

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

---

Legislative Document

No. 1484

S.P. 510

In Senate, March 24, 2005

### An Act To Protect Consumers and Enhance Real Estate Practice

---

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BROMLEY of Cumberland.  
Cosponsored by Representative RECTOR of Thomaston and  
Representatives: BERUBE of Lisbon, KOFFMAN of Bar Harbor.

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

4 **Sec. 1. 32 MRSA §13001, sub-§2, ¶¶G and H,** as enacted by PL 1987, c. 395, Pt. A, §212, are amended to read:

6 G. Acting as a finder to facilitate the purchase, sale or exchange of real estate; and

8 H. Buying, selling or exchanging real estate~~;~~ and

10 **Sec. 2. 32 MRSA §13001, sub-§2, ¶I** is enacted to read:

12 I. Commercial leasing.

14 **Sec. 3. 32 MRSA §13067, sub-§1, ¶L,** as amended by PL 1999, c. 16 129, §5 and affected by §16, is further amended to read:

18 L. Failure to produce to the director any requested documents in the licensee's possession or under the 20 licensee's control concerning any matter under investigation; and

22 **Sec. 4. 32 MRSA §13067, sub-§1, ¶M.** as enacted by PL 1991, c. 24 53, §5, is amended to read:

26 M. Failing to comply with a commission order or the terms of an executed and approved consent agreement~~;~~ and

28 **Sec. 5. 32 MRSA §13067, sub-1, §N** is enacted to read:

30 N. Failing to provide the minimum services required by section 13177 when acting under a brokerage agreement.

32 **Sec. 6. 32 MRSA §13069, sub-§6,** as amended by PL 1999, c. 129, §6 and affected by §16, is further amended to read:

36 **6. Investigations.** The director shall investigate the actions of any licensee under this chapter, ~~or any person or entity who assumes to act in a capacity requiring a license under this chapter,~~ or any person or entity who has operated without a license as set forth in section 13070, upon receipt of a verified written complaint or in accordance with the guidelines prescribed by commission rule. Upon completion of the investigation, the 44 director shall take one of the following actions:

46 A. With the commission's approval, dismiss the complaint;

48 B. With the consent of the parties and subject to approval of the commission and commission counsel, execute a consent agreement; or

50

2 C. Issue a staff petition for hearing before the  
commission, which may include a recommended disposition.

4 Sec. 7. 32 MRSA §§13070 and 13071 are enacted to read:

6 **§13070. Civil penalty for operating without license**

8  
10 **1. Investigation.** Upon receipt of a written complaint or  
upon the director of the commission's own motion, the director  
12 may investigate any person who has allegedly violated section  
13003.

14 **2. Prosecution by Attorney General.** If, after  
investigation, the director determines that reasonable evidence  
16 of a violation of section 13003 exists, within 7 business days  
after that determination the director shall present to the  
18 Attorney General the evidence compiled as part of this  
investigation for prosecution under Title 10, section 8003-C.

20 **3. Prosecution by commission.** If the Attorney General  
22 fails to prosecute the violation, the commission may prosecute  
the violation. Prosecution by the commission must be conducted  
24 according to this subsection.

26 **A.** The director shall notify the person suspected of  
unlicensed practice. The notice must be in writing, be sent  
28 by regular mail and include the following:

30 (1) A description of the activity engaged in by the  
32 person that is a violation of section 13003;

34 (2) A statement that a hearing concerning the alleged  
violation will be held and the date and place of that  
36 hearing; and

38 (3) A statement that the person may, either in person  
or through the person's attorney;

40 (a) Appear at the hearing and present evidence  
and examine witnesses for and against the person;  
42 or

44 (b) Submit written testimony stating the person's  
position, arguments or contentions.

46  
48 **B.** The commission shall hear the testimony of all persons  
present at the hearing and consider any written testimony  
submitted pursuant to paragraph A, subparagraph (3),

2 division (b) and determine if there has been a violation of  
3 section 13003. If the commission finds that a violation has  
4 occurred, the commission may issue a cease and desist order,  
5 assess a civil penalty in an amount it determines, but not  
6 to exceed \$2,000 per violation, or issue any other decision  
7 pursuant to section 13068. Each day a violation occurs or  
8 continues is a separate violation. The commission shall  
9 determine the terms of payment. The commission shall  
10 maintain a transcript of the proceedings of the hearing and  
11 issue a written opinion to all parties, citing its findings  
12 and grounds for any action taken.

13  
14 C. If a person fails to pay a civil penalty assessed  
15 pursuant to paragraph B within the time prescribed by the  
16 commission, the director may forward to the Attorney General  
17 the name of the person and the amount of the civil penalty  
18 for the purpose of collecting that civil penalty. In  
19 addition to the civil penalty assessed pursuant to paragraph  
20 B, the person also must pay any fee assessed by the Attorney  
21 General for collection of the civil penalty.

22 **§13071. Private cause of action**

23  
24 1. Injunction. In addition to the penalty and complaint  
25 provisions of this chapter, an injunction may be granted through  
26 an action in district court to prohibit a person from engaging in  
27 an activity that violates the provisions of section 13003. The  
28 action for injunctive relief may be brought only by an affected  
29 person. For the purposes of this section, "affected person"  
30 means any person upon whom the actions of a person suspected of  
31 violating the provisions of section 13003 have had a direct  
32 impact. "Affected person" may include, but is not limited to,  
33 the commission, a person who has used the services of a person  
34 suspected of violating the provisions of section 13003 or a  
35 private association composed primarily of members practicing a  
36 profession for which licensure is required pursuant to this  
37 chapter.

38  
39 2. Costs and attorney's fees. If a person is successful in  
40 obtaining injunctive relief, that person is entitled to actual  
41 costs and attorney's fees unless the person suspected of  
42 violating a provision of section 13003 prevails in any  
43 application for permanent injunctive relief. For the purposes of  
44 this section, "actual costs" means those costs other than  
45 attorney's fees that were actually incurred in connection with  
46 the action, including, but not limited to, court and witness  
47 fees, investigative expenses, travel expenses, legal research  
48 expenses and other related fees and expenses.

49 **Sec. 8. 32 MRSA §13177**, as amended by PL 1999, c. 129, §8, is  
50 further amended to read:

2       **§13177. Real estate brokerage contracts**

4           Nonexclusive listing contracts relating to one to 4 family  
6 residential properties, in addition to all exclusive  
8 right-to-sell and exclusive agency listing contracts, must be in  
10 writing, be signed by the person to be charged and specifically  
12 identify the date upon which the contract will expire. If the  
14 parties to the contract desire to continue the contract, a new  
16 contract must be executed.

18           Brokerage contracts may not be enforced against any  
20 principal who in good faith subsequently engages the services of  
22 another agency on an exclusive right-to-sell basis following the  
24 expiration date of the first contract. Any contract provisions  
26 extending a licensee's right to a fee following expiration of the  
28 contract ~~shall~~ may not exceed 6 months.

30           Brokerage agreements must specify that the real estate  
32 brokerage agency shall, at a minimum:

34           1. Accept and present offers and counteroffers. Accept  
36 delivery of and present to the client offers and counteroffers to  
38 buy or sell the client's property or the property the client  
40 seeks to purchase;

42           2. Assist in preparation of offers and counteroffers.  
44 Assist the client in developing, communicating, negotiating and  
46 presenting offers, counteroffers and notices that relate to the  
48 offers and counteroffers until a purchase agreement is signed and  
all contingencies are satisfied or waived;

50           3. Answer questions. Answer the client's questions  
52 relating to the offers, counteroffers, notices and contingencies;  
54 and

56           4. Other services. Provide any other minimum services or  
58 standards adopted by the commission through rulemaking pursuant  
60 to section 13065, subsection 3.

62           **Sec. 9. 32 MRSA §13197, sub-§1**, as amended by PL 1999, c. 129,  
64 §11 and affected by §16, is further amended to read:

66           **1. Requirement.** As a prerequisite to renewal of a license,  
68 applicants must complete ~~15~~ 21 clock hours of continuing  
education within 2 years prior to the date of application in  
programs or courses approved by the commission. This requirement  
does not apply to agency and company licenses.

2           **Sec. 10. 32 MRSA §13199, sub-§2,** as amended by PL 1999, c.  
129, §12 and affected by §16, is repealed.

4           **Sec. 11. 32 MRSA §13199, sub-§2-A** is enacted to read:

6           **2-A. Professional qualifications.** Each applicant for an  
associate broker license must have practiced as a real estate  
8           sales agent for 2 years within the 5 years immediately preceding  
the date of application and satisfactorily completed a course of  
10           study meeting guidelines established by the commission. The  
commission may not issue a license under this section until an  
12           individual has completed 2 years as a licensed real estate sales  
agent.

14           **Sec. 12. 32 MRSA §13200, sub-§2,** as enacted by PL 1987, c.  
16           395, Pt. A, §212, is amended to read:

18           **2. Professional qualification.** Each applicant for a sales  
agent license shall meet ~~one-of~~ the following qualifications.:

20           A. The applicant shall satisfactorily complete a course of  
22           study of at least 84 hours, meeting commission established  
guidelines.;

24           B. The applicant ~~may~~ shall appear at such time and place as  
26           the director may designate for the purpose of a written  
sales agent examination.

28           **Sec. 13. 33 MRSA §171, sub-§§2 and 4,** as enacted by PL 1999, c.  
30           476, §1, are amended to read:

32           **2. Seller.** "Seller" means the owner of the residential  
real property that is for sale, exchange, sale under an  
34           installment contract or lease with an option to buy or the  
seller's licensed real estate brokerage agency as defined in  
36           Title 32, section 13271, subsection 10.

38           **4. Purchaser.** "Purchaser" means a transferee in any of the  
types of transactions described in section 172 or the purchaser's  
40           licensed real estate brokerage agency as defined in Title 32,  
section 13271, subsection 10.

42           **Sec. 14. 33 MRSA §172, first ¶,** as enacted by PL 1999, c. 476,  
44           §1, is amended to read:

46           This subchapter applies to the transfer of any interest in  
residential real property, whether by sale, exchange, installment  
48           land contract, lease with an option to purchase or any other  
option to purchase, ~~when the transaction is without the~~  
50           ~~assistance of a person licensed to practice real estate~~

2 brokerage. The following transfers are exempt from this  
subchapter:

4 **Sec. 15. 33 MRSA §173, sub-§2**, as enacted by PL 1999, c. 476,  
§1, is repealed.

6 **Sec. 16. 33 MRSA §173, sub-§2-A** is enacted to read:

8 **2-A. Heating system or heating source.** The seller shall  
10 **disclose:**

12 **A. The type of heating system or source;**

14 **B. The age of the heating system or source;**

16 **C. The name of the company that services the heating system**  
**or source;**

18 **D. The date of the most recent service call on the heating**  
20 **system or source;**

22 **E. The annual fuel consumption per heating system or**  
24 **source; and**

26 **F. Any malfunctions per heating system or source within the**  
**past 2 years.**

28 **Sec. 17. 33 MRSA §173, sub-§4. ¶D.** as enacted by PL 1999, c.  
30 476, §1, is amended to read:

32 **D. Underground oil storage tanks as required under Title**  
**38, section 563, subsection 6; and**

34 **Sec. 18. 33 MRSA §173, sub-§5**, as enacted by PL 1999, c. 476,  
36 §1, is amended to read:

38 **5. Known defects.** Any known defects; and

40 **Sec. 19. 33 MRSA §173, sub-§6** is enacted to read:

42 **6. Other.** Any other information determined to be a  
**required disclosure and adopted by rule by the Real Estate**  
44 **Commission pursuant to Title 32, section 13065.**

## 46 SUMMARY

48 This bill amends various statutes affecting real estate  
brokerage agencies. The bill adds commercial leasing to the  
50 definition of "real estate brokerage."



2           The bill provides several methods to protect consumers from  
4           unlicensed real estate activity. It gives the Real Estate  
6           Commission the authority to investigate and prosecute unlicensed  
8           real estate activity. It also creates a private cause of action  
10           by which an affected party may seek a court-ordered injunction to  
12           prohibit unlicensed real estate activity. The bill does not  
14           affect the authority of the Attorney General's office to  
16           investigate and prosecute unlicensed real estate activity.

18           The bill provides minimum service standards for real estate  
20           brokerage agencies.

22           The bill amends the educational provisions for real estate  
24           brokerage licensees. The bill increases the continuing education  
26           requirement for licensees from 15 hours to 21 hours. The bill  
28           removes the requirement that associate real estate brokerage  
30           license applicants take an examination. Additionally, the bill  
          requires that applicants for a real estate sales agent license  
          both complete a course of study of no less than 84 hours and take  
          an examination.

          The bill requires that real estate brokerage licensees, as  
          well as owners selling their own homes, provide property  
          disclosures containing certain information.

          The bill updates the seller's mandatory disclosures  
          involving reference to heating systems and sources rather than to  
          insulation. The bill also authorizes the Real Estate Commission  
          to adopt other mandatory disclosures through rulemaking.