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Guest Commentary: Public Notices Should Stay in Newspapers

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By Tonda Rush

A character identified in "The Big Short" movie only as the "Tattooed Renter" protests the unfairness in the world when he learns that he is about to be booted out of his home because the landlord has not paid the mortgage.

"Man, I paid my rent," he cries.

Would that matter when the sheriff came around? Not one bit. When the mortgage defaults, the banks want the keys.

The memory of millions booted to the curb after the crash of Lehman Brothers has faded into memory for many. It is barely even an issue in the Presidential debates. Then along came the movie, to remind us a lot that went wrong then could still go wrong.

Dodd Frank made some reforms. But if the mortgage isn't paid, Tattooed still loses his home.

That is one reason why transparency in foreclosures makes sense. And why Virginia newspapers are protesting a move in the Virginia legislature to pull a curtain of obscurity around foreclosures. SB 560, patroned by Williamsburg senator Thomas Normant, Jr., would make foreclosures obscure.

The bill would end the practice of putting a notice in the newspaper when a foreclosure is about to occur. Instead, a small ad could run in the newspaper, pointing to a Circuit Court website. If a reader wants to know more, that reader has to surf.

What do foreclosure notices do? They give the public a window into what is otherwise a closed legal process. Although in Virginia foreclosures can occur in public lawsuits, more often lenders require a borrower to write the courts out of the process as a condition of getting the mortgage. A trustee for the mortgage holder can force and execute a foreclosure sale after a default. Virginia has one of the shortest required foreclosure periods in the nation. Some states permit up to 1,000 days to give residents a maximum opportunity to keep their homes after a bank declares a default. Virginia's process can be about a fourth of that.

The public notice is an important part of a scary process that can end with the family goods on the curb.

It gives residents time to assemble help to redeem the property.

It provides notice beyond the required letter to the borrower. In Tattooed's case, the landlord probably got the letter, but the renter was clueless.

Landlord could be pocketing the rent but not paying the mortgage. A public notice gives Tattooed or some watchful friend of Tattooed a clue about the impending sale.

If the foreclosure happens, greater notice would give more buyers a chance to find out about the sale. When a foreclosed house sells, the proceeds go to retire the costs of the foreclosure, to pay back taxes and the lender and then, only if there is money left over, does any money go to the homeowner. More buyers create a greater chance that the homeowner walks away with at least some equity.

The notice introduces some transparency into a closed system. Consumer groups, neighbors, scholars and historians who care about what goes on in this arcane world of securitized lending get a window - a small window, but still a window.

But no one reads printed newspapers any more, some will say. Shouldn't these things be on line?

First, they're wrong. Most people who consume newspaper news read it in print. So said the Pew Research Center this month. (You are probably one of them right now.) For those who want public notices on websites, the newspapers that run them in print put them online if they have websites and most do.

There is more to public notice than publishing. The printed notice is kept and archived, so when a dispute comes up years later, the authentic notice can be found. Unlike the fickle digital world, print doesn't change.

Yes, but the newspapers just want the revenue, the patrons will say. True, that. Newspapers do need revenue if they are going to cover the news. But the circuit court website isn't free. It has to be built, maintained, archived and authenticated when the notices are needed for evidence. Whether the newspapers can do the notice more cheaply than the courts is a question to answer after an honest study of the court site and all of its real costs - including marketing its links - are counted.

One thing is for sure. You just read this commentary. And I'll bet you haven't been on the Circuit Court website all day.

Mortgage lenders have a point. When they lend money and it isn't paid back, they have to free up that property so they can put the money back into circulation - even if the loan is immediately sold into secondary markets, as most are. Someone somewhere has money tied up in that property. Not all the defaults in "The Big Short" were by innocents. Loads of people took out loans during that period that they well knew they couldn't afford. The foreclosure process is a regrettable but necessary tool to keep the loan markets fluid.

Obscurity, however, is also regrettable and completely unnecessary. Court websites are for lawyers. People who want to know what is going on look at the newspaper.

Tonda Rush is co-director of the Public Notice Resource Center.

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