

Memorandum

To: Rep. Mari Manoogian, Rep. John Cherry III, Rep. Julie Calley, Rep. Steve Marino
From: Blake Goodman, Legislative Director for Rep. Mari Manoogian
Date: May 7, 2021
Subject: National Push to Standardize or Relax Fees on Furnishing Local Public Records

Zillow Group, Inc. is a national online real estate marketplace company which allows customers to research local property listings and to contact relevant real estate brokers through their portal. Using the iBuyer model, Zillow – along with Redfin and Trulia – control most of this market, and has become indispensable to Americans looking to buy or sell homes who may not have access to industry-specific databases and digital tools such as Multiple Listing Services (MLS).

Zillow acquires data for their website through third-party data vendors, including many local and county officials across the country. States have specific laws regarding the capping of fees that local officials may charge for furnishing such datasets; Michigan's laws appear to have a loophole which prevents iBuyer services from acquiring these datasets at a reasonable price because of the stringency with which local officials are allowed to define a "complete" dataset.

Zillow uses public records not only for its own website, but also aggregates public data into its ZTRAX database, which it then licenses out – as well as offers to researchers for free.

Through House Bills 4279, 4280, 4281, and 4282, Zillow hopes to remove the dataset completion requirement and cap local fees at what they believe to be a reasonable price relative to the other markets in which they operate. County and local officials worry that these caps will kneecap their ability to collect, manage, and protect this data, which they are legally bound to manage outside of this context.

Zillow and other iBuyer services have been involved in both lawsuits and legislative pushes around the country to ease their access to this public data:

1. Kentucky

In 2019, Zillow filed suit against the Commonwealth of Kentucky and six county recorders (equivalent to Michigan Registers of Deeds).¹ The suit, filed in the U.S. District Court for the Eastern District of Kentucky, contended that state statute and its implementation by these recorders was unconstitutional, as it allowed for a distinction in fee structures between the furnishing of records for commercial and noncommercial use. Zillow claimed that while it would happily pay the same fees as those using it for noncommercial use – which statutorily was the cost of reproduction of the records – it was unfair to charge them more for their commercial use.

Zillow also challenged the constitutionality of a separate state law banning the resale or relicensing of state or county data for commercial purposes.

In May 2020, the Court denied the Commonwealth's motion to dismiss the suit,² and although it is unclear whether the suit has been resolved, state statute appears to have been updated in

¹ <https://www.courier-journal.com/story/money/2019/07/16/zillow-sues-kentucky-over-fees-access-public-real-estate-records/1742052001/>

² <https://law.justia.com/cases/federal/district-courts/kentucky/kyedce/3:2019cv00049/89521/29/>

such a manner as to render the constitutional challenge moot. Whether the Court will issue an advisory opinion is still unclear.

Kentucky Revised Statute Chapter 64.012 (“Fees of county clerks -- Use of fees for recording real estate mortgages -- Reimbursement of clerk”) was updated with an effective date of July 15, 2020.³ A similar provision, KMS 64.019 (“Procedures for obtaining copies of records under control of county clerk -- Per-page fee), has not been updated since April 23, 2012.

2. Ohio

In 2016, Zillow filed suit against the Recorder of Columbiana County, Ohio in the Supreme Court of that state.⁴ Zillow sought a court order demanding the Recorder comply with its request for electronic copies of public property records for the prior 16 months. Although claiming that the request was too broad when first issued in 2013, the Recorder told Zillow that she would furnish the requested information at \$2.00 per page. Zillow was then told in 2015 to scale back the size of their request, and on Sept. 22 of that year, they did so, requesting only three months of data. When the Recorder agreed and told them how to pay the fees, Zillow filed a *mandamus* action with the Ohio Supreme Court.

In fighting the action, the Recorder and local Assistance Prosecuting Attorney claimed that the records requested are not proper public records under Ohio statute.⁵ In 2017, the suit was settled, and the Supreme Court of that state decided to call the matter moot, rather than issue an opinion on the unresolved legal arguments.⁶

In 2019, state law on the furnishing of public records for commercial and noncommercial use (Ohio Revised Code 317.32 – Recording fees) was updated, although what pieces were updated is still unclear, as it was updated within the FY2020 budget boilerplate.

3. Illinois

In 2017, Zillow filed suit against Harris County, Illinois, claiming that local property tax assessment records should have been available to them at request through that state’s Freedom of Information Act (FOIA) statutes.⁷ Zillow requested that information from Harris County in May 2016, and the County claims that it was allowed under statute to charge \$2500.00 for that data under local ordinance. Zillow claimed that state law capped FOIA requests at \$100.00. That December, judgement was found in favor of Zillow, and a court ordered that the County offer the records to Zillow for free under FOIA.⁸

Just before the lawsuit was enrolled, the Illinois General Assembly passed and enrolled HB 3036, which provided for a predictable fee schedule for the furnishing of such records to third parties outside of FOIA. The new law took effect on August 17, 2017, but the section relevant to the lawsuit did not take effect until January 1, 2019, and so the court could not take it into account.

³ <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=50199>

⁴ <https://www.salemnews.net/news/local-news/2016/02/county-recorder-to-fight-records-request/>

⁵ http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=802686.pdf

⁶ <https://www.reviewonline.com/news/local-news/2017/01/court-dismisses-lawsuit-against-county-recorder/>

⁷ <https://www.inman.com/2017/12/22/zillow-wins-data-request-scuffle-with-local-county-government-in-illinois/>

⁸ https://qconline.com/news/local/henco-conflict-settled-in-realtor-zillow-s-favor/article_92daefcc-8b29-5668-bdd9-9b3ec41848c0.html