

Bringing Summary Proceeding Notice Into the Email Age

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Landlords and tenants routinely use email to negotiate lease amendments, exchange rent statements, transmit default notices, document access issues, and discuss surrender terms. Yet when a dispute moves into a summary proceeding, RPAPL §735 returns the parties to a communications model organized around the door of the premises and the mailroom: where service is made by substitute service on a suitable person at the property or, after reasonable application, by affixing the papers to a conspicuous part of the property.

If service is not made personally, the statute requires duplicate post-service mailings, by registered or certified mail and by regular first-class mail, to that same property address and, in some instances, to discrete alternative addresses where the respondent *may* receive the mailings.

These methods remain important, but in many modern occupancy relationships they no longer reflect how the parties actually communicate or where a respondent is most likely to receive papers affecting its legal rights. The mismatch is most acute in the post-service mailing



Courtesy photos

Gary Rosenberg, left, and John P. Amato, right, with Rosenberg & Estis.

requirement, which arises only because personal service at the property could not be completed in the first place.

If the respondent could not be reached in person at the premises, why should mailing duplicate copies to that same address, after the papers have already been left with a third party or affixed to an empty door, be treated as a meaningfully better way of providing notice?

The Legislature should answer that question with a narrow amendment to RPAPL §735 authorizing email delivery of the post-service mailings required for substitute and conspicuous-place service directly to the respondent, where the

respondent has expressly designated that email address and agreed in writing that such email should be utilized for Article 7 papers. The amendment should supplement, not displace, the existing methods.

A Statute Organized Around the Premises

RPAPL §735 rests on a sensible historical premise: the property sought to be recovered is ordinarily where the respondent can be found, and therefore where notice is most likely to reach it. That premise holds up in many cases, but not when a tenant is traveling or living elsewhere, a storefront has gone dark, a business runs with skeleton on-site staff, or no one at the premises is responsible for legal mail.

The mismatch is easy to see. Papers can be left with a stranger or taped to the door of a temporarily empty apartment or shuttered store, then mailed to that same address, in exact compliance with the statute, while the respondent is reachable in real time by email.

The petitioner has no obligation to flag the service or the mailings, so days pass and clocks run on dates that affect the respondent's occupancy, even though the parties have been emailing each other all along. The same disconnect surfaces before a case is even filed: a statutory demand is routed through the premises-centered service regime even when the occupancy relationship itself is managed virtually over email.

None of this changes the service requirements at the premises. The point is narrower: in most modern occupancy relationships, email delivery of the post-service mailings is the method most reasonably calculated to apprise the respondent of a pending summary proceeding or of a deadline in a statutory notice that triggers a window to act.

Where the parties have already selected and relied on a particular email address, such as the same one used for non-statutory predicate notices, the statute should recognize that address as a legitimate channel for the post-service mailings too.

This option would be available only with the respondent's express agreement. No tenant would be required to accept email delivery, and the existing paper-mailing methods would remain available whenever the tenant does not consent.

Due Process Is Practical, Not Ceremonial

Due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of a proceeding and afford them an opportunity to object. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). That standard does not enshrine any particular method of service, and it does not turn on a guarantee of actual receipt. It asks only whether the method chosen was reasonable under the circumstances.

Not every "emailing" satisfies that standard. An address scraped from an old website or an unverified directory may well be unreliable. But an email address that the respondent expressly designated in a lease, occupancy agreement, or other signed writing for receipt of the statutory post-service mailings is different. If the tenant chooses the email address and agrees to receive the email there, transmission to that address is at least as likely to provide notice as the paper mailings the statute already permits.

Jones v. Flowers, 547 U.S. 220 (2006), supplies the other half of the test. There, certified-mail notice of a tax sale was returned unclaimed, and the Supreme Court held that the government had to take an additional reasonable step, if

practicable, before proceeding. The lesson is not that one service medium beats another. It is that a sender cannot rely on a service method once the sender knows the method has failed.

Under the proposed amendment, a bounce-back or other affirmative indication that an email transmission failed should trigger a duty: the petitioner must make another authorized post-service mailing. The physical delivery required for substitute or conspicuous-place service would remain unchanged.

Recognized in Principle

New York courts already evaluate electronic service through a practical lens. In *Dobkin v. Chapman*, 21 N.Y.2d 490 (1968), the Court of Appeals described due process as a flexible inquiry informed by the circumstances when courts fashion alternative service.

More recently, the First Department upheld court-directed email service under CPLR 308(5) where conventional service was impracticable and email was reasonably calculated to apprise the defendant of the action. *NMR e-Tailing LLC v. Oak Investment Partners*, 216 A.D.3d 572, 572 (1st Dep’t 2023).

The Second Department reached the same conclusion when it approved email service through the defendants’ attorneys. *Bruce v. Solny*, 249 A.D.3d 673, 673 (2d Dep’t 2026). These decisions show that New York courts are familiar with evaluating the sufficiency of email service and are well equipped to do so when the Legislature authorizes that method.

The Case for a Limited Amendment

The line the proposed amendment draws is consent, and its scope is narrow by design. The statute should require a signed writing that specifically authorizes email delivery of the

post-service mailings required after substitute or conspicuous-place service and identifies the address to be used. A general provision permitting routine notices by email should not silently become consent to electronic delivery of court papers, and consent should not be inferred merely because the parties previously exchanged emails.

The amendment would apply only after the notice of petition and petition have been delivered to a person of suitable age and discretion at the property, affixed to a conspicuous part of the property, or placed under the entrance door in accordance with §735.

It would not authorize commencement of a summary proceeding by email, dispense with the reasonable application standard, alter who may receive substitute service, or otherwise permit email to replace the required act at the premises. It would modernize only the post-service mailings that complete those methods.

The respondent’s written consent should expressly identify which RPAPL §735 post-service mailings may be transmitted electronically and designate one or more email addresses for that purpose. It should be set out conspicuously, separately acknowledged, revocable prospectively by written notice, and accompanied by a simple means to update the designated address.

Consent by one respondent should not bind another respondent, guarantor, occupant, principal, affiliate, or household member. For residential respondents in particular, the statute should make clear that electronic delivery is optional, that declining it does not affect the tenancy or any substantive right, and that a landlord may not condition housing or continued occupancy on consent.

The amendment should also prescribe the mechanics. Within the same period now allowed for the statutory mailings, the sender should transmit complete, legible copies of the notice of petition and petition to every email address properly designated by that respondent. The email should use a standardized subject line identifying the court, the property, and the nature of the papers (which may track the subject line already used for the predicate notice sent to that same address), state that a summary proceeding has been commenced, and direct the respondent to the attached documents.

Proof of service should annex or identify the written authorization and record the addresses used, the date and time of transmission, the subject line, and the documents attached. If the petitioner receives a bounce-back or otherwise learns that a required transmission failed, email should not satisfy the mailing component.

The petitioner should then complete the mailing by an existing method authorized by §735. Courts should retain full authority to conduct a traverse, vacate a default, or direct supplemental notice where the record raises a genuine question about consent or transmission.

These guardrails address the principal concerns. Emails can be overlooked, but so can envelopes and papers placed on or under a door. Spam filters, shared accounts, disabled addresses, and unequal digital access are real risks, which is why specific consent, separate acknowledgment, address-update and revocation procedures, a known-failure rule, and retention of existing paper options matter.

A recent Civil Court decision illustrates the broader need for legislative attention to RPAPL §735. In *Ung 3 Realty, LLC v. Passerine LLC*, 88

Misc. 3d 1006 (Civ. Ct., N.Y. County 2025), the court held that RPAPL §735 did not authorize the statutory method used to serve an LLC respondent because LLCs are not listed in the provision.

Regardless of the ultimate appellate treatment of that issue, the decision illustrates the uncertainty that can arise when a premises-centered statute is applied to contemporary respondents and methods of communication.

That is a different problem from the one addressed here, but if the Legislature intends to revisit the statute to address modern organizational forms, it should also consider modernizing the post-service mailing rules as proposed here.

Restoring the ‘Summary’ to Summary Proceedings

Article 7 exists to resolve possessory disputes quickly. Whether the premises are residential or commercial, delay in reaching the merits imposes real costs. A petitioner needs a prompt determination of possession, while a respondent needs enough lead time to retain counsel, seek assistance, investigate the allegations, cure where permitted, or mount a defense.

Modernizing the post-service mailing component can serve both interests at once, without touching the physical act of service that anchors the proceeding to the property.

Disputes over notice frustrate that purpose before the merits are even reached. Questions about whether statutory mailings were properly addressed, prepared, and sent; delays from returned mail; and adjournments to litigate service defects all add cost and consume court resources.

An authorized email option will not eliminate such disputes, but it can narrow them by creating a precise, built-in record of what was sent,

when, where, and with what attached. That record is simpler to build than it may sound. For instance, because a summary proceeding must be brought in the county where the property is located, the proper court is already fixed when the predicate notice goes out, so the same subject line used for that notice can carry forward unchanged into the post-service transmission. The premises-based act of substitute or conspicuous-place service stays intact. The proposal only adds a modern, supplemental notice channel alongside it.

The benefit runs in all directions. As noted, respondents gain practical time to retain counsel, seek rental assistance or other resources, investigate disputed charges, assert defenses, cure defaults where permitted, or arrange an orderly surrender.

Petitioners save on postage, printing, handling, and returned-mail costs. Courts gain a standardized record that simplifies preliminary review and enables focused litigation on possession, payment, and genuine defenses.

And where a respondent has knowingly chosen email, replacing duplicate paper mailings reduces the use of paper, envelopes, toner, transportation, and storage. The environmental savings from any single mailing are modest, but across the volume of summary proceedings statewide, they add up to a real and cumulative gain.

A Modern Update

RPAPL §735 need not abandon the doorstep. Personal delivery, substitute service, and con-

spicuous-place service should remain exactly as they are, and the existing paper-mailing procedure should remain available whenever a tenant has not expressly authorized email or an authorized transmission fails.

The Legislature need only recognize that, once substitute or conspicuous-place service has validly occurred, a designated inbox may be the most reliable place to send the post-service copies meant to reinforce that notice.

The reform is incremental, not technological for its own sake. It would not apply to every tenant, but only by express choice, and only to the post-service mailing component of two methods Article 7 already authorizes. It preserves existing proof requirements, judicial oversight, fallback procedures, and the respondent's right to contest whether the conditions for electronic transmission were actually met.

The central question is not whether email should replace service at the premises. It is whether, once the statute's premises-based requirements are satisfied, New York should still require duplicate paper mailings when a respondent has expressly selected and maintained an email address for that exact purpose. A carefully confined amendment would make notice faster, create a clearer record, cut cost and waste, and leave every existing procedural protection in place, to the benefit of all parties.

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