

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**SECOND REGULAR SESSION**

**January 5, 1994 to April 14, 1994**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 14, 1994**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1993**

A. Violations or penalties do not accrue from the date that the public water system files the request for a hearing to the date the hearing officer renders a decision.

B. Notwithstanding paragraph A, if the hearing officer finds that the appeal is frivolous, the violations or penalties accrue throughout the appeal period.

C. If an administrative hearing is held and a penalty is assessed at the conclusion of that hearing, the penalty becomes final 30 days after the decision.

#### **§2620-B. Exception**

Notwithstanding section 2619, if a violation poses a serious risk to public health, the commissioner may issue an administrative compliance order immediately without having issued a notice of non-compliance or having attempted to negotiate an administrative consent order.

#### **§2620-C. Rules**

The commissioner shall adopt rules establishing procedures regarding notice and the issuance, amendment and withdrawal of administrative compliance orders and administrative consent orders.

**Sec. 5. 22 MRSA §2660-C, sub-§4, ¶H,** as enacted by PL 1993, c. 410, Pt. DD, §4, is amended to read:

H. Submit to the department commissioner annually by August 1st a report that must include, but is not limited to, a performance evaluation of the program, including the implementation of administrative remedies, and commission recommendations regarding, but not limited to, administrative remedies, program operations, funding and staffing requirements, funding formulas and fee collection and transfer schedules.

**Sec. 6. 22 MRSA §§2660-D and 2660-F,** as enacted by PL 1993, c. 410, Pt. DD, §4, are amended to read:

#### **§2660-D. Annual work plan on primacy**

Annually, by January 1st, the department commissioner shall submit to the commission a work plan and budget, listing all funding sources including but not limited to appropriations from the General Fund and allocations from the United States Environmental Protection Agency that are used for the purpose of complying with federal requirements for maintaining primacy. The work plan must include goals and objectives relating to the use of administrative reme-

dies that are consistent with other parts of the work plan.

#### **§2660-F. Public Drinking Water Fund**

The Public Drinking Water Fund is established as an interest-bearing dedicated revenue account. All interest earned by the account becomes part of the fund. All fees collected by the ~~department commissioner~~ under this subchapter must be deposited into the fund. Any balance remaining in the fund at the end of the fiscal year does not lapse but is carried forward into subsequent fiscal years. The ~~department commissioner~~ may use the fund only to support the program, including the cost of salaries, benefits, travel, education, technical assistance, capital equipment and other allowable expenses incurred by the program.

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

Effective April 14, 1994.

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## **CHAPTER 679**

**S.P. 616 - L.D. 1714**

### **An Act to Clarify Agency Relationships in Real Estate Transactions**

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

**Sec. 1. 32 MRSA c. 114, sub-c. VII** is enacted to read:

#### **SUBCHAPTER VII**

#### **AGENCY RELATIONSHIPS**

#### **§13271. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Affiliated licensee.** "Affiliated licensee" means a licensee who is authorized to engage in brokerage activity by and on behalf of a brokerage agency.

**2. Appointed agent.** "Appointed agent" means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.

**3. Brokerage agreement.** "Brokerage agreement" means a contract that establishes the relationships between the parties as to that brokerage services to be performed.

**4. Buyer agent.** "Buyer agent" means a brokerage agency that is engaged by and represents the buyer in a real estate transaction.

**5. Client.** "Client" means a person who has entered into a brokerage agreement creating a special agency relationship with a real estate brokerage agency.

**6. Designated broker.** "Designated broker" means a licensee designated by a real estate brokerage agency to act for it in the conduct of real estate brokerage.

**7. Disclosed dual agent.** "Disclosed dual agent" means a brokerage agency representing 2 or more clients whose interests are adverse in the same transaction with the knowledge and informed consent of the clients.

**8. Material fact.** "Material fact" means a fact that relates to the transaction and is so substantial and important as to influence the parties to whom it is imparted.

**9. Ministerial acts.** "Ministerial acts" means those acts that a brokerage agency or its affiliated licensees perform for a person that do not require discretion or the exercise of the brokerage agency's or its affiliated licensees' judgment.

**10. Real estate brokerage agency.** "Real estate brokerage agency" means a person providing real estate brokerage services through that person's designated broker, associates or employees and licensed by the commission as a real estate brokerage agency.

**11. Seller agent.** "Seller agent" means a brokerage agency that is engaged by and represents the seller in a real estate transaction.

**12. Subagent.** "Subagent" means a licensee engaged by another brokerage agency to perform brokerage tasks for a client.

**13. Third party.** "Third party" means a person who is not a client and has no agency relationship to the real estate brokerage agency.

**14. Undisclosed dual agent.** "Undisclosed dual agent" means a brokerage agency representing 2 or more clients whose interests are adverse in the same transaction without the knowledge and informed consent of the clients.

### **§13272. Scope of agency**

A real estate brokerage agency that provides services through a brokerage agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting as set forth in this chapter. Such an agency may be a seller agent, a buyer agent or subagent. If a different relationship between the real estate brokerage agency and the person for whom the real estate brokerage agency performs the services is intended, including a dual agent, it must be described in writing and signed by the parties.

### **§13273. Seller agent**

**1. Duty to seller.** A real estate brokerage agency engaged by a seller:

A. Shall perform the terms of the brokerage agreement made with the seller;

B. Shall promote the interests of the seller by exercising agency duties as set forth in section 13272 including:

(1) Seeking a sale at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the seller except that the licensee is not obligated to seek additional offers to purchase the property while the property is subject to a contract of sale unless the brokerage agreement so provides;

(2) Presenting in a timely manner all offers to and from the seller, even when the property is subject to a contract of sale;

(3) Disclosing to the seller material facts of which the licensee has actual knowledge or if acting in a reasonable manner should have known concerning the transaction, except as directed in section 13280;

(4) Advising the seller to obtain expert advice on material matters that are beyond the expertise of the licensee; and

(5) Accounting in a timely manner for all money and property received in which the seller has or may have an interest;

C. Shall exercise reasonable skill and care;

D. Shall comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission;

E. Shall comply with any applicable federal, state or local laws, rules, regulations or ordi-

nances related to real estate brokerage including fair housing and civil rights laws or regulations;

F. Has an obligation to preserve confidential information provided by the seller during the course of the relationship that might have a negative impact on the seller's real estate activity unless:

(1) The seller to whom the information pertains grants consent to disclose the information;

(2) Disclosure of the information is required by law;

(3) The information is made public or becomes public by the words or conduct of the seller to whom the information pertains or from a source other than the licensee; or

(4) Disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a judicial proceeding before the commission or before a professional committee; and

G. Must be able to promote alternative properties not owned by the seller to prospective buyers as well as list competing properties for sale without breaching any duty to the client.

**2. Duty to buyer.** The duty of a seller agent to a buyer is governed by the following.

A. A real estate brokerage agency engaged by a seller shall treat all prospective buyers honestly and may not knowingly give false information and shall disclose in a timely manner to a prospective buyer all material defects pertaining to the physical condition of the property of which the real estate brokerage agency knew or, acting in a reasonable manner, should have known. A real estate brokerage agency is not liable to a buyer for providing false information to the buyer if the false information was provided to the real estate brokerage agency by the real estate brokerage agency's seller-client and the real estate brokerage agency did not know or, acting in a reasonable manner, should not have known that the information was false. A real estate brokerage agency is not obligated to discover latent defects in the property.

B. Nothing in this subchapter precludes the obligation of a buyer to inspect the physical condition of the property. A cause of action may not arise on behalf of any person against a real estate brokerage agency for revealing information in compliance with this subchapter.

C. A real estate brokerage agency engaged by a seller in a real estate transaction may provide assistance to the buyer by performing ministerial acts such as preparing offers and conveying those offers to the seller and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the buyer may not be construed as violating the real estate brokerage agency's agreement with the seller and performing ministerial acts for the buyer may not be construed as forming a brokerage agreement with the buyer.

#### **§13274. Buyer agent**

**1. Duty to buyer.** A real estate brokerage agency engaged by a buyer:

A. Shall perform the terms of the brokerage agreement made with the buyer;

B. Shall promote the interests of the buyer by exercising agency duties as set forth in section 13272 including:

(1) Seeking a property at a price and terms specified by the buyer except that the licensee is not obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase that property unless it is provided by the brokerage agreement;

(2) Presenting in a timely manner all offers to and from the buyer;

(3) Disclosing to the buyer material facts of which the agency has actual knowledge or, if acting in a reasonable manner, should have known concerning the transaction, except as directed in section 13280. Nothing in this subchapter limits any obligation of a buyer to inspect the physical condition of the property;

(4) Advising the buyer to obtain expert advice on material matters that are beyond the expertise of the agency; and

(5) Accounting in a timely manner for all money and property received in which the buyer has or may have an interest;

C. Shall exercise reasonable skill and care, except that a real estate brokerage agency is not obligated to discover latent defects in the property;

D. Shall comply with all requirements of the laws governing real estate commission broker-

age licenses and any rules adopted by the commission;

E. Shall comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage including fair housing and civil rights laws or regulations;

F. Has an obligation to preserve confidential information provided by the buyer during the course of the relationship that might have a negative impact on the buyer's real estate activity unless:

(1) The buyer to whom the information pertains grants consent to disclose the information;

(2) Disclosure of the information is required by law;

(3) The information is made public or becomes public by the words or conduct of the buyer to whom the information pertains or from a source other than the licensee; or

(4) Disclosure is necessary to defend the licensee against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee; and

G. Must be able to promote other properties in which the buyer is interested to other buyers who might also be clients of the real estate brokerage agency without breaching any duty or obligation.

**2. Duty to seller.** The duty of a buyer agent to a seller is governed by the following.

A. A real estate brokerage agency engaged by a buyer shall treat all prospective sellers honestly and may not knowingly give them false information including material facts about the buyer's financial ability to perform the terms of the transaction.

B. A real estate brokerage agency is not liable to a seller for providing false information to the seller if the false information was provided to the real estate brokerage agency by the real estate brokerage agency's buyer-client and the real estate brokerage agency did not know or, acting in a reasonable manner, should not have known that the information was false. A cause of action may not arise on behalf of any person against a real estate brokerage agency for revealing information in compliance with this subchapter.

C. A real estate brokerage agency engaged by a buyer in a real estate transaction may provide

assistance to the seller by performing ministerial acts such as preparing and conveying offers to the buyer and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the seller may not be construed as violating the real estate brokerage agency's agreement with the buyer and performing ministerial acts for the seller may not be construed as forming a brokerage agreement with the seller.

### **§13275. Disclosed dual agent**

#### **1. Consent agreement; disclosed dual agent.**

A real estate brokerage agency may act as a disclosed dual agent only with the informed written consent of all parties. Consent is presumed to be informed if the party signs an agreement that contains the following:

A. A description of the transactions in which the real estate brokerage agency will serve as a disclosed dual agent;

B. A statement that, in serving as a disclosed dual agent, the real estate brokerage agency represents 2 clients whose interests are adverse and that the agency duties are limited;

C. A statement that the disclosed dual agent may disclose any information to one party that the agent gains from the other party if that information is relevant to the transaction, except:

(1) The willingness or ability of the seller to accept less than the asking price;

(2) The willingness or ability of the buyer to pay more than has been offered;

(3) Confidential negotiating strategy not disclosed in the sales offer as terms of the sale; and

(4) The motivation of the seller for selling and the motivation of the buyer for buying;

D. A statement that the client may choose to consent or not consent to the disclosed dual agency; and

E. A statement that the consent of the client has been given voluntarily and that the agreement has been read and understood.

**2. Cause of action.** A cause of action may not be brought on behalf of any person against a disclosed dual agent for making disclosures permitted or required by this subchapter and the disclosed dual agent does not terminate any real estate brokerage agency

relationship by making disclosures permitted or required by this subchapter.

**3. Actual knowledge; information.** In a disclosed dual agent situation each client and the real estate brokerage agency and its affiliated licensees are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the clients, the real estate brokerage agency or its affiliated licensees.

#### **§13276. Interpretation**

The provisions of this subchapter supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a client or principal, except with regard to vicarious liability and except as set forth in this subchapter. This section does not preclude the use of common law, when it is not inconsistent with this subchapter, in defining and interpreting the duties listed in section 13272. This section does not abrogate an injured party's cause of action pursuant to this chapter.

#### **§13277. Written policy**

Every real estate brokerage agency shall adopt a written company policy that identifies and describes the types of real estate brokerage agency relationships in which the designated broker and affiliated licensees may engage.

#### **§13278. Appointed agents within a firm**

**1. Appointed agents.** A real estate brokerage agency entering into a brokerage agreement may, through the designated broker, appoint in writing to the client those affiliated licensees within the real estate brokerage agency who will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage agency.

**2. Not a dual agent.** A real estate brokerage agency and the designated broker are not considered to be dual agents solely because of an appointment under the provisions of this section, except that any affiliated licensee who personally represents both the seller and the buyer in a particular transaction is considered to be a disclosed dual agent and is required to comply with the provisions of this subchapter governing disclosed dual agents.

**3. Actual knowledge; information.** When agents are appointed, each client, the real estate brokerage agency and its appointed licensees are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the

clients, the real estate brokerage agency and appointed agents.

**4. Appointments; roles.** Methods of appointment and the role of the real estate brokerage agency and the designated broker must be defined by rules adopted by the commission. The rules must include a requirement that clients be informed as to the real estate brokerage agency's appointed agent policy and give written consent to that policy in advance of entering into a real estate brokerage agreement.

#### **§13279. Real estate brokerage agency disclosure required**

A real estate brokerage agency shall provide in a timely manner to buyers and sellers a meaningful, written real estate brokerage agency relationship disclosure form as defined and mandated by rules adopted by the commission.

#### **§13280. Real Estate Commission rules**

The commission shall adopt rules setting forth criteria necessary to the implementation of this subchapter. The rules must include, but are not limited to, the following:

**1. Disclosure.** Those aspects of the services of a real estate brokerage agency and its affiliated licensees that must be disclosed to a client; and

**2. Handling of information.** Procedures to be followed by a real estate brokerage agency and its affiliated licensees to prevent the mishandling of information and undisclosed dual agency in the representation of clients. In adopting these rules, the commission shall consider the formal and informal sharing of information within a real estate brokerage agency, the arrangement of real estate brokerage agency office space, the relationships of affiliated licensees within a real estate brokerage agency who are representing clients with adverse interests and means of avoiding client representation by an undisclosed dual agent. The commission shall review the professional responsibility rules and practices of the legal profession with regard to conflict of interest in considering the adoption of rules under this subsection.

#### **§13281. Duration of the relationship**

**1. Effective date.** The relationships set forth in this subchapter commence on the effective date of the real estate brokerage agency's agreement and continue until performance, completion, termination or expiration of that agreement.

**2. Obligation; termination.** A real estate brokerage agency and an affiliated licensee owe no further duty or obligation after termination, expira-

tion, completion or performance of the brokerage agreement, except the duties of:

A. Accounting in a timely manner for all money and property related to, and received during, the relationship; and

B. Treating as confidential information provided by the client during the course of the relationship that could have a negative impact on the client's real estate activity, unless:

(1) The client to whom the information pertains grants written consent;

(2) Disclosure of the information is required by law;

(3) The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the real estate brokerage agency or the affiliated licensee; or

(4) Disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee.

See title page for effective date.

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## CHAPTER 680

S.P. 676 - L.D. 1852

### An Act to Correct Errors and Inconsistencies in the Laws of Maine

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the law of Maine; and

**Whereas,** these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

**Whereas,** it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following

legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

## PART A

**Sec. A-1. 4 MRSA §164, sub-§1-A,** as amended by PL 1987, c. 758, §2, is further amended to read:

**1-A. Appoint bail commissioners.** Appoint bail commissioners pursuant to Title 15, section 1023, for any district when the resident judge for that district, because of illness, absence or disability, is unable to appoint;

**Sec. A-2. 4 MRSA §164, sub-§13,** as enacted by PL 1975, c. 408, §19, is amended to read:

**13. Additional duties.** ~~The Chief Judge of the District Court shall perform~~ Perform such additional duties as may be assigned by the Chief Justice of the Supreme Judicial Court;

**Sec. A-3. 4 MRSA §164, sub-§14,** as enacted by PL 1975, c. 488, §19, is repealed.

**Sec. A-4. 4 MRSA §164, sub-§15,** as amended by PL 1981, c. 414, §1, is further amended to read:

**15. Fisheries and wildlife bureau.** ~~The Chief Judge shall establish~~ Establish in each division a Fisheries fisheries and Wildlife Bureau wildlife bureau. The Chief Judge shall appoint ~~the clerks~~ a clerk of the District Court in each division as violations clerk for the Fisheries fisheries and Wildlife Bureau wildlife bureau in ~~their respective divisions~~ that division.

The violations clerk shall accept written appearances, ~~waiver~~ waivers of trial, ~~plea~~ pleas of guilty and ~~payment~~ payments of ~~fine~~ fines and costs in fisheries and wildlife offense cases, subject to the limitations ~~hereinafter~~ prescribed in this subsection. The violations clerk ~~shall serve~~ serves under the direction and control of the judge of the court for which ~~he~~ the violations clerk is appointed.

A. A fisheries and wildlife offense ~~shall mean~~ means any violation of any provision of Title 12, Part 10; any provision of law enumerated in Title 12, section 7053; or any ~~regulation promulgated~~ rule adopted by the Commissioner of Inland Fisheries and Wildlife pursuant ~~thereto~~ to the rules.