

Protecting the public's right to know

With the 2017 regular legislative session behind us, let's each turn our attention to the advertising department at your newspaper – to those who have responsibility for handling your public notices. How can we make this function of your newspaper stronger?

Nobody who runs a newspaper takes public notices for granted. They are a backbone of your operation. They are a critical service you provide to those in your community and in your county.

As Missouri Press Association reported to you during this past legislative session, two Missouri law firms involved in mass foreclosure operations bolstered an effort to move non-judicial foreclosure notices from newspapers to private websites. There were two bills specifically dealing with this issue. (At least one other, unrelated, bill was filed that would have moved all public notices onto a state government website.) Under the foreclosure notice bills, rather than run a traditional public notice in the local newspaper, a trustee could publish an "electronic notice" for 21 consecutive days "on an internet website hosted by an entity that maintains such website for the purposes of providing web-based notice of foreclosure sales."

The bill vaguely defined the internet website owner as any corporation or limited liability company, stating only that it had to have liability insurance coverage. Those entities could not charge a rate exceeding the "regular local classified advertising rate of newspapers ..." These website notices would be grouped by county and the entity would provide an affidavit after the notice ran confirming that it properly ran. The bills said nothing about how the validity of this affidavit would be impacted by the website being down or otherwise

inaccessible, or the reliability of the website operator. Would that factor affect whether there was still a valid notice? (It did not hurt that during the period this bill was being heard in committee, internet service was inaccessible for a substantial period in Jefferson City – perfect timing!)

But this concept will not die that easily. These folks will be back. One of the most important things we can do over the summer is look at your public notices. How are they being handled? How are they displayed? Are you making them seem important to your readers?

Unfortunately, I know a couple of our member newspapers recently missed running one of the notices in a foreclosure. No need to single them out – it has happened to others over the years I've served as hotline attorney. Instead, just remind your staff that when they accept those notices, they assume liability for running them according to the placement schedule. Newspapers need to have in place a system to track the notices, to monitor and double-check they are in each issue for which they are placed and that mistakes cannot creep into the content. I recommend strongly that a proof of the notice be sent to the firm placing the notice, with a tight deadline to confirm

its accuracy before the first notice runs. Getting a sign-off affirming the accuracy will help avoid typographical errors and placement date errors, preventing a dispute later over who made the mistake. If you fail to run the notice as directed, you may incur potential financial liability. I have urged you to have disclaimers in your rate card avoiding these "consequential" damages, but fighting with a law firm that is a good advertiser presents a dilemma nobody wants to face.

Where are your public notices placed

in the newspaper? Are they in a regular location, easily found and anticipated by your readers? Are they well marked? Does the layout emphasize the importance these public notices are to the public? And, even more importantly, are they in FRONT of your online paywall? It does no good if only subscribers can see them. Are there ways to emphasize these notices without incurring significant additional expense to the consumer? (And, don't forget it is CRITICAL to send a digital copy of these notices promptly to Missouri Press, or more specifically our sponsored vendor, NewzGroup, to place on its statewide website of public notices – this is an important selling feature for MPA.) Are you thinking about these notices when you make a decision to change a publication date? Or change a column size/width? These are all important issues for your staff.

And have you ever thought about doing more than running the notice? There may be occasions when a public notice relates to an important story in the community. Don't hesitate to focus your readers' attention on the significance of the notice in a news story.

The best publisher ensures accuracy in the notice and its placement. The advertiser needs to be assured that the foreclosure may move smoothly and in a timely fashion, without the publication process creating a delay. We have to our benefit a product that cannot be disputed to meet state legal requirements – the minute the ink hits the page, the state law requirements are completed. Nobody has to worry about the lack of availability of the product due to disruptions in service. Our affidavits allow the lawyers to accomplish what the client wants done. As long as our process moves smoothly from start to finish, we provide an assurance that no website can. We need to keep it that way.

"One of the most important things we can do over the summer is look at your public notices. How are they being handled?"

