MODEL LEGISLATION

AMERICAN ECONOMIC LIBERTIES PROJECT

Open Real Estate Listings Act

Laurel Kilgour, August 2026

Real estate markets run on a simple premise: when a seller lists a property, their goal is to reach as many qualified buyers as possible. Buyers, in turn, want to see a full list of properties available in their desired location within their price range. Having many sellers and many buyers drives price competition. Multiple listing services (MLSs)—the shared databases through which most properties are listed—were built to create that open market. Originally mediated through licensed agents and brokers, the rise of internet real state platforms brought listings based on MLS data to the public.

Now the open market is under assault. Listings marketed to only a small group of buyers—often called “private,” “pocket,” or “exclusive” listings—used to be rare. They were used by high-net-worth sellers, often celebrities, who valued privacy over the benefits of a competitive marketplace. But in recent months, the practice has suddenly been pushed into the mainstream—accelerated by a merger the current administration allowed to close without meaningful scrutiny. When Compass, the country’s largest residential real estate brokerage bought Anywhere Real Estate—parent of Coldwell Banker, Sotheby’s, and Century 21—that gave the combined entity control of nearly 20 percent of annual home sales nationally, including an estimated 40 percent of the market in New York City and San Francisco. And Compass has made private listings a cornerstone of its business model.

Both sides of the market are short-changed by the move to private listings. Buyers browsing public listings can no longer see the full market. Even when initially-private listings are later posted publicly, buyers are deprived of key market signals—such as price change history and the true number of days-on-market—about what is often the largest, most consequential financial transaction of their lives. A buyer has no way of knowing whether a home had quietly failed to sell for months, or why. Moreover, when listings are private, buyers may have to prematurely commit to retaining an agent from a dominant brokerage to see a fuller range of listings on the broker’s platform, including basic information such as prices, photographs, and addresses.

The harm to sellers is different but equally concrete. A seller’s best outcome depends on multiple buyers discovering the property simultaneously and competing. Remove a slice of those buyers from the pool—for example, the ones who rely on independent brokers—and that potentially removes the person who would have driven the bidding up.

Structural incentives make this worse. When an agent represents both the buyer and the seller—a conflicted relationship that private listings often coerce both sides into—a lower sale price can actually be more profitable for the brokerage than a higher one achieved through open competition, because the brokerage collects commission on both sides of the deal and does not have to split the total with an outside agent. Private listings also put pressure on independent brokerages and agents to join dominant firms or lose access to inventory.

Similar dynamics apply to private listings in rental markets.

Fortunately, states are beginning to act. Connecticut, Washington, and Wisconsin have passed various private listing restrictions into law, and other states have also introduced bills. The model bill below builds on this momentum. By restraining the aggressive push for private listings, lawmakers can ensure that competition among real estate brokerages and platforms focuses on the dimensions that benefit customers: service, commissions, platform user interfaces, and quality, including add-ons such as school rankings and walk-scores. The alternative—a real estate market where dominant brokerages control what buyers can see and who sellers can reach—is not a free market.

What the Bill Does

This bill, which expands on new laws in Connecticut and Wisconsin, would ensure that real estate listings are openly viewable by the public on a nondiscriminatory basis, with limited exceptions. The bill applies to brokerages, agents, and real estate platforms.

The bill would ensure that real estate clients do not have to commit to representation by a particular brokerage or agent just to view listings.

The bill establishes omissions or misrepresentations relating to number of days on market or price history as violations of state unfair or deceptive acts or practices statutes.

The bill also prohibits multiple listing services, brokerages, and trade associations from adopting rules that conflict with this Act or applicable unfair or deceptive acts or practices laws.

Violations can be enforced either by agency enforcers or through a private right of action by individuals.

Because residential and commercial real estate transactions both use multiple listing services, the bill can be adapted to cover either or both types of real estate, as indicated in the bracketed language below.

Notably, the bill provides a consent mechanism for sellers who genuinely prefer private listings to affirmatively choose that option, with required written disclosures about the financial consequences of that choice.

Section 1: Public Listing Requirements for Brokers and Agents

Requires real estate listings to be made available on an equal and nondiscriminatory basis. Definitions are set forth in subsection (f). Section 5 below provides a consent form for owners to choose private/pocket listings.

a. Any real estate broker or real estate agent representing a seller or landlord in a real estate transaction involving such seller's or landlord's real property shall:

    i. furnish all property information authorized for disclosure by such seller or landlord, and any other information or material facts such real estate broker or real estate agent representing such seller or landlord is obligated to disclose to any prospective buyer or tenant on an equal and nondiscriminatory basis, through a real estate broker or real estate agent, if such prospective buyer or tenant is represented, or directly, if such prospective buyer or tenant is unrepresented;

    ii. respond to inquiries from any prospective buyer or tenant on an equal and nondiscriminatory basis, through a real estate broker or real estate agent if such prospective buyer or tenant is represented, or directly, if such prospective buyer or tenant is unrepresented, or designate a specific individual responsible for responses to any such inquiry; and

    iii. make the property available for in-person or virtual showings to any prospective buyer or tenant on an equal and nondiscriminatory basis, through a real estate broker or real estate agent if such prospective buyer or tenant is represented, or directly, if such prospective buyer or tenant is unrepresented.

b.

    i. Except as provided in subsection (c) of this section, any real estate broker or real estate agent representing a seller or landlord in a real estate transaction shall make such property available to the general public on a fair, nondiscriminatory, and publicly accessible listing platform that is reasonably designed to generate broad public exposure to prospective buyers or tenants no later than one business day from the start date of any agreement authorizing the broker or agent to sell or lease the property, or concurrently with the first instance of public marketing, whichever is earlier. Such requirement may be satisfied through an active listing on

1. at least one multiple listing service operating in this state,
2. a publicly accessible internet listing platform, or
3. any other electronic listing platform that provides unrestricted public access to listing information.

ii. No such real estate broker or real estate agent shall satisfy the requirements of (2) or (3) of subdivision (i) of this subsection through the use of any listing platform, if access to such listing platform is limited or the platform (A) requires an invitation, password, or other credentials to access such listing platform, or (B) is designed primarily for internal use by a single brokerage or affiliated group.

iii. No such real estate broker or real estate agent shall satisfy the requirements of (2) or (3) of subdivision (i) of this subsection if the broker or agent conditions access to, or disclosure of, any real estate listing on a prospective buyer or tenant entering into a representation agreement or any other agreement requiring the prospective buyer or tenant to work exclusively with the broker or agent.

c. Nothing in this section shall be construed to: (1) require a seller or landlord of real property to publicly market and submit such real property for active listing on at least one multiple listing service operating in this State; (2) prohibit the use of private listings, pocket listings or office-exclusive listings, provided that any such listing is not publicly marketed and provided that the seller or landlord signs a consent form as set forth in Section 5; (3) restrict a seller or landlord of real property from directing a real estate broker or real estate agent to market such property privately or to a limited group of prospective buyers, provided any such direction complies with all state and federal laws; (4) restrict an individual agent at a brokerage to market to another agent at a different brokerage when marketing a private listing or pocket listing, provided any such private listing or pocket listing is not publicly marketed; or (5) restrict the real estate broker or real estate agent representing the seller or landlord of real property in a real estate transaction involving such seller's or landlord's real property from furnishing property information to another real estate broker or real estate agent controlled and supervised by the same supervising licensee in the same office.

d. It is not a defense to a violation of this section that a real estate broker or real estate agent's conduct was required or permitted by a rule, policy, or agreement of a multiple listing service, brokerage, or real estate trade association.

e. The following definitions apply to this section:

   i. "Public marketing" means any promotion or distribution of information through any medium that is reasonably accessible to prospective buyers or tenants, real estate licensees and the general public that provides open and nondiscriminatory access to available [*residential /commercial*] real property for sale or lease, such as (A) the display of real estate listings on a publicly accessible internet website or digital platform; (B) promotion through any social media platform; (C) distribution through electronic mail to more than one recipient at a time; (D) signage directing consumers to a real estate broker; (E) publication on a real estate broker's or brokerage internet website, application, or other digital platform, or inclusion on a private network established among not less than two real estate brokerage agencies or franchisees; or (F) digital advertisement intended for public distribution.

   ii. "Multiple listing service" means any cooperative information exchange system, operated by, or on behalf of, licensed real estate brokers, that:

      1. aggregates and disseminates information concerning real estate listings among participating real estate brokers on a broad and nondiscriminatory basis;

      2. is not limited to, and is not owned, controlled, or operated by any single brokerage or affiliated group of brokerages, or by any entity in which any single brokerage holds a controlling interest;

      3. is governed by standardized rules;

      4. provides for the contemporaneous distribution of such real estate listing information to publicly accessible real estate marketplaces and internet websites; and

      5. is not established or operated for the purpose of limiting the visibility or distribution of real estate listings.

   iii. "Real estate broker" means any person licensed or required to be licensed as a real estate broker under the law of any state in which they conduct business.

   iv. "Real estate agent" means any person licensed or required to be licensed as a real estate salesperson or agent under the law of any state in which they conduct business.

   v. "Real property" means land and any structures [*containing one to four dwelling units*] permanently affixed thereto.

f. A violation of this section constitutes a violation of [*insert state real estate broker licensing/conduct statute*], and is subject to all penalties, remedies, and enforcement mechanisms available under that chapter. [*State lawmakers should consider verifying that penalty provisions under existing laws are adequate and strengthen them here if needed*].

Section 2: Prohibiting contrary provisions.

Prohibits MLSs, brokerages, and trade associations from adopting or enforcing provisions that would require real estate brokers or agents to violate this Act.

No multiple listing service, real estate brokerage, or real estate trade association operating in this state may adopt, maintain, or enforce any provision in a rule, policy, or agreement that requires any real estate broker or agent to violate this Act. Any such provision is void and unenforceable.

Section 3: Restrictions on real estate platforms.

Prohibits real estate platforms, including platforms integrated with brokerages, from displaying listings that condition access on exclusive representation agreements.

a. As used in this section, "[*residential /commercial*] real estate platform" means any person or entity that operates a publicly accessible service, website, or application that displays or promotes [*residential /commercial*] real estate listings to consumers, including any such service operated by a licensed real estate broker or brokerage.

b. A [*residential /commercial*] real estate platform may not display, promote, or accept for publication any [*residential /commercial*] real estate listing that conditions access to listing information—including price, address, photographs, or other property details—on the consumer entering into a representation agreement or any other agreement that requires the consumer to work exclusively with the broker or agent.

c. A [*residential /commercial*] real estate platform that displays or promotes [*residential /commercial*] real estate listings shall make all such listings equally accessible to all consumers, regardless of whether the consumer is represented by or has entered into an agreement with a real estate broker or agent.

d. A brokerage that operates a [*residential /commercial*] real estate platform is subject to both Section 1 of this Act and this section.

e. A violation of this section constitutes a violation of [*insert state UDAP statute*] and is subject to all penalties, remedies, and enforcement mechanisms available thereunder.

Section 4: Days-on-market and price history transparency

Clarifies that omissions and misrepresentations of days-on-market and price history are unfair or deceptive acts or practices (UDAP).

a. It is an unfair or deceptive act or practice under [*insert state UDAP statute*] for a real estate broker or agent to: (1) misrepresent or reset, or knowingly omit, the number of days real property has been listed or marketed for sale or lease since the date of any agreement authorizing the broker or agent to sell or lease the property, or the date of first marketing, whether public or private, whichever is earlier; or (2) misrepresent or knowingly omit the prior listing or price change history of a property in any listing or disclosure to a prospective buyer or tenant.

Section 5: Required Disclosures; Owner Consent Form

Amends laws requiring disclosures by real estate brokerages and agents to include a form for owners to consent to opt out of public marketing.

a. Real estate licensees must include the following statement along with any listing agreement and any other required disclosures in connection with the sale or lease of [*commercial/residential*] real property:

   Property Must Be Marketed Publicly

Brokers who represent a seller must market [commercial/residential] *real property to all members of the public and all other brokers and may not market the property to an exclusive group of buyers or brokers only, unless the seller signs the "Consent to Opt-Out of Real Estate Public Marketing" form.*

b. To market the sale or lease of real estate to a limited or exclusive group of prospective buyers or brokers pursuant to Section 1, a real estate broker or real estate agent must obtain from the seller or landlord of the applicable property a form, in not less than ten-point type, containing the following content:

"CONSENT TO OPT-OUT OF REAL ESTATE PUBLIC MARKETING"

Public marketing of real estate through multiple listing services, internet portals and web sites is intended to maximize exposure to prospective buyers/tenants and promote competition in the sale/lease of such property.

This form documents the Seller/Landlord's informed decision to decline such public marketing and the potential consequences of doing so.

____ *(Seller/Landlord name)*

____ *(Property Address)*

By signing below, the Seller/Landlord acknowledges and agrees to the following (initial each):

_______*(1) The Seller/Landlord understands that the Seller/Landlord's property may not be visible to a broad range of prospective buyers/tenants and real estate licensees representing prospective buyers/tenants of the Seller/Landlord's property.*

_______ *(2) The Seller/Landlord understands that foregoing public marketing may reduce competition for the property, may result in fewer offers to purchase/lease the property and may adversely impact the final sale/rental price and terms of the sale/lease of the Seller/Landlord's property.*

_______*(3) The Seller/Landlord understands that limiting or restricting access to the property, including showings or tours, may further reduce buyer/tenant interest and may not be in the Seller/Landlord's best financial interest.*

_______ *(4) The Seller/Landlord is making this decision knowingly and voluntarily, and has had the opportunity to consult with a real estate broker or real estate agent and Seller/Landlord's attorney regarding the potential impacts of this decision.*

_______________________________________ *(Seller/Landlord signature)*

_______________________________________ *(Date)*

_______________________________________*(Authorized Representative signature)*

_______________________________________ *(Brokerage Name)*

_______________________________________ *(Date)*

Any real estate broker or real estate agent who violates any provision of this section shall be subject to the actions and penalties set forth in [*insert applicable law*]

Section 6: Private Right of Action

a. Any person may bring a civil action in any court of competent jurisdiction for a violation of this Act to recover not less than one thousand dollars ($1000) and not greater than seven thousand dollars ($7000) per person per violation, or actual damages, whichever is greater; for injunctive or declaratory relief; or for any other relief the court deems proper. An action under this section must be brought within four years of the date on which the violation occurs or is discovered, whichever is later.

b. In assessing the amount of statutory damages, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

c. In any action brought pursuant to this subsection, the court may award to the prevailing party court costs together with reasonable attorneys fees.

Section 7: Effective Date

This act shall take effect on the ninety days after it becomes a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made [by State authority] and completed on or before such effective date.