SCOTT ALLEN

REPRESENTATIVE • 97TH ASSEMBLY DISTRICT

29 October 2015

Thank you for your time and consideration. As you know, I am Representative Scott Allen.

In 1993 I launched my career in real estate because I wanted to be in business for myself. I was attracted to unlimited earning potential and the idea of independence. I could work as hard or as easy as I wanted. I could work when I wanted and take off when I wanted. I scheduled my own appointments and set my own hours.

What I've found over the years when I operated my own real estate firm and managed real estate sales offices is that the vast majority of people who are drawn to real estate as a career are attracted to it for the same reasons. Most of them have had jobs before and are tired of having a boss to report to. Real estate sales affords them a self-directed career opportunity.

With 22 years of experience in the real estate industry it is natural that the Realtors Association would contact me to talk about appropriate updates to the statutes related to real estate practice. The Realtors and I have been meeting on this bill since February, working to craft the legislation that is before you for your consideration. Many of the provisions were obvious updates to me based on my first-hand experience in the industry. Some of the provisions we negotiated to come up with precise language, and some things they wanted I didn't agree with and simply said no. The bill you see before you is the 9th draft and I am confident it is good legislation.

One of the important things that this bill does is solidify the independent, sole-proprietor nature of being a real estate agent while updating the language to allow for 21st century business models, allowing agents to operate as business entities under the umbrella of a real estate firm.

Also, considering that the average Realtor sells about seven houses per year, another important component of this bill is that it limits liability to a more reasonable level of 2 years from the current 6 years. It puts Realtor liability on par with that of home inspectors which I believe to be fair and reasonable.

The bill moves a few things from the administrative rule directly into the statutes and it codifies a 1961 Supreme Court decision that gives real estate agents the ability to do a limited practice of law by completing State-approved forms at a client's or customer's direction.

It also makes the law and the necessary disclosures a lot more consumer friendly by using easier to understand language rather than attorney speak.

I appreciate your consideration of this bill.

I suspect that Ms. Cori Lamont and/or Mr. Tom Larson with the Wisconsin Realtors Association would also like to make a few remarks before we take your questions.

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Wisconsin **REALTORS**® Association

To: Assembly Committee on Housing and Real Estate

From: Cori Lamont, Director of Corporate and Regulatory Affairs
Tom Larson, Senior Vice President of Legal and Public Affairs

Date: October 29, 2015

RE: Two-year Statute of Limitation for Liability in AB456

The WRA supports legislation that provides a two-year statute of limitations for licensee liability relating to a transaction in which the licensee provides brokerage services. Setting a statute of limitations as to when a real estate licensee can be sued relating to a real estate transaction and the brokerage services provided.

Wisconsin real estate licensees are currently subject to a 6-year statute of limitations on litigation related to written contracts. Generally, a real estate licensee is vulnerable to litigation relating to a written contract for 6 years. Therefore, a real estate licensee, including their company, may be sued based upon a listing, buyer agency agreement or offer to purchase anytime within a 6-year period after a closing on a transaction, or a listing or buyer agency agreement.

Real estate licensees are inevitably named in any lawsuit related to the transaction. Often real estate companies and their agents are brought into the litigation due to the perception that they have "deep pockets" even though the agent and its company had no involvement or knowledge of the issue that is at the heart of the litigation. However, the company and its agent must defend their way out of the lawsuit.

The "leaky basement" example. For example, 5 years after closing the buyer's basement takes on water. The buyer sues the seller stating that the seller did not disclose and knew of the pre-existing condition of the basement taking on water. The buyer also sues the listing company, the listing agent and the subagent arguing that they also knew about the water issue in the basement and failed to disclose such to the buyer. The seller did not disclose the water issue on the Real Estate Condition Report, the agents said they had no knowledge of the water issue and recommended that the buyer have a home inspection, which the buyer refused.

A 6-year threat of possible litigation is too long. The fact that a company and its agents are susceptible to litigation 6 years after a transaction closes, terminates or expires creates significant uncertainty for practitioners and their companies.

Other professions have a specific statute of limitations as to liability, such as home inspectors (2 years), doctors and nurses (3 years for medical malpractice), lawyers (6 years for legal malpractice), and appraisers (7 years).

Other states have a **shorter statute of limitation on contract claims** of **3 years or less** (e.g., Alabama, Alaska, California, Colorado, Delaware, North Carolina, South Carolina) **or carve out for professional malpractice of 2 years** (e.g., Florida, Michigan, Nebraska, New York, Oregon, Rhode Island). While these states represent a broad spectrum of political philosophies

(e.g., Alabama and California), each of these states believed that placing reasonable limitations on the liability would maintain adequate protection for consumers. To date, none of these states have felt the need to repeal or significantly modify by enlarging their statutes of limitation.

This legislation

- **recognizes** that the **more time that passes from the close of a transaction** the burden is **higher to prove the responsibility and knowledge** on the parties.
- identifies the parties' right to sue while **identifying the action should occur closer to the transaction itself**.
- **prohibits any agreement from reducing the 2-year timeframe for litigation.**
- **does NOT place any time limits on the ability of consumers to file a complaint** with the Department of Safety and Professional Services (DSPS), or for DSPS to act on such a complaint.

Wisconsin REALTORS® Association

To: Assembly Committee on Housing and Real Estate

From: Cori Lamont, Director of Corporate and Regulatory Affairs
Tom Larson, Senior Vice President of Legal and Public Affairs

Date: October 29, 2015

RE: Wisconsin Statute 452 Modernization – AB456

The objective of this bill is to modernize the statute to reflect changes in Wisconsin real estate practice and interests as well as codify existing Wisconsin law. The following is a brief summary of the changes reflected in the proposed draft.

Protecting the real estate licensee independent contractor relationship - clarify what must be accomplished in order to classify real estate agents as independent contractors, as opposed to employees. This bill assists in clarifying the independent contractor status of real estate agents and removing any consistencies of the treatment of real estate independent contractors under state law by:

Removing the employee and employer statutory references avoids any suggestion of a default employee/employer relationship between the real estate company and its agent.

Creating a safe harbor for real estate independent contractors consistent with federal IRS regulations (See 26 U.S. Code § 3508) if certain statutory tests are met, such as 1) a written agreement has been entered into that provides the licensee shall not be treated as an employee for federal and state tax purposes and 2) seventy–five percent or more of compensation paid by the firm to the licensee during a calendar year is directly related to the brokerage services performed by the licensee on behalf of the firm.

Eliminating the current inconsistent application of Wisconsin's worker's compensation law requiring real estate companies to carry worker's compensation insurance for agents as though they are employees, even though the same agents are independent contractors for federal and state tax purposes. Under this treatment, Wisconsin deems the real estate agent an employee only for worker's compensation but as an independent contractor for tax purposes. This legislation concludes a real estate company is not required to carry worker's compensation for an agent who meets the statutory independent contractor safe harbor test.

Supervision by real estate companies – identifying in the statute the supervision responsibilities by real estate companies as to agents, review of transaction documents, document retention and assignment of supervision tasks to a firm's supervising broker.

Codify the unauthorized practice of law - statutorily confirming the Wisconsin Supreme Court's 1961 decision of a real estate licensee's ability to complete state-approved forms. A 1961 decision by the Wisconsin Supreme Court, in Reynolds v. Dinger, 14 Wis. 2d 193 (1961), Court held that the completion of state-approved forms by Wisconsin real estate licensees was

not an unauthorized practice of law. In 2008 the State Bar of Wisconsin successfully petitioned the Wisconsin Supreme Court to better define the "unauthorized practice of law." The final draft of Supreme Court Rule (SCR) 23.02(2)(o)adopted by the Court in 2010 created a protection for real estate licensees to provide services authorized under Wisconsin Statute Chapter 452, unless a rule or published court case says otherwise.

This legislation does not expand a Wisconsin licensee's rights but, rather, statutorily provides for rights confirmed 50 years ago by the Wisconsin Supreme Court in *Dinger* and five years ago in SCR 23. Under this legislation, Wisconsin licensees are still not permitted to provide legal advice.

Broker liability protection - provide a 2-year statute of limitations similar to the language and structure of home inspectors under Wis. Stat. §440.977. Wisconsin real estate licensees are currently subject to a 6-year statute of limitations on litigation related to written contracts. The fact that a company and its agents are susceptible to litigation 6 years after a transaction closes, terminates or expires creates significant uncertainty for practitioners and their companies.

This legislation recognizes that the more time that passes from the close of a transaction the burden is higher to prove the responsibility and knowledge on the parties. The legislation identifies the parties' right to sue while identifying the action should occur closer to the transaction itself. Other professions in Wisconsin have a specific statute of limitations as to liability, such as home inspectors (2 years), doctors and nurses (3 years for medical malpractice), lawyers (6 years for legal malpractice), and appraisers (6 years). Other states have a shorter statute of limitation on contract claims of 3 years or less or carve out for professional malpractice of 2 years.

This bill prohibits any agreement from reducing the 2-year timeframe for litigation and does not place any time limits on the ability of consumers to file a complaint with the Department of Safety and Professional Services (DSPS) or for DSPS to act on such a complaint.

Deleting time-share licenses - eliminate timeshare salesperson licenses and permit employees of developers (defined in Wis. Stat. § 707.02(11)) to engage in time-share interests and exempt developers and their employees from broker license requirements. A timeshare salesperson is not required to complete any pre-licensed education, does not take an examination and has no continuing education requirements.

Wis. Stat. Chapter § 707 regulates the timeshare industry and creates numerous consumer protections as to specific language that must be contained in an offer, penalties for violating the law and provides a consumer complaint process at the Department of Agriculture, Trade and Consumer Protection (DATCP). Complaints are also currently filed with the Real Estate Examining Board (REEB) because the individual is registered as a timeshare salesperson. Most often new timeshare transactions are not real estate based but rather are non-real estate based such as purchasing an interest in a trust. Arguably, the REEB is not qualified to address these types of transactions and is a misuse of time because the REEB lack of knowledge.

Modernizing the law as to licensed business entities – a real estate license may be obtained by individuals and/or business entities. This legislation provides clarification as to the permitted activities of licensed business entities and the licensed broker business representatives. In addition, this bill codifies the current authorization under Wis. Admin. Code Chapter REEB 17 as to the limited ability of licensed brokers to provide independent practice under their own license.

Submitted by WRA

http://www.inman.com/2015/09/02/worries-for-real-estate-mount-as-uber-independent-contractor-suit-moves-forward/?utm_source=20150903&utm_medium=email&utm_campaign=dailyheadlinesam

Worries for real estate mount as Uber independent contractor suit moves forward

Takeaways:

- **Class-action suit against Uber could spell big trouble for real estate agents and brokers.**
- **Increased employment costs could lead to a "significant reduction" in agents, according to the National Association of Realtors.**
- **Some state legislatures have specifically carved out real estate salespeople as independent contractors, but others have not.**

A federal judge has granted class-action status to a controversial lawsuit questioning whether drivers for ride-hailing app company Uber are independent contractors or statutory employees, allowing the case to move forward.

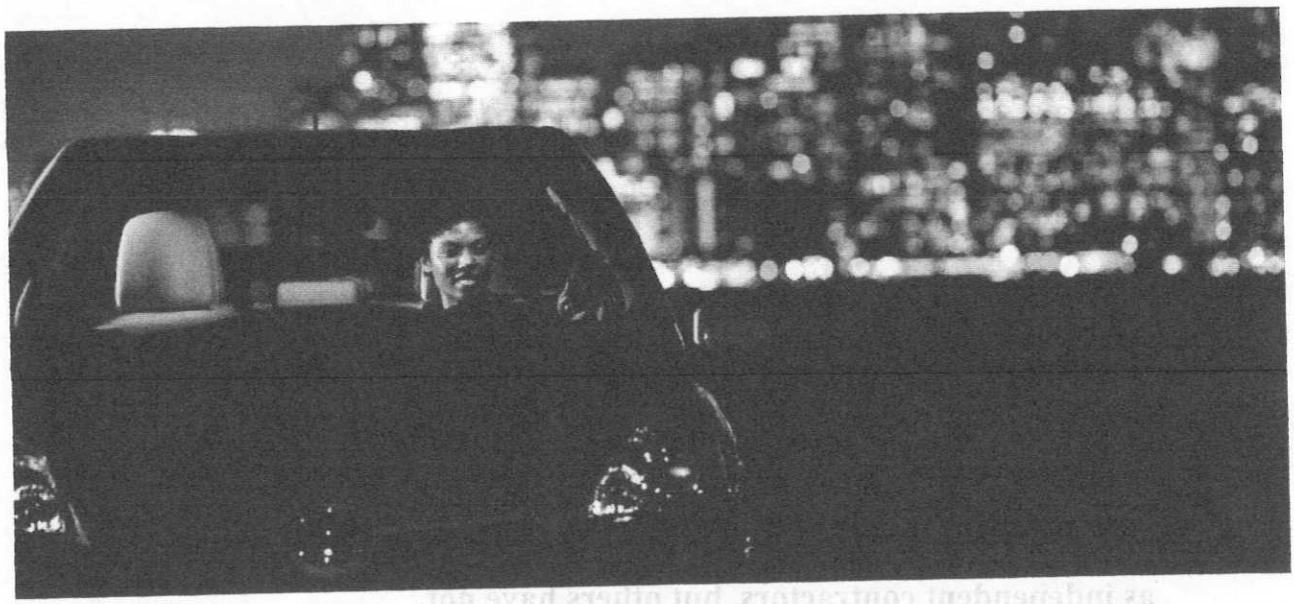
The eventual outcome of the case and a slew of others could spell big trouble for other businesses, including real estate brokers, that have for many years chosen to classify real estate agents as independent contractors.

Some of the cases directly involve real estate agents and brokers, and some don't. At the same time, many state legislatures are taking a closer look at employment relationships in the real estate industry and are carving out exemptions to protect the business model, and some protections exist at the federal level as well.

But recent battles in the court arena "could lead to a drastic shift in the way the real estate industry has historically done business in those states," warns the National Association of Realtors (NAR), which recently published a white paper on the use of

independent contractors in real estate and how the practice may be impacted by cases like Uber's.

"For decades, the industry has primarily relied on the independent contractor model for conducting its business," the association stated.



"If a broker's ability to treat real estate salespeople as independent contractors is limited, then brokers will be forced to take on more costs and responsibilities, such as the provision of employee benefits and payment of various employment taxes, than previously accounted for within a broker's business model.

"A resulting shift away from the independent contractor model may result in a significant reduction in the number of real estate agents, as brokers struggle with the increased costs of employing agents.

"In addition, brokers would have to assume heightened control over real estate salespeople, resulting in a significant decrease in the freedom and flexibility that real estate agents currently enjoy in an independent contractor relationship."

Gratuity not included

The trouble for Uber began in August 2013, when four drivers — Douglas O'Connor, Thomas Colopy, Matthew Manahan and Elie Gurfinkel — took issue with Uber's gratuity policy.

They filed suit in San Francisco's U.S. District Court for the Northern District of California against Uber, as well as Travis Kalanick, the company's co-founder and CEO, and Ryan Graves, head of global operations, who are responsible for Uber's pay and employment policies across the country.

In their complaint, the four San Francisco Bay Area drivers said Uber advertises to riders that gratuity is included in the cost of the service, but many drivers receive only a portion of that gratuity — if they receive anything at all.

According to the drivers, because Uber communicates to customers that gratuity is included in the price of its service, few customers leave tips.

But the plaintiffs further alleged that they and other Uber drivers across the country have been misclassified as independent contractors, but are, in fact, employees under most state labor laws in that they are required to pay business expenses, such as vehicle gas and maintenance.

"They are required to follow a litany of detailed requirements imposed on them by Uber, and they are graded, and are subject to termination, based on their failure to adhere to these requirements (such as rules regarding their conduct with customers, the cleanliness of their vehicles, their timeliness in picking up customers and taking them to their destination, what they are allowed to say to customers, etc.)," the plaintiffs alleged in their complaint.

The lawsuit was filed on their own behalf and that of about 160,000 other Uber drivers in the country (except Massachusetts, where lawmakers are working to implement safety and other restrictions on the service) for unjust enrichment, tortious interference with contractual and/or advantageous relations, and violation of the California Gratuities Law, California Labor Code Section 351 and the California Unfair Competition Law.

In its defense, Uber has countered in court documents that not only have the plaintiffs failed to state "enough facts to state a claim to relief that is plausible on its face," but also noted that the Software License and Online Services Agreement and Driver Addendum Related to Uber Services that it enters into with its drivers specifically

provides that the company is not the drivers' employer and denies Uber the requisite control needed to establish an employment relationship under employment laws.

Judge defines the class

After a flurry of filings during the last two years, U.S. District Judge Edward M. Chen ruled on the plaintiffs' motion for class-action certification. The Sept. 1 ruling does not discuss the merits of the case. It answers only two questions: whether the case can properly proceed as a class action, and if so, how.

Giving partial approval to the class certification, Chen ruled that the class will be defined as: "All UberBlack, UberX and UberSUV drivers who have driven for Uber in the state of California at any time since Aug. 16, 2009, and who (1) signed up to drive directly with Uber or an Uber subsidiary under their individual name; and (2) are/were paid by Uber or an Uber subsidiary directly and in their individual name; and (3) did not electronically accept any contract with Uber or one of Uber's subsidiaries … unless the driver timely opted-out of that contract's arbitration agreement."

This motion was granted only for the plaintiffs' claim that drivers were owed tips, and not necessarily that they are unfairly denied compensation for items like mileage and taxes.

Chen effectively shut down Uber's arguments against class-certification, calling them "problematic."

The company had argued that the drivers' employment classification cannot be adjudicated on a classwide basis because both its right of control over its drivers, as well as the day-to-day reality of its relationship with them, are not sufficiently uniform across the proposed class to satisfy legal requirements.

"There is inherent tension between this argument and Uber's position on the merits," Chen stated in his ruling.

"On one hand, Uber argues that it has properly classified every single driver as an independent contractor; on the other, Uber argues that individual issues with respect to each driver's 'unique' relationship with Uber so predominate that this court (unlike,

apparently, Uber itself) cannot make a classwide determination of its drivers' proper job classification. It appears that at least one of these arguments cannot be entirely accurate."

A case management conference has been scheduled for Oct. 22.

In a blog post discussing Chen's decision, Abby Horrigan, managing counsel for employment at Uber, hinted at how the company may respond to this development.

Noting that the ruling excludes drivers who opted out of the arbitration option in their agreements since June 2014 — which occurred around the time that Uber experienced most of its growth in driver numbers — Horrigan said, "only a few hundred drivers who are actively driving with Uber today can now be part of this case."

In addition, Horrigan contended that before June 2014, most of Uber's business in California was comprised of drivers for UberBlack who work primarily for limo companies and can't be included in the case because they never had a contract directly with Uber.

"In fact, one of the three plaintiffs — Thomas Colopy — has only worked for limo companies and so can no longer be included in the case," she said. Other people who registered with Uber as a corporation also cannot participate in the class, she added.

"Despite these facts, we will likely still appeal because partners use Uber on their own terms, and there really is no typical driver — the key question at issue here," Horrigan wrote.

"When asked in a survey earlier this year, most drivers said they love being their own boss. And it's no wonder: Uber fits around their lives, not the other way around.

"Most drivers who use the Uber app already have full-time careers or part-time jobs. Many are students or retirees. About half of drivers in the U.S. work less than 10 hours per week.

"And, most drivers vary the number of hours they drive each week significantly. You're more likely to find someone who drives five hours one week, 15 hours the next and eight hours the week after, than one who drives 10 hours week after week."

Real estate's unique framework

If that scenario sounds familiar, it's probably because independent contractor relationships between real estate brokers and their salespeople are a long-standing tradition in the real estate industry.

In its June 15 white paper, NAR warned its members that the outcome of cases like Uber's — which is only one of several cases in a recent wave of similar litigation — could potentially have a wide-reaching impact on the manner in which brokers have traditional done business.

"The real estate industry is not alone, as the issue of worker classification has been raised in several industries in various jurisdictions throughout the country, and the Department of Labor has made it clear that it will aggressively pursue worker misclassification as a top priority," wrote Joe Molinaro, NAR's managing director of smart growth and housing, and Lesley Walker, the association's associate counsel, in the white paper.

"While the issue of worker classification has been challenged in a variety of industries, the real estate industry's regulatory structure presents a unique framework within which to operate when it comes to worker classification.

"The hallmark characteristic of an independent contractor relationship is one where the worker is generally free of control. However, state real estate statutes specifically require brokers to exercise supervision over their agents.

"Since the requirement of a broker to exercise supervision over agents is in direct conflict with one of the basic tenets of an independent contractor relationship, it is difficult for a broker to both comply with labor laws in order to establish an independent contractor relationship while also fulfilling their supervisory duties under state real estate laws."

According to NAR's analysis, about 22 state real estate statutes contain language expressly permitting a real estate broker to treat their real estate salespeople as independent contractors while simultaneously exercising their mandatory supervisory duties under the statute.

Several other states, including Indiana, Michigan and South Dakota, have also addressed this issue head on and enacted legislation to eliminate a conflict between the labor laws and the real estate statute.

But state legislatures are not alone in recognizing the unique nature of the real estate industry and the corresponding need to carve out real estate professionals from general application of particular statutes, NAR noted.

The Internal Revenue Service considers real estate agents to be "statutory nonemployees" if three factors are met: the agent must be licensed; all payments for the agent's services must be directly related to their sales or other output, rather than based on number of hours worked; and lastly, the agent's services must be performed pursuant to an agreement that states the real estate agent will not be treated as an employee for federal tax purposes.

This three-pronged test is intended only to determine the federal tax treatment of agents, but it also "demonstrates the federal government's recognition of the unique nature of the real estate industry and, as such, the need to treat it differently than other industries," NAR said.

Yet another important consideration is the Affordable Care Act (ACA), which requires large employers (those with 50 or more employees) to offer health care coverage to their full-time employees. But as NAR pointed out in its white paper, the ACA also recognizes that agents who are recognized as "qualified real estate agents" and statutory non-employees under the IRS code will similarly be viewed as "non-employees" under the act.

"Here again, the federal government acknowledged the unique independent contractor relationship between real estate salespeople and brokers," NAR said.

But the trade group added that "a recent uptick in litigation has generated concern among brokers across the country. Brokers are worried about what this litigation means to their businesses and whether they are exposing themselves to legal liability by classifying their real estate salespeople as independent contractors."

For those reasons, NAR recommends that states review their existing labor and employment statutes, along with their real estate statute, and determine if those laws sufficiently secure brokers' ability to classify real estate agents as independent contractors.

In some states, it may be appropriate to urge legislatures to make a direct and unequivocal carve-out for the treatment of real estate salespeople as independent contractors.

"This will help solidify the status of real estate salespeople as independent contractors and avoid future litigation," NAR advised.

Email Amy Swinderman.

WISCONSIN ASSOCIATION *for* JUSTICE

formerly the Wisconsin Academy of Trial Lawyers

AB-456 Weakens Consumer Protections for Homebuyers and Sellers

Hold Real Estate Agents to the Same Standards as Other Professionals

Homebuyers and sellers deserve the strongest consumer protections. Buying and selling a home is the biggest financial transaction most people will undertake in their lives. Rather than allow Real Estate Agents to commit acts of fraud, libel and slander with lesser risk of being held responsible, they should be held to the same standards as other professionals. The statute of limitations affecting claims brought against real estate agents must allow consumers adequate time to discover agent wrongdoing and bring claims, if necessary. AB-456 significantly lowers the standards by which real estate agents can be held accountable for their intentional or negligent misdeeds and puts consumers at risk of significant losses at the hands of unscrupulous agents.

- **Under Current Law, Victims Are Provided Adequate Time to Discover Wrongs, Build Their Case, and Make Their Claim.** Under current law, a party wronged by a real estate agent's conduct has generally has six (6) years from the time they discover they have a claim. In the case of fraudulent representation, the claim must be made within three (3) years. *See* Wis. Stat. § 100.18(11)(b)3.

- **What the Bill Does:** The bill requires consumers who have been wronged by a real estate agent to file claims within two years of any one of the following:
  1) a transaction is completed or closed;
  2) an agency agreement is terminated; or
  3) an unconsummated transaction is terminated or expires.

Real Life Example: Speed is the Fraudster's Best Friend

(Based on a real case brought by a WAJ Member)

A defendant and former real estate agent misrepresented her experience in real estate to defraud incapacitated individuals. Aside from fraudulent misrepresentation, speed was her main weapon. She used these misrepresentations to gain influence over real estate transactions in her workplace. When a coworker was appointed the corporate guardian of three individuals who were wards of the state, she sprang into action. The tall tales of her real estate successes allowed her to get her co-conspirator hired as the listing agent for the homes owned by these individuals.

Once hired as the listing agent, the co-conspirator quickly put the properties up for sale at below-market value prices. The two then worked together to sell the properties quickly, preparing false comps and other data to assist their fraud. Almost nothing they presented to coworkers, the property owners, *or the court*, was true and accurate. The properties were sold below market value, even below their tax-assessed value. The financial gains of their scheme were almost entirely dependent on selling properties quickly and having their fraud go undetected.

Only through the careful eye of social service agency workers was this fraud discovered. Not every property owner or victim can count on being so lucky. Even when the fraud was discovered, it was months after the scheme was launched and consummated. Not every victim may be so lucky. Two years imposes a harsh and unflinching barrier to justice for buyers and sellers of real estate in Wisconsin.

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- **This Bill Explicitly Weakens Consumers' Rights to Take Action Against the Worst Kind of Misconduct:** Aside from narrowing the rights of consumers for actions in contract and actions not in contract (Wis. Stat. §§ 893.42 and 893.52), the bill seeks to create a special carve-out for claims against real estate agents who commit the worst wrongs:

    - **Fraudulent Representations.** Wis. Stat. § 100.18(11)(b)3.

        - **Under this Bill, Used Car Dealers Will Be Held to a Higher Standard.** Section 100.18 protects consumers from a wide variety of misrepresentations that unscrupulous individuals may make in order to boost their business and sales.

    The carve-out shortening the statute of limitations could affect consumers victimized by:

        - **Fraudulent and Misleading Real Estate Advertising.** *See* Wis. Stat. § 100.18(2)(a).

        - **Deceptive Representations about Pricing.** *See* Wis. Stat. § Wis. Stat. § 100.18(2)(a)1.

        - **Misrepresentations about Experience or Expertise in a Geographic Region or County**. *See* Wis. Stat. § 100.18(2)(c).

    - **Intentional Torts, including Assault, Battery, Libel, Slander, Invasion of Privacy and False Imprisonment**. Wis. Stat. § 893.57.

- **This Bill Gives Real Estate Agents Greater Protection Than Any Other Licensed Professionals in Wisconsin.** In Wisconsin, malpractice claims against lawyers, accountants, architects and other licensed professionals, for example, must be brought within six years. No other professionals, including doctors, have such narrow periods for victims to bring legitimate claims. *See, e.g.*, Wis. Stat. §§ 893.52 and 893.55(1m)(a)-(b).

- **Misconduct in Real Estate Deals Can Take Years to Discover**. Consumers buying and selling real estate often do not discover mistakes until years after they have completed their purchase or sale when they go to refinance or sell the property.

    - **An easement may not be discovered until years after a deal has closed.**
    - **Errors in property description, surveying, etc. may take years before being revealed to the wronged party.**

- **Consumers Deserve the Same Protections Against Agent Misconduct As They Do Against Sellers.** In 2009, the Wisconsin legislature wisely stepped in to protect buyers who faced intentional misrepresentation by sellers in residential real estate transactions. *See* Wis. Stat. § 895.10. This section of the statutes was added after the courts barred those claims in a 2008 case. *See Below v. Norton*, 2008 WI 77, 310 Wis.2d 713, 751 N.W.2d 351 (barring a home buyer's intentional misrepresentation claim against a seller who did not disclose known defects in their property).