

**To:** GLA Board of Directors  
Election Committee

**From:** Andrea Sedlak, Co-Chair, Election Committee  
Charlene Murphy, Election Committee member and former Election  
Committee Co-Chair

**Date:** December 8, 2018; Revised December 22, 2018

**Re:** Historical Overview of Recommendations and Rationales Governing the  
Election Process for Proxy, Absentee, and In-Person Voting

**cc:** Landowners Attending the December 17, 2018 Election Committee  
Meeting

This memo provides background for the Board, the GLA lawyer, and concerned landowners. It summarizes the timeline of communications and considerations in our records on the new processes for handling absentee ballots and proxy representatives.

June 16, 2018. At the Rescheduled 2017 Election this date, 3 people with proxy designation forms were refused ballots because the landowners they represented had voted absentee.

The processing of absentee ballots was completed very early in the meeting and those ballots had already been de-identified and placed in the ballot box. Because the landowners' absentee ballots could not be retrieved, their proxy authorizations could not be honored.

July 26. EC meeting. An Election Committee (EC) member was tasked with looking into Montana nonprofit law governing legal representatives. In doing that research, she ran across MCA 35-2-539(5) on proxy appointments.

August 5. Her email to the EC reported an issue related to treatment of proxies to add to the next EC meeting agenda.

August 18. The EC member sent the committee four attachments relevant to the upcoming EC meeting on August 30. They all pertained to the handling of proxy appointments.

- The GLA proxy form,
- A copy of MCA 35-2-539, which can be found at the following URL:  
[https://leg.mt.gov/bills/mca/title\\_0350/chapter\\_0020/part\\_0050/section\\_0390/0350-0020-0050-0390.html](https://leg.mt.gov/bills/mca/title_0350/chapter_0020/part_0050/section_0390/0350-0020-0050-0390.html), and
- A copy of MCA 35-2-542, which can be found at the following URL:  
[https://leg.mt.gov/bills/mca/title\\_0350/chapter\\_0020/part\\_0050/section\\_0420/0350-0020-0050-0420.html](https://leg.mt.gov/bills/mca/title_0350/chapter_0020/part_0050/section_0420/0350-0020-0050-0420.html)

August 30. The EC meeting discussed the fact that MT law stipulates that a proxy appointment can only be revoked in two ways—by the owner who granted the proxy showing up in person to vote at the meeting or by the grantor of the proxy sending a written revocation to the organization or authoring a subsequent proxy appointment form. The meeting minutes list discussion of “MT state law pertaining to proxies and how they are legally revoked.”

Post-meeting emails: Over the following days, the EC communicated by emails on edits to the proxy designation form, which led to the important highlighting in bold red font of these last lines from GLA Bylaw Article V on the final version of the form: **Such proxy shall be effective and remain in force until voluntarily revoked, amended or terminated by operation of law, until the expiration of one year after its execution or until the date of the next GLA Annual Meeting after the proxy was used at the previous Annual Meeting. The Association shall continue to recognize a proxy which has not expired until it receives notice of such revocation, amendment or termination.**

September 2. EC email discussions showed concerns about a conflict between an absentee ballot and a proxy and how to resolve such a circumstance. One EC member noted: “Mailing in an absentee ballot does not qualify for a proxy revocation under state law.” Subsequent emails agreed we must follow state law and another EC member identified a need to adapt absentee ballot processing so they would be available for rescinding them if a proxy representative were to appear “Since an absentee ballot does not invalidate a proxy, that means that we can’t process any absentee ballots until all votes are submitted at the meeting—that is, until 12 pm.”

Sept 10, 2018. BOD meeting discussed the election committee recommendation re: (1) A proxy is honored until it expires or is revoked in writing, so a proxy trumps absentee, and (2) landowner in person trumps proxy. No formal board vote was taken, but the board recommended an action item to make these changes to the election instructions for sign-in and verifier staff.

Excerpt from minutes for BOD meeting Sept 10:

### **5.9.3 Voting Authority (Proxy, Absentee, In-person)**

Discussed amending election instructions to align with bylaws; that a proxy is honored until it expires or is revoked in writing. A valid proxy will override an absentee ballot as per state law.

**Action Item:** *Charlene and Election Committee will revise election instructions to align with bylaws and state law.*

September 17. The upcoming September 20 EC meeting agenda included revising the instructions for the sign-in table volunteers and verifiers. Emails September 17 discussed amending the previous instructions to adhere to the then-current understanding of MT state law limiting the ways a proxy appointment could be revoked.

October 25-28. By this point, the instructions for election volunteers had been edited to recognize that the MT state law requirements, as we understood them, clearly resolved two situations: (1) should a proxy want to vote after the landowner had voted absentee (the proxy gets precedence), and (2) should a landowner want to vote in person after having given their proxy to another (the landowner gets precedence).

October 25, 2018, 7-9 p.m. EC verifier training on 10/25 raised a third potential scenario—a landowner shows up to vote in person after having submitted an absentee ballot.

October 26, 7:28 a.m. Charlene reported to the Board via email that the EC training the previous night had identified this third scenario, and the suggestion was to allow the in-person landowner to cancel their absentee ballot in this case as well (to be consistent with the procedures established for (1) above). Charlene’s email to the BOD asked whether anyone objected. A total of three BOD members replied to her question. None objected:

- GLA Board President Dennis Riley asked “*How would you find a secret ballot?*” Charlene’s reply described the new processing instructions whereby “*the secret absentee ballot is not separated from its identifying small envelope until 12:00 noon when the voting period ends.*”
- BOD member Newman Brozofsky asked: “*The question comes up with the proxy being nullified. It would be impossible to know which ballot it was unless you attached a name to it until the final separation at noon.*” Charlene agreed that would be the case if the proxy representative had already placed their ballot into the ballot box. She described what had occurred in the previous election in June—a single instance where the proxy representative had not yet voted so they gave their ballot to the landowner to use.
- BOD member Leo Keeler stated: “*A person can ask for GLA to return an unopened letter since it is not officially part of the GLA records until opened. I believe they should be able to ask for the unopened "Letter" (with postage stamp) ballot return to not be opened and returned if they do it in time.*”

*I do not consider a ballot form to be a ballot that has been cast until it is removed from the envelope and placed in the box/pile where it cannot be differentiated from others.”*

The EC accepted this reasoning, that an absentee ballot would not be considered “cast” until it is anonymized and placed into the ballot box with other anonymous ballots. (This assumption is noted in Question #4 in “Draft Questions for the GLA lawyer revised\_’18-12-22,” which also gives further details about the new absentee ballot processing.) Up to that point, when the anonymous absentee ballot is removed from the identifying envelope and put into the ballot box with other anonymous absentee ballots, it is possible to retrieve absentee ballots because (under the revised processing instructions) they would be held unopened in their small envelope with identifying sticker until 12:00 p.m. in-person voting cutoff. The EC worked on editing the sign-in table and verifier instructions to conform to these arrangements.

October 26, 11:58 a.m. Charlene alerted the board by email that she has just seen Ron Price and he stated he wanted to withdraw as a candidate. Charlene later called Ron and left a voice message telling him he needed to call the board and officially withdraw.

October 26, at 12:38 p.m. Ron Price notified the Board he was officially withdrawing as a candidate.

NOTE: The editing of election procedure instructions to allow a landowner to retrieve their absentee ballot and vote in person was *not* based on Ron Price’s withdrawal as a candidate. It was discussed the night before at the EC training and proposed in an email early in the morning of October. 26. The decisions about deferring to a landowner who showed up in person to override a proxy they issued and about pulling an absentee ballot in deference to a proxy that appeared at the meeting to vote for a landowner were discussed weeks, even months, earlier and were made to conform to MT nonprofit law and in response to the BOD’s action item order. The recommendation to allow a landowner who arrived to vote in person to revoke his or her earlier absentee ballot was made prior to Ron Price’s withdrawal as a candidate.

October 27, at 10:52 a.m., Ron contacted the board, asking to be reinstated as a candidate, reversing his withdrawal of the previous day. The Board consulted the GLA attorney advice and, following the attorney’s advice, explained to Ron that he could not do so. His withdrawal was officially accepted the day before. Now he could not re-nominate himself, since the nomination deadline had passed. The board sent a letter to Ron Price, (dated November 7, 2018) stating this status.

NOTE: Ron could still be a write-in candidate, but in fairness to all write-in candidates, the BOD policy is to not announce any write-in candidates. They have sole responsibility for their write-in campaign and, if removed from the official ballot as Ron was, sole responsibility for contacting their constituents/potential supporters themselves. Thus, the BOD issued no announcement about Ron’s status.

November 10, 2018. At the Election Meeting, the new procedures were applied to a total of 7 processing decisions:

- Four NG Absentee ballots were superseded by ballots given to proxy representatives because ‘Proxy trumps absentee’
- Two NG Absentee ballots were superseded by an in-person landowner’s vote because ‘Landowner in person trumps absentee’
- One SG absentee ballot was superseded by a ballot given to a proxy representative because ‘Proxy trumps absentee’