

Spoiling Ballots

9. If a voter, by accident or mistake, spoils or erroneously prepares their ballot, they may receive another by returning the defective ballot to an election official. Wis. Stat. § 6.80(2)(c).
 - a. The defective ballot must be returned to the election officials and spoiled (torn to make it unusable).
 - b. The spoiled ballot should be kept in an envelope to be returned to the municipal clerk with the other election materials.
 - c. Up to three ballots may be issued to a voter. Wis. Stat. § 6.80(2)(c). A notation (2nd or 3rd ballot issued) should be made on the Inspectors' Statement (EL-104) and poll list for each additional ballot issued.
 - d. Note: This procedure is not affected by the ballot spoliation injunction in *Kormanik v. WEC* (2022CV001395).
10. The voter then places his or her voted ballot into the tabulating device or appropriate ballot box. Or, if using direct recording electronic equipment (DRE), the voter casts his or her ballot and closes out the voting session.
11. The voter should then leave the polling place unless he or she intends to stay as an observer.

On the ICX voting machine, if the voter leaves before accepting the ballot, it must be SPOILED! Do NOT press accept ballot!

Instead, remove the voter card, insert the poll worker card, enter the login credentials, and remove the poll worker card (p. 49 of the ICX manual).

Record the incident on the Inspectors' Statement with code X (other occurrences or irregularities).

Subject **RE: Ballot question**
From Williams, Robert A - ELECTIONS <RobertA.Williams@wisconsin.gov>
To villofboaz@mwt.net <villofboaz@mwt.net>
Cc ELECTIONS HelpDesk <elections@wisconsin.gov>
Date 2022-03-16 9:01 am



Hi Susie,

Our guidance has been that the ballot should be spoiled. Without being able to determine the voter's intent, there is no way to know why that ballot was left uncast.

Please let us know if you have any further questions.

*How to spoil a ballot
page 49*

Thank you,

Robert Williams

Election Administration Specialist
Voting Systems Certification Testing
Wisconsin Elections Commission



From: ELECTIONS HelpDesk <elections@wisconsin.gov>
Sent: Wednesday, March 16, 2022 7:54 AM
To: Williams, Robert A - ELECTIONS <RobertA.Williams@wisconsin.gov>
Subject: FW: Ballot question

From: Village of Boaz <villofboaz@mwt.net>
Sent: Tuesday, March 15, 2022 4:59 PM
To: ELECTIONS HelpDesk <elections@wisconsin.gov>
Subject: Ballot question

CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

The instructions with our new ICX machine mentions the possibility of a voter leaving the polling place before casting a ballot. (Please see attached.) If this ever were to happen, does the ballot get spoiled or cast as is? Thank you for answering my question.

Susie Hauri, Clerk/Treasurer

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Spoiling and Replacement of Absentee Ballots

Disclaimer: This section of the manual covers a municipal clerk's ability to return absentee ballots to electors under § 6.86(5) when the ballot is spoiled or damaged. For information on a municipal clerk's ability to return absentee ballots to electors under § 6.87(9) when the certificate is incomplete or missing, see "Voter Correction of Incomplete Absentee Certificate Envelopes" on page 94. **Be advised that these two sections of the manual are not interchangeable.**

If a clerk receives an absentee ballot that is spoiled or damaged from a voter, statute directs that the clerk shall issue a new ballot to the elector, provided there is enough time for the elector to properly return the ballot. Wis. Stat. § 6.86(5). The clerk must also believe that the first ballot was issued to or on behalf of the elector who is returning it, or that the first ballot was issued to a person with disabilities and on whose behalf the ballot is being returned. before issuing the second ballot. Wis. Stat. § 6.86(5). If the clerk issues a new ballot pursuant to § 6.86(5), the clerk should destroy the spoiled or damaged ballot. Wis. Stat. § 6.86(5). The spoiled or damaged ballot should be destroyed to the extent that it cannot be tabulated, but should still be preserved as a defective ballot per § 7.51(2)(b). If the clerk does not believe the person requesting the replacement ballot is the one to whom the original

ballot was provided, the clerk should not issue the replacement ballot, document the incident for a subsequent challenge on Election Day under § 6.92, and contact law enforcement immediately.

A circuit court has recently concluded on a motion for summary judgment that there is no statutory authority for a clerk to return or spoil an otherwise complete, undamaged absentee ballot that was properly previously returned by an elector. *Kormanik v. WEC* (2022CV001395, Nov. 29, 2023). If an absentee ballot is complete and in totally acceptable condition and was properly returned in an unspoiled and undamaged state, “the statutes provide no basis upon which the voter may ever possess that ballot again.” *Kormanik*, at 13.

A voter who did not receive the replacement ballot, or chose not to return it, is able to vote in-person on Election Day.

When is a Ballot Returned

The *Kormanik* circuit court decision concluded that the only way to read § 6.86(5) is that the spoiling or damaging were already done when the absentee ballot was returned. The circuit court concluded that a ballot that is not damaged or spoiled, and is otherwise complete, is “returned” when it arrives at the clerk’s office. The circuit court noted that § 6.88(1) “requires that upon arrival at the clerk’s office, the ballot shall be sealed in a carrier envelope and must be opened when and where election day votes are being cast...Once the clerk has that returned ballot, it is to be sealed until election day.” *Kormanik*, at 13. A reasonable interpretation of § 6.88(1) and *Kormanik* is that a ballot is returned when it is in possession of the clerk.¹⁹

How the Request is Made

If the voter returns an absentee ballot that is already spoiled or damaged to the municipal clerk, the voter’s request for a replacement ballot under § 6.86(5) must be made within the applicable statutory timeframe for requesting an absentee ballot. Wis. Stat. § 6.86(5) (cross-referencing §

¹⁹ As of the date of the manual, the *Kormanik* matter is still open. To the extent necessary, the manual will be further updated.

6.86(1) and (3)(c)). The elector may vote the replacement ballot at the clerk's office during in-person absentee voting under those procedures, or may vote the ballot under the usual absentee return procedures in § 6.87(4)(b)1.

1. The municipal clerk ensures that each absentee ballot is delivered to the correct polling place or alternate ballot site on Election Day no later than 8:00 p.m. Wis. Stat. § 6.87(6).
2. If the clerk receives an absentee ballot from an elector who is recorded as voting on Election Day, the clerk should mark the ballot "To Be Rejected" and set the ballot aside for processing by the Municipal Board of Canvassers. The clerk should also contact law enforcement immediately.
3. If an elector with a calendar year request does not return a ballot for an election, the absentee request is cancelled and the absentee elector should be notified by mail within 5 days, if possible. Wis. Stat. § 6.86(2)(b).

Special Categories of Absentee Voters

There are additional procedures for various special categories of voters.

Indefinitely Confined Electors

1. An elector who is indefinitely confined because of age, physical illness or infirmity, or is disabled for an indefinite period may sign a statement to that effect and request that absentee ballots be sent to the elector automatically for every election until such time as the elector fails to return a ballot.
 - a. The Application for Absentee Ballot (EL-121) contains a space for the voter to indicate they qualify as indefinitely confined.

Note: The completion of the certification of witness satisfies the proof of Identification requirement for indefinitely confined electors.

 - b. The envelope containing the indefinitely confined elector's ballot should be clearly marked "return service requested."