

FREQUENTLY ASKED QUESTIONS

Presumption of Mailing

Q. What is the presumption of mailing?

A. The presumption of mailing is the concept that if mail is properly deposited in the U. S. Mail that it is legally presumed to be timely delivered to the Addressee. One of our founding fathers' first major achievements on July 26, 1775, as members of the Second Continental Congress, was the establishment of a reliable national postal service with a near flawless record of performance, hence the venerable saying "*Neither snow nor rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds*".

Q. How is the presumption of mailing established if the Addressee claims mail was not received?

A. The presumption of mailing is automatically established either by (1) a statement by the person that mailed or deposited the envelope/package in the U.S. Mail, or (2) evidence that the envelope/package was mailed or deposited in the U.S. Mail pursuant to office procedures. Office procedures or internal operations should be specific so as to ensure the likelihood that mail is always properly addressed, stamped and mailed.

Q. Does the presumption of mailing apply to grant applications and mandatory periodic reports?

A. Yes. Any grant, report, notice, response, statement or any payment required or authorized to be filed or made to the State, or to any political subdivision thereof, which is: (1) Transmitted through the United States mail; (2) mailed but not received by the state or political subdivision; or (3) received and the cancellation mark is illegible, erroneous, or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the grant, report, notice, response, statement or payment was deposited in the United States mail on or before the date for filing or paying.

Q. Does the State of Georgia recognize the presumption of mailing?

A. Yes. The presumption of mailing is frequently mentioned and has been historically affirmed under Georgia law in the official code of laws and in the decisions of Georgia's highest courts. The Georgia Code also applies the presumption of mailing when using alternative methods, e.g. UPS, Fed Ex, etc. The following are examples:

Official Code of Georgia Section 11-1-201. General definitions.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

Official Code of Georgia Section 19-8-12.

(1) Registered or certified mail or statutory overnight delivery, return receipt requested, at his last known address, which notice shall be deemed received upon the date of delivery shown on the return receipt.

Q. How does the Sender assert or proceed if the Addressee challenges the Sender's statement after it is communicated to the Addressee that the mail was properly mailed, and the presumption of receipt of mail is challenged by the Addressee?

A. An Affidavit (statement under oath) of the party claiming that mail was posted will be sufficient to establish proper mailing if it includes a sworn statement that the Affiant personally mailed the envelope/package, and the Affidavit contains a sufficiently detailed description of standard office mailing procedure so as to give rise to the presumption of mailing. See: A.M. Medical Services, P.C., as Assignee of Zhanneta Rabayeva, Respondent, against Progressive Casualty Insurance Co., Appellant., decided May 19, 2006, Supreme Court of the State of New York. See *Meckel v. Continental Resources Co.*, 758 F.2d 811, 817 (2d. Cir. 1985) (holding that "the presence of . . . proof [of regular mailing practices] establishes prima facie evidence of the mailing and creates a rebuttable presumption as to receipt.") See also *Wells Fargo Business Credit v. Ben Kozloff, Inc.*, 695 F.2d 940, 944 (5th Cir.), cert. denied, 464 U.S. 818 (1983) (noting that "[p]lacing letters in the mail may be proved by circumstantial evidence, including customary mailing practices used in the sender's business").

Q. How does the Addressee rebut the presumption of receipt?

A. The Addressee can only rebut the presumption of receipt by presenting credible evidence admissible in a court of law proving that the Sender did not deposit the mail with the U.S. Postal Service, e.g. a statement of an employee of the arts organization to the effect it was their responsibility and they did not deposit it in the mail.

Q. What is Sender's recourse if the Addressee refuses to acknowledge the presumption of receipt, refuses to rebut the presumption of receipt, and as a result Sender will experience loss, damage, or irreparable harm?

A. The Sender has many options. Sender can check with Addressee's mailman or mail facility to determine if there has been a new mailman or temporary carrier assigned, or other sources of problems within their system or that they know of with the Addressee. Additional responses would include an appeal of the Addressee's decision under its internal rules and guidelines, if any and suggest that they adopt an internal mail processing policy. In the case of a government agency, appeal the matter to the head of the agency, to their superior or to their governing board; or appeal the decision through the state's Administrative Procedures provisions. Consider notification and requests for assistance to local and statewide elected officials; consider sending notification to local and statewide media; or refer to legal counsel for advice, assistance and for pursuit of a lawsuit to ask the courts for help with the Addressee's alleged egregious decision.