

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

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NON-EMERGENCY LAWS IS
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TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
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CHAPTER 304

H.P. 1059 - L.D. 1488

**An Act to Amend the Real Estate
Laws Concerning
Validation of Defects**

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

Sec. 1. 33 MRSA §352, as amended by PL 1981, c. 181, §1, is repealed and the following enacted in its place:

§352. Defective acknowledgments

A record of a deed or other instrument, including a power of attorney, made prior to January 1, 1990 for the conveyance of real property, or of any interest in the property, and recorded in the registry of deeds of the county in which the real property is located is valid and enforceable even if:

1. Acknowledgment. The acknowledgment:A. Was not completed;B. Was erroneously taken;C. Was taken by a person not having authority to take the acknowledgment or the authority of the person taking the acknowledgment was not completely stated or was erroneously stated;D. Does not reveal whether the authority taking the acknowledgment acted as a notary public, a justice of the peace or other duly authorized authority for the taking of the acknowledgment;E. Was not taken;F. Had not been signed by the authority taking the acknowledgment but the authority had attached, affixed or stamped the deed or instrument with a seal of authority;G. Was taken by the grantor or grantee or by the husband or wife of the grantor or grantee;H. Was taken by a magistrate who was a minor or an interested party or whose term of office had expired at the time of the acknowledgment;I. Was taken by an officer authorized to take an acknowledgment but outside the territory in which the officer was authorized to act;J. Was taken by a person who, at the time of the acknowledgment, had received an appointment, election or permission authorizing that person to take the acknowledgment, but had not qualified

and who has since qualified to take an acknowledgment;

K. Was authorized by the grantor who was acting as a duly authorized agent or officer of a corporation or in a fiduciary or representative capacity for a corporation;

L. Was taken in another state or country before a person authorized to take acknowledgments and was made on the form of acknowledgment prescribed by the laws of the state or country in which the deed or instrument was executed or the person taking the acknowledgment failed to affix a proper certificate to the deed or instrument, showing that person's authority to act as a magistrate;

M. Was not signed by a magistrate of this State or any other state or territory of the United States, or any foreign country, authorized to take an acknowledgment but was complete in every other respect and was signed by an ambassador, minister, charge d'affaires, consul, vice-consul, deputy consul, consul general, vice-consul general, consular agent, vice-consular agent, commercial agent or vice-commercial agent of the United States who was not qualified to take an acknowledgment, but has since become qualified by law to do so;

N. Was signed by a magistrate authorized to take an acknowledgment but the magistrate's official seal, the names of the grantors, the date and place of acknowledgment, the words "personally appeared before me" or a statement that it was acknowledged as the grantor's "free act and deed" had been omitted; or

O. Is in the form of an oath or states merely that the deed or instrument was subscribed in the magistrate's presence, or is otherwise informal or incomplete, but was signed by a magistrate authorized to take an acknowledgment; or

2. Records relating to title to real property.

The records in relating to the title to real property fail to disclose the date when received for record or the records have not been signed by the register of deeds or other duly authorized recording officer for the county.

Sec. 2. 33 MRSA §353-A, as amended by PL 1987, c. 15, §2, is repealed and the following enacted in its place:

§353-A. Miscellaneous defects**1. Omission of consideration; failure to seal.**

A deed or other instrument, including a power of attorney, made prior to January 1, 1990 for the

conveyance of real property, or any interest in real property, in this State and otherwise valid, except that the deed or instrument does not state any consideration for the real property or was not sealed by the grantors, is valid.

2. Discharge or assignment of mortgage. A duly recorded satisfaction piece or instrument made prior to January 1, 1990 with the intent to cancel and discharge or assign a mortgage of real estate, fully identifying the mortgage intended to be canceled and discharged or assigned, but not drawn in accordance with statutory requirements is considered valid.

3. Corporations organized or attempted to be organized; validation of deeds and other instruments. A corporation organized or attempted to be organized under the laws of this State more than 20 years prior to January 1, 1990 and not declared to be invalid prior to January 1, 1990 is for all intents and purposes a lawful corporation. The deeds or other instruments of the corporation, given in its corporate name, that affect or convey real estate or any interest in the real estate and that prior to January 1, 1990 were recorded in the registry of deeds in the county where the real estate is located may not be held invalid by reason of:

- A. The lack of authority for or informality in their execution or delivery if executed or delivered in good faith by the acting officers of the corporation;
- B. The failure to disclose the corporation's authority for the conveyance of real estate;
- C. The failure to bear the corporate seal;
- D. A person executing or acknowledging a deed or instrument in that person's individual capacity;
- E. The failure to disclose the official capacity of the person executing the deed or instrument; or
- F. The failure of the duly authorized corporate officer to sign the deed or instrument.

4. Omission of authorization for conveyance of real estate. A deed or other instrument for the conveyance of real property, or any interest in the real property executed by a person or persons purporting to act as the agent or attorney of the grantors or their spouses, that has been recorded in the registry of deeds for the county in which the real property is located more than 40 years prior to January 1, 1990 is valid even if no power of attorney authorizing and empowering an agent or attorney to make the conveyance or execute and deliver the deed or instrument appears of record, but the real property has in the meantime been occupied, claimed or treated by the grantees or their heirs as their own property.

5. Discharge of mortgage. An instrument written or recorded in the registry of deeds more than 40 years prior to January 1, 1990 that is signed or executed by a person or persons purporting to act as the agent or attorney of a mortgagee of real estate and purporting to discharge the mortgage is valid even if no power of attorney authorizing an agent or attorney appears of record.

6. Failure to secure bond or comply with licensing. In all cases in which an executor, administrator, guardian, conservator, trustee, master, receiver or similar officer has been authorized or ordered by a court of probate or other court to sell or exchange real estate and has sold or exchanged the real estate, or any interest in the real estate, in accordance with the authority, without first having filed a bond covering the faithful administration and distribution of the sale when a bond was required by law or has failed to comply with any other prerequisite for the issuance of the license authorizing the sale or exchange and has given a deed to the purchaser of the real estate or to the person with whom an exchange was authorized or ordered or when the executor, administrator, guardian, conservator, trustee, master, receiver or other officer appointed has acted in that capacity under a decree of any court appointing that person to the office, but the decree of appointment erroneously or inadvertently excused the person from giving bond in that capacity when a bond was required by law and was not in fact given, the deeds and acts previously done are valid.

7. Foreclosure by publication. In all cases of foreclosure of real estate mortgages by publication, a certificate of the publication of foreclosure made by the mortgagee or by an officer of the mortgagee, if the mortgagee is a corporation, recorded on or before January 1, 1990 is prima facie evidence of the publication of foreclosure to the same extent as if the certificate had in fact been made by the register of deeds and recorded; certificates made by the mortgagee or by an officer of the mortgagee, if the mortgagee is a corporation, and recorded on or before January 1, 1990 have the same force and effect as if made by the register of deeds and are valid.

8. Foreclosure by civil action. All foreclosures commenced on or after October 1, 1975 of real estate mortgages executed on or prior to October 1, 1975 using the method of foreclosure set forth in Title 14, sections 6321 to 6324 for which the period of redemption allowed was not less than one year and that would be valid but for the date of execution of the mortgage are valid and effective according to their terms.

9. Abstracts of divorce decrees. An abstract of a divorce decree recorded in any registry of deeds prior to March 24, 1987 and otherwise valid that failed to state the residence of any party to the divorce action

is valid and has the force and effect of a quitclaim deed releasing all interest in the real estate described in the decree or abstract.

See title page for effective date.

CHAPTER 305

H.P. 108 - L.D. 143

An Act to Increase the Minimum Wage in Maine

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

Sec. 1. 26 MRSA §664, as amended by PL 1993, c. 434, §1 and affected by §8, is repealed and the following enacted in its place:

§664. Minimum wage; overtime rate

Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section.

1. Minimum wage. The minimum hourly wage is \$4.25 per hour. If the highest federal minimum wage is increased in excess of \$4.25 per hour, the minimum wage must be increased to the same amount, effective on the same date as the increase in the federal minimum wage, but in no case may the minimum wage exceed \$5.15 per hour.

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

3. Overtime rate. An employer may not require an employee to work more than 40 hours in any one week unless 1 1/2 times the regular hourly rate is paid for all hours actually worked in excess of 40 hours in that week. The regular hourly rate includes all earnings, bonuses, commissions and other compensation that is paid or due based on actual work performance.

The overtime provision of this section does not apply to:

A. Automobile mechanics, automobile parts clerks and automobile salesmen as defined in section 663;

B. Hotels and motels;

C. Mariners;

D. Public employees;

E. Restaurants and other eating establishments; and

F. The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

(1) Agricultural produce;

(2) Meat and fish products; and

(3) Perishable foods.

See title page for effective date.

CHAPTER 306

H.P. 199 - L.D. 258

An Act to Change the State's Air Quality Standard for Ozone to the Federal Standard

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

Sec. 1. 38 MRSA §584-A, sub-§4, as enacted by PL 1971, c. 570, is repealed.

Sec. 2. 38 MRSA §584-A, sub-§4-A is enacted to read:

4-A. Ozone. For purposes of statutory interpretation, rules, regulations, licensing determinations, policy guidance and all other actions by the department or the board relating to the control of ozone precursors for the purpose of controlling ozone or photochemical oxidant, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard for ozone established pursuant to Section 109 of the federal Clean Air Act as amended, 42 United States Code, Section 7409.

Sec. 3. 38 MRSA §584-F is enacted to read:

§584-F. Ozone health warnings

1. Dissemination of warnings to media. Whenever monitored data demonstrates or the department predicts that ground-level ozone concentrations have exceeded or will exceed 81 parts