



News and Info Item

What to do if a voter insists their ballot be hand counted.

Summary

- The Constitution calls for ballots or voting equipment.
- The Code of Virginia mandates electronic voting equipment which is within the Constitution.
- The Code of Virginia only allows for using paper ballots when the voting equipment is inoperable.
- A person has not voted until the permanent record of their vote is preserved (placing the optical scan ballot into the tabulator)
- If the voting machine is operational, the only option for the voter is to vote using the voting machine.
- If the voter is persistent, call the Registrar's Office or 911 whichever is appropriate.

What does the Constitution say?

(Page 6 in Virginia Election Law Book)

Article II. Franchise and Officers

Section 3. Method of voting

In elections by the people, the following safeguards shall be maintained: Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form, including the offices to be filled and the listing of candidates or nominees, shall be as uniform as is practicable throughout the Commonwealth or smaller governmental unit in which the election is held.

What does Virginia Law say?

(Page 299 in grey VA Election Law Book)

§ 24.2-626. Governing bodies shall acquire electronic voting systems.

The governing body of each county and city shall provide for the use of electronic voting systems, of a kind approved by the State Board, at every precinct and for all elections held in the county, the city, or any part of the county or city.

What does the Virginia Law say about using paper ballots? (Page 316 in grey VA Election Law Book

§ 24.2-646.1. Permitted use of paper ballots.

The official paper ballot shall be used by a voter to cast his vote only in one of the following circumstances:

1. The official paper ballot is the only ballot in use in the precinct.
2. The official paper ballot is used by voters voting outside of the polling place pursuant to § 24.2-649.1.
3. The voter is casting a provisional ballot.
4. The voter is provided an official paper ballot or copy thereof pursuant to § 24.2-642 when voting equipment is inoperable or otherwise unavailable.
5. The official absentee paper ballot voted in accordance with (§ 24.2-700 et seq.).

When is a ballot cast?

(page 517 in grey VA Election Law Book)

VAC20-60-40. When ballot cast.

1. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved. A permanent record is preserved by a voter (i) pressing the vote or cast button on a direct recording electronic machine, (ii) inserting an optical scan ballot into an electronic counter, or (iii) placing a paper ballot in an official ballot container.
2. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.
3. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present. Notwithstanding the previous sentence, if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the scanner due to an undervote or overvote, the officer of election may cast the ballot for the absent voter.
4. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the moment he personally delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the U.S. Postal Service or other authorized carrier for returning the ballot as required by law.

Statutory Authority § 24.2-103 of the Code of Virginia.