

USPS updates postmarking system altering deadlines for time-sensitive mail

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The U.S. Postal Service published a clarification that postmarks will now reflect the date and time that mail processes at a USPS facility, which may not necessarily match when the item was deposited, stamped in a mailroom or accepted at a retail counter.

Why it matters: In many states, deadlines for filing mechanic's liens and other time-sensitive documents are based on the postmarking of a notice. Previously, postmarking reflected the day an item was deposited, credit managers sending lien notices and contracts accordingly. The recent announcement clarifies that postmarking occurs when an item is processed, not deposited.

"Historically, postmarks played an evidentiary role in proving the date upon which a document was mailed," said Chris Ng, managing partner at Gibbs Giden Locher Turner Senet Wittbrodt (Westlake, CA). "In California, most construction payment notices are governed by the mailbox rule, which means that notice is generally 'given' when it is deposited in the mail, not when it's postmarked. In the real world, credit managers and third-party notice vendors have often treated the postal cancellation or postmark as an easy third-party data point to corroborate what the proof of service says."

The recent clarification reveals that postmarking is no longer a reliable mark of when an item is mailed, with delays in postmarking potentially creating timeliness problems for credit managers. "Even in states like California where the statute generally keys off deposit, postmark delays can create an evidentiary dispute," Ng said. "If an owner or general contractor wants leverage, a postmark that appears later than the date in the proof of mailing can be used to argue the notice was late. The USPS has warned that postmarks aren't proof of 'first possession' or mailing date anymore."

Credit managers can adjust their procedures to account for these delays and reduce the risk of losing lien rights due to the unpredictability of postmarking. There are a few different solutions that might help credit managers navigate these changes:

- **Use a delivery method that creates independent, acceptance evidence:** "Credit managers can use in-person USPS counter acceptance for certified, registered and express mail in a physical USPS location," Ng said. "Additionally, when appropriate, credit managers can secure a Certificate of Mailing when they want clean documentation of when USPS receives a document. Another option is to use an express delivery carrier, like FedEx, UPS or DHL, that uses acceptance scans."
- **Save a "proof package" for each job account:** "Save a signed proof of notice declaration, acceptance receipt with tracking information and a copy of the notice," Ng said.
- **Set conservative internal cut offs for sending notices:** Don't wait until the last minute to send out lien notices or other time-sensitive documents. Pad in a few extra days to ensure that even if there is a delay in postmarking, your notices will be postmarked by the deadline.
- **Set clear standards for documentation:** "If using a notice vendor or platform, confirm what proof you receive showing acceptance and deposit date, not merely a 'sent' date or a later postmark" Ng said. "And have an open discussion with your provider."

The bottom line: The clarification from the USPS signals to credit managers that they will need to adjust their procedures for mailing time-sensitive documents to reduce risk. While the shift creates new challenges, it also presents an opportunity to build more consistent, reliable processes—ones that don't hinge on the unpredictability of a postmark.