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STATE OF CALIFORNIA | ELECTIONS

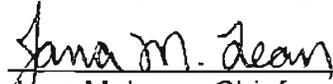
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September 14, 2010

County Clerk/Registrar of Voters (CC/ROV) Memorandum #10285

TO: All County Clerks/Registrars of Voters

FROM:



Jana M. Lean, Chief
Elections Division

RE: Voter Registration: Permanent Residence

Given the home foreclosure rates in California continue to remain high, we thought it is important to re-visit 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.

Below is the response included in our Frequently Asked Questions (FAQ) document that is posted on our Voter Registration web page at www.sos.ca.gov/elections/elections_faq.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.

In issuing this guidance, we rely on Elections Code section 349 and the ruling issued by the California Supreme Court in *Walters v. Weed* in 1988.

Elections Code section 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 give time, a person may have only one domicile.
- (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. If you have any questions, please do not hesitate to contact me at (916) 657-2166 or jana.lean@sos.ca.gov.