



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on SB 394

December 19, 2023

Thank you all for being here for today's public hearing on Senate Bill 394, legislation I authored with Representative Armstrong with the intent of allowing licensed real estate brokers to advertise "for sale by owner" (FSBO) properties. The legislation would require a broker to enter into a written agreement with the property owner and disclose certain information in the advertisement of the property.

As a bit of background, 2017 Act 110 made various changes to Wisconsin's real estate advertising statutes. Among these changes was the creation of a provision prohibiting licensed real estate brokers from advertising a property unless the broker served as the listing firm or obtained the consent of the listing firm.¹ This provision was subsequently interpreted by DSPS to apply to FSBO properties. As a consequence, real estate marketplace platforms who hold real estate brokerage licenses in Wisconsin were informed that they would need to pull thousands of FSBO advertisements from their websites and remove the FSBO posting option for Wisconsin homeowners.²

Following a Montana law change in April, Wisconsin became the only state where FSBO advertisements are prohibited on real estate marketplace platforms holding brokerage licenses.³ In an age where virtually all prospective homebuyers rely on online tools to find properties for sale, Wisconsin homebuyers looking to directly sell their homes have been relegated to websites with far less visitor traffic compared to the top real estate marketplace platforms, such as Zillow and Redfin.

There is no denying the fact that most Wisconsin homeowners will find it to be in their best interest to rely on the expertise and services of a real estate agent when selling their homes. In recent years, roughly 90% of home sellers have done so.⁴ FSBO properties have accounted for the remaining 10% of home sales and have consistently made up around 5% of home listings.⁵ At a time when Wisconsin faces a persistent shortage in housing inventory, FSBO advertisements remain an important option for Wisconsinites looking to buy or sell a home.⁶

SB 394 would allow licensed real estate brokers to advertise FSBO properties upon entering into a written agreement with the property owner and clearly disclosing that the property is being sold directly by owner, is being advertised at the owner's request, and is not subject to a listing agreement.

I am hopeful that the committee will place its support behind SB 394 to help restore opportunities for Wisconsin homeowners who have made a conscious decision to attempt to directly sell their own home to reach a broader pool of potential buyers.

References:

¹ § 452.136 (3), Wis. Stats. <https://docs.legis.wisconsin.gov/statutes/statutes/452/136/3>

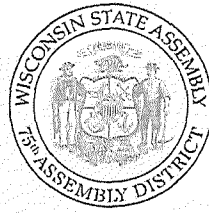
² See the announcement made by the South Central Wisconsin MLS: <https://scwmls.com/news/recent-zillow-announcement/>

³ 2023 Montana House Bill 247 (signed into law as Chapter 250). <https://leg.mt.gov/bills/2023/billhtml/HB0247.htm>

⁴ National Association of Realtors (2022). *2022 Profile of Home Buyers and Sellers*. https://www.nar.realtor/sites/default/files/documents/2022-highlights-from-the-profile-of-home-buyers-and-sellers-report-11-03-2022_0.pdf

⁵ Zillow (2021). *FSBOs May Fit the Bill For Buyers Looking for Affordable Options*. <https://www.zillow.com/research/fsbo-affordability-30340/>

⁶ Wisconsin currently has 3.3 months of housing supply, with 6 months of supply being the benchmark for a balanced market. See the Wisconsin Realtors Association's *October 2023 Home Sales Report*: <https://www.wra.org/HSROct2023/>



DAVE ARMSTRONG

STATE REPRESENTATIVE • 75TH ASSEMBLY DISTRICT

Testimony on Senate Bill 394 December 19, 2023

Thank you for the opportunity to submit testimony on behalf of Senate Bill 394.

While most people in Wisconsin who put their homes on the market use the services of real estate agents, a significant number choose sell their homes on their own – For Sale by Owner (FSBO). As you might expect, FSBO sellers typically don't have access to the same marketing resources as those enjoyed by sellers working with real estate agents. However, 49 states permit agents to advertise FSBO properties on marketplace platforms without listing agreements. Wisconsin is the only exception.

SB 394 corrects this outlier status by allowing Wisconsin real estate brokers to advertise FSBO properties. In order to avoid confusion between FSBO properties and properties covered by listing agreements, SB 394 requires that any FSBO advertising on a broker's platform prominently declare the property's FSBO status, that the property is being advertised at the owner's request, and that the property is not subject to a listing agreement.

I recognize concerns from the real estate industry that SB 394 does not require brokers to inspect the FSBO properties before advertising them. While I believe SB 394 as introduced provides sufficient notice to prospective buyers that FSBO properties are different from listed properties, I am open to this committee's suggestions for further protections, such as a requirement that an advertisement explicitly state that the broker has not inspected the FSBO property. In any case, SB 394 only allows brokers to advertise FSBO properties – it does not require them to do so.

Thank you for your consideration.



To: Senate Committee on Government Operations
From: Cori Lamont, Senior Director of Legal and Public Affairs
Date: December 19, 2023
RE: SB 394/AB 407: Licensee Advertising For Sale By Owner Properties

The Wisconsin REALTORS® Association (WRA) opposes SB 394/AB 407 exempting real estate licensees from being required to comply with Wisconsin license law when advertising For Sale by Owners (FSBOs).

Background

A real estate license triggers compliance with Wisconsin law.

Per Wisconsin Statute Chapter 452, to provide brokerage services in the state of Wisconsin, one must be a real estate licensee. These practices are referred to as brokerage services, which includes promoting (advertising) properties for another. See Wis. Stat. § 452.01(2)(c).

For many, a real estate transaction is the single largest financial transaction an individual is involved in. Accordingly, a license ensures that a professional has the necessary knowledge and skills to guide a party in a transaction, reducing the risk of fraud and protecting consumers.

Wisconsin law does not prohibit FSBO advertising by real estate licensees. However, compliance with Wisconsin law is required for those holding a real estate license.

Under current Wisconsin law, to advertise a FSBO, a licensee must:

1. Walkthrough the property to verify the condition and information provided (inspect)
2. Enter into a written agreement identifying the services provided by the firm (listing contract)

SB 394/ AB 407 eliminates consumer protections.

Wisconsin law requires all real estate licensees, including listing and cooperating licensees, to conduct a walkthrough of the property. SB 394/ AB 407 removes the obligation of a licensee to inspect a FSBO property.

The pandemic increased the number of buyers purchasing properties sight unseen in 2020. Additionally, extremely low inventory has created a competitive real estate market that creates a disadvantage for those who want to tour the home before writing an offer. However, millennials continue to purchase properties sight unseen often relying on pictures or virtual tours during the home buying process.

SB 394/AB 407 creates other significant exemptions for consumer protections concerning licensees advertising FSBO properties such as required disclosures and associated duties, as well as eliminating the requirement to have a listing contract.

These consumer protections are measures designed to ensure that buyers and sellers have access to relevant information and fairness. Allowing a licensee under some circumstances to be exempt from those requirements while being required to follow them in others creates consumer confusion and lack of trust from the public.

Removing consumer protections as real estate scams increase is not advisable.

- One widespread scam that has emerged across the nation, known as the vacant land scam, involves criminals impersonating sellers.
- In response to this growing threat, the Secret Service issued an advisory warning¹ to consumers about the risks associated with the vacant land scam in 2023.
- An October 2023 survey of real estate professionals conducted by CertifID found with the past six months:
 1. 54% experienced at least one seller impersonation fraud attempt.
 2. 77% saw an increase in seller impersonation fraud.²

Given the ongoing and increasing prevalence of real estate scams, it is not recommended to strip away consumer protections from Wisconsin license law.

The WRA's opposition to SB 394/ AB 407 is grounded in concerns that providing real estate licensees with exemptions from vital consumer protections, such as inspection, disclosure, and other duties, erodes safeguards for consumers.

¹ <https://www.alta.org/file?name=Seller-Impersonation-Fraud>

² <https://marketing.certifid.com/seller-identity-verification>



Zillow Proponent Testimony
Wisconsin Senate Bill 394
December 19, 2023

Beth Wanless
Government Relations & Public Affairs Manager, Midwest Region

Chairman Stroebel, Vice Chair Bradley, and members of the Senate Government Operations Committee, thank you for the opportunity to provide testimony in support of Senate Bill 394. I would also like to thank you, Chair Stroebel, and the co-sponsors for bringing this important legislation forward.

Zillow is proud to support Chairman Stroebel's Senate Bill 394, a simple, common-sense bill that would clarify state law to give Wisconsin homeowners the freedom to choose whether to sell their own homes for sale by owner (or "FSBO") online on popular real estate websites, including Zillow, Redfin, and others. Wisconsin is the only state where this free option is unavailable to homeowners. SB 394 would fix this and put the power of choice back in the hands of Wisconsin homeowners.

As the most-visited real estate website in the United States with more than 200 million monthly active users, Zillow is committed to creating transparency and access in real estate to help make home a reality for more and more people. Consumers and real estate agents should have easy and unrestricted access to all available real estate information, and we're committed to breaking down barriers that run counter to this vision and disadvantage home buyers and sellers by limiting consumer choice and taking options off the table.

While most homeowners turn to trusted real estate professionals to help sell their properties, a small share of homeowners ([between 4% and 6% of for-sale listings](#)) choose to sell their homes independently without the assistance of a real estate professional. The FSBO option offers homeowners the flexibility and choice to sell a home on their terms — without removing the option to work with a real estate professional if a homeowner later decides they need assistance.

It's important to explain why Wisconsin homeowners are not currently allowed to post their own homes for sale on Zillow's website. In 2017, the Wisconsin Legislature made several amendments to Wisconsin's real estate advertising statutes in [SB 455](#), specifically in [Section 452.136\(3\)](#), which were intended to prevent consumer confusion when a licensed real estate brokerage firm advertised a property that had already been listed for sale by another licensed real estate brokerage firm. Unfortunately, these amendments also affected FSBO postings since Zillow is a licensed real estate broker.

These unintended consequences came to light in 2021. A local multiple listing service (MLS) threatened to file a complaint, and Zillow requested guidance from Wisconsin's real estate regulatory agency in response. The agency determined the statute applied to FSBO postings, resulting in Zillow notifying nearly 2,000 Wisconsinites that their home would no longer be allowed on Zillow. In the years since, frustrated Wisconsin homeowners have reached out to Zillow, asking us to change the law and restore their freedom to choose how

to sell their homes. Senate Bill 394 restores the freedom of Wisconsin homeowners to sell their homes how they want to sell them.

To ensure there is no consumer confusion, Senate Bill 394 requires brokers to clearly and prominently state that the owner is selling the property for sale by owner, the broker is displaying the property at the owner's request, and the broker does not have a listing agreement with the property owner. You can see an example of this disclosure from our website in the photos at the end of this testimony.

In all 49 other states, homeowners can post their homes for sale by owner on any website or platform they choose. This includes Montana, where last spring Zillow worked closely with the Montana Association of REALTORS and Montana home builders to pass nearly identical legislation to SB 394, leaving Wisconsin as the only state in the nation where this free option is unavailable to homeowners.

The Montana bill, [House Bill 247](#), was sponsored by House Majority Leader Sue Vinton, who introduced the bill when home builders around the state told her they were blocked from selling their homes on Zillow as FSBO postings due to the Montana state law. The same is true in Wisconsin: home builders here are also blocked from selling their newly constructed homes on Zillow unless they list them for sale with a real estate professional.

The Montana bill had no opponents, and the Montana Association of REALTORS actually had two witnesses testify in support of the legislation. The bill passed smoothly and was heralded as "common sense" by the chief lobbyist of the Montana Association of REALTORS, who voiced his support in the [Missoulian newspaper](#).

We understand the Wisconsin REALTORS Association has expressed concerns that not requiring an inspection of homes to be sold through FSBO postings could result in an increase in fraudulent activity. We want to clarify that Senate Bill 394 will not remove the inspection requirement for homes listed with a real estate agent.

Only one other state in the nation — California — requires real estate licensees to inspect properties as part of the real estate sales process similar to Wisconsin law. Yet, California continues to allow homeowners to sell their homes through FSBO postings on Zillow and other platforms, and we are unaware of any resulting crisis there.

We share the Wisconsin Realtors Association's concern for consumer safety, and we prioritize fraud prevention. Zillow provides consumers with a safe and secure online platform, going to great lengths to monitor activity on our website, detect and prevent fraud, and block and remove fraudulent postings. We have and will continue to work with law enforcement, policymakers, regulators, and the industry to protect consumers. Zillow rejects fraudulent FSBO postings everyday thanks to these sophisticated systems.

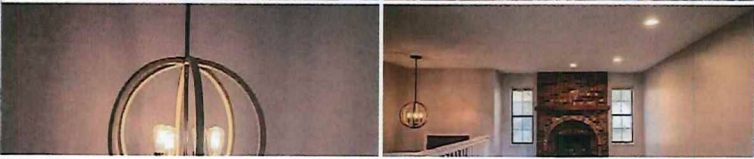
We do not charge homeowners to list their homes for sale through FSBO postings on our platforms, and we never solicit homeowners to use any services we offer as part of this process. In fact, our communications with homeowners who post FSBOs on our platforms are limited to disclosures and verifications (please see the graphic in my testimony that shows what a homeowner sees and agrees to before posting their home for sale). Our support of Senate Bill 394 comes from the belief that the consumer deserves the freedom to sell their home how they want. Wisconsin residents have reached out to us consistently over the past two years asking us to reinstate their ability to sell FSBO, and so we are here respectfully asking for your support of this important legislation.

Additionally, the [FSBO resources](#) on our platforms give consumers an unbiased, educational overview of the "pros and cons" of selling their homes through FSBO postings. Zillow appreciates the incredible value real estate professionals bring to the home buying and selling experience. You will see the webpage encourages consumers never to rule out using a real estate agent to sell their homes. However, if a consumer feels comfortable selling their own home independent of a real estate professional, they deserve to have that choice.

A broad cross-section of consumer protection groups, government enforcement agencies, industry groups, and free-market think tanks support consumers' ability to sell their own homes using FSBO postings on internet platforms, including the [CATO Institute](#), the [U.S. Department of Justice](#), and the [Consumer Federation of America](#). As you consider SB 394, we would respectfully ask that you consider the views of the organizations listed above, along with Wisconsin consumers, Redfin, the Wisconsin Builders Association, and other proponents, in supporting SB 394 and restoring Wisconsin homeowners' freedom to choose how to sell their own homes. With 49 other states allowing homeowners to sell their homes for sale by owner on popular websites, we believe Wisconsin consumers deserve the same freedom.

The status quo in Wisconsin harms consumers by curtailing the public's access to information, limiting transparency, and restricting choice in how they are represented in real estate. We believe that giving power back to Wisconsin consumers is the right thing to do and we respectfully ask you to support Senate Bill 394.

I am grateful for the opportunity to testify in support of the bill, and I would be happy to answer any questions you may have.



Zillow

Save Share Hide More

\$236,200 3 bd | 2 ba | 1,361 sqft

For sale by owner Zestimate®: \$240,300

Est. payment: \$1,508/mo Get pre-qualified

Contact agent

Overview Facts and features Home value Price and tax history Monthly cost Down

- Singlefamily
- Built in 1978
- Forced air, gas
- Central
- 2 Parking spaces
- 9,583 sqft
- \$174 price/sqft

Overview

This 1361 square foot single family home has 3 bedrooms and 2.0 bathrooms. This home is located

10 days on Zillow 206 views 7 saves

Listed by: Property Owner (785) 760-

This property is for sale by owner and Zillow, Inc. is displaying it at the owner's request. It is not subject to a listing agreement with Zillow, Inc. or its affiliates.

Screenshot #2 - Disclaimer language on FSBO posting submission form

I agree to, acknowledge and understand the following: (i) I am (or I have authority to act on behalf of) the owner of this home; (ii) I will not provide incorrect information or state a discriminatory preference; (iii) I will be posting my property 'for sale by owner' on zillow.com and other affiliated websites and that I will solely be responsible for maintaining and updating the posting and responding to and negotiating potential offers to purchase the property; (iv) Zillow, Inc. ("Zillow") is a licensed real estate brokerage, that I am not entering into any agency or brokerage relationship with Zillow as part of this posting and that Zillow is not providing me with any real estate brokerage services as part of this posting; and (v) I will comply with the Zillow Terms of Use and Listing Quality Policy.

I also agree that by clicking below, Zillow Group and its affiliates, and real estate professionals may call or text me for marketing purposes, which may involve use of automated means and prerecorded/artificial voices. Consent is not a condition of buying any property, goods or services. Message/data rates may apply.

Post for sale by owner

**Testimony in Support of SB 394/AB 407
Advertising Without Agency Agreement or Written Consent**

Before the Wisconsin State Senate
Committee on Government Operations

Roger P. Alford
Professor of Law, Notre Dame Law School
Former Deputy Assistant Attorney General, U.S. Department of Justice

December 19, 2023

Chairman Stroebel and Members of the Committee, thank you for allowing me to testify today in support of SB 394/AB407. I come before this Committee freely and voluntarily and without compensation from any interested party. I do so because I care deeply about the state of the real estate market in the United States, including Wisconsin, and I know firsthand the National Association of Realtors' antitrust harm to homebuyers and homesellers.

I am writing as an expert in the real estate industry. I served as Deputy Assistant Attorney General in the Antitrust Division of the Department of Justice from 2017 to 2019. In that capacity, the DOJ addressed antitrust violations in the real estate market on a regular basis, including criminal convictions against NAR members for bid rigging.¹ During my tenure there, the DOJ and the FTC held a full-day conference in June 2018 where we discussed the anticompetitive practices of NAR and major real estate brokerage companies, and addressed "state and local laws [that] continue to impede competition among residential real estate brokers."²

Together with Benjamin Harris, former Assistant Secretary for Economic Policy in the Biden Administration, I have written on the anticompetitive practices of NAR, one of the most powerful lobbying organizations in the country,³ including how some realtor associations have secured the passage of state laws that dramatically harm consumers.⁴

¹ See, e.g., DOJ Press Release, *Nine Real Estate Investors Sentenced for Rigging Bids at Mississippi Public Foreclosure Auctions* (Feb. 21, 2019), available at <https://www.justice.gov/opa/pr/nine-real-estate-investors-sentenced-rigging-bids-mississippi-public-foreclosure-auctions>; DOJ Press Release, *Real Estate Investor Pleads Guilty to Bid Rigging at Online Auctions*, (Aug 9, 2018), available at <https://www.justice.gov/opa/pr/real-estate-investor-pleads-guilty-bid-rigging-online-auctions>; DOJ Press Release, *Real Estate Investor Pleads Guilty to Rigging Bids at Online Foreclosure Auctions*, (June 20, 2018) available at <https://www.justice.gov/opa/pr/real-estate-investor-pleads-guilty-rigging-bids-online-foreclosure-auctions>; DOJ Press Release, *Real Estate Investor Agrees to Plead Guilty to Bid Rigging at Public Foreclosure Auctions in Northern California*, (Oct. 25, 2017), available at <https://www.justice.gov/opa/pr/real-estate-investor-agrees-plead-guilty-bid-rigging-public-foreclosure-auctions-northern>.

² *What's New in Residential Real Estate Brokerage Competition—An FTC/DOJ Workshop*, (June 5, 2018), available at <https://www.ftc.gov/news-events/events/2018/06/whats-new-residential-real-estate-brokerage-competition-ftc-doj-workshop>.

³ *DataDigest: 25 Years of NAR Lobbying Visualized*, Housing Wire, (Sept. 23, 2023), available at <https://www.housingwire.com/articles/datadigest-25-years-of-nar-lobbying-visualized/#:~:text=Freddie%20Mac%20and%20Fannie%20Mae,the%20National%20Multifamily%20Housing%20Council>.

⁴ Roger Alford and Benjamin Harris, *Anticompetition in Buying and Selling Homes*, CATO Regulation, (Summer 2021), available at <https://www.cato.org/sites/cato.org/files/2021-06/regulation-v44n2-2.pdf>.

In October 2023 I served as an expert witness on behalf of plaintiffs in *Sitzer/Burnett*, a landmark case in which a federal jury in Missouri found that NAR and major real estate brokerage companies had engaged in unlawful price fixing against home sellers and awarded damages totaling \$1.8 billion.⁵

It is difficult to underscore the significance of the Internet for the successful sale of a home. According to a 2020 NAR study, “97 percent of homebuyers used the internet in their search of a home.”⁶ Moreover, according to NAR, 51 percent of buyers found the home they purchased on the Internet.⁷

The Internet is particularly important with respect to for-sale-by-owner (“FSBO”) sellers. If a FSBO home is not listed on an Internet platform such as Zillow, Redfin, or Trulia, there are few viable non-agent alternatives, such as open houses, yard signs, and word of mouth. FSBO homes make up approximately 4-6 percent of all homes sold in the United States.⁸ The typical FSBO seller is a rural, low-income married older couple who is price sensitive and is trying to avoid paying real estate agents in order to save tens of thousands in commissions.⁹ A home seller listing their home with a real estate agent will typically pay around 6 percent in commissions, three percent to the seller agent and three percent to the buyer agent.¹⁰

The average price of a home in Wisconsin is \$286,787, so a FSBO sale will save sellers between \$8,603 and \$17,207 in real estate commissions, depending on whether and how much they negotiate a commission with a buyer’s agent.¹¹ The real estate commissions are much higher in popular urban markets, so a typical FSBO home seller in Madison, Wisconsin could save up to \$22,824 in commissions for the sale of their \$380,404 home, which is the average price in Madison.

In order to appreciate the consequences of this law, imagine a homeowner who purchased their \$277,777 home in December 2018. Assume they put 10 percent down on the home and for the past five years they have been diligently paying \$1,848 in monthly mortgage payments on their \$250,000 mortgage at an interest rate of 7 percent.¹² In December 2023, when they go to sell their home the principal on their mortgage would have been reduced by \$16,301. If they use a real estate agent, they will have to pay \$16,666 for the 6 percent real estate commission fees, which is the *entire principal* that they paid on that mortgage for five years. In other words, without the FSBO option, they will see five years of hard work used just to pay real estate commissions.

⁵ Laura Kusisto, Nicole Friedman, and Shannon Najmabadi, *Jury Finds Realtors Conspired to Keep Commissions High*, Wall Street Journal (Oct. 31, 2023), available at <https://www.wsj.com/real-estate/jury-finds-realtors-conspired-to-keep-commissions-high-awards-nearly-1-8-billion-in-damages-b26f9c2f>; Laura Kusisto, *How the \$1.8 Billion Real-Estate Commissions Lawsuit Came to Be*, Wall Street Journal, (Nov. 26, 2023), available at <https://www.wsj.com/real-estate/how-the-1-8-billion-real-estate-commissions-lawsuit-came-to-be-106433d1>; Debra Kamin, *Home Sellers Win \$18 Billion After Jury Finds Conspiracy Among Realtors*, New York Times, (Oct. 31, 2023), available at <https://www.nytimes.com/2023/10/31/realestate/nar-antitrust-lawsuit.html>

⁶ National Association of Realtors, *Real Estate in a Digital Age*, (Sept. 2021), available at <https://www.nar.realtor/sites/default/files/documents/2021-real-estate-in-a-digital-age-10-05-2021.pdf>.

⁷ *Id.*

⁸ Press Release, “*For Sale by Owner*” Listings Tend to be Used by Rural and Lower-Income Sellers, (Nov. 23, 2021), available at <https://zillow.mediaroom.com/2021-11-23-For-Sale-By-Owner-Listings-tend-to-be-used-by-Rural-and-Lower-Income-Sellers>.

⁹ *Id.*; see also Tony Mariotti, FSBO Statistics (2023), available at <https://www.rubyhome.com/blog/fsbo-stats/>.

¹⁰ Anna Bahney, *After a \$1.8 Billion Verdict, the Clock is Ticking on the 6% Real Estate Commission*, CNN (Nov. 5, 2023), available at <https://www.cnn.com/2023/11/05/homes/nar-verdict-real-estate-commission-fee/index.html>.

¹¹ According to NAR, 74 percent of FSBO sellers pay a commission to the buyer agent. National Association of Realtors, 2022 Profile of Home Buyers and Sellers.

¹² <https://www.bankrate.com/mortgages/amortization-calculator/>.

The FSBO market is extraordinarily small and the risk to the Wisconsin realtor association is minor. Last year 78,000 homes were sold in Wisconsin,¹³ and FSBO listings on Zillow were just over 1,800 homes. This bill is about the 2 percent of Wisconsin home sellers who are trying to sell their home without an agent. Moreover, the majority of FSBO homes ultimately use a seller agent, but why not let them at least try to sell their home without one? The question for the Wisconsin legislature is why should Wisconsin be the only state in the country that will not allow rural, low-income, price-sensitive home owners the option to advertise their home on the Internet without paying tens of thousands in real estate commissions?

Of course, NAR and other state realtor associations cannot say that they oppose this bill because they want to transfer the hard-earned wealth of homeowners to real estate brokerage companies by forcing them to forego the possibility of a FSBO sale and instead pay a price-fixed 6 percent commission to real estate agents. Nor can they say that their opposition to this legislation is part of a larger pattern and practice of steering buyers away from FSBO homes.¹⁴

Instead, NAR and state realtor associations falsely argue that passing this law will somehow harm consumers, specifically because it could lead to fraudulent advertising.¹⁵ They argue that “[i]f a property can be advertised without confirmation by the real estate licensee by looking at the property themselves, who will protect the buyer?” Never mind that consumer harm is concerned about many matters, but especially price competition. Never mind that no other state in the country has a law to protect against fraudulent FSBO listings on Zillow and Redfin.

Opponents of the bill offer no evidence of this happening with respect to FSBO listings on Zillow and Redfin in Wisconsin or any other state. Nor do they address how the buyer can be protected in other, equally or even more effective ways than a real estate agent inspection. These alternatives include (1) a FSBO seller’s disclosure statement that the listing is a FSBO home and not subject to a listing agreement;¹⁶ (2) a FSBO seller’s disclaimer statement that Zillow is not providing the seller with any real estate brokerage services;¹⁷ (3) a FSBO seller’s obligation under Wisconsin state law to disclose to the buyer material property defects;¹⁸ (4) a FSBO seller following Redfin’s recommendation and certifying that an independent, third-party inspection by a home professional has been conducted on the home prior to its listing;¹⁹ (5) a buyer following Zillow’s guidelines

¹³ Wisconsin Housing Statistics, available at https://www.wra.org/Resources/Property/Wisconsin_Housing_Statistics/.

¹⁴ RE/MAX Training Manual “Abundant Agent Series—FSBO Bootcamp, at 443 (“If you have a buyer whose criteria match the home of a FSBO who indicated an unwillingness to pay, call the FSBO and say: I have a buyer whose criteria match your home. I noticed in my notes that when we first talked you were unwilling to pay me 3% for selling your home, has that changed? If the FSBO agrees to pay your fee then include the home on your tour (after getting a onetime showing agreement signed). If the FSBO remains unwilling to pay, exclude the home from the tour (unless the buyers are willing to pay your fee”). See generally, Matthew Magura, DOJ Economic Analysis Group, *How Rebate Bans, Discriminatory MLS Listing Policies, and Minimum Service Requirements Can Reduce Price Competition for Real Estate Brokerage Services and Why It Matters* (May 2007), 17-19, available at <https://www.justice.gov/sites/default/files/atr/legacy/2007/09/28/225695.pdf> (discussing how FSBO homes are more susceptible to real estate agent steering than MLS-listed homes).

¹⁵ Wisconsin Realtors Association, *Licensee Advertising For Sale By Owner Properties*, (“The bill eliminates a real estate licensee’s responsibility to inspect the property when advertising an FSBO property. If a property can be advertised without confirmation by the real estate licensee by looking at the property themselves, who will protect the buyer? To remove a licensee’s obligation to inspect the property will lead to fraudulent advertising.”)

¹⁶ Zillow, Real Estate & Consumer Freedom: Allowing “For Sale by Owner” Homes on Internet Platforms.

¹⁷ Id.

¹⁸ Disclosures by Owners of Real Estate, Chapter 709, available at <https://docs.legis.wisconsin.gov/statutes/statutes/709/02>.

¹⁹ See, e.g., Chibuzo Ezeokeke, Redfin Blog, *Unlocking Peace of Mind: Navigating the Indiana Home Inspection Process* (“Sellers can choose to provide a recent inspection report to instill confidence in potential buyers or opt for a pre-listing inspection to identify and address any issues beforehand, which can help streamline the selling process”), available at <https://www.redfin.com/blog/home-inspection-indiana/#:~:text=According%20to%20James%20Porter%20of,diligence%20before%20purchasing%20the%20property>.

and hiring a buyer agent (on their own or one prominently listed on Zillow) to assist them in inspecting the home;²⁰ (6) a buyer following Zillow's recommendation to visit the FSBO home listed on Zillow before making an offer on that home;²¹ and (7) a buyer following Zillow's recommendation and requiring the FSBO seller to agree to a home inspection before closing on the sale of the home.²²

The essence of consumer welfare is vigorous price competition.²³ In light of the established price fixing behavior of NAR and major real estate brokerage companies with respect to real estate commissions, it is essential to promote alternatives such as FSBO home sales that facilitate price competition. I encourage this Committee to weigh the arguments of both sides and vote in favor of the position that actually protects Wisconsin consumers. I encourage you to vote in favor of SB 394.

Thank you and I look forward to your questions.

²⁰ Meredith Arthur, *How to Buy a Home That's "For Sale By Owner,"* Zillow (July 10, 2016), ("Just because a seller isn't using a real estate agent doesn't mean you can't. Many real estate agents comb FSBO listings as well as agent-assisted listings to find the perfect home for clients.") available at <https://www.zillow.com/learn/buying-homes-for-sale-by-owner/>.

²¹ Id. ("But what does a FSBO sale mean to you, the buyer? You'll still want to do all the same things you would if the house were being sold through a real estate agent: ... Inspect the property yourself") available at <https://www.zillow.com/learn/buying-homes-for-sale-by-owner/>.

²² Id. ("But what does a FSBO sale mean to you, the buyer? You'll still want to do all the same things you would if the house were being sold through a real estate agent: ... have a professional inspection done") available at <https://www.zillow.com/learn/buying-homes-for-sale-by-owner/>.

²³ Federal Trade Commission, *Price Fixing* ("When purchasers make choices about what products and services to buy, they expect that the price has been determined on the basis of supply and demand, not by an agreement among competitors. When competitors agree to restrict competition, the result is often higher prices."), available at <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing>.



Wisconsin Senate Committee on Government Operations
Senate Bill 394
December 19, 2023

On behalf of Redfin, I appreciate the opportunity to provide written testimony on Senate Bill 394. We appreciate the Committee's attention to this important issue for Wisconsin consumers.

Redfin is a national brokerage with a mission to redefine real estate in consumers' favor. Redfin employs local real estate agents to help people buy and sell homes in more than 100 markets nationwide, including Wisconsin. Redfin invented map-based real estate search and operates one of the most visited real estate websites in the country for consumers to find homes for sale and rent.

A cornerstone of our mission is to bring transparency to the real estate marketplace. In today's housing market, which has been defined by low inventory, high home prices and high mortgage rates, consumers are eager to discover any property that might meet their needs and budget. Redfin data shows that in October, the supply of homes in the Madison and Milwaukee metro areas was down 16% and 5% compared to a year ago, while prices were up 5% and 6% respectively. [Redfin economic research](#) found 2023 has been the least affordable year to buy a home on record.

Existing Wisconsin law prevents Redfin and other brokerage sites from displaying homes that are listed for sale by owner (FSBO). Specifically [Wisconsin statute 452.136\(3\)](#) says "a firm...may not advertise a property unless one of the following applies: (a) the firm is the listing firm for the property[;] (b) the firm...has obtained the consent to advertise the property from the listing firm for the property." As written, the law doesn't account for homes that are advertised for sale without a listing firm or brokerage, or provide any mechanism for real estate websites --like Redfin's-- to display FSBO listings, *even if that's what the seller wants*. This is both anti-consumer and anti-competitive, and harms both homebuyers and sellers.

In practice, the law prevents home sellers from effectively advertising their property to the broadest pool of buyers unless they use a licensed listing agent. This limits the ability of homeowners to sell their properties in the manner they see fit. While Redfin is in the business of helping homeowners sell their properties with Redfin real estate agents, we do not believe every homeowner should be obligated to hire a real estate agent to gain exposure in the market. Consumers should have the ability to choose whether to hire a real estate professional and how to market their home.

Prohibiting real estate brokerage websites from displaying FSBO listings also hurts prospective homebuyers. Homebuyers should be able to see all homes for sale that meet their criteria, regardless of whether those homes are being marketed by real estate professionals, homebuilders, or homeowners directly. Redfin's agents regularly represent homebuyers in



transactions where the home was listed for sale directly by the owner. In this low inventory market, homebuyers may be missing out on FSBO homes in Wisconsin simply because they cannot find them on the most popular real estate websites. These homebuyers are likely unaware that current Wisconsin law prevents them from discovering these relevant listings on sites like Redfin.

SB 394 addresses these problems and brings more transparency and choice to Wisconsin consumers. The bill includes meaningful protections to ensure Wisconsin consumers are adequately informed when a property is being sold without a listing agent. These protections add further clarity for consumers by obligating brokerages to make it clear to consumers who they do or do not represent. The bill also requires real estate sites to receive homeowners' consent to display FSBO listings, ensuring homeowners are given the power to decide how to advertise their properties.

This is a straightforward proposal that will improve transparency and consumer choice in real estate. We thank the sponsors and their staff for their work on this legislation and strongly encourage the Committee to pass Senate Bill 394.

Sincerely,

Joe Rath
Senior Director, Head of Industry Relations at Redfin

Sarah Peterson
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Dear Senator Stroebel:

Thank you for introducing SB 394 addressing the inability for people of Wisconsin to list their property/homes FSBO on Zillow due to a law that was passed in 2021 prohibiting them to do so... It is anticompetitive and is not fair to Wisconsinites that we do not have a choice as to how and with whom (FSBO vs broker) we can list our property for sale as other states can do so because they do not have these restrictions.

Realtor's seller and buyer commissions are well out of line cutting into the cost of buying or selling a home. It is only fair that the people of Wisconsin have the same opportunities as people in other states when it comes to listing/selling their property...listing FSBO can save thousands of dollars. In today's world, that makes it even more important that people have this opportunity to help them hang on to more their hard-earned money.

Listing FSBO is not all lost for Realtors... When I had my property FSBO on Zillow, I was contacted by a realtor and asked if I would be interested working with them if they had a potential buyer at a 3 percent commission. Even on FSBO listings on Zillow, there are still opportunities for them.

In 2019, I listed my home in Hazelhurst FSBO on Zillow. It was a very positive experience. The process was straight forward and rather simple setting up the listing. There was good exposure to the market with multiple listing. I ended up selling in less than a week at asking price.

I was grateful to have this option to sell FSBO on Zillow because in the past we had relied on realtors to sell our home in Rib Mountain and also this one in Hazelhurst and did not have such positive experiences.

Listing FSBO with Zillow allowed us to be in control of every aspect of the process from taking the photos, authoring the description to showing the property. We felt more comfortable being there to supervise the showing because after all, you are allowing strangers to come into your home. In another instance, we previously listed our home in Rib Mountain with a realtor. We also had the home in Hazelhurst. We were out of town and after returning home in Rib Mountain we discovered that a showing had taken place unannounced...doors were not locked, lights were left on and the realtor who did the showing was not cleared to show the house.

This past August, we were set to put our present home in Rhineland on the market FSBO on Zillow...in doing so, we made the revelation that this option is no longer available because of the law put into place in 2021 prohibiting listing FSBO on Zillow.

I will reiterate again that this restriction is very unfortunate for Wisconsinites to not have a choice... thank you again for sponsoring the bill #394. It is our hope that selling FSBO on Zillow will be an option again.

Respectfully submitted,

Sarah Peterson