

# A Trap for the Unwary

How to avoid mail disputes, which can disrupt delivery of correspondence vital to the day-to-day survival of corporations, medical practices, and law firms

BY GLENN L. SMITH



Mail is the lifeline of any business. But what happens if two or more people suddenly lay claim to the same mail? You have a mail dispute. Mail is delivered in accordance with regulations published in the Domestic Mail Manual (DMM). The DMM is published electronically at <http://pe.usps.gov>. The DMM is also available for inspection at local post offices or purchase from the Superintendent of Documents at the U.S. Government Printing Office. Since the contents of the DMM are published by reference in the *Federal Register*, every person (and attorney) affected by its provisions is deemed to have knowledge of its contents.<sup>1</sup> DMM Section D042—*Conditions of Delivery*, sets forth the provisions that govern the delivery of mail addressed to minors, incompetent persons, deceased persons,

jointly addressed mail, as well as mail addressed to organizations (including current and former employees).

These provisions govern the delivery of mail when family members squabble over the mail, when siblings fight over a deceased parent's correspondence, when former employees seek to forward *their* mail from a former place of work, when law firms or medical practices break up and when businesses are sold, but the control of the corporation is not transferred. These regulations address how the U.S. Postal Service meets its obligation to deliver the mail as intended. The contents of the mail and its ownership are not factors considered by the U.S. Postal Service when deciding how to deliver a piece of correspondence. Delivery of mail is not evidence of entitlement to or ownership of its content.

## What is a Postmaster to Do?

Mail is delivered as addressed until conflicting delivery orders are received for the same mail. When this occurs, the postmaster will hold the mail and ask the disputing parties to agree among themselves who should receive the mail or to agree on a receiver or third party to receive the mail for them. If that fails, the postmaster will request that the disputing parties provide all evidence that supports their claim that they are entitled to control delivery of the disputed mail.

At this point, the postmaster has full authority to decide who is entitled to the disputed mail in accordance with postal regulations. Often, the postmaster will seek legal guidance from in-house postal attorneys in reaching a decision. The parties can, at any point in a dispute, get a court order setting



## Fast Facts:

Disputes are referred to the U.S. Postal Service judicial officer for formal resolution unless the disputing parties resolve the matter themselves or get a court order regarding how the mail is to be delivered.

Mail disputes often arise after the sale of a business unless the purchase agreement specifies how the mail is to be delivered after the sale.

Whether mail delivered to a post office box will be forwarded depends on how the application for the box was filled out. If the "applicant" was a business, mail addressed to individuals will be forwarded. If the applicant was an individual, mail will not be forwarded.

When business relationships are dissolved, the Post Office resolves disputes by honoring the instructions of the highest officer in the business. If there was an equal partnership, the parties will have to appoint someone to receive the mail or seek judicial resolution of the dispute.

forth who is entitled to the mail, provided the order does not compel the U.S. Postal Service to direct the delivery of mail contrary to its regulations. This typically occurs when the parties are already in litigation or the stakes are so high that the parties seek immediate resolution of the dispute.

If the postmaster cannot determine who is entitled to the mail within five workdays from the receipt of the evidence presented by the disputing parties, postal regulations direct the postmaster to refer the matter to the chief field counsel for informal resolution.<sup>2</sup> The assigned postal attorney will then seek to have the parties come to an informal resolution of the matter. Alternatively, the chief field counsel can order the disputed mail marked, "Return to Sender—In Dispute," thereby effectively requiring the parties to resolve their differences themselves or to obtain a court

order regarding how the mail is to be delivered. Barring informal resolution or an order by the chief counsel to return the mail, the dispute is then referred to the U.S. Postal Service judicial officer for formal resolution.

The judicial officer will, upon receipt, docket a mail dispute case and direct the postmaster to hold the mail pending issuance of his decision. The judicial officer will also send each party a notice of the docketing and submittal due date together with the "Rules of Practice in Proceedings Relative to Mail Disputes" published at 39 CFR Part 965. An administrative law judge will serve as the presiding officer. The presiding officer's initial decision will become the final agency decision on the matter if it is not appealed or if an appeal is denied.

The judicial officer tries to issue an initial decision as soon as possible. Under the rules,

an initial decision based on a written record should be issued by the presiding officer no sooner than 40 days from the date the parties receive the notice of docketing when taking into account service of process. If an evidentiary hearing is held, this time-frame for receipt of an initial decision can be greatly extended, since a decision will not be issued until 10 days after the close of the evidence.

### The Asset-only Transaction

Mail disputes often arise after the sale of businesses, because the parties fail to take into account how mail to the business was delivered before the sale and how it is to be delivered afterwards. For example, suppose Dr. Smith operates a medical practice that is incorporated as Family Practice, Inc. He is the president of the company. Dr. Smith decides he wants to retire and sells his practice



to Dr. Jones. Rather than purchase all the stock of Family Practice, Inc., Dr. Jones buys all the assets of the practice, the right to use the business name "Family Practice," and moves in.

Dr. Smith retains the rights to the accounts receivable due at the time of purchase. He puts in a change-of-address order for the mail of "Family Practice" because he has been receiving personal mail at his practice for years and he wants the receivable remittances due under the purchase agreement. Who has the right to the delivery of mail addressed to "Family Practice"?

Unless there is anything to the contrary in the purchase agreement, Dr. Smith will get to control the mail since he is the president of the corporation, and the U.S. Postal Service will find no meaningful distinction between mail addressed to "Family Practice" and mail addressed to "Family Practice, Inc." This result is contrary to what most lawyers would expect. Dr. Jones's only recourse would be a court order directing delivery of the mail to him and the return of any mail Dr. Smith received that is rightfully the property of Dr. Jones.

This is an expensive proposition for Dr. Jones and one that could have been avoided by specifying in the purchase agreement how the mail was to be delivered after the practice was transferred. When drafting a purchase agreement, attorneys should always consider how mail is delivered before sale, what comes in the mail (remittances, legal notices, lab results, employees' personal correspondence, time-sensitive medical records) and specify in the contract how the parties want the mail handled after the business is sold. Of course, an agreement on the delivery of mail cannot contradict delivery regulations or it will not be honored.

### Post Office Box Service— Special Forwarding Rules

Post office box delivery, generally speaking, is defined as a premium delivery service offered for a fee to any customer who needs more than free carrier service. This fee is commonly referred to as "box rent," which is a misnomer. A boxholder has no property interest in the post office box. Box service is offered under the specific terms



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and conditions outlined in DMM D910—*Post Office Box Services*. The box customer is the person who signs the box application (PS Form 1093) or the name of the organization on whose behalf the individual signs the application.

The applicant or box customer can also designate on the application the names of other individuals or entities authorized to receive mail at the post office box address. Any of these individuals or entities are then entitled to receive and pick up mail from the box. However, it is the box customer's responsibility to forward the mail of other people or organizations receiving mail at the box. The U.S. Postal Service will deliver mail addressed to the post office box and will not cull out mail for partial forwarding. This forwarding regulation frequently comes as a surprise to box customers and their attorneys.

Going back to the previous example, suppose that Dr. Jones buys all the stock of Family Practice, Inc., and the corporation's mail is addressed to PO Box 123, Anytown, USA. Dr. Jones decides that he wants delivery of the practice's mail to the physical address of the practice and puts in a change-of-address order. Will it be honored? It depends on how the box application was completed. If Dr. Smith listed himself as the applicant and Family Practice, Inc. as an organization entitled to receive mail at the box, then the answer is no. Dr. Jones will have to get Dr. Smith to re-address and forward the mail.

If the application was completed in the name of Family Practice, Inc., and Dr. Smith merely listed himself as an individual also entitled to receive mail at the box, then the change-of-address order from Dr. Jones will be honored, and Dr. Smith will have to collect his receivables from Dr. Jones. An attorney involved in the sale of a business should obtain a copy of the box application and take into account the various scenarios by which business mail is delivered to a post office box. With the box application in hand, the attor-

ney can properly account for post-acquisition mail delivery in the purchase agreement.

### Dissolution of Businesses

The dissolution of relationships frequently gives rise to mail disputes. When partnerships or corporations dissolve or people are fired, individuals often put in a change-of-address order for *their* mail in order to meet their obligations and otherwise to protect their personal and financial interests. The U.S. Postal Service resolves the mail disputes that may arise from these situations by honoring the instructions of the organization's president, managing partner, or equivalent official, regarding where the mail of the organization and its current and former employees should be delivered.

In cases in which there is dissolution of a 50-50 partnership, the parties themselves will have to appoint a receiver for the mail or seek judicial resolution of the dispute, since postal regulations do not address delivery of the mail in such a scenario. As businesses and partnerships begin to break up or people are let go, attorneys and employers should seek to address the issue of mail delivery to prevent a prolonged mail dispute that serves no one's interests. ♦

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*The opinions of the author do not necessarily reflect those of the U.S. Postal Service.*

### Footnotes

- 39 CFR Part 111; 44 USC 1507.
- Postal Operation Manual (POM) § 616.21.b. The chief field counsel position has been retitled managing counsel, but regulations have not yet been corrected. For consistency with published regulations, the published title is used.