

A Candidate's Guide to Statements of Financial Interest Or how you can get thrown off the ballot without really trying

Note: This is a plain language guide for normal people (non-lawyers). It is intended to give you a summary of what you must do. While I work hard to make it accurate, lawyers, judges and legislators are great at making complicated what should be obvious – if you have questions, ask a lawyer.

Candidates for state or local office in Pennsylvania must file a “Statement of Financial Interest.” This is a form on which the candidate must list various income sources and property holdings. *See* 65 Pa.C.S. § 1104(b). (Incumbents and public employees also have to complete this form, but that’s not what is getting discussed here. *See* 65 Pa.C.S. § 1104(a).)

Not filing or messing up the statement of financial interest be the express lane to private citizen: errors can get a candidate tossed off the ballot. The statute says that errors in a candidate’s statements of financial interest are “***fatal***.” The court decisions in Pennsylvania on just how a fatal a mistake is, is a mess. You don’t want to get this wrong. Below, I’ll try to explain the court decisions, but you have better things to spend your scarce campaign dollars on that lawyers’ fees.

Note: Localities may have their own reporting requirements in addition to those required on the state Statement of Financial Interest.

Where can I get copies of the form? You can find a link to the state form at this address – www.ethics.state.pa.us/portal/server.pt/community/forms/9044

When does a candidate have to file a statement of financial interest? A candidate petitioning to be on a party primary ballot must file the statement of financial interest on the due date for the petition or before.

Tip: Get this done early! Why not file early? As described above, messing up or forgetting to file your statement of financial can be a “fatal” problem.

Where do I file my statements of financial interest?

If running for state-level office:

- Original goes to the state ethics commission **AND**
- A copy is submitted with your nominating petitions at the secretary of state’s office

If running for county or local office:

- Original goes to your local government where you're a candidate **AND**
- A copy is submitted with your nominating petitions wherever it is you file your nominating petitions (most commonly your county board of elections but double check).

What's state-level office? ○ Governor ○ Justice of the Supreme Court ○ Lieutenant Governor ○ Judge of the Superior Court ○ Attorney General ○ Judge of the Commonwealth Court ○ Auditor General ○ Judge of the Court of Common Pleas ○ Treasurer ○ Judge of the Municipal Court ○ Senator in the General Assembly ○ Representative in the General Assembly

What are county or local offices? Everything else.

What are the addresses for filing the papers?

For state-level offices, if you don't file electronically,

The original goes to State Ethics Commission, PO Box 11470, Room 309 Finance Building Harrisburg, PA 17108-1470

A copy goes with your nominating petition to the Bureau of Commissions, Elections and Legislation, Commonwealth Keystone Building, Room 125, Plaza Level, 400 North Street, Harrisburg, PA17120.

For Philadelphia Offices:

The hard copy original goes to the Records Department in City Hall, Room 156. Electronic filing is also supposed to be available, but the webpage says that on-line filing will be unavailable until April 1, 2015.

A copy goes with your nominating petitions to the Board of Elections, Room 142 in City Hall.

For Other Pennsylvania Counties or Localities:

Please call your county government or town hall, depending on the office that you're seeking.

What goes on the form? THE FORM IS FOR THE PRIOR YEAR. So if you're submitting it in 2015, you're filling it out with 2014 information (Box 7).

You generally aren't being asked to list the dollar numbers – just list the property or the person, as the case may be.

○ *Real Estate*: If you have real estate that was involved in transactions with the state, counties, or local governments, or any governmental body in Pennsylvania – you are required to list the address of the real estate. This is any kind of real estate transaction – buy, sell, lease, rent, condemnation. This covers both direct and “indirect” holdings. Where you own 80% of a company that owns the real estate, that's an indirect holding and must be reported.

○ *Creditors*: You are required to list the name and address of all creditors to whom you owe more than \$6,500, ***excluding*** a mortgage or home equity loan (on your first or second house¹) or a loan from immediate family.

If the loan is a joint loan (*that is*, to candidate and spouse), you need to list that if the creditor can collect the whole thing from you or if the fraction of the outstanding amount that the lender can collect from you is above \$6,500. (*that is*, candidate and husband have an auto loan for \$7,000. If the candidate can be sued for the whole amount, he needs to report it. But if the finance company can only hold the candidate responsible for half the loan, then it doesn't have to be reported.)

You do not have to state the amount of the debt – just the name and address of the creditor and the interest rate on the loan.

○ *Income*: You are required to list the name and address of all sources of income over \$1,300 for the year.

Income means any money to you from just about anything that isn't inheritance or a gift. You only have to list the name and address for the income source.

If you are a sole proprietor (i.e., an unincorporated one-person business), you should list all clients who gave you \$1,300 during the year.

You don't have to list your spouse's income sources.

¹ If you have a loan on your third home, you have to report that. However, if you have a third home, you really might want to think about why you are taking on all that debt.

- Gifts: You are required to list all gifts valued at \$250 or more.

You must list the name and address of the source, the circumstances of the gift, a description of the gift and a value for the gift.

Campaign contributions if reported elsewhere do not have to be listed here.

Gifts from friends and family do not have to be listed – however, a lobbyist is never a “friend” for these purposes.

Loans at commercially reasonable rates don’t count as gifts. But an extra-low interest rate loan can.

- Transportation, lodging, hospitality. If a source of transportation-lodging-hospitality provides more than \$650 worth of transportation and lodging in a single year, you must list the name and address of the person/company providing it. (Repayment of travel expenses by government organization doesn’t count.)

- Positions with Business Entities: If you are an officer, director or employee of any business entity, you must provide the name and address of the entity. Treat non-profits as business entities.

- Financial Interests: List the name, address and interest you hold for all for-profit businesses where you own 5% or more of the business or where you hold loans to the business that are worth 5% or more of what the business itself is worth.

- Transferred financial interests: List any businesses where you had a 5% or more interest that you transferred to an immediate family member. Identify the name and address of the business, the nature/size of your interest and the family member to whom you transferred it.

How fatal is fatal? Defects are “fatal” under the statute. But how fatal is fatal?

One thing is clear: blowing the deadline is **FATAL**. No ands, ifs or buts.

If you’ve filed on time but filing a defective form, the law isn’t clear on the degree of fatality of those errors. In the past, the slightest error on the form was grounds to bounce a candidate off the ballot. Then, in 2007, the Pennsylvania Supreme Court ruled that as long as a candidate filed a timely statement of financial interest with the appropriate government offices, that candidate could stay on the ballot provided that the candidate made a “good faith” effort to comply. *See In re Palmier*, 594 A.2d 433, (2007).

At first blush, it may appear that the court had eased the fatality rule. And it did. But there's a lot of stretch in the phrase "good faith." Your opponent's lawyer can do magic with wiggle room like that. What it should cover are honest mistakes that are not made with the intent to deceive. What a court will do with those words is another question. Because the court's exact words are important, they are printed in the footnote.²

Palmier was not the Pennsylvania Supreme Court's final word on statements of financial interest. In 2014, the Supreme Court tossed a primary challenger to Gov. Corbett on the ground that he failed to file his financial disclosure form with the state ethics commission when that candidate had submitted the form to the elections commission at the secretary of state's office. *In re Guzzardi*, 99 A.3d 381 (2014). This would seem like a pretty minor error – since the purpose of the disclosure was fully served and the state (albeit a different office) actually had the information. But nope.

A good lawyer can argue these things all day long. A good lawyer costs at least \$300 an hour. Capisce?

² In specific, at p. 445, the court held that

the fatality rule announced in Section 1104 of the Ethics Act was intended by the Legislature to bar only those candidates from the ballot who fail to file statements of financial interests or who file them in an untimely manner. Section 1104 does not bar any candidate from the ballot if he or she files in a timely manner, even if there are defects on the face of the form, so long as that candidate subsequently amends the form to correct the defect and comes into compliance with the Act in a timely manner. In other words, all defects related to the content of disclosures on a timely filed statement of financial interest are subject to timely amendment.³

³ The Ethics Commission regulation at 51 Pa. Code § 19.3(c) provides twenty days from notice of a deficiency to amend a statement of financial interest. It is also important to note that Section 1105 of the Ethics Act requires that the statement of financial interests be provided to the best of the knowledge, information and belief of the person required to file. This means that candidates must still file in good faith, even though they do have an opportunity to amend. See 65 Pa. C.S. § 1105(a). See also 65 Pa. C.S. § 1107(5).