not a factor if they remain registered to vote at their pre-school “home.”

With more than 18 million college students nationwide, this accommodation protects a significant number of voters whose residency is often extremely fluid, and who often face problems obtaining identification.⁸⁷

Absentee voters

Absentee voters are able to vote in every state in the jurisdiction where they have a residence from which they are absent on Election Day. Most absentee voters are likely away from a precinct for only a short time. However, the law in most states does not prevent persons absent from a jurisdiction for an extended or even semi-permanent period, due to a job, second home, or other circumstances, from continuing to vote in a precinct where they once lived. In Ohio, for example, which is one of the few states with any limitation, a voter can be absent from a “home” precinct for *four years* before losing absentee voting status.⁸⁸

Homeless voters

A further complex residency situation is that of homelessness. A homeless person “resides” in a town or locality, despite his or her lack of permanent address. The National Mail Voter Registration Form includes a map on which a person may show where they live if they “have no address.” States require a mailing address in addition to this map, even though the homeless person does not reside at this address.

Registering as a homeless person might be an option for some voters displaced from their homes by foreclosure, but given the potential stigma attached to homelessness, this is not a viable solution for the millions of people likely to lose their homes this year.

Prisoners

Felons are generally denied the right to vote while incarcerated, except in two states.⁸⁹ But misdemeanants are generally *not* denied the right to vote.⁹⁰ And, where prisoners are allowed to vote, they are generally considered to be voting residents of the place they lived before they were imprisoned, whether or not they maintain any connections to their former address.⁹¹

Given the accommodations our society provides to voters facing residency and documentation problems in other contexts, there is no reason why we could not extend such protections to voters displaced from their homes due to foreclosure. The simplest solution would be to allow such voters to continue to vote in the precinct where their foreclosed home is located until they have established a new permanent residence from which they can obtain the documentation needed to change their voter registration. This would solve the problems identified in Part One.

This protection does not need to be any more extensive than what is already applied in California and any other state where a voter does not lose a voting domicile until he or she acquires a new one. It does not need to be as extended or open-ended in duration as are many of the protections for military and overseas voters, college students, and absentee voters. However, as a matter of fairness, it should be the policy nationwide.

The most critical period to offer additional protections is between the time a voter is forced from a home by foreclosure and the next election. Once that election is over, there is usually a significant time period until another election. Voters who know they must update their registration or re-register will have more time to establish residency and obtain identification to complete the process during this period. This will not be an easy process for foreclosure victims forced to live in a series of temporary residences, but at least they will be far less likely to be arbitrarily trapped by state deadlines.

PART THREE: A MODEL APPROACH

Secretaries of State should take steps to dispel the myths and confusion surrounding the ability of foreclosure victims to register or remain registered to vote at their foreclosed property and to provide guidance to help those permanently displaced from their homes.

Voters whose homes have been foreclosed face problems at various stages of the process. While they are still in their homes, they may be confused as to their ability to register or remain registered to vote at their home while foreclosure proceedings are pending, including the period of appeal and right of redemption, if any. These voters are likely targets for those wishing to pursue voter intimidation and caging tactics.

After they have been forced from their homes, the problem is how to protect their voting rights during the unstable period when they are attempting to establish a new residence, and to obtain necessary documentation. When this period overlaps with state deadlines for updating voter registrations, it becomes a serious threat to the franchise of potentially millions of citizens.

Secretaries of State should take steps to dispel the myths and confusion surrounding the ability of foreclosure victims to register or remain registered to vote at their foreclosed property and to provide guidance to help those permanently displaced from their homes. Specifically, Secretaries of State should consider:

- Issuing a directive/notice to city and county boards of elections indicating that being issued a foreclosure notice or being on a foreclosure list is not grounds, by itself, to challenge any voter or prevent them from voting using the address of their foreclosed home.
- Incorporating the message of the directive into training for county and local election officials, so they are aware that foreclosure, by itself, is not a reason to deny someone the ability to cast a regular ballot.

- Issuing a public service announcement assuring citizens facing foreclosure that they will not be deprived of the right to vote in the jurisdiction of their foreclosed home, as long as they either reside there, or retain a right of appeal or redemption to keep the property.
- Analyzing state election law to determine whether voters that have been permanently forced from their homes can nonetheless retain their domicile at that home for voting purposes until they have established a new domicile and updated their voter registration.
- If state law protects the voting domicile of a person until they have established a new domicile, issuing a directive to county election officials, and a parallel public announcement indicating that persons displaced from their homes can still vote using that address until they have established a new domicile and registered to vote where they intend to remain.
- If state law does not protect the voting domicile of a person displaced from their home, issuing a public statement to inform citizens of the steps necessary to protect their franchise, including deadlines for registration and the ability to update a voter registration depending on the voter's circumstances.

Given the historically high rates of foreclosure still facing Americans, FELN considers these steps crucial to ensure that those facing the financial and emotional struggle of foreclosure are not denied a fundamental right of citizenship – the right to vote.

CONCLUSION

If you lose your home, you should not also lose your right to vote.

The historic level of foreclosure in the United States over the last two years brings to light how this financial calamity poses a risk of potentially disenfranchising millions of voters. This can happen in multiple ways.

First, before voters are even forced from their homes, there have been attempts to sow confusion, intimidate, and challenge voters caught in the foreclosure process and thereby suppress citizens' exercise of their franchise.

Second, once voters are forced from their homes, they face a triple threat of establishing residence, updating documentation needed to prove their voting residence, and meeting conflicting and often confusing state-imposed registration deadlines to protect their franchise.

Unfortunately, these problems fall disproportionately on minority voters, who, regardless of their credit rating and other financial means, have been issued a disproportionate number of the sub-prime loans that are much more likely to be foreclosed.

Given these challenges, a simple and fair solution would be to protect these voters in the same way we protect military and overseas voters, college students, absentee voters, homeless people, and even some prisoners – by legally deeming them to be a resident of a place for voting purposes, whether or not they actually live there.

As homeowners who were once registered in a specific precinct, and who likely retain ties to the community through work, school, and church, the law could allow such voters to vote from their foreclosed home address until they have established a new permanent residence and domicile. As many as 17 states already have laws that would appear to support this policy. It would allow voters time to update their voter registration status once they have a new permanent home and avoid the challenges of trying to do so while living in temporary housing. All states should adopt this policy.

This would be a fair, and simple, solution to a serious problem faced by millions of voters. If you lose your home, you should not also lose your right to vote.

Appendix A - State-by-State Overview of Foreclosure and Election Laws and Rules

State	Shortest foreclosure timeframe (days)	Right of redemption ⁹²	Definition of domicile/residence	Durational residency requirement	Voter registration deadline	Grace period (interstate move)	In-state moves between jurisdictions
AK	90-100	None	Intent to return and no intent to remain in another place. ⁹³	30 days	30 days	30 days ⁹⁴	Can vote by absentee ballot in old jurisdiction, for certain races, if voter has moved within 30 days of the election. ⁹⁵
AL	60-90	1 Year	Intent to remain No other lawful domicile/Domicile presumed to continue until new one is gained. ⁹⁶	None	10 days	None	None
AR	120	1 year	Intent to return. Domicile presumed to continue until new one is gained. ⁹⁷	None	30 days	None	None
AZ	120	None	Intent to return. ⁹⁸	29 days	29 days	None	Can vote using old address if voter moves within 29 days of election. ⁹⁹
CA	120	12 months	Intent to return, and no intent to make another place his/her domicile. Domicile presumed to continue until new one is gained. ¹⁰⁰	15 days	15 days	14 days ¹⁰¹	Can vote using old address if voter moves within 14 days of election. ¹⁰²
CO	60-70	75 days	Intent to return, and no intent to make another place his/her domicile. ¹⁰³	30 days	29 days	29 days ¹⁰⁴	Can vote using old address if voter moves within 29 days of election. ¹⁰⁵
CT	60-75	None	Intent to return. ¹⁰⁶	None	14 days but the day before if you move within 7 days of the election	None	None
DE	175-200	None	Has not established a domicile or registered to vote in another place. ¹⁰⁷	None	Fourth Saturday prior to an election	None	Can vote using new address so long as voter is validly registered somewhere in Delaware. ¹⁰⁸

State	Shortest foreclosure timeframe (days)	Right of redemption ⁹²	Definition of domicile/residence	Durational residency requirement	Voter registration deadline	Grace period (interstate move)	In-state moves between jurisdictions
FL	180-200	None	Intent of person to be at the relevant domicile to the exclusion of any other location. ¹⁰⁹	None	29 days	None	Can vote using new address if voter fills out a form on Election Day swearing to your new address. ¹¹⁰
GA	60-90	None	Intent to return and no acts taken to indicate a desire to change their citizenship and residence. ¹¹¹	None	Fifth Monday before an election	None	Can vote using old address if voter moves after voter registration deadline. ¹¹²
HI	60-90	None	Intent to return. ¹¹³	None	30 days	None	Can vote using new address after filling out a form at new polling place. ¹¹⁴
IA	150-180	1 year	Intent to remain at residence, no registration at another residence. ¹¹⁵	None	EDR	Can vote in Iowa until eligible to vote in precinct moved to. ¹¹⁶	Can vote in Iowa until eligible to vote in precinct moved to, but the voter must register in new precinct when eligible. ¹¹⁷
ID	150	None	Intent to return. ¹¹⁸	30 days	EDR	30 days ¹¹⁹	Can vote by absentee ballot using old address if voter moves within 30 days of election. ¹²⁰
IL	215	3 months	Intent to return and no intent to permanently abandon residence. ¹²¹	30 days	28 days (but grace period registration up to 7 days before the election)	None	Can vote using old address if voter moves within 30 days of election, after signing an affidavit certifying the move. ¹²²
IN	150-200	None	Intent to remain, no intent to establish a new residence, and no action taken to establish new residence. ¹²³	30 days	29 days	None	Can vote using old address if voter moves within 30 days of election, after signing an affidavit certifying the move. ¹²⁴
KS	120-140	1 year	Intention to return. ¹²⁵	None	14 days	None	Can vote using old address if voter moves within 30 days of election. ¹²⁶

State	Shortest foreclosure timeframe (days)	Right of redemption ⁹²	Definition of domicile/residence	Durational residency requirement	Voter registration deadline	Grace period (interstate move)	In-state moves between jurisdictions
KY	150	None	Intent to return and no intent to permanently reside elsewhere. ¹²⁷	28 days	Fourth Tuesday preceding election	None	Can vote using old address if voter moves within 30 days of the election. ¹²⁸
LA	180-270	None	Bona fide residence, intent to reside at residence indefinitely. ¹²⁹	None	30 days	None	Can vote in parish from which voter moved until registers in new parish, or three months after move, whichever is sooner. ¹³⁰
MA	75-90	None	Defined by common law – a change in domicile only occurs when a person is physically present in the new place and intends to make that place his home for the time at least. ¹³¹	None	20 days	Can vote using voter's address from January of that year if voter moves within 6 months of election (unless has registered to vote somewhere else). ¹³²	Can vote using voter's address from January of that year if voter moves within 6 months of election (unless has registered to vote somewhere else). ¹³³
MD	90-100	None	Domicile is the place you consider your permanent home. ¹³⁴	None	21 days	None	None
ME	180-200	1 Year	Intent to return. ¹³⁵	None	EDR	None	Can vote using new address by registering to vote in new precinct on Election Day. ¹³⁶ The registrar will alter the incoming voter rolls. ¹³⁷
MI	60	1 year	Actual residence in the state, which is not constituted by leaving personal effects at a leased property and returning only occasionally. ¹³⁸	30 days	30 days	60 days ¹³⁹	Can vote using old address if voter moves within 60 days of the election. ¹⁴⁰
MN	60-90	1 year	Intent to return, and no intent to make another place his/her residence. ¹⁴¹	20 days	EDR	None	Voter can update registration on Election Day by showing proof of residence. ¹⁴²

State	Shortest foreclosure timeframe (days)	Right of redemption ⁹²	Definition of domicile/residence	Durational residency requirement	Voter registration deadline	Grace period (interstate move)	In-state moves between jurisdictions
MO	60-90	1 year	A question of acts and intentions of voters. ¹⁴³	From fourth Wednesday before the election until the election	Fourth Wednesday before the election	None	Can vote (for all national and state offices and state questions) using new address by notifying new polling place on Election Day. ¹⁴⁴
MS	60-90	6 months	Defined by common law - intent to return, no intent to remain in another residence. Residence lost if new one acquired. Domicile presumed to continue until new one is gained. ¹⁴⁵	30 days	30 days prior to election	None	None
MT	140-150	None	Intent to remain at residence and no intent to remain elsewhere. ¹⁴⁶	30 days	30 days and EDR at county courthouses	None	If voter moves within 30 days of election, they can vote by absentee ballot at old address or register change of address with new county administrator up to 5pm the day before the election. ¹⁴⁷
NC	90-120	10 days	Defined by common law – no abandonment of domicile coupled with intention not to return, no acquisition of new domicile, and no intent to make new residence a permanent home. ¹⁴⁸	30 days	25 days before the election, but SDR available up to the Saturday before the election	30 days ¹⁴⁹	Can vote using old address if voter moves within 30 days of election by signing written affirmation. ⁵⁰
ND	90	60 days	Domicile presumed to continue until new one is gained. Test is union of action and intent. ¹⁵¹	30 days	No voter registration	Can vote using old address until voter has established residence in a new precinct. ¹⁵²	Can vote using old address until voter has established residence in a new precinct. ¹⁵³
NE	90-120	None	Intention to return. ¹⁵⁴	None	Second Friday before the election	None	None

State	Shortest foreclosure timeframe (days)	Right of redemption ⁹²	Definition of domicile/residence	Durational residency requirement	Voter registration deadline	Grace period (interstate move)	In-state moves between jurisdictions
NH	60-70	None	Intent to remain, no intent and action taken to reside elsewhere. ¹⁵⁵	None	10 days before the election and EDR	None	Can register to vote on Election Day with proof of residence. ¹⁵⁶
NJ	250	10 days	Intention to reside there and an act in furtherance of intention. ¹⁵⁷	30 days	21 days before the election	None	If a voter moves within 30 days of the election they can vote using old address. ¹⁵⁸
NM	120-180	9 months	Need act of removal and intention to live elsewhere in order to change residence. ¹⁵⁹	None	28 days before the election	None	None
NV	120	1 year	Intent to continue it permanently as his/her predominant and principal home. ¹⁶⁰	30 days	21 days before the election	None	Can vote using old address if voter moves after the deadline for registration. ¹⁶¹
NY	120-180	None	Intent, conduct and all surrounding circumstances. ¹⁶²	30 days	25 days before the election	None	None
OH	150-180	None	Intention to return, except if resides outside state continuously for four years, then residence is lost. ¹⁶³	30 days	30 days before the election	None	If voter moves within 28 days of the election, voter may vote up through Election Day using new address by signing a form at the new county Board of Elections and casting a provisional ballot. ¹⁶⁴
OK	90	None	Defined by common law – no intention to abandon, and no intention to not return. Can be absent for period of years. ¹⁶⁵	None	24 days before the election	None	None

State	Shortest foreclosure timeframe (days)	Right of redemption ⁹²	Definition of domicile/residence	Durational residency requirement	Voter registration deadline	Grace period (interstate move)	In-state moves between jurisdictions
OR	180	180 days	No other residence established. ¹⁶⁶	None	21 days before the election	None	Can update registration if voter has moved to another county within the state up to 8pm on Election Day. ¹⁶⁷
PA	120	None	Intention to return, and no intention to be temporarily absent for an indefinite period. ¹⁶⁸	30 days	30 days	None	Can vote using old address after signing written affirmation of new address on Election Day. ¹⁶⁹
RI	60-80	3 years	Intention to return; domicile is maintained until a new domicile is acquired. ¹⁷⁰	30 days	30 days	None	Can vote using old address if voter moves within 30 days of election. ¹⁷¹
SC	150-180	None	Intent to return, no intent to make another place his/her domicile. ¹⁷²	None	30 days	None	Can vote at county board office after affirming voter's new address in writing. ¹⁷³
SD	90-150	1 year	No intent to make another place his/her permanent home. ¹⁷⁴	None	15 days before an election	None	None
TN	90-120	2 years	Lose residency by act of removal plus intent to remain elsewhere (even if absence is for one or more years). ¹⁷⁵	None	30 days	None	None
TX	60	None	Intent to return to home after temporary absence. Common law also defines residence. ¹⁷⁶	None	30 days	None	Can vote a limited ballot during early voting or by absentee ballot, using new address if registration in new county will not be effective on Election Day. ¹⁷⁷

State	Shortest foreclosure timeframe (days)	Right of redemption ⁹²	Definition of domicile/residence	Durational residency requirement	Voter registration deadline	Grace period (interstate move)	In-state moves between jurisdictions
UT	120	None	Intent to return to home after temporary absence, no intent to make another place his/her residence. ¹⁷⁸	30 days	30 days	None	None
VA	60-90	None	Intention to remain. ¹⁷⁹	None	22 days before the election	None	Can vote using old address upon confirmation of new address. ¹⁸⁰
VT	210-230	1 year	Intent to return, no intent to remain elsewhere indefinitely. ¹⁸¹	None	Wednesday before the election	17 days ¹⁸²	Can vote using old address if moved within 17 days of election. ¹⁸³
WA	120	1 year	Intent to return, no intent to reside elsewhere. ¹⁸⁴	30 days	30 days before the election (mail or online); 15 days before the election (in person)	29 days ¹⁸⁵	Can vote using old address if voter moves after voter registration deadline, after filling out new voter registration form. ¹⁸⁶
WI	365	1 year	“Neither an intent to acquire a new residence without removal, nor a removal without intent, shall affect residence”. ¹⁸⁷	10 days	EDR available	None	If a voter moves within 10 days of the election they may vote at old precinct. ¹⁸⁸
WV	60-90	None	Bona fide residence; defined by common law, includes actual presence and intent to remain. ¹⁸⁹	None	21 days before the election	None	None
WY	90	3 months	Intention to return and no intention or action to register elsewhere. ¹⁹⁰	None	EDR available	In a general election year voter can vote in Wyoming if they are not eligible to register to vote in the State to which they moved. ¹⁹¹	Can register to vote on Election Day with proof of residence. ¹⁹²

Explanation of Data Categories for Appendix A

Shortest foreclosure timeframe

This section lists the shortest period of time within each state from a Notice of Sale until a voter can be forced from their home, absent some agreement by the homeowner to vacate the property in less time.

Right of redemption

This section indicates whether the state provides homeowners with a statutory right to redeem their real estate from foreclosure by paying off the amount owed, and, if so, the time period provided.

Definition of domicile/residence

This section provides a greatly abbreviated definition of domicile or residence for voting purposes in the state. To understand this often-complex area of the law, state codes and case law should be consulted.

Durational residency requirement

If voters in foreclosed homes are forced to move into a new state, this column provides the time period they must live in the state prior to Election Day to register to vote in that state.

Voter registration deadline

This is the general voter registration deadline for each state. Voters forced from their homes may be able to update their registration up through Election Day, depending on where they live and where they move to. However, this deadline can still trap many voters forced to move.

Grace period

In some states, even if you move away permanently, you will be allowed to vote at your old address, if the move takes place within a certain number of days before an election.

In-state moves between jurisdictions

This section provides an abbreviated indication whether voters forced from their homes will be able to update their registration up through Election Day depending on where they have moved within the state. Our focus is on in-state moves outside the county or congressional district of a prior address, because federal law allows those who move within a precinct or county/congressional district to update their registration up through Election Day. Where “none” is entered, voters who move outside the jurisdiction are treated just like any voter needing to register to vote, with the general voter registration deadline applying. State codes and case law should be consulted for a full understanding of these rules.



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ADVISORY 2008-25
September 24, 2008

To: All County Boards of Elections

Re: Voting Rights of Persons Facing Home Foreclosure

In response to numerous questions received by the Secretary of State's office, this advisory addresses how Ohio election law may affect persons who are the subject of foreclosure actions. Although primarily focused upon the rights of Ohioans who are facing or have lost their homes due to foreclosure, the information contained within this advisory applies generally to situations where an elector has changed residences, on or before Election Day, without updating his or her voter registration.

As a preliminary matter, boards of elections are advised that they may **not** cancel an Ohioan's voter registration based **solely** on the fact that the person is involved in the foreclosure process. The filing of a foreclosure action is not determinative until there is a final judgment entry, including the passage of at least 30 days from the date of the entry because of the right of appeal, and the person no longer resides at the property. Due to the protracted nature of legal foreclosure proceedings, mere involvement in a foreclosure action does not, by definition, mean that an elector no longer resides at the address that is the subject of the foreclosure. An elector might continue to reside at an address throughout the pendency of a foreclosure action, a legal process that may take several months or even more than a year.

Therefore, boards are advised that evidence of a foreclosure action is, on its own, insufficient to sustain a voter registration challenge. Under the federal National Voter Registration Act, a county board of election may cancel a voter's registration for reasons of residency **only if** the elector has either (1) confirmed in writing that he or she has moved to a different jurisdiction, or (2) failed to respond to a forwardable notice sent by a board of elections *and* failed to vote at the two subsequent general elections for federal office. For additional information regarding the administration of voter challenges, please review Directive 2008-79.

Under R.C. 3503.19(A), any Ohio elector may update his or her voter registration by completing a change of registration form and returning it in person to the board of elections, the Secretary of State, or any designated agency, or by mail to the board of elections or Secretary of State. Updated voter registration forms postmarked or received at least thirty (30)¹ days before an election qualify that elector to vote a regular ballot.

¹ If an otherwise valid voter registration application that is returned by mail does not bear a postmark or a legible postmark, the registration shall be valid for that election if received by the office of the Secretary of State or the office of a board of elections no later than twenty-five days preceding any special, primary, or general election.



Even if a change of address form is postmarked or received after the thirtieth day before the election, Ohio law allows electors to update their voter registrations to reflect a change of address through Election Day and cast a provisional ballot as provided in R.C. 3503.16 and Directive 2008-81.

R.C. 3503.16 requires electors who wait until Election Day to update their address to comply with different voting procedures that will depend upon whether the elector moves within the same precinct, within the same county but to a different precinct, or to a different county in Ohio.

Where, due to foreclosure, eviction, or for any other reason, an Ohio elector changes residences within the same voting precinct on or before Election Day, R.C. 3503.16(B)(1) allows that elector to appear at his or her regular precinct polling location on Election Day and vote a **regular ballot**. The elector must complete a change of address form and provide identification that reflects the elector's current (new) address. If the elector provides an Ohio driver's license or state issued identification card that does not show the elector's current address, the elector may still vote a regular ballot if he or she provides the last four digits of his or her driver's license or state identification card number for the poll worker to record. In this case, the poll worker must mark in the pollbook that the elector provided a driver's license or state identification card number with a former address and then record the last four digits of the elector's driver's license number or state identification card number.

When an elector moves to a different voting precinct but remains within the same county, R.C. 3503.16(B)(2) allows that elector to appear at his or her new polling location on Election Day or at the county board of elections on or before Election Day and vote a **provisional ballot**. The elector must complete a change of address form and a statement attesting that the elector: moved on or before Election Day, voted a provisional ballot at either the polling location or the board office, and will not vote or attempt to vote at any other location for that particular election.

R.C. 3503.16(C) allows electors, who move from one Ohio county to another, to appear on or before Election Day at the office of their new county board of elections and vote a **provisional ballot**. These electors must complete a change of address form and a statement attesting that the elector: moved on or prior to Election Day, voted a provisional ballot at either the polling location or the board office, and will not vote or attempt to vote at any other location for that particular election.

Directive 2008-79 prohibits the cancellation of an elector's voter registration for the sole reason that a 60-day notice sent pursuant to R.C. 3501.19 was returned. Similarly, a challenge based on a foreclosure action cannot be sustained without first holding a hearing on such a challenge before Election Day that meets the requirements of due process as set forth in Directive 2008-79.

When a challenge is made on the basis of an elector being a defendant in a foreclosure action or residing at a property that is the subject of a foreclosure action, in addition to meeting all other requirements of Directive 2008-79, the board of elections must determine:

- 1) Whether the foreclosure action is for property that is the residence of the elector, as that residential address is reflected in the records of the board of elections;
- 2) If the foreclosure action is for the property that is the residence of the elector, the status of the foreclosure action; i.e. whether the action is still pending in court, whether there is a judgment entry from the court action granting foreclosure, and if there is a judgment granting foreclosure, whether the time to appeal the judgment has expired (appeal must be filed no later than 30 days after the judgment);
- 3) Regardless of the status of the foreclosure action, whether the elector resides at the property;
- 4) If the foreclosure action or judgment is for property that is the residence of the elector and the action is still pending or the time to appeal a judgment granting foreclosure is not yet expired, whether the elector has the intention of returning (R.C. 3503.02(A)) or if the elector has left the residence for temporary purposes only with the intention of returning (R.C. 3503.02(B)).

Please note that R.C. 3503.02(I) provides:

If a person does not have a fixed place of habitation, but has a shelter or other location at which the person has been a consistent or regular inhabitant and to which the person has the intention of returning, that shelter or other location shall be deemed the person's residence for the purpose of registering to vote.

Therefore, if an elector's residence is property that is the subject of a foreclosure action, and his or her residency, upon challenge, either at a hearing held before the election or at the polling place, cannot be established as that which appears in the records of the board of elections, the elector may use his or her current location of residence as his or her residence for the purposes of voting. In such a case, however, the elector must be directed to the proper precinct polling location (in the case of moving from one precinct to another within the county) or to the board of elections (in the case of moving from one precinct to another in the county or from one county to another in Ohio) in order to complete the requisite change of address form and attestation statements that will allow the elector to vote a provisional ballot for his or her new voting precinct.

When a challenge is made on the bases of (a) a returned 60-day notice under R.C. 3501.19, and (b) an elector being a defendant in a foreclosure action or residing at a property that is the subject of a foreclosure action, the same determinations must be made as set forth in 1) through 4) above and in compliance with Directive 2008-79.

If you have any questions about this advisory, you may contact the elections attorney assigned to your board of elections.

Sincerely,



Jennifer Brunner



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October 14, 2008

County Clerk/Registrar of Voters (CC/ROV) Memorandum #08301

TO: All County Clerks/Registrars of Voters

FROM:

A handwritten signature in brown ink that reads "Cathy Mitchell".

Cathy Mitchell
Chief, Elections Division

RE: Voter Registration: Permanent Residence

We have received a number of questions regarding the issue of whether a voter who, for example, has recently left their home due to a foreclosure, is required to re-register to vote at a different address. The subject has also been in the news lately.

We have included the following in our Frequently Asked Questions (FAQ) document that's posted on the Voter Registration webpage
http://www.sos.ca.gov/elections/elections_vr.htm:

- **I have just moved. Am I required to re-register?**

Your voter registration should always reflect your current residence. However, if you have moved from your home into a temporary residence that you do not intend to use as your permanent residence, you can continue to use your prior permanent residence where you were previously registered to vote as your address for the purpose of voting.

We rely on Elections Code § 349 and the ruling issued by the California Supreme Court in *Walters v. Weed* in 1988.

Elections Code § 349 reads:

- (a) "Residence" for voting purposes means a person's domicile.
- (b) The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.

CCROV #08301
October 14, 2008
Page Two

(c) The residence of a person is that place in which the person's habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence.

In *Walters v. Weed*, the Court was presented with the question of whether voters (in this case, college students) who left their domiciles with no intention of returning lost their right to vote in the precinct where their domiciles were located though they had not yet established new domiciles.

The Court concluded that because "everyone must have a domicile somewhere ... such individuals retain their right to vote in the precincts of their former domiciles." In overturning a Court of Appeal decision to the contrary, the Court wrote:

"Specifically, the Court of Appeal has disenfranchised the students by creating an implied presumption that a new domicile is created whenever a person intends to abandon his or her former domicile. The Court of Appeal held: "A person who has moved from his or her voting domicile and who has no intention ever to return there to live does not satisfy the requirements of section 200, subdivision (b) [this section was renumbered as Section 349 in 1994]. We conclude as a matter of law that such a person is no longer domiciled for voting purposes in the place from which he or she has moved, and *necessarily intends to acquire a new domicile elsewhere*, regardless of his or her subjective expressions of intent with respect to that acquisition." (Italics added.) The problem with the Court of Appeal's analysis is that the students in this case had not in fact acquired new domiciles elsewhere. They had merely established residences. The acquisition of a new domicile requires the union of act and intent. Even if the students intended to acquire new domiciles in the abstract, they had not yet moved to a place where they intended to remain.

"The result of the Court of Appeal's presumption is that the students cannot vote in their former domiciles, because they have abandoned them; they cannot vote in the precincts of their current residences, because they do not have the intentions to remain and hence cannot qualify their residence as their domicile; and they cannot vote in their future domiciles, because they do not yet reside there. Such a disenfranchisement cannot be sustained.

"Our holding in this case is narrow in its scope. We hold that when a person leaves his or her domicile with the intention to abandon it, and when that person currently resides in a place in which he or she does not intend to remain, that person may vote in the precinct of his or her former domicile until a new domicile has been acquired."

I hope this information is helpful to you. If you have any questions, please do not hesitate to contact me at (916) 657-2166.

ENDNOTES

¹ The term “foreclosure” is often misused to describe a single event. It is actually a process that typically results in the loss of home ownership for a person or persons with legal title. This process very often involves a lengthy timeline marked by a number of events, starting with a bank issuing a notice of default on a home loan, and following through to the property being repossessed and resold to new owners. In this report, we use the term to refer to all stages of the process. The process can be completed in as little as 60 days, but more often takes many months. In addition, some states offer a right of redemption that can be a year or longer. See Appendix A.

² RealtyTrac® “RealtyTrac® Year-End Report shows Record 2.8 million U.S. Properties With Foreclosure Filings in 2009,” available at <http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&itemid=8333> (last visited May 14, 2010); and figure based on data for January-June 2010, emailed to FELN by J Cone of RealtyTrac® on Aug. 6, 2010. The figure was projected to the end of 2010 by multiplying January-June 2010 figure by 1.85. This methodology was recommended by D Blomquist of RealtyTrac® via telephone on Aug. 10, 2010.

³ An average of 1.76 U.S. citizens over the age of 18 lived in each household in 2009. US Census Bureau, “Family Status and Household Relationship of People 15 Years and Over, by Marital Status, Age, and Sex: 2009” *America’s Families and Living Arrangements: 2009*, available at <http://www.census.gov/population/www/socdemo/hh-fam/cps2009.html>. (last visited July 15, 2010).

⁴ See “Foreclosure Can Be a Lengthy Process” on page 8 of this report. See also Appendix A (state-by-state listing of the shortest time frames for foreclosure).

⁵ See “Foreclosure Affects Millions of Voters” on page 5 of this report.

⁶ As noted below, there are millions of Americans who are effectively deemed to have a residence in a state for voting purposes whether or not they maintain a residence there, or intend to return. See *infra* notes 84, 85, 87-91 and accompanying text.

⁷ A “right of redemption” is the right of a property owner to redeem his or her real estate from foreclosure or tax sale by paying off the amount owed. Many states provide statutory protection to homeowners to redeem their property in this way even after they no longer live in the home. See, e.g., Ala. Code § 6-5-248(b) (2010). In Appendix A, we indicate which states provide this statutory protection.

⁸ In most states, “domicile” or “residence” for the purpose of voter registration is defined as the place where a person intends to live, and when he or she is away, intends to return. See, e.g., Mont. Code Ann. § 13-1-112 (2010). Voters are only allowed one location from which to vote. As we will see below, in many states a person does not lose their voting domicile or residence until they obtain a new one, and a temporary residence does not qualify if the voter does not intend to remain there. See *infra* notes 23-40.

In this report, we most often use the term “residence” for voting purposes, even though some states use the term “domicile.” We do this to convey concepts in a less legalistic form.

⁹ See Eartha Jane Melzer, “Lose your house, lose your vote,” *The Michigan Messenger* September 10, 2008. Available at <http://michiganmessenger.com/4076/lose-your-house-lose-your-vote> (last visited May 14, 2010) (In September, 2008, a Michigan political party revealed its plan to ask poll workers to block people seeking to vote if their registered address appeared on a list of foreclosure properties); Adam Serwer, “Michigan GOP Settles Over Foreclosure Challenges” *The American Prospect TAPPED Blog* (October 20, 2008) (quoting Indiana Marion County, GOP Chairman Tom John on foreclosure “‘We might end up challenging on that,’ he said. ‘It’s entirely possible. I think it would be a solid basis for asking someone to vote provisionally.’” Available at http://www.prospect.org/csnc/blogs/tapped_archive?month=10&year=2008&base_name=michigan_gop_settles_over_fore (last visited May 28, 2010).

¹⁰ In most cases, registered voters can update their registration up to Election Day as long as they have not moved too far from their prior address. See Appendix A and 42 U.S.C. §1973gg-6(e). To do this, however, they will often have to provide documentation that links their name with their new address.

¹¹ State and federal law allows voters to use several forms of identification at the polls with current name and address: current and valid government issued photo ID; utility bill, bank statement, government check, paycheck, or government document. This can be challenging for voters who have been forced by foreclosure to move into temporary housing because their name and current address may not be on any of these documents.

¹² See Appendix A for state-by-state voter registration deadlines.

¹³ The states with a 30 day registration deadline are LA, MI, MS, MT, NV, NJ, NY, NC, ND, OH, PA, RI, SC, TN, TX, UT, and WA. See Appendix A for state-by-state information. For example: 1. if a person moves from Idaho to Utah within 30 days of the election, they will have moved from a State where they could register to vote on Election Day, to a state where they have already missed the voter registration deadline; 2. If a person moves from Alabama to Mississippi between 30 and 10 days of the election, they will have moved from a state where they could register up to 10 days before Election Day to a state where they would have had to register 30 days before Election Day.

¹⁴ In many states, voters who move outside the county cannot vote if they have not updated their registration prior to the general registration deadline.

¹⁵ Of the homeowners who obtained mortgages between 2005 and 2008, 8% of African American and Hispanic borrowers have lost their homes to foreclosure versus only 4.5% of white borrowers. Of the total homeowner pool, 17% of Hispanic individuals, 11% of African Americans, and 7% of white borrowers have faced foreclosure. Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst. *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*. Center for Responsible Lending, (June 18, 2010), available at, <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf> (last visited June 23, 2010).

¹⁶ Christy Rogers, *Subprime Loans, Foreclosure, and the Credit Crisis: What Happened and Why? – A Primer*, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, Dec. 2008, at 4 (“People of color are more than three times as likely as whites to have subprime mortgages”); Kai Wright, *The Assault on the Black Middle Class*, American Prospect, Aug. 4, 2009 (“In 2006, African American borrowers at all income levels were three times as likely to be sold sub-prime loans than were their white counterparts, even those with comparable credit scores. The Pew Hispanic Center reports that 17.5 percent of whites took out sub-prime loans, but that 44.9 percent of Hispanics and 52.5 percent of African Americans took out sub-prime loans. ... As a result, one in 10 black borrowers is expected to foreclose, compared to one in 25 whites.”).

¹⁷ National Community Reinvestment Coalition, “Income is No Shield Against Racial Differences in Lending II: A Comparison of High-Cost Lending in America’s Metropolitan and Rural Areas” (Washington, DC: 2008).

¹⁸ Gerardi, K., Shapiro, A., and Willen, P., “Subprime outcomes: Risky mortgages, homeownership experiences, and foreclosures.” *Federal Reserve Bank of Boston Working Paper* 07-15 (2007) (using data from 1990-2007 estimate that over approximately 12 years borrowers who purchase their homes with subprime mortgages have an almost 20 percent change of losing them to foreclosure – about six times as great as those who use the prime mortgage market).

¹⁹ See “U.S. Foreclosure Market Data by State – 2009 Totals” Table on page 3.

²⁰ *Uniformed and Overseas Citizens Absentee Voting Act* of 1986, Title 42, Chapter 20, Supchapter I-G (“UOCAVA”). According to the U.S. Election Assistance Commission, 637,216 UOCAVA ballots were counted by the States in 2008. *Uniformed and Overseas Citizens Absentee Voting Act: Survey Findings*, Election Assistance Commission, Washington D.C., November, 2009.

²¹ Most state absentee voter statutes provide that a person may leave the state temporarily (on business or otherwise) so long as they do not have an intention to reside in the place to which they move. Typically, there is no pre-set durational limit on this “temporary” absence. A few states provide additional qualifications, such as California, where the person cannot have an intention to remain in the new location for an “indefinite time.” Cal. Elec. Code § 2023 (2010). Ohio limits the absence to four years or less. Ohio Rev. Code Ann. § 3503.02(F).

²² Renee Paradis, Sara Conrath, and Mimi Franke with Laura Seago and Jennifer Rosenberg “Legal Guide to Student Voting” (2008) Brennan Center Website (available at http://www.brennancenter.org/content/pages/svg_state_write_ups (last visited June 7, 2010).

²³ See Cal. Elec. Code § 349(b) (“The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning.”); *Walters v. Weed*, 45 Cal. 3d 1, 14 (Cal. 1988) (“We hold that when a person leaves his or her domicile with the intention to abandon it, and when that person currently resides in a place in which he or she does not intend to remain, that person may vote in the precinct of his or her former domicile until a new domicile has been acquired”). See also Memorandum #08301 to County Clerk/Registrar of Voters from Cathy Mitchell, Chief, Elections Division, California Secretary of State (Oct. 14, 2008).

²⁴ See Ala. Code § 17-3-32 (2010) (no person shall “lose or acquire domicile either by temporary absence from his or her domicile without the intention of remaining. . . without having acquired any other lawful domicile”); *Jacobs v. Ryals*, 401 So.2d 776, 778 (Ala. 1981) (“Temporary absence from one’s residence for the purposes of his employment and the like, without the intent to abandon the home town and acquire a domicile elsewhere permanently, or for an indefinite time, does not forfeit his right to vote” citing *Wilkerson v. Lee*, 181 So. 296, 298 (Ala. 1938)).

²⁵ See Ark. Code Ann. § 7-5-201 (2010) (“(2) A change of domicile is made only by the act of abandonment, joined with the intent to remain in another place; (3) A person does not lose his or domicile if he or she temporarily leaves his or her home and goes to another country, state, or place in this state with the intent of returning”); *Clement v. Daniels*, 235 S.W.3d 521, 526 (Ark. 2006) (“in election cases, to effect a change of domicile from one locality or state to another, there must be an *actual abandonment* of the first domicile, *coupled with an intention not to return* to it, *and* there must be a *new domicile* acquired by *actual residence* in another place or jurisdiction, with the *intent of making the last acquired residence a permanent home.*” citing *Jenkins v. Bogard*, 980 S.W.2d 270, 274 (Ark. 1998), and “Halter was physically removed from Arkansas, but the evidence and testimony reveal that his intent was never to leave Arkansas permanently, nor adopt any other state as his permanent home.”).

²⁶ See Colo. Rev. Stat. Ann. § 1-2-102 (a)(I) (2010) (“The residence of a person is the principal or primary home or place of abode of a person. A principal or primary home or place of abode is that home or place in which a person’s habitation is fixed and to which that person, whenever absent, has the present intention of returning after a departure or absence, regardless of the duration of absence”; *Gordon v. Blackburn*, 618 P.2d 668, 672 (Colo. 1980) (“[T]he statutes make clear that one does not lose voting rights by reason of departure or absence from the primary home, once it has been established. . . The intention of the individual is of prime importance in resolving this problem, and to do so, all the surrounding facts and circumstances must be weighed.”).

²⁷ See Ga. Code Ann. § 21-2-217(a)(2) (2010) (“A person shall not be considered to have lost such person’s residence who leaves such person’s home and goes into another state or county or municipality in this state, for temporary purposes only, with the intention of returning, unless such person shall register to vote or perform other acts indicating a desire to change such person’s citizenship and residence”); *Holton v. Hollingsworth*, 514 S.E.2d 6, 9-10 (Ga. 1999) (Two voters had lived in Midway and had had a trailer there which they had sold two to three years before, they then lived in Hinesville but continued to return to Midway to go to Church, maintain bank accounts and to stay with one partner’s mother. The Court found them to be residents of Midway for voting purposes).

²⁸ See 10 Ill. Comp. Stat. Ann. 5 § 3-1 (“a permanent abode is necessary to constitute a residence within the meaning of Section 3-1”); *Madigan v. Baumgartner*, 823 N.E.2d 1144, 1151 (Ill. App. Ct. 2005) (in relation to a person who had allegedly abandoned a former residence: “Implicit in the residency requirement of intention to make a place a person’s permanent home is the ability of that person to choose whether he wishes to exercise the rights afforded to a permanent resident in his new location or if he wishes to continue his residence at the home he has temporarily left. As long as he does not seek to “exercise the rights of property or of citizenship incident to or resulting from permanent residence” at his new location but instead continues to exercise those rights, including the right to vote, at his original location, he remains a resident at the original location.”).

²⁹ See Ind. Code § 3-5-5-4 (2010) (“A person who has residence in a precinct retains residency in that precinct until the person abandons the residence by: (1) having the intent to abandon the residence; (2) having the intent to establish a new residence; and (3) acting as provided in this intent by establishing a new residence in a new precinct.”); *State Election Board v. Bayh*, 521 N.E.2d 1313, 1317-18 (Ind. 1988) (“A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. . . Physical presence in a place is only one circumstance in determining domicile”).

³⁰ See Ky. Rev. Stat. Ann. § 116.035(2) (“A voter shall not lose his or her residence by absence for temporary purposes merely; nor shall he or she obtain a residence by being in a county or precinct for such temporary purposes, without the intention of making that county or precinct his or her home”); *Moore v. Tiller*, 409 S.W.2d 813, 816-17 (Ky. Ct. App. 1966) (the Court states that a person may be absent for a short period and maintain an intention to return and not lose their residency. The Court notes however that being absent for two to three years would not constitute a “temporary” absence).

³¹ See Md. Const. art. 1 § 1 (“A person once entitled to vote in any election district, shall be entitled to vote there until the person shall have acquired a residence in another election district or ward in this State”); *Maryland Green Party v. Maryland Board of Elections*, 832 A.2d 214, 222 (Md. Ct. Spec. App. 2001) (“a qualified voter who may be in the process of moving from one election district into another remains qualified to vote in his or her original district until the change in domicile is fully effective”).

³² See *Jones v. McFarland*, 42 So.2d 123, 126 (Miss. 1949) (“Inasmuch as one must also have a domicil somewhere and a domicil is not lost until a new one is acquired, a domicil once existing cannot be lost by mere abandonment even when coupled with the intention to acquire a new one, but continues until a new one is in fact gained”).

³³ See Mont. Code Ann. § 13-1-112 (2010) (“(4) An individual does not lose his residence if he goes into another state or other district of the state for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district... (8) A change of residence may be made only by the act of removal joined with intent to remain in another place”); *Drummond v. Town of Virginia City*, 833 P.2d 1067, 1070 (Mont. 1992) (The Court found that a number of seasonal residents did not fail to meet residency requirements because they are not required to be physically present in the county in order to establish residency).

³⁴ See *Farnsworth v. Jones*, 441 S.E.2d 597, 601 (N.C. 1994) (The Court establishes a three part test to distinguish between residence and domicile: (1) actual abandonment of first domicile, coupled with intention not to return to it; (2) acquisition of new domicile by actual residence at another place; and (3) intent of making newer residence a permanent home).

³⁵ See N.D. Cent. Code § 51-01-26(3) (2010) (“A residence cannot be lost until another is gained”); *Burshiem v Burshiem*, 483 N.W.2d 175, 180 (N.D. 1992) (“The trial court must find the fact of domicile from the evidence of the person’s acts *and* declarations”).

³⁶ See *Moore v. Hayes*, 744 P.2d 934, 937 (Okla. 1987) (“Dominant element in determining ‘legal residence’ or ‘domicile’ is intention to abandon former domicile and to acquire another without intention of returning” and “A temporary absence from residence, even if it extends for a period of years, will not effect a change of residence, for voting purposes”).

³⁷ See Or. Rev. Stat. § 247.035(2) (2010) (“[A] person who has left the place of the person’s residence for a temporary purpose only, who has not established another residence for voter registration purposes and who does not have a place in which habitation is fixed shall not be considered to have changed or lost residence. The person may register at the address of the place the person’s residence was located before the person left.”).

³⁸ See Pa. Cons. Stat. § 1302(2) (2010) (“An individual shall not be considered to have lost residence if the individual leaves home and goes into another state or another election district for temporary purposes only, with the intention of returning”); *In Re Nomination Petition of Joseph Driscoll, Democratic Candidate for Congress 15th District*, 847 A.2d 44, 50 (Pa. 2004) (The Court found that a person does not change domicile just by purchasing or renting a home in a new location, they must also have the intent to live in the new residence permanently).

³⁹ See Tenn. Code Ann. § 2-2-122(4) (2010) (“A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state or place within this state for temporary purposes, even if of one or more years duration”); *Brown v. Hows*, 42 S.W.2d 210, 211 (Tenn. 1931) (The Court found that the mere act of abiding at a place for a specific purpose, with no present intention of making it permanent home, does not make such place one’s ‘residence’”).

⁴⁰ Iowa Code §48A.5(3) (2010) (“If a person...moves to a new residence, either in Iowa or outside Iowa, and does not meet the voter requirements at the new person’s residence, the person may vote at the person’s former precinct in Iowa until the person meets the voter requirements of the person’s new residence”); Nev. Rev. Stat. §293.490 (2010) (“any registered voter removing from one county to another in the State, or from one precinct to another within the same county, after the close of registration for any election shall be deemed to retain his or her residence in the county or precinct removed from for the purposes of that election”); Vt. Stat. Ann. tit. 17, §2122(b)(2010) (“a person shall retain the ability to vote in a town of former residence for a period of 17 days after becoming a resident of a new town”).

⁴¹ Data extracted from RealtyTrac®, “RealtyTrac® Year-End Report Shows Record 2.8 Million U.S. Properties with Foreclosure Filings in 2009” (January 14, 2010), available at <http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&itemid=8333> (last visited June 7, 2010); and from email received from J Cone of RealtyTrac® on Aug. 6, 2010.

⁴² See Appendix A for a summary of the residency requirements of each state.

⁴³ See Christopher Cooper and Evan Perez, *Voting-Rights Conflict Intensifies*, The Wall Street Journal (Sept. 17 2008), available at <http://online.wsj.com/article/SB122161670293146325.html> (last visited June 22, 2010); See also, The Public Record Staff, *Democrats Sue Michigan GOP over ‘Vote Caging’ Plan*, The Public Record, (Sept. 17 2008), available at <http://pubrecord.org/nation/417/democrats-sue-michigan-gop-over-vote-caging-plan/> (last visited June 22, 2010).

⁴⁴ Order of Judge John Hanley, Marion Superior Court #11, *April Herring, Shawn Herring, Great Indianapolis NAACP Branch # 3053 v Marion County Election Board*, Cause No. 49D11-0810-MI-047860, October 24, 2008.

⁴⁵ Maletski, Lopez, Zick v Macomb County Republican Party, *Complaint for Declaratory and Injunctive Relief*, United States District Court for the Eastern District of Michigan (Sept. 16, 2008), at 3-5.

⁴⁶ *Id.* at 17.

⁴⁷ See, e.g., Peter S Goodman, “Foreclosures Force Ex-Homeowners to Turn to Shelters,” *New York Times* October 19 2009 (describing story of person forced from her foreclosed home). The voter received a number of Notices of Default throughout 2007. Eventually, in Spring 2008 she accepted a deal from her mortgage company and moved out of the foreclosure property, handed over the keys and received \$2,500. She moved into her car, then onto the couches of neighbors, family and friends for over a year, before finally accepting a bed at a homeless shelter in Ohio. During this period, the voter had no fixed address and likely no clear answer where she would live on Election Day.

⁴⁸ Congressional Oversight Panel, “April Oversight Report: Evaluating Process on TARP Foreclosure Mitigation Programs” (April 14, 2010), at 115-117.

⁴⁹ See *supra* note 2.

⁵⁰ Lynn Adler, “U.S. foreclosure actions spike in Q1 despite aid,” Reuters, April 15, 2010. Available at <http://www.reuters.com/article/idUSNYS00791220100415?type=marketsNews>, and *supra* note 2.

⁵¹ See *supra* note 68.

⁵² See *supra* note 48 at 120-123.

⁵³ See *supra* note 48 at 123-128.

⁵⁴ See *supra* notes 15-18 and accompanying text.

⁵⁵ This figure is estimated based on the 5.9 million foreclosure filings expected for 2009-2010 (see *supra* note 2) multiplied by 1.76 (this is the average number of U.S. citizens over the age of 18 in each household, see *supra* note 3).

⁵⁶ Data from *supra* note 41. 2010 projections calculated by multiplying January-June 2010 figures by 1.85. This multiplication was approved as a method of projection by D Blomquist of RealtyTrac in a telephone conversation on Aug. 10, 2010.

⁵⁷ Calculated Risk, *Mortgage Delinquencies by Period and State*, [calculatedriskblog.com](http://www.calculatedriskblog.com), (May 19, 2010), available at <http://www.calculatedriskblog.com/2010/05/mortgage-delinquencies-by-period-and-by.html> (last visited June 22, 2010).

⁵⁸ See *supra* notes 23-39. We urge Secretaries of State to act as California Secretary of State Debra Bowen has done. See Appendix C.

⁵⁹ Advisory 2008-25 (Sept. 24, 2008) (emphasis in original).

⁶⁰ See Appendix A for a summary of the shortest period from default to repossession by state.

⁶¹ 752 P.2d 443 (Cal. 1988).

⁶² Cal. Elec. Code, § 349 (2010), established:

- (a) “Residence” for voting purposes means a person’s domicile.
- (b) The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.
- (c) The residence of a person is that place which the person’s habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence.

⁶³ *Walters v. Weed*, 752 P.2d 443, 444 (Cal. 1988).

⁶⁴ *Id.* at 451.

⁶⁵ See *supra* note 23 Memorandum #08301.

⁶⁶ See *supra* note 63.

⁶⁷ See *supra* note 24.

⁶⁸ See *supra* note 25.

⁶⁹ See *supra* note 23.

⁷⁰ See *supra* note 26.

⁷¹ See *supra* note 27.

⁷² See *supra* note 28.

⁷³ See *supra* note 29.

⁷⁴ See *supra* note 30.

⁷⁵ See *supra* note 31.

⁷⁶ See *supra* note 32.

⁷⁷ See *supra* note 33.

⁷⁸ See *supra* note 34.

⁷⁹ See *supra* note 35.

⁸⁰ See *supra* note 36.

⁸¹ See *supra* note 37.

⁸² See *supra* note 38.

⁸³ See *supra* note 39.

⁸⁴ See *supra* note 20. Section 12 of the Military and Overseas Voter Empowerment (MOVE) Act (2009) provides that military and overseas voters must re-register to vote and apply for an absentee ballot before each election, rather than a single application for all subsequent elections.

⁸⁵ Federal Voting Assistance Program, Reference Center. Available at <http://www.fvap.gov/reference/nvr-res.html> (last accessed April 14, 2010). The 17 states are: AZ, CO, DL, GA, HI, IA, MA, MI, NE, NY, ND, OK, RI, TN, WA, WV, WI.

⁸⁶ Tammy Luhby, “Foreclosure crisis hits minorities harder” CNNMoney.com, June 21, 2010. Available at http://money.cnn.com/2010/06/18/news/economy/african-americans_latinos_foreclosure/ (last accessed June 22, 2010).

⁸⁷ See Fair Elections Legal Network, *Barriers to Student Voting 2010*, available at http://www.fairelectionsnetwork.com/_data/global/images/Barriers%20to%20student%20voting%202010.pdf (last visited June 23, 2010).

⁸⁸ Ohio Rev. Code Ann. § 3503.02(F) (2010).

⁸⁹ Felons are not denied the right to vote in Maine and Vermont.

⁹⁰ States list disqualifying factors for voters, but few states disqualify misdemeanants. See, e.g., V.A. Const. art. 2 § 1 (disqualifying felons but not misdemeanants); Mo. Ann. Stat. § 561.026 (1-2) (2010) (disqualifying felons and certain misdemeanants).

⁹¹ See Peter Wagner, “If prisoners could vote, they would vote at home, not in the prison town” Prisoners of the Census (December 15, 2003) (available at <http://www.prisonersofthecensus.org/news/2003/12/15/vote/>, last visited June 7, 2010). For example: Me. Rev. Stat. Ann. tit. 21A, §112(7) (2010) (“A person does not gain or lose a residence...while kept in any institution at public expense”); Vt. Stat. Ann. tit. 17, §2122(a) (2010) (“A person shall not gain or lose a residence ... while confined in a prison or correctional institution”).

⁹² This is the average period for a right of redemption, certain property types may be governed by a different time period and in certain states the deed may vary the redemption period. In most cases where judicial and non-judicial proceedings can occur, the redemption period only applies for a judicially ordered foreclosure. Where both judicial and non-judicial proceedings may occur and “none” is listed in this table, the court typically has discretion to set a redemption period.

⁹³ Alaska Stat. Ann. § 15.05.012; § 15.05.020 (2010).

⁹⁴ Alaska Stat. Ann. § 15.05.012; § 15.05.014 (2010).

⁹⁵ Alaska Stat. Ann. § 15.20.015 (2010).

⁹⁶ See *supra* note 24.

⁹⁷ See *supra* note 25.

- ⁹⁸ Arz. Rev. Stat. Ann. § 16-101; §16-593 (2010).
- ⁹⁹ Arz. Rev. Stat. Ann § 16-126 (2010).
- ¹⁰⁰ *See supra* note 23.
- ¹⁰¹ Cal. Elec. Code § 14242.
- ¹⁰² Cal. Elec. Code § 2035.
- ¹⁰³ *See supra* note 26.
- ¹⁰⁴ Colo. Rev. Stat. Ann. § 1-2-217.
- ¹⁰⁵ Colo. Rev. Stat. Ann. § 1-2-216 4(a) (2010).
- ¹⁰⁶ Conn. Gen. Stat. § 9-12(a) (2010); 9 Op.Att’y.Gen.138 (1916).
- ¹⁰⁷ Del. Code Ann. tit. 15, § 1701 and § 1901.
- ¹⁰⁸ Del. Code Ann. tit. 15, § 2047.
- ¹⁰⁹ Fla. Stat Statutes § 97.041 (2010); Op.Div.Elect., DE 78-27, June 2, 1978.
- ¹¹⁰ Fla. Stat. Ann. § 101.045 (2010).
- ¹¹¹ *See supra* note 27.
- ¹¹² Ga. Code Ann. § 21-2-218 (2010).
- ¹¹³ Haw. Rev. Stat. § 11-13 (2010).
- ¹¹⁴ Haw. Rev. Stat. § 11-21 (2010).
- ¹¹⁵ Iowa Code § 48A.5(2)(b); §48A.5A (2010).
- ¹¹⁶ Iowa Code Ann. § 48A.5 (3) (2010).
- ¹¹⁷ Iowa Code Ann. § 48A.5 (3) (2010).
- ¹¹⁸ Idaho Code Ann. § 34-405 (2010).
- ¹¹⁹ Idaho Code Ann. § 34-413 (2010).
- ¹²⁰ Idaho Code Ann. § 34-413 (2010).
- ¹²¹ *See supra* note 28.
- ¹²² 10 Ill. Comp. Stat. Ann. 5 § 3-1.
- ¹²³ *See supra* note 29.
- ¹²⁴ Ind. Code Ann. §§ 3-10-11-2, 3-10-11-4(a).
- ¹²⁵ Kan. Stat. Ann. § 25-1125 (2010); *Littell v Milleomon*, 154 Kan. 670 (Kan. 1942).
- ¹²⁶ Kan. Stat. Ann. §25-1801(a) (2010).
- ¹²⁷ *See supra* note 30.
- ¹²⁸ Ky. Rev. Stat. Ann. § 116.025 (2010).
- ¹²⁹ La. Elec. Code, Chapter 4 § 101 (2010).
- ¹³⁰ La. Elec. Code. Chapter 4 § 101(D) (2010).
- ¹³¹ *Hershkoff v Board of Registrars of Voters of Worcester*, 321 N.E.2d 656 (Mass. 1974).

- ¹³² Mass. Gen. Laws ch. 51, § 3 (2010).
- ¹³³ Mass. Gen. Laws ch. 51, § 3 (2010).
- ¹³⁴ *See supra* note 31.
- ¹³⁵ Me. Rev. Stat. Ann. tit. 21A, § 112 (2010).
- ¹³⁶ Me. Rev. Stat. Ann. tit. 21A, § 129 (3) (2010).
- ¹³⁷ Me. Rev. Stat. Ann. tit. 21A, § 661 (1-2) (2010).
- ¹³⁸ Mich. Comp. Laws § 168.11 (2010).
- ¹³⁹ Mich. Comp. Laws Ann. § 168.501a(2) (2010).
- ¹⁴⁰ *Id.*
- ¹⁴¹ Minn. Stat. Ann. § 200.031 (2010).
- ¹⁴² Minn. Stat. Ann. § 201.06(3) (2010).
- ¹⁴³ *Marre v Reed*, 775 S.W.2d 951 (Mo. 1989).
- ¹⁴⁴ Mo. Ann. Stat. §§ 115.277, 115.275(3) (2010).
- ¹⁴⁵ *See supra* note 32.
- ¹⁴⁶ *See supra* note 33.
- ¹⁴⁷ Mont. Code. Ann. §§ 13-2-514(2), 13-2-304 (2010).
- ¹⁴⁸ *See supra* note 34.
- ¹⁴⁹ N.C. Gen. Stat. Ann. § 163.55.
- ¹⁵⁰ N.C. Gen. Stat. Ann. § 163-55(a) (2010).
- ¹⁵¹ *See supra* note 35.
- ¹⁵² N.D. Cent. Code § 16.1-01-05 (2010).
- ¹⁵³ *Id.*
- ¹⁵⁴ Neb. Rev. Stat. Ann. § 32-116 (2010).
- ¹⁵⁵ N.H. Rev. Stat. Ann. § 654.1(I) (2010).
- ¹⁵⁶ N.H. Rev. Stat. Ann. § 654:7-a (2010).
- ¹⁵⁷ *In re Sullivan*, 5 A.2d 57 (N.J.Cir.Ct. 1939); *In the Matter of the Petition of Allan E. Kriso*, 647 A.2d 1373 (N.J. Super.Ct. 1994).
- ¹⁵⁸ N.J Stat. Ann. 19:31-15 (d) (2010).
- ¹⁵⁹ N.M. Stat. § 1-1-7 (2010).
- ¹⁶⁰ Nev. Rev. Stat. Ann. § 41.191, § 293.486, and § 293.500 (2010).
- ¹⁶¹ Nev. Rev. Stat. Ann. § 293.490 (2010).
- ¹⁶² N.Y. Chapter ELN § 1-104 and § 5-104 (2010); *Stewart v Chautauqua County Board of Elections*, 894 N.Y.S.2d 249 (N.Y. App. Div. 2010).
- ¹⁶³ Ohio Rev. Code Ann. § 3503.02 (2010).
- ¹⁶⁴ Ohio Rev. Code Ann. §§ 3503.16, 3505.181(A)(9) (2010).
- ¹⁶⁵ *See supra* note 36.
- ¹⁶⁶ *See supra* note 37.

167 Or. Rev. Stat. § 247.303 (2010).

168 *See supra* note 38.

169 25 Pa. Const. Stat. Ann. § 1902(b) (2010).

170 R.I. Gen. Laws § 17-1-3.1 (2010).

171 R.I. Gen. Laws § 17-9.1-16 (a-b) (2010).

172 S.C. Code Ann. § 7-1-25 (2010).

173 S.C. Code Ann. § 7-5-440(B)(2) (2010).

174 S.D.Codified Laws § 12-1-4 (2010).

175 *See supra* note 39.

176 Tex. Elec. Code Ann. § 1.015 (2010); *Slusher v Streater*, 896 S.W.2d 239 (Tex. App. 1995).

177 Tex. Elec. Code Ann. § 112.002(a) (2010).

178 Utah Code Ann. § 20A-2-105 (2010).

179 Va. Code Ann. § 24.2-101 (2010).

180 Va. Code Ann. § 24.2-401 (2010).

181 Vt. Stat. Ann. tit. 17 § 2122(b) (2010).

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183 Vt. Stat. Ann. tit. 17, § 2122 (b) (2010).

184 Wash. Rev. Code Ann. § 29A-04.151 (2010).

185 Wash. Rev. Code Ann. § 29A.08.140 (2010).

186 Wash. Rev. Code Ann. § 29A.08.430 (2) (2010).

187 Wis. Stat. Ann. § 6.10 (2010).

188 Wis. Stat. Ann. § 6.02(2) (2010).

189 *Sandy v Johnson*, 571 S.E.2d 333 (W.Va. 2002).

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