MAINE STATE LEGISLATURE

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1	(EMERGENCY)
2	(New Draft of H.P. 1176, L.D. 1570)
3 4	FIRST REGULAR SESSION
5 6	ONE HUNDRED AND ELEVENTH LEGISLATURE
7 8	Legislative Document No. 1687
9	H.P. 1273 House of Representatives, May 25, 1983
10	Reported by Representative Cooper from the Committee on State Government and printed under Joint Rule 2. Original bill presented by Representative Gwadosky of Fairfield.
12	EDWIN H. PERT, Clerk
13	
14 15	STATE OF MAINE
16 17 18	IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-THREE
19 20 21	AN ACT to Clarify the Types of Property Which Pass by Deed.
22 23 24	Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and
25 26 27 28 29	Whereas, Title 33, section 151, parts of which were enacted in the 19th century, unnecessarily and arbitrarily classify stoves and carpets as personal property even though under applicable common law some stoves and carpets may be classified as realty; and
30 31 32 33	Whereas, the statute as written could cause confusion among buyers and sellers of real estate, lenders, financial institutions and their attorneys; and

1 Whereas, due to certain requirements of federal 2 law, the statute unnecessarily restricts various pro-3 grams of the Maine State Housing Authority; and

Whereas, the effective 90-day period may not terminate until after the Maine State Housing Authority has commenced these programs, thereby unnecessarily limiting the programs; and

8 Whereas, in the judgment of the Legislature, 9 these facts create an emergency within the meaning of 10 the Constitution of Maine and require the following 11 legislation as immediately necessary for the preser-12 vation of the public peace, health and safety; now, 13 therefore,

Be it enacted by the People of the State of Maine as follows:

33 MRSA §151 is amended to read:

§151. Items covered by deed

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36 37 A person owning real estate and having a right of entry into it, whether seized of it or not, may convey it or all his interest in it, by a deed to be acknowledged and recorded as provided in this chapter. Down trees lying on land at the time of conveyance are real estate and pass by the deed; but such down trees as are cut into wood, logs or other lumber and hemlock bark peeled are personal property, and the owner may remove them in a reasonable time thereafter. Carpets and carpeting, steves and funnels belonging thereto are not real estate and do not pass by a deed thereof.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

This new draft of L.D. 1570 removes a statutory declaration that stoves and carpets invariably constitute personal property and can never be fixtures. The new draft, rather than establishing a new statu-

tory standard, allows this determination to be made 1 2 on a case-by-case basis under applicable principles 3 of the common law of fixtures. With respect to the Maine State Housing Authority's home improvement and 4 5 energy conservation loan program, the authority will adopt program standards pursuant to the Maine Admin-6 istrative Procedure Act, Title 5, chapter 375, for classifying those stoves which are fixtures under the 7 8 9 common law and which are therefore eligible for the authority's tax-exempt loan funds. 10

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