

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE

AS PASSED BY THE

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Penmor Lithographers
Lewiston, Maine
2005

CHAPTER 378

H.P. 1072 - L.D. 1525

An Act To Amend the Real Estate
Brokerage Laws

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

Sec. 1. 10 MRSA §8003-C, sub-§6 is enacted to read:

6. Unlicensed practice; private cause of action; repeal. In addition to the penalties and remedies provided under this chapter, an affected person may bring an action in District Court to enjoin any person from violating the provisions of subsection 4. For the purposes of this section, "affected person" may include, but is not limited to, a person who has used the services of a person suspected of violating the provisions of subsection 4 or a private association composed primarily of members practicing a profession for which licensure is required pursuant to this chapter.

If an affected person is successful in obtaining a permanent injunction, that person is entitled to the costs of suit and attorney's fees. In any action brought by an affected person against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to any person who has suffered any ascertainable loss of money or personal or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

This subsection is repealed July 1, 2007.

Sec. 2. 32 MRSA §13171, as enacted by PL 1987, c. 395, Pt. A, §212, is amended to read:

§13171. Real estate brokerage agency

~~Real~~ As used in this chapter, except for subsection 7, "real estate brokerage agency" or "agency" means any person or entity engaged in real estate brokerage services through its designated broker, associates or employees and licensed by the commission as a real estate brokerage agency.

Sec. 3. 32 MRSA §13177, as amended by PL 1999, c. 129, §8 and affected by §16, is repealed.

Sec. 4. 32 MRSA §13177-A is enacted to read:

§13177-A. Brokerage agreements

1. Definitions. As used in this section, "brokerage agreement," "real estate brokerage agency" and "client" have the same meanings as in section 13271.

2. Written agreements. A brokerage agreement between a real estate brokerage agency and a client must be in writing and, at a minimum, include the following:

A. The signature of the client to be charged;

B. The terms and conditions of the brokerage services to be provided;

C. The method or amount of compensation to be paid; and

D. The date upon which the agreement will expire.

A brokerage agreement may not be enforced against any client who in good faith subsequently engages the services of another real estate brokerage agency following the expiration date of the first brokerage agreement. Any brokerage agreement provision extending a real estate brokerage agency's right to a fee following expiration of the brokerage agreement may not extend that right beyond 6 months.

Sec. 5. 32 MRSA §13178, as enacted by PL 1987, c. 395, Pt. A, §212, is amended to read:

§13178. Trust accounts

Every agency shall maintain a ~~trust~~ federally insured account or accounts in a ~~banking institution~~ located in the financial institution authorized to do business in this State, as defined in Title 9-B, section 131, subsection 17-A, or a credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsection 12-A, for the sole purpose of depositing all earnest money deposits and all other money held by it as an agency in which its clients or other persons with whom it is dealing have an interest. The trust account and withdrawal orders, including all checks drawn on the account, shall ~~must~~ name the subject agency and be identified as a real estate trust account. Real estate trust accounts shall ~~must~~ be free from trustee process, except by those persons for whom the brokerage agency has made the deposits and then only to the extent of the interest. The designated broker, except for an amount necessary to maintain the accounts not to exceed an amount prescribed by commission rule, shall withdraw from the accounts all fees due within 30 days after, but not until consummation or termination of the transaction when the designated broker makes or causes to be made a full accounting to ~~his~~ the broker's principal. The designated broker shall maintain, at the agency's place of business, contracts and other necessary records to verify the adequacy and proper use of the accounts

trust accounts and supporting records in a manner prescribed by commission rule. These accounts and records ~~shall~~ must be ~~opened~~ open for inspection by the director or ~~his~~ the director's authorized representative at the agency's place of business during generally recognized business hours. Upon order of the director, the designated broker shall authorize the director in writing to confirm the balance of funds held in all agency trust accounts. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 32 MRSA §13184 is enacted to read:

§13184. Real estate brokerage records; retention

A designated broker shall maintain complete and adequate records of all real estate brokerage activity conducted on behalf of the broker's agency. The commission shall specify by rule the records required to establish complete and adequate records, including retention schedules. The records must be open for inspection by the director or the director's authorized representative at the agency's place of business during generally recognized business hours.

Sec. 7. 32 MRSA §13196, sub-§2, ¶¶A, B and C, as enacted by PL 1999, c. 129, §10 and affected by §16, are amended to read:

A. For those applicants remaining inactive from the issuance of the inactive licenses up to 2 years, ~~15~~ 21 clock hours of continuing education completed within the previous biennium;

B. For those applicants remaining inactive for more than 2 years but less than 4 years, ~~22~~ 28 clock hours of continuing education completed within the previous biennium; or

C. For those applicants remaining inactive for more than 4 years but less than 6 years, ~~30~~ 36 clock hours of continuing education completed within the previous biennium.

Sec. 8. 32 MRSA §13197, sub-§1, as amended by PL 1999, c. 129, §11 and affected by §16, is further amended to read:

1. Requirement. As a prerequisite to renewal of a license, 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.

Sec. 9. 32 MRSA §13199, sub-§2, as amended by PL 1999, c. 129, §12 and affected by §16, is repealed.

Sec. 10. 32 MRSA §13199, sub-§2-A is enacted to read:

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

Sec. 11. 32 MRSA §13200, sub-§2, as enacted by PL 1987, c. 395, Pt. A, §212, is amended to read:

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

A. The applicant ~~shall~~ must satisfactorily complete a course of study meeting commission established guidelines-; and

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

Sec. 12. 32 MRSA c. 114, sub-c. 7, as amended, is further amended by repealing the subchapter headnote and enacting the following in its place:

SUBCHAPTER 7

**REAL ESTATE BROKERAGE
RELATIONSHIPS**

Sec. 13. 32 MRSA §13271, as amended by PL 1999, c. 129, §15 and affected by §16, is further amended to read:

§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 real estate 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 real estate brokerage agency to the exclusion of other affiliated licensees of that real estate brokerage agency.

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

4. Buyer agent. "Buyer agent" means a real estate brokerage agency that is engaged by and represents ~~has entered into a written brokerage agreement with~~ the buyer in a real estate transaction to represent the buyer as its client.

5. Client. "Client" means a person who has entered into a written brokerage agreement ~~creating a special agency relationship~~ with a real estate brokerage agency that has agreed to represent that person and be bound by the duties set forth in section 13272 on behalf of that person.

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

7. Disclosed dual agent. "Disclosed dual agent" means a real estate 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~~ client to whom it is imparted.

9. Ministerial acts. "Ministerial acts" means those acts that a real estate brokerage agency ~~or its affiliated licensees perform~~ performs for a person who is not a client and that do not require discretion or the exercise of the brokerage agency's or its affiliated licensees' judgment are informative or clerical in nature and do not rise to the level of active representation on behalf of the person.

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

11. Seller agent. "Seller agent" means a real estate brokerage agency that ~~is engaged by and represents~~ has entered into a written brokerage agreement with the seller in a real estate transaction to represent the seller as the real estate brokerage agency's client.

12. Subagent. "Subagent" means a real estate brokerage agency engaged by another real estate 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.~~

13-A. Transaction broker. "Transaction broker" means a real estate brokerage agency that provides real estate brokerage services to one or more parties in a real estate transaction without a fiduciary relationship as a buyer agent, a seller agent, a subagent or a disclosed dual agent.

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

Sec. 14. 32 MRSA §§13272 to 13274, as enacted by PL 1993, c. 679, §1, are amended to read:

§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 a real estate brokerage agency may be a seller agent, a buyer agent or, a subagent or a disclosed dual agent. 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~~ agent:

- 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 seller agent 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 seller agent 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~~ seller agent; 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 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 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~~ seller agent; or

(4) Disclosure is necessary to defend the ~~licensee~~ seller agent 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~~ agent 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 seller agent~~ knew or, acting in a reasonable manner, should have known. A ~~real estate brokerage agency seller agent~~ 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 seller agent~~ by the ~~real estate brokerage agency's seller client~~ seller agent's client and the ~~real estate brokerage agency seller agent~~ did not know or, acting in a reasonable manner, should not have known that the information was false. A ~~real estate brokerage agency seller agent~~ 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 seller agent~~ for revealing information in compliance with this subchapter.

C. A ~~real estate brokerage agency engaged by a seller in a real estate transaction~~ seller agent 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 seller agent's~~ agreement with the seller and performing ministerial acts for the buyer may not be construed as or forming a brokerage agreement with the buyer. Performing ministerial acts for the buyer does not make the seller agent a transaction broker for the buyer.

§13274. Buyer agent

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

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~~ buyer agent 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~~ buyer agent 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~~ buyer agent; 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~~ buyer agent is not obligated to discover latent defects in the property;

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 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~~ buyer agent; or

(4) Disclosure is necessary to defend the ~~licensee~~ buyer agent 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~~ buyer agent 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 agent 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~~ buyer agent 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~~ buyer agent by the ~~real estate brokerage agency's~~ buyer agent's ~~buyer client~~ buyer agent's client and the ~~real estate brokerage agency~~ buyer agent 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~~ buyer agent for revealing information in compliance with this subchapter.

C. A ~~real estate brokerage agency~~ engaged by a buyer in a real estate transaction buyer agent 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~~ buyer agent's agreement with the buyer and performing ministerial acts for the seller may not be construed as or forming a brokerage agreement with the seller. Performing ministerial acts for the seller does not make the buyer agent a transaction broker for the seller.

Sec. 15. 32 MRSA §13275, sub-§1, ¶C, as enacted by PL 1993, c. 679, §1, is amended to read:

C. A statement that the disclosed dual agent may disclose any information to one party that the disclosed dual 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;

Sec. 16. 32 MRSA §13275, sub-§2, as enacted by PL 1993, c. 679, §1, is amended to read:

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~~ client relationship by making disclosures permitted or required by this subchapter.

Sec. 17. 32 MRSA §13275, sub-§4 is enacted to read:

4. Duty to parties. The duty of a disclosed dual agent to the client who is selling is the same as set forth in section 13273, and the duty to the client who is buying is the same as set forth in section 13274, except that:

A. A disclosed dual agent may not promote the interests of one party to the detriment of the other party except as required to comply with this section; and

B. A disclosed dual agent may disclose any information to one party that the disclosed dual 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.

Sec. 18. 32 MRSA §13277, as enacted by PL 1993, c. 679, §1, is amended to read:

§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.

Sec. 19. 32 MRSA §13278, sub-§§2 and 4, as enacted by PL 1993, c. 679, §1, are amended to read:

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, as clients, 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.

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.

Sec. 20. 32 MRSA §13279, as amended by PL 1999, c. 100, §1, is further amended to read:

§13279. Real estate brokerage relationship disclosure required

A real estate brokerage agency shall provide in a timely manner to buyers and sellers of residential real property a meaningful, written real estate brokerage ~~agency~~ relationship disclosure form as defined and mandated by rules adopted by the commission. For purposes of this section, "residential real property" means real estate consisting of not less than one nor more than 4 residential dwelling units.

Sec. 21. 32 MRSA §13281, sub-§1, as enacted by PL 1993, c. 679, §1, is amended to read:

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

Sec. 22. 32 MRSA §13281, sub-§2, ¶B, as enacted by PL 1993, c. 679, §1, is amended to read:

B. ~~Treating~~ For seller agents, buyer agents, sub-agents and disclosed dual agents, 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 real estate brokerage agency or an affiliated licensee against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee.

Sec. 23. 32 MRSA §§13282 and 13283 are enacted to read:

§13282. Presumption

Except as otherwise provided in this subchapter, a real estate brokerage agency providing real estate brokerage services is presumed to be acting as a transaction broker unless the real estate brokerage agency has agreed, in a written brokerage agreement, to represent one or more parties to the real estate transaction as the real estate brokerage agency's clients. Client representation may not be created orally or by implication or be assumed by a real estate brokerage agency or any party to a real estate transaction.

§13283. Transaction broker

1. Not an agent. A transaction broker does not represent any party as a client to a real estate transaction and is not bound by the duties set forth in section 13272.

2. Responsibilities. A transaction broker shall:

A. Account in a timely manner for all money and property received;

B. Disclose in a timely manner to a buyer to a transaction all material defects pertaining to the physical condition of the property of which the transaction broker has actual notice or knowledge;

C. Comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission;

D. 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;

E. Treat all parties honestly and may not knowingly give false information; and

F. Perform such ministerial acts as may be agreed upon between the transaction broker and one or more parties to a real estate transaction.

A transaction broker is not liable for providing false information if the false information was provided to the transaction broker and the transaction broker did not know that the information was false. A transaction broker is not obligated to discover latent defects in the property. A cause of action does not arise on behalf of any person against a transaction broker who reveals information or makes disclosures permitted or required by this subchapter.

3. Prohibited acts. A transaction broker may not:

A. Conduct an inspection, investigation or analysis of a property for the benefit of any party;

B. Verify the accuracy or completeness of oral or written statements made by the seller or buyer or any 3rd party; or

C. Promote the interests of either party to a transaction except as required to comply with this section.

4. No vicarious liability. A party to a real estate transaction is not vicariously liable for the acts or omissions of a transaction broker.

5. Actual knowledge; information. In a situation in which one affiliated licensee acting as an appointed agent of a real estate brokerage agency represents a party to a real estate transaction as the real estate brokerage agency's client and another affiliated licensee of the same real estate brokerage agency is acting as a transaction broker for another party to the transaction, 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 parties, the real estate brokerage agency or its affiliated licensees.

Sec. 24. 33 MRSA §172, first ¶, as enacted by PL 1999, c. 476, §1, is amended to read:

This subchapter applies to the transfer of any interest in residential real property, whether by sale, exchange, installment land contract, lease with an option to purchase or any other option to purchase, when the transaction is without the assistance of a person licensed to practice real estate brokerage. If a person licensed to practice real estate brokerage is involved in the transaction, the licensee is subject to

the requirements of licensure in Title 32, chapter 114. The following transfers are exempt from this subchapter:

Sec. 25. 33 MRSA §173, sub-§2, as enacted by PL 1999, c. 476, §1, is repealed.

Sec. 26. 33 MRSA §173, sub-§2-A is enacted to read:

2-A. Heating system or heating source. Detailed information on the system or source used to supply heat to the property, including:

A. The type of heating system or source;

B. The age of the heating system or source;

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

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

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

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

Sec. 27. Transition provisions; sales agent; associate broker; applications processed. A license application for real estate sales agent must be processed according to the laws in effect on the date the application is received by the Real Estate Commission. If an applicant has satisfactorily completed the requirements for licensure by July 1, 2006, the license application must be processed according to the laws in effect on June 30, 2006. A person already licensed as a sales agent on the effective date of this Act must comply with the examination procedures of Title 32, section 13200, subsection 2 to become licensed as an associate broker.

Sec. 28. Commercial leasing and sunrise review. Pursuant to the Maine Revised Statutes, Title 32, chapter 1-A, subchapter 2, the Commissioner of Professional and Financial Regulation shall conduct an independent assessment concerning expansion of the scope of practice of real estate brokerage under Title 32, section 13001, subsection 2, to include leasing of any nonresidential property, that, notwithstanding Title 32, section 13279, does not include any residential component. The commissioner shall submit a report to the Joint Standing Committee on Business, Research and Economic Development no later than January 15, 2006. The joint standing committee is authorized to introduce a bill to the Second Regular Session of the 122nd Legislature expanding the scope of practice of real estate brokerage to include leasing

of any nonresidential property. This section takes effect 90 days after adjournment of the First Special Session of the 122nd Legislature.

Sec. 29. Effective date. Except as otherwise provided, this Act takes effect July 1, 2006.

Effective July 1, 2006, unless otherwise indicated.

CHAPTER 379

H.P. 1180 - L.D. 1671

An Act To Protect Maine Citizens from Identity Theft

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

Sec. 1. 10 MRSA c. 210-B is enacted to read:

CHAPTER 210-B

NOTICE OF RISK TO PERSONAL DATA

§1346. Short title

This chapter may be known and cited as "the Notice of Risk to Personal Data Act."

§1347. Definitions

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

1. Breach of the security of the system. "Breach of the security of the system" or "security breach" means unauthorized acquisition of an individual's computerized data that compromises the security, confidentiality or integrity of personal information of the individual maintained by an information broker. Good faith acquisition of personal information by an employee or agent of an information broker for the purposes of the information broker is not a breach of the security of the system if the personal information is not used for or subject to further unauthorized disclosure.

2. Encryption. "Encryption" means the disguising of data using generally accepted practices.

3. Information broker. "Information broker" means a person who, for monetary fees or dues, engages in whole or in part in the business of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring or communicating information concerning individuals for the primary purpose of furnishing personal information to nonaffiliated 3rd parties. "Information broker" does not include a governmental agency whose records are maintained