

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL  
AND FINANCIAL REGULATION  
REAL ESTATE COMMISSION  
35 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0035

JOHN ELIAS BALDACCI  
GOVERNOR

CAROL J. LEIGHTON  
DIRECTOR

September 20, 2004

Senator John L. Martin, Senate Chair  
Representative Theodore Koffman, House Chair  
Joint Standing Committee on Natural Resources  
100 State House Station  
Augusta, ME 04333-0100

Re: Report – Arsenic and Real Estate Transactions

Dear Senator Martin and Representative Koffman:

Pursuant to Public Law, 2003, c. 457, section 5 on behalf of the Real Estate Commission within the Office of Licensing and Registration and the Department of Professional and Financial Regulation, I respectfully submit the enclosed report on Arsenic and Real Estate Transactions.

Sincerely,

A handwritten signature in cursive script that reads "Carol J. Leighton".

Carol J. Leighton  
Director

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## REPORT ON ARSENIC AND REAL ESTATE TRANSACTIONS TO THE JOINT STANDING COMMITTEE ON NATURAL RESOURCES

Pursuant to Public Law 2003, c. 457, section 5, the Real Estate Commission within the Office of Licensing and Registration and the Department of Professional and Financial Regulation provides the following information regarding efforts within the real estate industry to increase awareness among real estate licensees and buyers and sellers of residential real estate of the hazards of arsenic in water supplies and treated wood, the need to test for arsenic in private water supplies and the need to regularly coat with a sealant arsenic-treated wood structures, including decks, entryways and play sets.

### **I. 121<sup>st</sup> Legislature - LD 2309 *An Act to Protect Health by Reducing Human Exposure to Arsenic* (sponsored by Representative Cowger):**

The Joint Standing Committee on Natural Resources in the spring of 2003 conducted public hearings on LD 2309. The Committee heard testimony regarding the health risks associated with arsenic in private water supplies and in arsenic treated wood, especially to children. As a result of the testimony and information provided by interested parties, the Committee supported a ban on the sale of arsenic treated wood for residential purposes effective April 1, 2004 and directed three state agencies (Bureau of Health, Department of Environmental Protection and the Real Estate Commission) to report to the Legislature, by October 1, 2004, on specific areas of concern regarding arsenic in water supplies and treated wood.

### **II. Efforts to Increase Awareness Among Real Estate Licensees:**

The Real Estate Commission ("the Commission") is responsible for the supervision of the 8,500 real estate companies and individual licensees licensed to practice real estate brokerage in Maine. The Maine Association of Realtors ("MAR") is a trade association representing approximately 4,000 Realtors® in Maine. The Commission and MAR participated in the hearings on LD 2309 and supported the Legislature's efforts to inform Maine citizens of the health risks associated with arsenic in private water supplies and treated wood.



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A. Educational/Informational Efforts Including Timeline:

May 2003 – Web site Update: the Commission adds information regarding arsenic and drinking water to the home page (<http://www.state.me.us/pfr/olr/categories/ca38.htm>) and links to the Bureau of Health for additional information, including the Bureau's publication "*Have You Tested Your Well Water for Arsenic?*";

Fall 2003 – Commission Publications: 1. *Maine Real Estate News* fall edition sent to every real estate licensee. Article on page 2 highlights recent legislation to ban arsenic treated wood and provides information regarding arsenic in private water supplies and encourages testing of all private water supplies; and, 2. *Educators Bulletin* October 2003 edition sent to all real estate pre-license and continuing education course sponsors and instructors. Article on page 2 highlights recent legislation and encourages instructors to emphasize the importance of testing for arsenic as part of the course curriculum (between the fall 2003 and fall 2004 school year, 2,415 real estate students completed pre-license classes to qualify for licensure);

September 18, 2003 – December 9, 2003 Live Presentations: Linda Gifford, Esq. Legal Council MAR - Ms. Gifford speaks to approximately 800 members at nine Realtor® board meetings across the state, including the annual convention in October 2003, educating members about arsenic in the need to test all private water supplies and inspect arsenic treated wood;

January 2004 - MAR Purchase and Sale Agreement Forms Revised: MAR amends standard purchase and sale agreement form used by its 4,000 members to include specific inspection for arsenic in private water supply and arsenic treated wood;

January 2004 – MAR Residential Transaction Booklet Revised: Transaction booklet is revised to include questions on arsenic (page 6, questions 18 & 19) as well as phone number and website for Drinking Water Program on contact information (page 10). This booklet is passed out to prospective buyers at or near the first contact with the Realtor®;

January 2004 – MAR Tapes Educational Program: MAR tapes educational program, including a segment with Dr. Andrew Smith, State Toxicologist, with the Department of Human Services, regarding arsenic. The DVD is sent to every Realtor® office in the state to be used for in-house staff meetings and educational sessions; and

January 21, 2004 – June 17, 2004 Live Presentations: Linda Gifford, Esq. Legal Council MAR – Ms. Gifford speaks to approximately 650 members at 17 Realtor® board meetings and office staff meetings across the state educating members about arsenic and the need to test all private water supplies and inspect arsenic treated wood.

B. Enforcement/Consumer Inquiries:

Real estate licensees are required by Commission rule (Chapter 330, Section 19) to keep informed regarding any federal, state or local laws, rules, regulations, or ordinances concerning known hazardous materials that may impact negatively upon the health and well being of clients and customers. In addition, real estate licensees are required to make

disclosures to prospective buyers regarding the quality and quantity of private water supply for all residential listings and sales (Chapter 330, Section 16). These rules have been in effect, in one form or another, since 1989.

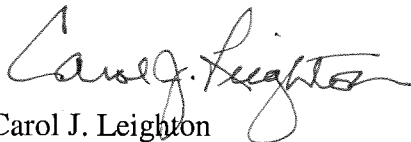
The Commission and MAR's efforts within the past year to inform real estate license applicants and licensees of the health risks associated with arsenic in drinking water and treated wood is consistent with the purposes of Chapter 330, Section 19. Real estate licensees have been given the necessary and appropriate information to use in their dealings with residential homebuyers and sellers to alert them to the health risks associated with arsenic in a private water supply or treated wood.

In the absence of data reporting the number of residential transactions where disclosure of hazardous materials, such as arsenic treated wood, or the number of water tests where arsenic was tested has occurred, the Commission turns to information from formal complaints and consumer calls to determine the level of compliance. In the past thirteen months (July 2003-August 2004), the Commission has received 167 formal complaints, closed 191 investigations and received over 1,700 calls from consumers and licensees regarding real estate transactions. No calls or complaints received during this period reported concerns involving arsenic in the private supply or treated wood. Documents reviewed as part of a complaint investigation reveal that disclosure of arsenic in the water supply, if known, is made appropriately and in instances where prospective buyers are requesting water tests as part of the required inspections, arsenic is one of the elements tested.

#### **IV. Summary:**

The Commission and MAR will continue their efforts to keep real estate licensees and the homebuyers and sellers they serve informed regarding the health risks associated with arsenic in private water supplies and treated wood.

This Report Respectfully Submitted with Attachments,



Carol J. Leighton  
Director, Real Estate Commission

Dated: September 20, 2004