

# MAINE STATE LEGISLATURE

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June 28, 1967

Philip R. Gingrow, Director  
Division of Personal and Consumer Finance  
Phillip M. Kilmister, Assistant

Banks and Banking  
Attorney General

**Home Repair Contract - Questionable Provisions**

**FACTS:**

In your memorandum of June 5, 1967 submitted to this office, you state that a contractor licensed under the Home Repair Financing Act makes use of a written retail installment contract which provides that the customer shall pay attorney's fees of 20% of any amount due under the contract if said debt is placed by the contractor with an attorney for collection. Also contained in the contract is a provision for payment of 25% of the cash contract price as liquidated damages to the contractor if the customer terminates the contract without the consent of the contractor. You have asked two questions relative to these particular contractual provisions.

**QUESTION #1:**

May a contractor provide in a home repair contract that a definite percentage of the amount due under the contract be charged for attorney's fees when said debt is placed for collection by the contractor?

**ANSWER:**

Yes, if the stated percentage represents a reasonable fee.

The Home Repair Financing Act provides that a home repair contract may provide for delinquency or collection charges, as well as charges for attorney's fees, when the customer for whom materials and services are furnished under the contract fails to make payments pursuant to the terms of the contract.

9 M.R.S.A. § 3730, § 2 reads as follows:

"Attorney's fees. The home repair contract may also provide for the payment of reasonable attorney's fees when a payment in default for a period of 10 days is referred to any attorney, not a salaried employee of the holder of the contract, for collection."

A contract provision which provides that the customer shall pay attorney's fees of 20% of any amount due under the contract if said debt is placed with an attorney for collection by the contractor, would not appear to be violative of the language of 9 M.R.S.A. § 3730 quoted above. Without reciting the various collection fee percentages established by county bar associations in the State of Maine, we believe that a court would clearly rule that a stated fee of 20% of the debt due would constitute a reasonable rather than an unreasonable collection fee. The validity of the fee is dependent upon the reasonableness of said fee. We conclude that a contractual provision which states that a definite percentage of the debt placed for collection shall be charged as attorney's fees is permissible, if in fact, the percentage so designated represents a reasonable fee.

QUESTION #2:

Is a provision of a home repair contract which provides for payment of liquidated damages in case of breach of contract by the customer violative of any of the terms of the Home Repair Financing Act?

ANSWER:

Yes.

The Home Repair Financing Act denotes with specificity what fees and charges may be included in contracts executed by contractors licensed under the Act. The Act also expressly prohibits the inclusion of certain contractual provisions.

9 M.R.S.A. § 3724 entitled "Prohibited contract provisions" provides in section (2) that no home repair contract shall contain:

"Any agreement to pay any amount other than the time sales price of the goods and services furnished under the contract plus fees and charges authorized by this chapter; . . ."

Although the prohibitory language of 9 M.R.S.A. § 3724 (2) does not specifically designate liquidated damages provisions, such provisions do in fact represent agreements to pay contractual monetary obligations which are not authorized under any terms of the Act. For this reason, we hold that a liquidated damages provision is violative of the language of 9 M.R.S.A. § 3724 (2) and thus unenforceable.

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Phillip M. Kilmister  
Assistant Attorney General

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