

What Type of Notices Can Be Published on the Publicly Accessible Website Option in HB 7049 (s. 50.0311, F.S.)?

Question

At the Citrus County Commission hearing on August 30, 2022, there was discussion about the County opting for the new “publicly accessible website” option to publish public notices. During the meeting, questions were raised about what type of legal ads and public notices could run on such a website and the 18 government notices listed in a previous public notice bill and referred to during the meeting. The following is an attempt to provide some background and hopefully help clarify what notices we believe the law allows the County to post on the website-only option should it proceed in that direction.

Legislative Background

HB 35 (2021)

A year before passage of this year’s bill (HB 7049), the Legislature passed HB 35, which revised Chapter 50 and other substantive notice provisions to allow for certain legal notices to be published not just in the newspaper’s printed edition but also solely on the newspaper’s website (s. 50.0211(5)).

HB 35 did not specifically allow all notices to use this online option. Rather, the bill defined “governmental agency notice” to include a list of 18 government notices, which ranged from state agency notices to enactment of city and county zoning ordinances.* This list reflected the 62-page bill’s many substantive changes to various government notice provisions scattered throughout the Florida Statutes. Specifically, these numerous sections were amended to delete the print-only language and clarify when the online newspaper-only option in Chapter 50 could be used. For example, s. 13 amends s. 125.66 (county notices regarding ordinances changing zoning requirements) by deleting the print-only language and adding “as provided in Chapter 50” to clarify the newspaper website-only option could be used.

The bill did not change the printed newspaper requirements for notices not on the list, including many non-governmental-type notices such as those relating to foreclosures, probate, storage units, automobile lien sales, fictitious names, etc. These types of notices continued to require publication in the printed newspaper.

HB 7049 (2022)

The newspaper website-only option (s. 50.0211(5)) in HB 35 was to be short-lived, as this option was deleted the next year (2022) with the passage of HB 7049. The main change of HB 7049 was to replace the newspaper website-only notice option contained in HB 35 with the new county website-only option, codified as s. 50.0311.

While HB 7049 deleted HB 35’s list compiling the 18 governmental notices, the new bill did not expand on this list (with one exception noted below**). The bill (40 pages) merely adjusted the language in the various notice provisions to clarify that the new county website-only process could be used as opposed to the discarded newspaper website-only option

Further, the new county website section contained in HB 7049 (s. 50.0311) did not refer to other types of notices. It merely said that such website may be used to publish “legally required advertisements and public notices.” There is no further definition of these terms in HB 7049.

Analysis

For the following reasons, we believe that HB 7049’s county website option is only applicable to those notices that authorize use of that website in the various substantive notice provisions in the statutes. If a notice still requires newspaper publication, the website option is not available. This interpretation makes sense for the following reasons.

The changes to Chapter 50 including the new website-only notice option should be considered in light of the totality of the statutory language. The substantive provisions of the notices describe how they should be published.

Only if the notice language allows placement on a “publicly accessible website provided in s. 50.0311,” “as provided in Chapter 50,” or similar language, can that option be used. That language appears in the 18 notices listed below so they can use that process.

On the other hand, where the notices continue to only recognize newspaper notice, then the notice would continue to be published in that manner. Examples of notices that fall within that category are as follows:

1. Probate. Section 733.2121 (2) requires the notice to creditors to be published in a “newspaper published in the county.” 74.041 –
2. Process; service and publication. Section 74.041, where personal service cannot be had, the clerk of the court shall cause the summons to show cause to be published “in some newspaper published in the county.”
3. Storage unit lien enforcement. Section 83.806(4) requires the ad to be “published....in a newspaper of general circulation.”
4. Fictitious name registration. Section 865.09(3)(a)5. requires the registrant to certify the name “has been advertised...in a newspaper as defined in chapter 50.”
5. Abandoned or lost property. Section 705.103(2)(b) requires “an advertisement published....in a newspaper of general circulation in the county.”
6. Enforcement of lien by sale of motor vehicle. Section 713.585 requires lienor to “publish... in a newspaper circulated in the county.”

This is not meant as an exhaustive list. There are other examples of notice provisions contained in the Florida Statutes that do not recognize the county website-only option but only newspaper publication.

Conclusion/Answer

Only those legal advertisements and notice provision in the Florida Statutes that specifically recognize the new Chapter 50 county website-only option can be published in that manner. These would be the 18 governmental agency notices listed, as well as the notice of sale in foreclosure actions (although hosting such notices on the county website would raise other due process and county liability concerns, as noted below**.)

*"Governmental agency notice" [in HB 35] includes any of the following notices required by law to be published in a newspaper:

1. Notices related to special or legal legislation pursuant to s. 11.02. 159
2. Educational unit notices pursuant to s. 120.81.
3. Retirement system notices pursuant to s. 121.0511.
4. Notices related to inclusion of positions in the Senior Management Service Class of the Florida Retirement System pursuant to s. 121.055.
5. Notices proposing the enactment of county ordinances pursuant to s. 125.66.
6. Code enforcement notices published pursuant to s. 167 162.12.
7. Notices proposing the enactment of municipal ordinances pursuant to s. 166.041.
8. Special district meeting notices pursuant to s. 189.015.
9. Establishment and termination notices for community development districts pursuant to ss. 190.005 and 190.046, respectively.
10. Disclosures of tax impact by value adjustment boards pursuant to s. 197.037.
11. Advertisements of real or personal property with delinquent taxes pursuant to s. 197.402.
12. Advertisements of hearing notices, millage rates, and budgets pursuant to s. 200.065.
13. Turnpike project notices pursuant to s. 338.223.
14. Public-private partnership notices pursuant to ss. 348.0308 and 348.7605.
15. Notices of prime recharge area designations for the Floridan and Biscayne aquifers pursuant to s. 373.0397.
16. Water management district notices pursuant to s. 373.146.
17. Hazardous waste disposal notices pursuant to s. 403.722.
18. Forfeiture notices pursuant to ss. 849.38 and 932.704.

**HB 7049 does contain language (section 10, p. 22) that states that certain judicial sales procedures (s. 45.031(2)) can be published in the newspaper or on the s. 50.0311 "publicly accessible website." This would allow such notices to be placed on a county website that meets the new law's requirements. However, placing such notices illustrates the downsides to the county that website-only notice presents. The county would be potentially responsible for the precise language in the notices, time stamps, affidavits, and any increased liability for mistakes or untimely notices from lawsuits by those affected by the foreclosure process. Further, attorneys/banks/creditors may hesitate to place such notices solely on a "publicly accessible website" because of due process concerns and related liability.