

Foreclosure notices intended to inform the public may go unseen

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The process of publishing notices about foreclosure cases differs from county to county in Colorado, with few rules defining how the lucrative business gets divided.

As a result, there are no guarantees that the notices — intended to disclose foreclosures to interested parties including property owners and creditors — will reach a broad readership.

By law, the notices must be published in a newspaper in the county where a foreclosure occurs. But how publications are chosen is a ramshackle methodology left mostly to public trustees who oversee the system.

The notices — classified ads that en-masse are worth hundreds of thousands of dollars in annual revenue to a publisher — sometimes appear in newspapers chosen by the foreclosure lawyers because a 2007 law allows the practice.

Otherwise, methods vary greatly: public trustees rotate the business among various newspapers in some counties; a single newspaper is chosen arbitrarily in others; or bids from a few publications — though not all — are taken at inconsistent intervals.

The publications vary as well, from tiny 600-per-week subscription-only newspapers to the mega-circulation Wall Street Journal. Some trustees publish notices according to the ZIP code of the foreclosed property, while others place them in newspapers farther away.

"It's troubling that a uniform legal process throughout the state is so disjointed and subject to whim," University of Denver law professor Thomas Russell said. "The point of publication is to give notice to creditors of some kind of transaction that might affect their interest. The way it is now just allows it to go wherever someone wants, and that's generally bad."

Though a new law intending to make public trustees more accountable requires they use a procurement system for large contracts, it's unclear whether the law applies to foreclosure notices. That's because trustees aren't spending their own funds. Lawyers representing the foreclosing lender pay the trustee, who in turn pays the publisher.

Notice of a foreclosure must be published once a week for five weeks — per-line costs can reach \$13 — racking up hefty cash for the newspaper with the contract. Some small publishers admit they'd be out of business without them, and with the demise of classified advertising it's become coveted work.

"If legals came out of newspapers, dozens of small-town papers would go belly up," Grand Junction Sentinel publisher Jay Seaton said.

The Sentinel last year laid off workers when Mesa County Public Trustee Paul Brown moved notices to the much smaller Fruita Times and Palisade Tribune, a job the Sentinel had for 100 years.

No rhyme or reason

Most trustees, the officials tapped to oversee the foreclosure process impartially and fairly, agree the notices are intended to let interested parties know about a case. But the method of selection varies widely.

Some are in publications with circulations so small that locating a copy is difficult, or in periodicals far from where a foreclosure property is located.

Jefferson County publishes in community newspapers according to the ZIP code of the property; Arapahoe County notices have appeared in the same three papers for 15 years without bids; Boulder County publishes notices in the Longmont Times-Call because Public Trustee Rich Gebhardt said he prefers it.

In Denver, foreclosure notices can appear in The Denver Post, the Wall Street Journal, the Colorado Statesman, the Herald-Dispatch, or in papers with specialized readerships.

Some lawyers say where to publish in Denver — the only county where it occurs regularly. For those law firms that don't choose, the trustee rotates the business, though not evenly.

The Colorado Statesman is not part of a six-paper rotation the trustee uses to share Denver notices not earmarked by a lawyer to a specific newspaper.

That's because the Statesman is the publication of choice for Aronowitz and Mecklenburg, the Denver law firm with the second-highest number of foreclosure cases statewide.

Since 2010, Aronowitz has had 3,088 foreclosure notices published in Denver — all but 31 of them in the Statesman, according to figures provided by the public trustee's office. That amounted to more than \$577,000 in business.

"It's because Aronowitz has so many cases, so we keep it fair and don't include (the Statesman) in the rotation," deputy trustee Sindee Wagner said.

Next highest was the Colorado Leader at \$444,000 — the mandated publisher for attorney Michael Medved.

"If you're in the foreclosure industry, you know us," said Jayne Owston, managing editor of the 600-paper weekly Leader. "The notices are a very important chunk of revenue. And everyone got into the game after classified advertising dropped."

Until a couple years ago, the Leader exclusively published notices for Castle Stawiarski, the statewide leader in foreclosure cases, she said.

Letting lawyers decide

Today, Castle's work is spread around six publications — The Denver Post, Herald-Dispatch, Intermountain Jewish News, Law Week Colorado, and the Wall Street Journal — in the trustee's rotation.

But that can end with a simple request by the lawyer — a decision that could be driven by economics, politics, favoritism or convenience.

"There's nothing in the law that mandates where it has to be published, just a newspaper of general circulation in the county," Wagner notes.

The Wall Street Journal has all the Denver foreclosure notices from the Janeway, Dale & Decker, and Brown, Barardini & Dunning law firms.

"We don't have information on all 52 counties, so would not typically overrule (a trustee's) decision by specifying a paper," Lynn Janeway said in an e-mail. "Lower costs on the publications help both the borrowers ... and lenders. We don't get any personal benefit from any choice."

The costs are passed on to a homeowner should they pay outstanding bills to stop the foreclosure, the bank if it wins the foreclosure auction, or an investor who outbids the bank.

"When you're in foreclosure, the first thing to go is your subscription to the Wall Street Journal," mused Russell. "The whole idea of public notice is theoretical, suggesting either debtors or creditors will read it. But just letting the creditor's attorney choose where it appears mocks the whole process."

It's not in a bank's interest to share the wealth, and that could play into the choice of publication, he said.

"Why would an attorney want other creditors to see the notice, the very ones who could compete for some of the value of the estate?" Russell asked.

In 2007, during hearings for a reworking of foreclosure laws drafted by the Colorado Public Trustee Association and foreclosure attorneys who were members of the Colorado Bar Association, the law allowing attorneys to choose slid through without mention about the change.

"No one has a ... clue how that got in there," Gebhardt said. "And every time I've asked for us to take it out, no one wants to take it on. I guess it's put there for a reason."

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### Publishing foreclosures

Foreclosure legal notices are required by law to be published in newspapers. Where they end up, though, is an inconsistent process from county to county. The business is lucrative for the newspaper that can get the contract. Here's a look at where Denver publishes and the cost from 2010 to the present.

### Publication, Paid

Colorado Statesman, \$577,055

Colorado Leader, \$444,276

Wall Street Journal, \$267,794

Law Week, \$248,376

Intermountain Jewish News, \$232,266

Denver Post, \$222,884

Herald Dispatch, \$204,726

Total, \$2,197,327

Source: Denver public trust

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