

☞ **09hr\_SC-SBEPTCCP\_ab0707\_pt02**



Details:

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                      (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



# Assembly Bill 707

## Wisconsin Self Storage

### Association Lien law reform

- Wisconsin Self Storage Association Lien law reform
- Adding option of 1<sup>st</sup> class mailing
- Adding an option for advertising the sale
- Adding a disposal clause if items left are less than \$100
- Deleting the storage unit number in the publication of the sale
- Adding a definition of commercially reasonable
- Adding a limit of value

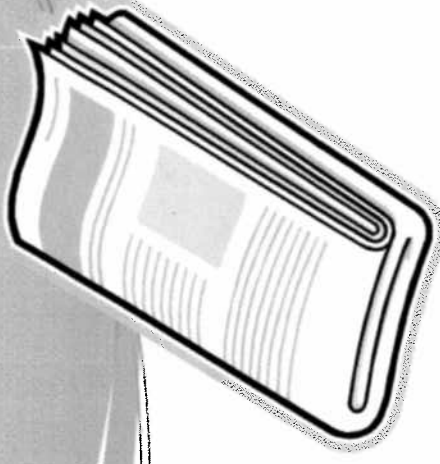
# Notice of mailing

## ADDING AN OPTION OF MAILING 2<sup>ND</sup> NOTICE

- Old way 2<sup>nd</sup> notice sent by certified mail to the last known address
- Change the mailing of first class with a certificate **OR** certified mail to the last known address



# Advertisement of sale



- Old way- advertise in the newspaper once a week for two consecutive weeks by publication in a newspaper of general circulation where the facility is located
- Change- added a choice of advertise the sale of personal property by publishing one notice in the newspaper of general circulation where the facility is located in addition to 2 OTHER places to give notice (the internet is a public place.) If putting on the internet it must be published on the WSSA website (Wisconsin Self Storage Association) or on the website of the storage facility and this must be printed on the rental agreement. **THIS OPTION IS ADDED SO THAT MORE PEOPLE WILL SEE THE LEGAL POSTING. (1 POSTING IN THE NEWSPAPER, 1 ON THE INTERNET AND 1 SOMEWHERE ELSE)**



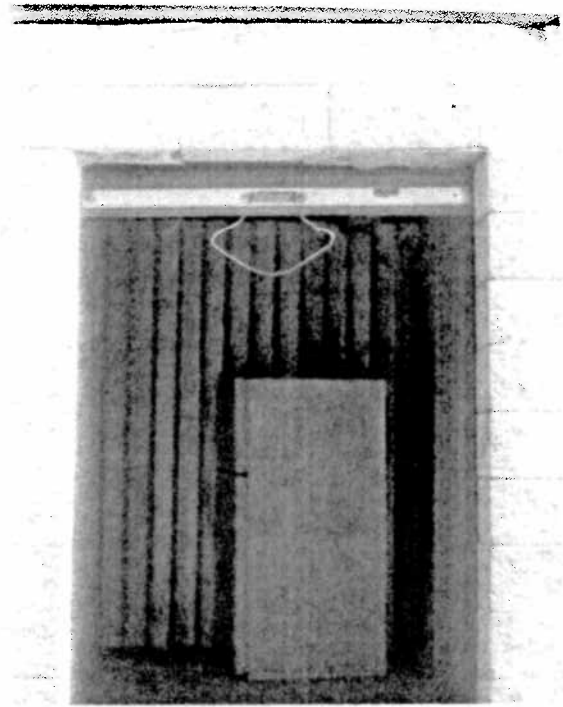
# DISPOSAL CLAUSE

**-If the property in the storage unit is worth less than \$100.00, the bill allows the facility to dispose of the items after proper notice.**

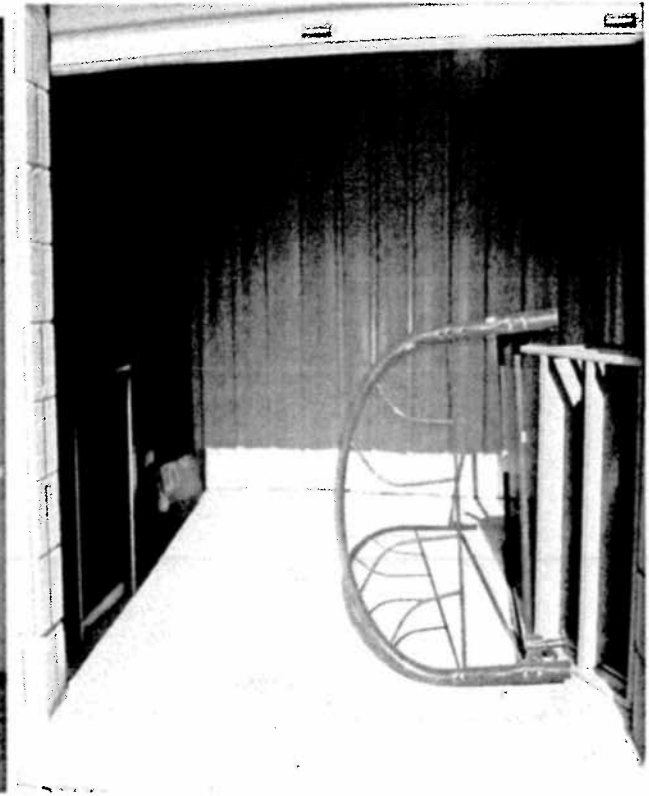
**-disposing of the items means to donate, recycle, remove, put in the garbage**

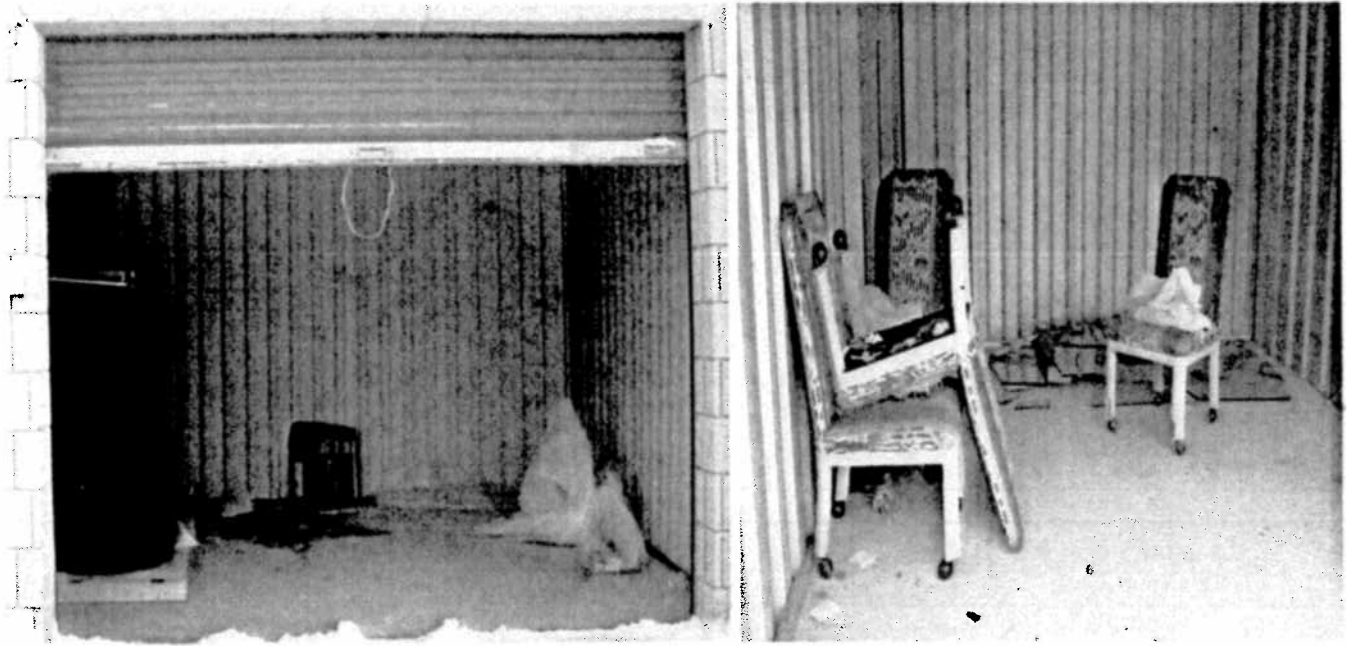
I have included pictures of items that were abandoned in a storage unit. Under the new lien law reform these items could have been dumped and saved the tenant money incurred by sale charges, IE cutting the lock, inventory, mailing charges, advertising charges.

This change would benefit the consumer and the storage owners. It's a win win!

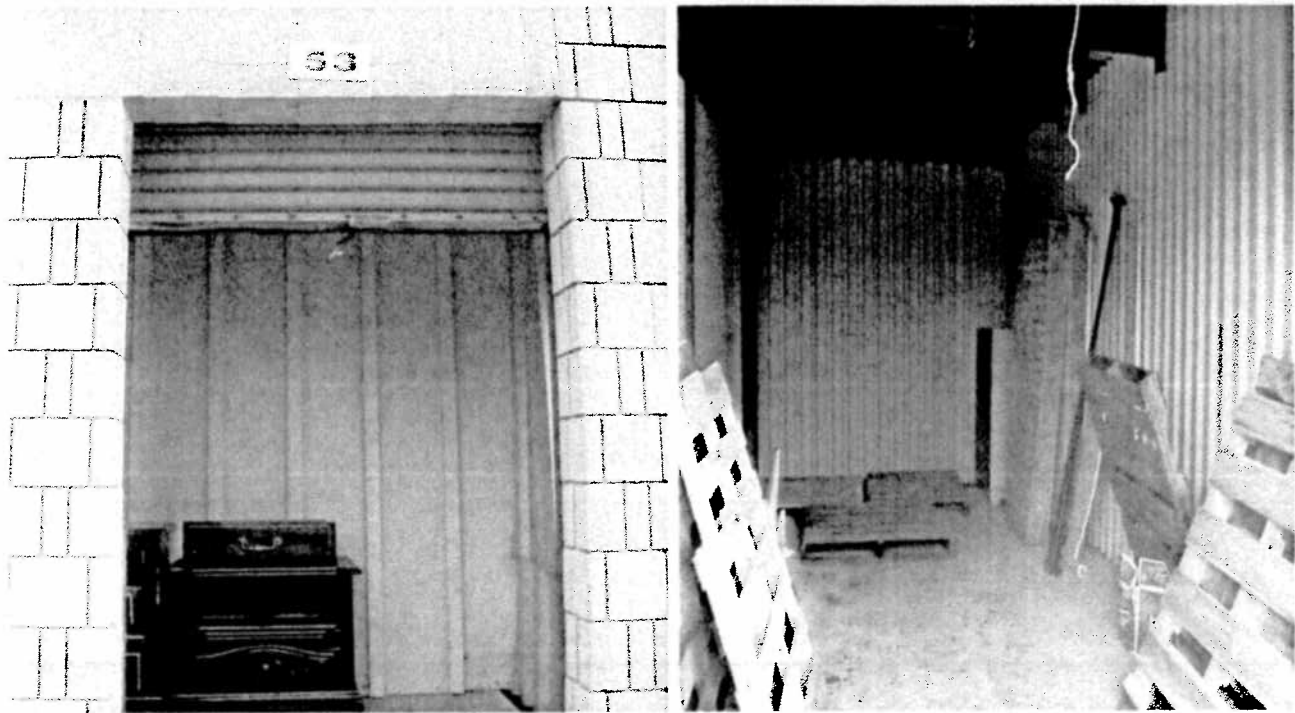


**SALE UNITS UNDER \$100 VALUE**





**SALE UNITS THAT COULD BE DISPOSED OF WITH \$100 CLAUSE**





\$118.83

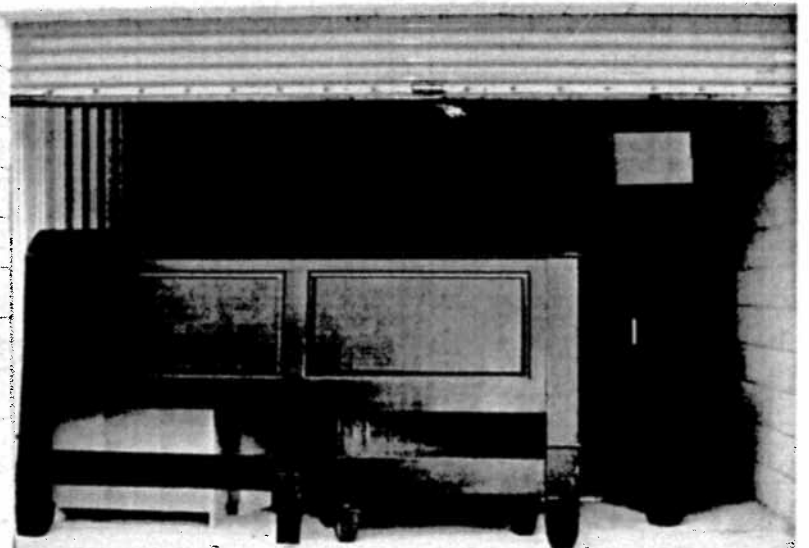


\$75.51

UNITS THAT WERE SOLD. SELLING PRICES LISTED:



\$20.00



\$226.76

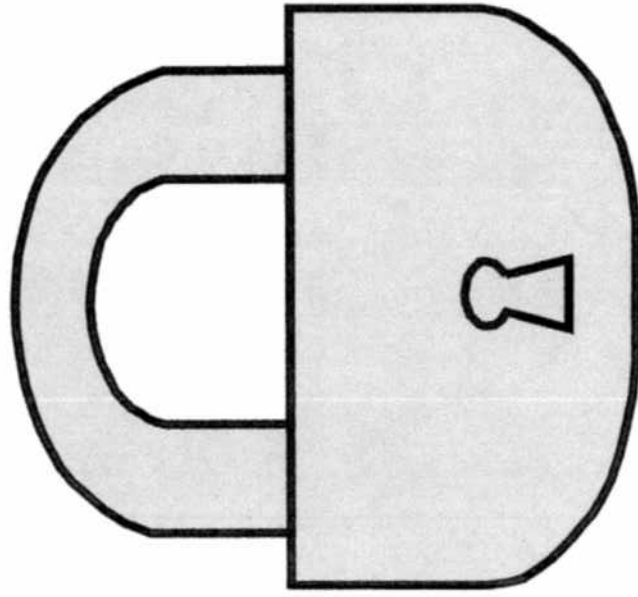


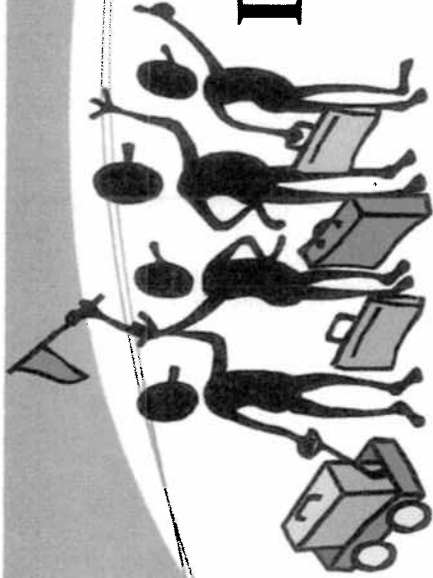
# Sale Saturday June 6, 2009

NAME	33	83	118	178	187	330	334	410	463	487	655	689
CRYSTAL FINK	107.51	51.75		49.01				101.51		21.51	75.51	
BEN DILLIN												
KATHY WHITE	165-											
ART LOPEZ		33.27		44.82								
STEVE HARDING								71-				
CHRIS SCHMIDT	226.14		350.29					101.76		85.01		61.76
ELDON MOORE		160.62	120.18	88.26			33.30	143.80				34.20
DELORES SEPANSKI	47.50	83-	127.75	67.30	22-		22.75	128.75	6.50	22.75	32.75	52.50
TOM KADDATZ								85-				
NANCY WICKLINE		31-		50-								
DOUG MC				25.75				27.80	207.50			
BOSE	5			5-			5-	15-		5-		
BARB	58.76		10-					78.55				
CHRISTY GEORGE								18.89	15.98	7.89		7.99
STEVE CIMA	99.50	21-		55-				101-				
MARY JOHNSON								25-	25-			
DAVID WILK					0.04			125-				
MICHAEL RADLOFF		97-	89-		17-			197-		17-		
BILL THOMAS		20.33		25.50			18.51	31.10				
BRIAN SHOHR		37-						181-				
BARRY MILLER	49.99		47.83	52.99			15.99					
JIM LARSEN												
BROOK	42.43	118.18	37.47	78.78	1.87			41.07				
SAM HANDY	22.52	22.52	52.52	23.33	504	104	20.27	119.21		10.19	27.27	6.81
JR		83.83					15.52	152.52	1.51	6.66	2.22	1.54

The average Bid per unit was \$ 110.94.  
 we had 57 bidders attend this sale.

- **Change of advertising of unit number- you don't have to publish the unit number for security reasons.**



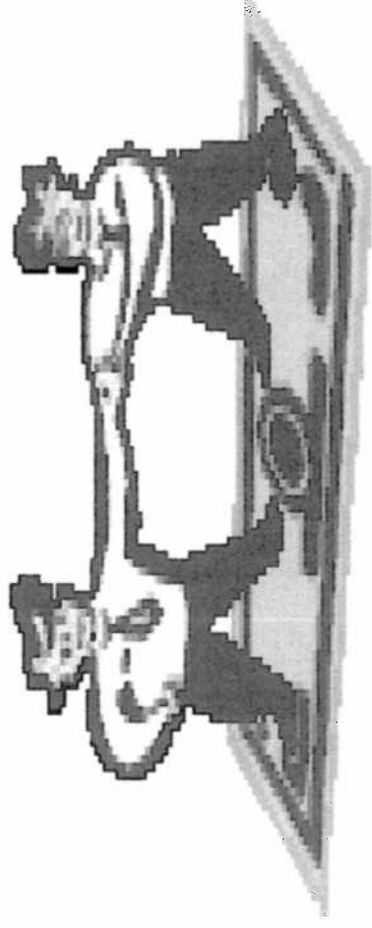


## Definition of commercially reasonable

- The personal property is offered either as a single parcel or multiple parcels at a public sale attended by 3 or more Independent BIDDERS
- The personal property has been offer to at least 3 persons who deal in that type of personal property and is sold in a private transaction
- Any other method of the sale provided that the disposition of the personal property is commercially reasonable
- We are also trying to add if the property left in the unit is a value of \$100 or less we can dispose of without sale process

## Limit of Value

- Requires a rental agreement that includes a provision that limits the value of property stored to print that provision in **bold type or underlined type** of the same size as the rest of the rental agreement. If such a provision is in the rental agreement that limit is presumed to be the limit.



A stylized graphic of a document with a 'delete' button. The document is white with a grey border and a shadow. The word 'delete' is written in a bold, sans-serif font in the center of the document. The document is positioned on a grey background that has a white, curved shape on the left side, resembling a page being turned or a document being inserted into a folder.

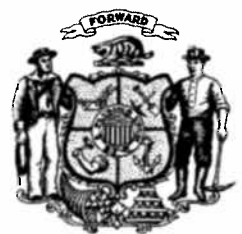
**delete**

**704.90 (12)**

- Repealed completely. The old laws allows a private person to bring a civil action for any damages the person incurs as the result of a violation of the statutory provisions
- Our rental agreements are with one person. The problem is all the unknown parties.
- Business need reliable rules and controlling potential loss exposure. This is very important.



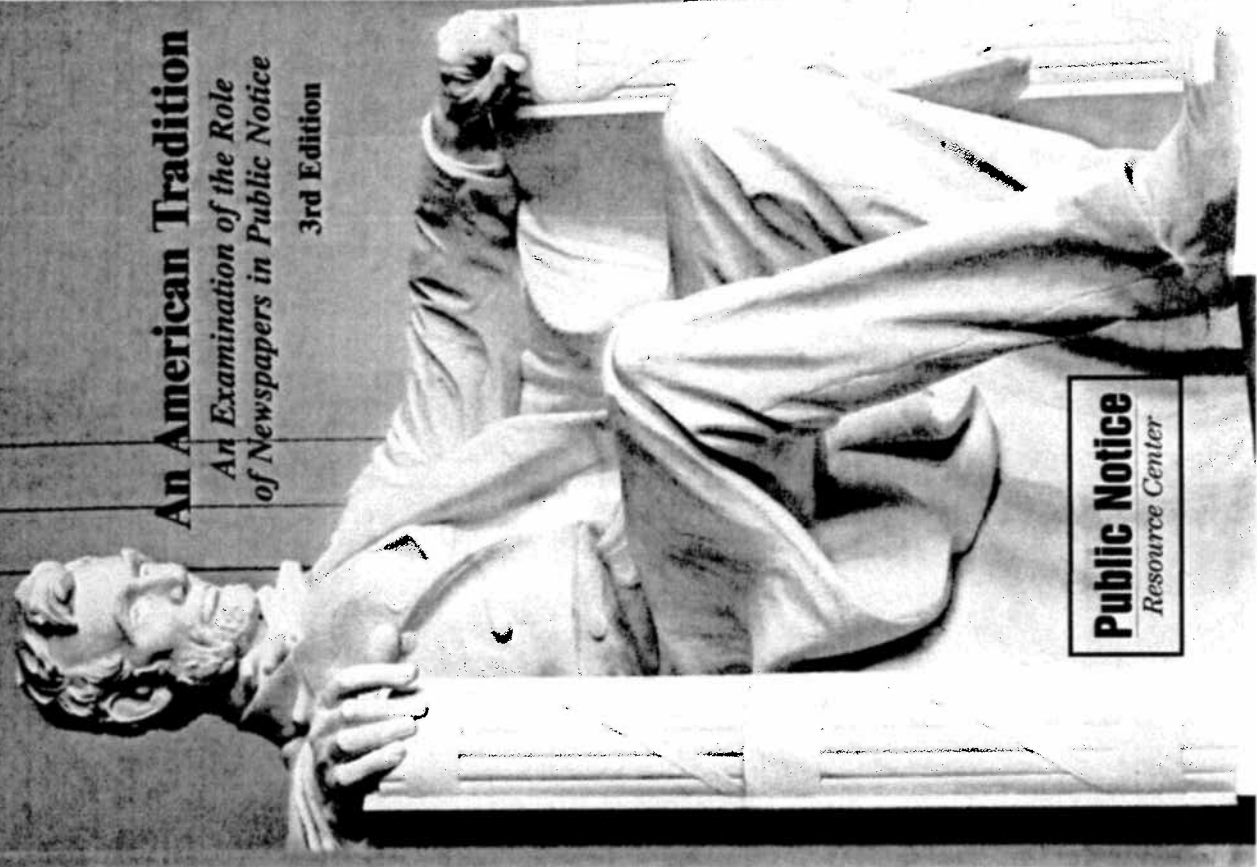
# WISCONSIN STATE LEGISLATURE



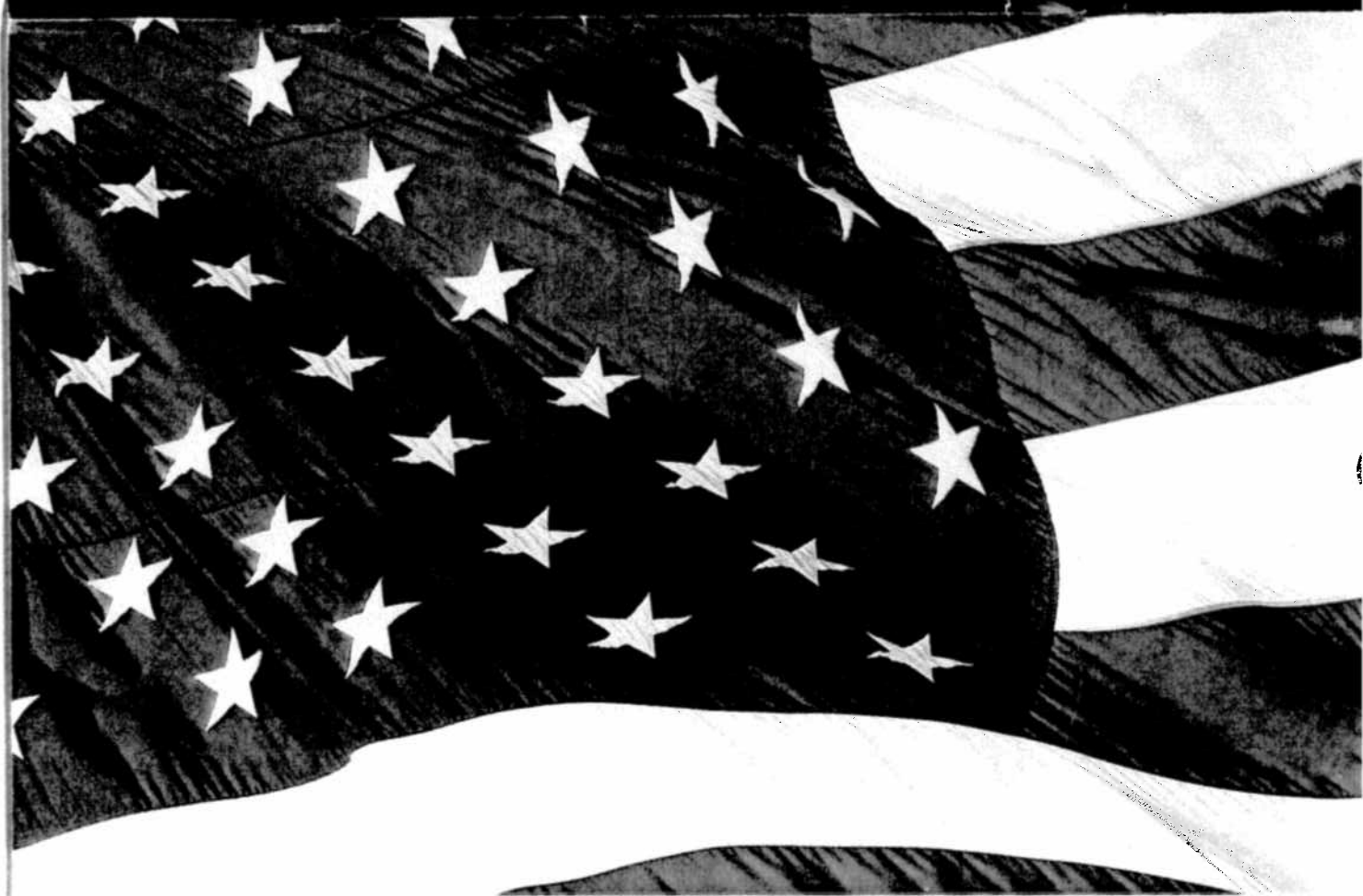
Added to the IRB's legal library collection.

# Public Notice

**An American Tradition**  
*An Examination of the Role  
of Newspapers in Public Notice*  
3rd Edition



**Public Notice**  
Resource Center



## Thank you for your support

PNRC is proud to acknowledge the support of these organizations:

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# Public Notice



**An American Tradition**  
*An Examination of the Role  
of Newspapers in Public Notice*  
3rd Edition

By Tonda F. Rush  
Public Policy Director  
National Newspaper Association  
Of Counsel, King & Ballow  
And Gurjit Chima  
Executive Director  
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Single copy price, \$4.50  
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## Prelude

The Public Notice Resource Center (PNRC) was established in 2003 with the sponsorship of the American Court and Commercial Newspapers, Inc., to collect, analyze, and disseminate information on public and private notifications to the public through local newspapers, and to educate the public on the value and use of its right to know. It provides research and public education materials on the use of public notice in newspapers.

PNRC is the sponsor of the Paul Revere Award for Notice to the Public, which recognizes the use of public notice by citizens and stories of their deeds. PNRC is managed by American PressWorks, Inc., Arlington, VA, on behalf of the PNRC Board of Directors.

Tonda F. Rush is a lawyer and consultant in Arlington, VA, with a background in media law. She is president of American PressWorks, Inc., where she represents the National Newspaper Association and other media organizations. She is also Of Counsel to the Nashville, TN, based law firm, King & Ballow, which has over 50 years of history representing newspapers.

Gurjit Chima is a lawyer who joined PNRC as executive director in 2007. Gurjit is admitted to practice in New Jersey and New York. Prior to joining Public Notice Resource Center, she practiced in the areas of consumer protection and employment discrimination at a class action civil litigation law firm in Washington, DC.

PNRC gratefully acknowledges the contributions of its subscribing partners, who make this publication possible. Particular thanks go to Chris Eddings, *Baltimore Daily Record*; and Bradley Thompson, *Detroit Legal News*, for editorial and production assistance and to Times-Picayune Publishing Company for editorial contributions.



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## Executive Summary

Public notice is an important tool in assuring an informed citizenry. Notices are mandated by legislatures to make sure there is a public window into the activities of governments, officers of the court and others holding a public trust. There are four key elements to a valid public notice. It should be executed by an entity outside the one mandated to provide notice, so proper checks and balances are in place.

- So it should be **independent**. It should be findable after it is issued so historians, archivists and even attorneys seeking proof for a lawsuit are able to obtain it
- So it should be **archivable**. It should carry with it a document attesting to its validity, such as a newspaper affidavit.
- So it should be **verifiable**. And it should be easily available to all segments of the citizenry, so it should be **accessible**.

This book is a summary of public notice, its purposes, missions, nature and effects.

Because of the onset of Internet publications of all sorts, some policymakers are debating whether printed newspaper notices are necessary, and even whether independent notice is needed at all. Moving notices to government-run websites has been discussed, though not executed. This book discusses the reasons why printed notice remains necessary, and why the Internet, particularly in its current immature state is an adjunct, not a suitable substitute for public notice. After they are published, public notices are increasingly available on newspaper websites, where they are provided for additional reach to readers without undermining the key elements of notice. And, for those interested in finding whole databases of notices at the state level, all in one place, state newspaper trade associations have become popular web publishers for these collections. Links to associations providing statewide public notice databases can be found at [www.pnrc.net](http://www.pnrc.net).

This book discusses the reasons why the printed notice remains necessary, and how the Internet fits into the public policy picture.

## Introduction

Enabling an informed citizenry through newspaper public notices helped America to develop participatory democracy where it counts: where money is spent, policy is made and futures charted. Public notices by government and private parties are so tightly woven into the American fabric that many citizens may take them for granted. Located in easily found sections of newspapers, public notices reach out to interested readers and lead them to opportunities.

Voices are expressed on taxation, communities are formed around planned public improvements, and assets are saved from loss to unworthy creditors – all as a result of public notices. Readers are accustomed to finding them in the newspaper, even if they may not know precisely how and why these important notices appear.

Yet some argue it is time to close this door to opportunity and shift notices to government or vendor-run websites. This booklet explores the history of public notices, and the arguments for and against newspaper versus Internet notices.



Public Notice Resource Center

## I. What is a Public Notice?

### Defining Characteristics of a Public Notice

*A public notice informs citizens of government or government-related activities that affect citizens' everyday lives. A public notice typically has four elements:*

- Independent:** A public notice is published in a forum independent of the government, typically in a local newspaper.
- Archivable:** A public notice is archived in a secure and publicly available format.
- Accessible:** A public notice is capable of being accessed by all segments of society.
- Verifiable:** The public and the source of the notice are able to verify that the notice was published, usually by an affidavit provided by the publisher.



## Types of Public Notices

### Citizen Participation Notices

Citizen participation notices inform the public about proposed government actions and allow the public time to react to such proposals. One such example is a public hearing notice. The notice shown here was published in *The Daily Journal* in Fergus Falls, Minnesota.

(First Publication March 20, 2008)

State of Minnesota )  
County of Otter Tail )

Pursuant to the provisions of Minnesota, Statute 394.26 NOTICE is hereby given that a public hearing will be held before the Otter Tail County Board of Adjustment in the Commissioners' Room of the Otter Tail County Government Services Center, Fergus Falls, MN at 6:30 p.m. on Thursday April 3, 2008 for the purpose of considering applications for variance for the following:

6:30 p.m. - Thursday, April 3, 2008 Meeting -

1. North Central Camp Chevit, Inc. Lot 21 Sky Blue Water Beach, Lake Six in Hobart Township, request a variance from the side lot line setback requirement of the Shoreland Management Ordinance.
2. Carol and Neil Myhre, Lot J and Northwest 25' of Lot K, Swanton's Addition in Government Lot 8, Section 17 of Edna Township by Big McDonald Lake, request a variance to have the parcel declared buildable and a variance from the ordinary high water level setback requirement of the Shoreland Management Ordinance.
3. Jerome Tyedtel, Lots 11 and 12, Block 2 Midway Park, Otter Tail Lake in Otter Tail Township, requests variances from the road right-of-way setback requirement of the Shoreland Management Ordinance.
4. Clarence Johnson and Margaret Blumer, part of Government Lot 3, Section 10 of Eagle Lake Township by Eagle Lake, request a variance from the Subdivision Control Ordinance.
5. Curtis Schachtschneider, part of Lot 8, Shirley Beach, Otter Tail Lake in Amos Township, request a variance from the ordinary high water level setback requirement of the Shoreland Management Ordinance.
6. David Geisler, Lots A3 and A4 of the Survey Lots of Government Lots 8 and 9, Section 1 of Dora Township by Sky Lake, request a variance to have the parcel declared buildable and a variance from the ordinary high water level setback requirement of the Shoreland Management Ordinance.
7. United Spontaneous Club, Government Lots 3, 4 and the North Half of the Northeast Quarter, Section 27 of Dead Lake Township by Dead Lake, request a variance from the ordinary high water level setback requirement and a variance from the conditional use permit application process of the Shoreland Management Ordinance.
8. Charles Brazel, part of Government Lot 9, Section 25 of Dead Lake Township by Dead Lake, request variances from the ordinary high water level setback and bluff setback requirements of the Shoreland Management Ordinance.

Detailed information regarding any specific application listed above is available on Otter Tail County's web site at [www.ottertail.mn.us](http://www.ottertail.mn.us), by contacting the Otter Tail County Auditor's office by phone at (218) 998-8038 or by mail at 510 Fir Ave W, Fergus Falls, MN 56537.

Individuals requiring special accommodations should contact the County Auditor's office prior to the date of the public hearing.

Wynne Stein, Secretary  
Otter Tail County Board of Adjustment  
Publication Date: March 20, 2008

## II. Why We Need Public Notices

### The History of Public Notices

Public notices existed long before the emergence of newspapers. The concept itself began when early civilizations posted notices in public squares. This crude method was eventually refined with the publication of the first English language newspaper in 1665—a court newspaper called the *Oxford Gazette*. After being renamed *The London Gazette*, this official newspaper carried notices from the King's Court, London officials and even outlying regions.<sup>1</sup>

The American system is modeled after the British system. State governments published public notices before America's founding and the newly-created federal government followed suit. In 1789, the Acts of the First Session of the First Congress required the Secretary of State to publish all bills, orders, resolutions and congressional votes in at least three publicly available newspapers.<sup>2</sup>

### The Purpose of Public Notices

An important premise both in federal and local governments of the United States, as well as many republics around the world, is that information about government activities must be accessible in order for the electorate to make well-informed decisions.<sup>3</sup> Public notices in newspapers provide this sort of accessibility to citizens who want to know more about government activities.

Public notice laws in this country serve to outline the most effective method of reaching the public. In designating newspapers as the carriers of public notices, many state statutes actually set forth specific qualifications that must be met before a newspaper can carry notices. Common qualifications include: paid circulation, a minimum percentage of news content, a local publishing address, and a requirement that the newspaper has been published continuously for a minimum period of time before notices can be published.<sup>4</sup> The latter requirement ensures stability in the venue for notices so that the public will know where to look for information.

\*\*\*\*\*  
**CLARK COUNTY**  
 (BR. NO. 1)  
**KLINELINE BRIDGE REPLACEMENT**  
 Bids due 1:50 pm, March 25  
**NOTICE TO CONTRACTORS**  
 Bids will be received until 1:50 P.M. on Tuesday, March 25, 2008, by the Clark County Board of County Commissioners through the General Services Purchasing Department, 1300 Franklin Street, Suite 650, Vancouver, Washington 98660, for the KlineLine Bridge Replacement (Br. No. 1), on NE Highway 99 from NE 117th Street to NE 122nd Street, CRP No. 341322; and other work; then publicly opened and read aloud at the Commissioners' Hearing Room, 6th Floor of the Public Service Center, 1300 Franklin Street, Vancouver, Washington 98660, at 2:00 P.M. on Tuesday, March 25, 2008, or as soon thereafter as the matter may be heard.  
**APPROXIMATE QUANTITIES**  
 Example of Contract Items  
 — Surveying (±2), 1 L.S.  
 — Excavation Incl. Haul, 7,960 C.Y.  
 HMA CI 1/2 in. PG 64-22, 4,700 Ton  
 Conc. Class 4000 1,300 C.Y.  
 Superstructure (Br. No. 1), 1 L.S.  
 St. Reinl. Bar for 100,570 Lb.  
 Storm Sewer Pipe — In. Diam., 3,970 L.F.  
 PIPE 6,690 EACH  
 Stream Boulder, 2-6 Ft. Diam. (Haul and Place), 590 EACH  
 Sanitary Sewer Pipe — In. Diam., 2,660 L.F.  
 Water Main Pipe — In. Diam., 960 L.F.  
**AND OTHER RELATED WORK / CONTRACT ITEMS**  
 This project is federally funded and contains DBE requirements.

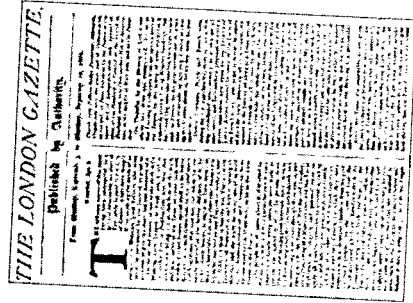
### Business and Commerce Notices

Business and commerce notices relate to government contracts and purchases. Notices of contract bids allow citizens to ensure that the government is operating in accordance with principles of equal opportunity and is acting responsibly in spending taxpayer money. The notice shown here (pictured at the right) was published in the *Portland Daily Journal of Commerce* in Portland, Oregon.

**FIRST INSERTION**  
 Gordon B. Heyman, Attorney  
 2224 Maryland Ave. N.W.  
 Building 300, Suite 2010  
 IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND  
 MARY M. HEYMAN, Plaintiff  
 vs.  
 THE REAL ESTATE PLACE OF HEYMAN STREET, LLC, Case No. 24-04-00049  
**NOTICE OF SALE**  
 Notice is hereby issued by the Circuit Court for Baltimore County, that the sale of the property described in the above mentioned proceedings, 5604 HILTON STREET, BALTIMORE, MARYLAND 21223 and reported by GORDON B. HEYMAN, DANIEL A. STAVEN, Trustees) be notified and confirmed unless cause to the contrary be shown on or before May 29, 2008, provided a copy of this notice be inserted in some newspaper published in this City, once in each of the following weeks on or before May 19, 2008.  
 The report states the amount of the sale to be \$36,000.00  
 FRANK M. CUNAWAY, Clerk  
 FRANK M. CUNAWAY, Clerk  
 May 19, 2008

### Court Notices

Court notices are required of many non-governmental entities that use public powers or institutions in some way. Examples include notices of home mortgage foreclosures, which can provide a public alert of widespread credit problems, fraud in underwriting, and a basis for analyses of housing trends. This notice allows the public to object to an appointment based on any conflict of interest. The example shown here (pictured left) was published in *The Daily Record* in Baltimore, MD.



### **Public Notice Supports Due Process**

Public notices are integral to democratic governance and stem from the right to "due process of law" guaranteed by the federal and state constitutions. Due process of law protects Americans' rights from arbitrary or wrongful violations. This concept has two parts: substantive due process and procedural due process. Substantive due process refers to the types of rights that are protected. Procedural due process refers to the means of protecting those rights. Substantive due process ensures that certain basic rights are not violated, while procedural due process may require suitable notice and a hearing before a government or court-appointed body can act in a way that may affect those basic rights. Public notices play a vital role in both substantive and procedural due process because they provide a window into government actions and also afford notice to citizens about to take place, so they may exercise their constitutional right to be heard. Importantly, notification not only informs the individual or entity most directly affected, but also the general public, which has an interest in knowing how public powers are being used.

### **III. The Need for Newspaper Notices in the Internet Age**

The Internet has revolutionized the way information is communicated and dispersed. As a result, legislatures and some private contractors have explored the possibility that the Internet has grown into a substitute avenue for public notice. However, while the Internet is a powerful tool for communicating many types of information, its use in dispersing public notice information is limited by the unique character and purpose of public notices. Key elements of public notice cannot properly be executed on the Internet at this point in the evolution of the electronic dissemination option. Even in the age of the Internet, newspapers remain the primary source for effectively publishing public notices. With technology constantly changing, the role the Internet can play in public notices is at present optimally expressed as a secondary dissemination tool for written notice that has already appeared in a newspaper as the official record.

### **Newspapers Are the Primary Source for Publishing Public Notices**

Newspapers, founded on the constitutional right of free press, have been serving the public's right to know in America since pre-colonial times, and on the European continent since the 16<sup>th</sup> century. Because

of their traditional informative role in society and their long established independence, newspapers remain the primary source for publishing public notices.

Upholding the public's right to know is essential to our country's way of life. Our government governs with the consent of the people, and this consent must be informed. Local newspapers keep the public informed about the inner workings of their respective state and local governments, thereby allowing citizens to participate more fully in the democratic process. Without this participation, the potential for misguided policies increases.

Newspapers play a major role in reporting on government spending. Money spent by state and local governments is, for the most part, public money raised through taxation. As a result, taxpayers have a fundamental right to know how their tax dollars are being spent.

Therefore, in reporting on public expenditures, public notices are vital to the transparency of government at all levels.



### **Newspapers Play a Traditional Role in Democratic Governance**

Newspapers allow the government to notify the public of government actions. The government has a fundamental responsibility to ensure adequate notification to the public of its actions. Therefore, the government has a duty to make sure the methods used in satisfying this responsibility are the most effective.

Removing public notices from newspapers and placing them solely on the Internet without first stopping to consider the possible negative consequences abandons this responsibility and may convert a proper public notice into a government relations tool, an ephemeral information byte, or a message destined only for the elite who have regular and unfettered access to computers.

Newspapers provide neutrality from government and credible distance from political pressures or partisan disagreements. Local and community newspapers serve as third-party reporter to the public, publishing information that can be both beneficial and detrimental to the government's public image. They provide an environment for notices that the public has traditionally regarded as objective and neutral. Public

notices in this print environment gain credibility because of the long history of trust in the local newspaper.

Placing notices on government websites undermines this neutral interest and removes a critical check and balance. While it may seem appealing on the surface in an age of ever-more sophisticated government websites, the potential for litigation and dispute is great.

On the other hand, public notices in independent newspapers increase government transparency by opening up the decision-making process to the public's eyes. Without this oversight, local governments could enact controversial policies without any input from the public. A few examples from public notice archives provide excellent illustrations of the ways notice can bring citizens into fruitful public debate:

- A public notice in a local weekly Texas newspaper alerted a citizen to the harm a proposed golf course could cause to a local creek in her community. Upon reading the notice published in the *Fredericksburg Standard Radio Post*, resident Barbara Mann wrote a letter to the editor of the newspaper regarding the notice. The letter sparked interest in the development's impact on a local creek and led to the formation of a citizen's group, People Protecting Our Water Equity Rights (People POWER) to oppose it. People Power successfully reached a settlement with developers that was a win for both the creek and the golf course allowing the course to continue its development and the citizens to protect their creek.<sup>v</sup>

- An unnoticed special election in Tahlequah, Oklahoma, which resulted in increasing the city's sales tax, led to a lawsuit against the city and its mayor in 2003.<sup>vi</sup> The court invalidated the special election and found that yard signs, letters to the editor, articles in newspapers, and flyers advertising the proposed tax increase could not replace published newspaper notice.

- An improperly announced school board meeting in Arizona led a newspaper to question and investigate the public meeting practices of an Arizona district in August 2007. The meeting time change, information which was allegedly provided on a website but which could not be found by newspaper reporters, was alleged to have violated open meeting laws. Such a violation can result in nullifying actions taken at the meeting.<sup>vii</sup>

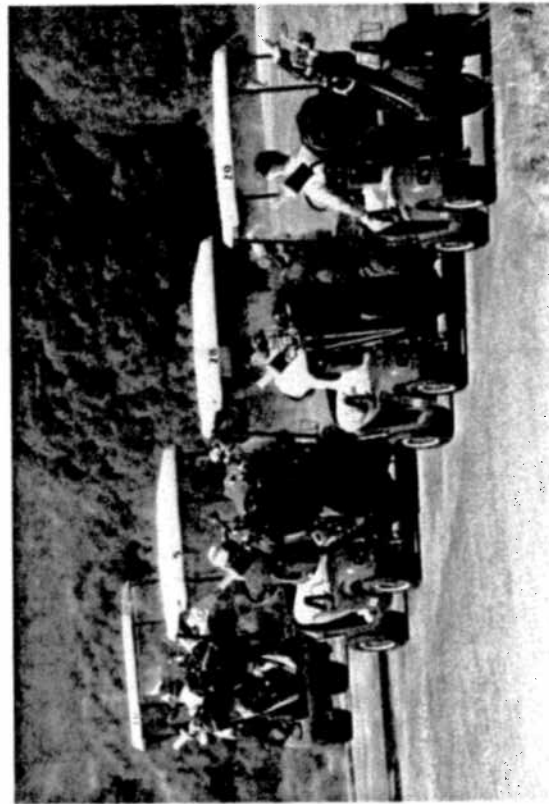
These are examples of a few of the daily events in America initiated by someone's reading a newspaper notice.

Newspapers serve as effective monitors of governments and ensure that they publish information as required by law. Public notices are typically required by a statute or a regulation. The independent press can provide a valuable civic service role by helping to monitor that the notices were published when required. If governments were responsible for publishing their own notices, no neutral and independent entity would have the incentive and the means to track public notice publication.

### **Newspapers Are the Most Accessible and Understandable Medium for Public Notices**

Newspapers, for most of the Republic's history, have been the accepted medium for public notices. This is exactly where the public, even infrequent readers, expects to find them. In addition, specialized publications, such as legal newspapers, are well known for providing public notices to the population through legal communities. Other general interest newspapers, such as county seat weeklies, are the forum where county citizens expect to locate notices of important public business. Furthermore, the vast majority of these notices arrive at citizens' homes in a context that compels readership (amid local news, sports features and other inviting content).

Another reason for the effectiveness of newspapers is that newspapers provide valid evidence of readership. The measurement of effective Internet traffic has not yet matured to the point that access by a human being, as opposed to a "bot" or automated search engine, can always be identified and measured. That is the reason many websites now require a human reader to type in a set of letters before completing a transaction. If public notices are placed solely on the Internet - whether government or private - questions about the true measure of readership may cloud the effectiveness of the notice.



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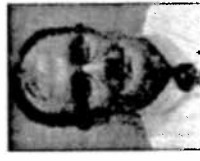
Newspapers use two major methods to provide a window into the nature of their readership, so that the government can determine that notice is reaching the people. First, many public notice laws require newspapers to maintain Periodicals postal permits, which require an auditable statement of "demand" for the newspaper, either through payment of a subscription or a recorded request that must be updated every 3 years. These, in turn necessitate the maintenance of reader records which undergo outside subscription audits to verify reader-ship numbers. Credible accountings from the Audit Bureau of Circulations, Verified Audit of Circulations and others can show detailed accountings of who reads and where the readers receive their newspapers.

Additionally, newspapers are usually read by several in a household and passed along to other readers. A single newspaper in the home may reach 3, 4, or more persons. And the newspaper gets carried outside the home, and passed along in places like business offices, barber shops, and on buses or trains. Pass-along readership helps to keep the newspaper accessible to the widest group of citizens. Many newspapers sponsor Newspaper in Education programs to enhance the availability of their copies to students.

The stability of newspapers as a medium for public notices is unquestionable. Many newspapers in this country are over 100 years old.

Legislatures are rightly concerned about web-only notices, given the digital divide between rich and poor, rural and urban residents. The Internet is either too costly or simply geographically unavailable to some segments of society. For example, only 31 percent of Americans living in rural areas have broadband at home - a meager 6 percent increase from 2006-2007.<sup>viii</sup> In states with large rural populations such as Texas, which briefly considered putting notices on a vendor's website and which has the largest rural population in America of approximately 3.2 million as of January 2007, access is a serious

issue.<sup>ix</sup> Economies of scale reduce the Internet options available to rural communities to dial-up Internet service, if any. Studies link the frequency of Internet use to the speed of Internet connections, suggesting that a slow connection reduces the frequency of Internet access.<sup>x</sup> In 2005, 24 percent of rural residents had high-speed Internet connections compared to 39 percent of residents living elsewhere.<sup>xi</sup> Overall Internet use for rural Americans in 2005 - by any type of Internet connection - lagged 8 percentage points behind non-rural Americans.<sup>xii</sup>



*Rural broadband users are no different from home high-speed Internet users elsewhere; they go online more often and do more online services than dial-up users...But with a lower proportion of broadband users in rural America than elsewhere, the result is that rural Americans, in aggregate, have a more distant relationship with the Internet than urban and suburban Americans.*

— **John B. Horrigan,**  
**Pew Internet Project Association Director**

Often the same rural states also have large low-income populations which further compound issues of access among communities that simply cannot afford subscribing to the Internet. Studies link greater Internet access and use to the economically affluent and educated populations.<sup>xiii</sup>

Equally troublesome for the "Net" is a recent trend that reveals a growing ambivalence toward the World Wide Web. A study by Parks & Associates conducted in the first quarter of 2007 found that almost a third of all U.S. households without Internet service *did not* intend on subscribing to the Internet in the coming year.<sup>xiv</sup> The reason: 44 percent of households surveyed were not interested in anything on the Internet while 22 percent of households reported they could not afford computers or the cost of Internet subscriptions.<sup>xv</sup> Another study by the same group in 2006 revealed that unwillingness of new households to subscribe to the Internet limited 2006 growth in overall Internet penetration to 1 percent.<sup>xvi</sup>



*We are clearly facing a problem of demand, not supply. Computers and Internet service have never been cheaper, yet many households still show little enthusiasm for the technology.*

— **John Barrett,**  
**Director of Research, Parks Associates.**

In contrast to the expense of computers and Internet access, newspapers are inexpensive and readily available to rich and poor, rural and urban alike. Unlike the Internet, newspapers are known and available to the most vulnerable communities, if not by inexpensive purchase or subscription, then in public libraries. Individuals turn to newspapers for public notice alerts because newspapers are a long-standing, trusted source for public notices.

### Newspaper Notices Are Historical Records

The newspaper as paper of record is an important factor in the public policy of notices. Government websites cannot provide a secure archival history the way newspapers can. Electronic records lack permanence and can easily be intentionally or accidentally erased. Even the Library of Congress has recognized this shortcoming, and has embarked upon a major project to attempt to archive digital records that are in danger of being "forever lost" due to Internet impermanence.<sup>xvii</sup> Most newspapers, on the other hand, maintain hard-copy or microfilm archives consisting of every issue published. State and local libraries also maintain large catalogs of microfilm and microfiche printed newspapers for the use of archivists and historians.

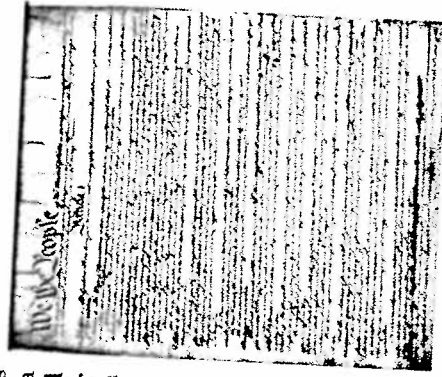
Furthermore, a growing number of scientists and scholars are nervous about their increasing reliance on the Internet as an archival tool. In 2003, a team of researchers looked at a number of Internet web addresses cited in scholarly articles and found that numerous web pages had been moved to other sites or had completely disappeared.<sup>xviii</sup> Indeed, even the National Archives and Records Administration considers the lack of a secure archiving system to be a significant obstacle to placing federal government information online.

Despite these problems, the federal courts unwisely approved a rule change to the Federal Rules of Civil Procedure recently that would move notices of federal asset forfeitures out of newspapers and onto a website, [www.forfeiture.gov](http://www.forfeiture.gov), administered by the Department of Justice. Yet, the courts have little research to show that the Justice Department's website will produce viable, accessible, archivable notices.

While Internet web pages pose serious archiving challenges, newspapers, on the other hand, become historical documents. They are printed and published with a date on every page. They cannot be deceptively altered after printing like web pages. Historians, judges, lawyers, genealogists, and researchers, to name only a few, use newspapers, and public notices in particular, as sources for records.

### Newspaper Notices Protect Due Process

Procedural due process, as granted by the U.S. Constitution and interpreted by courts, generally requires an individual to receive notice and a hearing before he or she is deprived of certain rights or property. For example, before a person's home is sold by a county sheriff at a foreclosure sale, he or she must receive notice of the foreclosure sale and an opportunity to save the home from foreclosure. If the owner does not receive the notice, he may challenge the sale in court. The Court may then void the sale or prevent the sale from happening to protect due process.



At least one court has already called into question the validity of Internet notices for purposes of fulfilling due process requirements. In 2007, the U.S. District Court for the Eastern District of California found no authority supporting the proposition that due process requirements are satisfied when a newspaper notice simply invites readers to check websites for information regarding state seizure of their property instead of publishing the entire notice in the newspaper.<sup>xx</sup> The Court went on to enjoin enforcement of California's Unclaimed Property Law until the state provided constitutionally adequate notice to property holders whose property was at risk for escheatment to the state. Perhaps in response to the case, legislation restoring newspaper notice and enhancing other methods of communication was passed later in the year.

California is not the only state questioning the validity of Internet public notices. Legislation protecting newspaper notices was also passed in Washington state during the same year in response to a state supreme court case finding web-only notice to be sufficient. The bill, signed into law by Washington Governor Christine Gregoire, requires owners of condemned property to receive notice by publication in a legal newspaper.



## Governments Pay for Newspaper Notices to Make Sure Space is Available

Newspapers are generally paid to run public notices, which recognizes that their publication creates a cost in paper, ink, and delivery. Payment reserves valuable newspaper space that will be devoted to notifying the public. Editors may independently choose to carry news stories on items that they believe to be of broad interest, as they do on other public matters in their areas. Courts have occasionally considered whether the newsroom's stories about a popular public issue can stand in place of the official paid notice. The prevailing rule is that news stories cannot fulfill publication responsibility - although they certainly aid in spreading the word and can be helpful in presenting a broader context for the event or issue being noticed.<sup>xx</sup>

Public payment for notice works in the same way in which qualified building contractors are paid to build schools and roads, and auto dealers are paid to supply official vehicles to police and fire departments.

Contractors such as these provide a valuable service and are compensated for their work product through a competitive bidding process. Some services are more effectively offered through contractors. Public notice is one. However, unlike bridges and fire trucks, public notice is generally paid for at the contractor's lowest rate, which for newspapers is often the classified advertising rate. Though payment creates an expense in tight public budgets, an examination of most public budgets shows that notice requires a minor, though important, line item. The return on investment from these small expenditures, however, can be huge if the notice fosters public debate and trust.

In times of tight budgets, governments sometimes ponder these expenditures and consider trimming budgets to save money. Sometimes, posting on government websites looks deceptively cheap and easy.

But before taking that route, policymakers should consider:

1. What is the cost of operating a public website for notices if all necessary elements are in place? For example, what process will be created to allow a citizen to request an affidavit proving a notice was published on-line two years ago as he would be able to obtain from a newspaper?

2. What is the true cost in relation to other government expenses, like travel, conferences, public relations budgets, and other programs that many challenge in tight fiscal times? Which costs better serve citizens?

3. Is publishing fewer public notices ever the right decision? Even when public websites may be used and are popular with some, do tight budgets justify eliminating access for others?

## IV. The Internet is Great! But...

### The Internet Remains an Immature Medium, and is Vulnerable to Many Problems.

Although it has been part of American society for a quarter century as a network for scholars and government agencies, the Internet has been widely used by citizens for barely more than a decade.

Because of its structure with computer clients and servers, information packets and open network codes, it remains vulnerable and sometimes unstable. Power surges, corrupted software, and downed servers can disrupt access at any given time. Government agencies cannot ensure that information located on a server is secure. Due to the presence of hackers and computer viruses, Internet public notices are vulnerable to obliteration, alteration, and "phishing" (a term meaning the sending of a realistic-looking notice for fraudulent purposes).

Even a highly technological site like that of the Pentagon has been affected. In June 2007, the Pentagon was forced to take approximately 1,500 computers off-line because of a cyber-attack.<sup>xxi</sup> In discussing the attack, then Defense Department Secretary Robert Gates stated that the Pentagon sees hundreds of attacks every day.<sup>xxii</sup> Nor was this the first time the Department of Defense had encountered major Internet problems. In January 2004, the Pentagon tabled its online voting program for overseas citizens over concerns that the presidential elections could provide an opportunity for tampering by foreign or domestic hackers.<sup>xxiii</sup>



According to a White Paper compiled by Government Computer News (GCN), reliance on computers for communication is increasingly making the US government more vulnerable to cyber attacks.<sup>xxiv</sup> GCN reports that the Department of Defense has seen a 46 percent increase in attacks on its Web sites since 2005 while the Department of Homeland Security received 37,000 reports of attempted breaches on government and private systems in fiscal year 2007, up 54 percent from 24,000 in 2006.<sup>xxv</sup>

The Department of Defense is not alone. A hacked California county website that redirected users to a pornographic Internet site triggered the federal government to issue a state-wide shutdown of all government sites in California in October 2007.<sup>xxvi</sup>

The global nature of the Internet also makes it an unreliable venue for public notices. Other countries' restraints on Internet access have the potential of adversely impacting Americans' access as well. For example, in February 2008, most of the world's Internet users lost access to YouTube, a video-sharing website, for several hours due to an attempt by Pakistan's government to block domestic access to the site.<sup>xxvii</sup> This came less than a month after broken fiber-optic cables in the Mediterranean caused Internet outages all the way from Egypt to India.

These periodic epidemics and outages remind citizens that websites are vulnerable to alteration as well as to further spreading of the viruses - such as rampant spyware - that brings many home computers to a near halt. Conversely, printed public notices provide a record that cannot be altered; once published, it is a permanent record. Furthermore, no one but the newspaper reader knows how that notice was used. Privacy is ensured.

### The Internet Tracks Who is Reading

As any Internet publisher will confess, it is hard to completely conceal a person's identity on the Internet. Subpoenas to Internet Service Providers to identify Internet users must be answered, and have become a common tool of law enforcement. With sufficient information about a reader, and a commonly-available traffic report on pages accessed, it is not rocket science to detect who is reading what.

Some readers might not wish their identities to be known by a government agency. For example, a company about to bid on a contract might fear exposure to competitors through courthouse gossip. A property owner wanting to preserve the right to challenge an inadequate eminent domain notice might not wish to access a notice online where identity might be discovered. And some people just don't like the government to know what they are reading.

A newspaper page doesn't know who is reading it and doesn't care. Publishers may be able to track dissemination to a reader's venue, but the information about the eyeball falling on the page remains a confidential bargain between the reader and that copy of the paper.

Government information on-line is at risk anytime a laptop is stolen. Recent media coverage is replete with incidences of stolen government and private corporate laptops that contained private information on individuals. In one instance, the retail giant GAP reported the loss of a laptop containing personal information on 800,000 job applicants.<sup>xxviii</sup> Contrary to GAP's agreement with its vendor, the information was not encrypted.<sup>xxix</sup> The following year, in May of 2006, a Veteran Affairs Department employee stole a laptop containing the social security numbers, names, and addresses for more than 26 million veterans.<sup>xxx</sup> Most recently, in February 2008, a government laptop, holding unencrypted medical records of 2,500 participants in a government study undertaken by the National Heart, Lung, and Blood Institute, was stolen.<sup>xxxi</sup> The computer contained the patients' names, birthdays, medical record numbers, and diagnoses.<sup>xxxii</sup> An interesting question for government websites is whether insecure servers and data will expose traffic information. Could a thief, for example, figure out how a citizen read and used public notices? If so, the implications for fair processes like arm's length and blind bidding on government contracts could be severely compromised.



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### The Internet is a Valuable Adjunct Avenue When Properly Used

The development of easily programmable databases, affordable search engines and appealing graphics has encouraged most newspapers to extend the reach of their printed notices by using their own websites to display the notices after publication. The notices may be displayed as public notices, or legal notices, or sometimes even called legal advertising. (The latter term is not ideal, as "legal advertising" can be understood by readers to mean "ads for lawyers or legal services.")

The value of these newspaper websites is to permit additional reach for notices, without threatening or compromising the underlying elements of the printed notice. Unmistakably, there are readers whose only interest in the newspaper is online, and the publishers are responding to that demand.

Additionally, because some state legislatures have expressed an interest in having notices collected in one place, most state newspaper trade associations have begun to aggregate notices on their own websites. These collections, provided as a service to the state free of charge by publishers, are searchable through browsers or independent search engines. Though these services have been available in some states for more than five years, webmasters report that there is as yet not a compelling reader demand for them. But the Internet is an important tool, and for those interested in public notices on the Internet—newspapers have responded. And they have done it without diminishing the veracity, archivability or independence of the notice!

Associations providing such statewide databases can be found through links at [www.pnrc.net](http://www.pnrc.net).

## IV. Conclusion

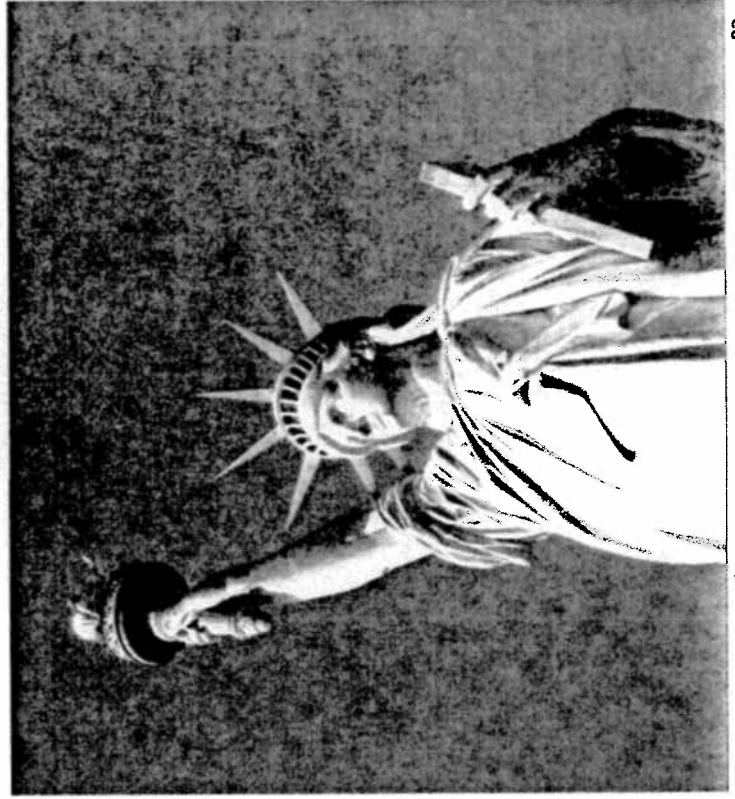
Newspapers have a long and rich tradition in our country's history of serving the public by keeping government transparent and accountable through publishing public notices. Newspapers are the stewards of public notices: they ensure that notices are independent, archivable, accessible, and verifiable.

Public notices, in turn, guard our constitutional rights to due process of law by informing citizens' of government action and providing proof of publication via notarized affidavits of publication. Unlike the time-tested and trusted local newspapers that citizens have come to rely on for public notices, the Internet is a new, dynamic, and unstable medium for information. While it is a valuable tool in disseminating certain information, it has not yet reached a level of sophistication and techno-

logical stability that would justify its supplanting newspapers as the primary venue for public notices. It is uncertain how, or if, a "Net" affidavit could ever show proof of a public notice publication when constant technological change makes any attempt at archiving and accessing such a document online for any significant amount of time currently impossible. No less problematic for the Internet is its reach - or the lack thereof. Those that live in rural areas where broadband does not exist and others who simply cannot afford the internet cannot access web public notices. In situations where foreclosures are on the rise due, in part, to predatory mortgage lending, more, not less, access to public notices is needed to better inform citizens about their rights and their choices.

It is difficult to see, then, why legislatures would consider moving public notices from newspapers to public notice websites administered either by already over-burdened state governments or by third-party vendors who lack the experience and long term viability newspapers have proven in publishing notices.

Especially in the Internet age, newspapers remain the most trusted and primary method for publishing notices.



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## Endnotes

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