



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.alt.org/file?name=Seller-Impersonation-Fraud>

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

Wis. Admin. Code § REEB 24.07(1) addresses the inspection of real estate as follows:

- (a) *General requirement.*** A licensee, when engaging in real estate practice that involves real estate improved with a structure, shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the property to detect observable, material adverse facts. A licensee, when engaging in real estate practice that involves vacant land, shall, if the vacant land is accessible, conduct a reasonably competent and diligent inspection of the vacant land to detect observable material adverse facts.
- (b) *Listing firm.*** When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee's inquiry.
- (c) *Other licensees.*** Licensees, other than listing firms, shall inspect the real estate as required by sub. (1) prior to or during a showing of the property, unless the licensee is not given access for a showing.

Additionally, Wisconsin law requires the listing agent to ask the seller about the condition of the structure, mechanical systems, and other relevant aspects of the property, and ask the seller to provide written responses. Typically, this takes the form of a real estate condition report or other seller disclosure report. See Wis. Admin. Code § REEB 24.07(1)(b)