DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION
OFFICE OF LICENSING & REGISTRATION
REAL ESTATE COMMISSION

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from the director's desk

Carol J. Leighton

Notice of Commission Rulemaking Proposal

Proposal includes repeal of Insulation Disclosure and adoption of a Heating Disclosure.

The Commission will hold a public hearing at 9:00 a.m. on Thursday, June 6, 2002 at its office in Gardiner to receive comments from licensees and the public regarding the proposed amendments to Chapter 330, Sections 9 and 17, Chapter 360, Sections 3 and 5, Chapter 370, Sections 2, 3, 4, and 7, Chapter 380 and Chapter 390, Sections 1,2 and 3. In addition, the Office of Licensing and Registration will hold a public hearing at 10:00 a.m. on Thursday, June 6, 2002 at its office in Gardiner to receive comments from real estate licensees and the public regarding a proposed amendment to Chapter 10, Section 35. Notice of the public hearing will also appear approximately 17-24 days prior to the hearing in the Bangor Daily News, Kennebec Journal, Portland Press Herald, Lewiston Sun-Journal, and the Waterville Morning Sentinel. Notice of state agency rulemaking is published every Wednesday. Finally, notice of the public hearing and the proposed rules are available on the Office of Licensing and Registration's homepage at www.maineprofessionalreg.org.

Two proposed changes impact brokerage practices. The first repeals the requirement of a licensee to disclose to another licensee the agency relationship at the time of first contact (Chapter 330, Section 9 [E] – see page 2 of this edition). The rule was intended to put the licensee receiving the call on notice that the inquiring licensee may be representing the other party in the transaction and as such no confidential information should be provided to the inquiring licensee. Since its enactment in 1994, changes in agency relationships, including the growth of buyer representation and the erosion of sub-agency, have effectively eliminated the opportunity for inadvertent

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COMMISSION OUTSOURCES LICENSING EXAMS

New Scheduling Process, Two Test Centers, Electronic Format

*The Commission is pleased to announce that CAT*ASI, the company with which the Commission is contracted to administer Maine's real estate licensing examinations, began giving the new exam in early April. Features of the new exam include electronic delivery, instant scoring and expanded scheduling at testing centers in Portland and Bangor. See below for more information.*

Making an Exam Reservation

- Candidates will contact CAT*ASI Customer Care by phone, fax or online to make a reservation. There is no application or fee to send to the Commission.
- Exams are given every Thursday and Saturday in Portland and two Saturdays a month in Bangor.
- AM & PM sessions each testing day.
- ***SPECIAL NOTE TO ASSOCIATE BROKER CANDIDATES*** *Associate Broker exam candidates must pre-qualify by submitting the Exam Authorization Request Form and course transcripts to the Commission before contacting CAT*ASI to schedule an exam. The Commission will verify the courses as qualifying prelicense education and issue the "yellow card" authorizing the candidate to sit for the exam. The candidate may then contact CAT*ASI to make a reservation and will be required to present the "yellow card" at the test site to gain admittance to the exam.*

Taking the Exam

- Cost: $85 to be paid at the test center by certified check, cashier's check or money order. Personal checks or cash not accepted.
- Exams are administered electronically on touch-screen console. No paper & pencil exam.
- Two-part exam: General / National portion and Maine Law.
- Exams consist of 80 general questions for all license types plus 30 Maine law questions for Sales Agents and 50 Maine law questions for Associate Brokers.
- Non-resident and renewal of expired license candidates need only take the 50 question Associate Broker level Maine law exam.
- Exams scored and score issued to candidates immediately upon completion of the exam.
- Failing score reports include a diagnostic of the candidate's performance on the General portion of exam.
- If a candidate fails one part of the exam, will need to retake the failed part only. *(Ex. If pass general but fail law, retake law portion only.)*

Exam Content

- Content is comparable to Commission's current competencies for Sales Agents and Associate Brokers.
- Practice exams for the general portion may be purchased from CAT*ASI.

CAT*ASI's new Candidate Handbook includes content outlines for the General and Maine Law portions of the exam, recommended study materials list and reservation instructions as well as general licensing information. The new handbooks are available from the Commission as well as most pre-license schools.

Candidates may contact CAT*ASI Customer Care at (877) 543-5220 to make an exam reservation OR make a reservation online at http://www.asisvcs.com.

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PROPOSED RULES

The Commission has proposed several important changes to its rules regarding disclosures, licensing examinations and continuing education. The underlined text is proposed new language, strike-out text is language that is being amended, replaced or repealed. A public hearing to receive comments on the proposed changes will be held at the Commission's office in Gardiner at 9:00 a.m. on Thursday, June 6, 2002.

CHAPTER 330: MINIMUM STANDARDS OF PRACTICE

Section 9. Agency Relationship Disclosure Procedures

A. The Maine Real Estate Commission adopts by reference Agency Relationships Form #2.

B. Except as provided in subsection C, a licensee shall furnish a prospective buyer or seller with a copy of Agency Relationships Form #2 when there is substantive communication regarding a real estate transaction by either a face-to-face meeting or a written communication with the prospective buyer or seller.

C. A licensee is not required to provide a copy of the form to a prospective buyer or seller in the following instances:

1. The real estate consists of less than one or more than 4 residential dwelling units;

2. The licensee is acting solely as a principal and not as an agent for another;

3. The written communication from the licensee is a solicitation of business; or

4. The licensee is meeting or communicating with a buyer or a seller who has already obtained agency representation.

D. The licensee shall complete the appropriate section of the form relating to the presentation of the form.

~~E. A licensee contacting another licensee regarding the sale or purchase of real estate shall disclose the nature of the agency representation at the time of the first contact. The licensee being contacted shall be responsible for disclosing that information to the client. Said disclosures may be oral or written.~~

~~F~~E. The agency shall retain a copy of the form for a period of at least two years from the date of the presentation.

~~**Section 17. Insulation Disclosure**~~

~~A licensee listing a single-family residential property, a multifamily property or a commercial property with a residential component, and a licensee representing the buyer in such transactions when the property is not listed with an agency, shall ask the seller for the following information: (A) type of insulation and (B) location of insulation. In addition the licensee shall make a reasonable effort to inspect visually the following:~~

~~A. Attic;~~

~~B. Crawl space;~~

~~C. Exterior walls.~~

~~Such information and any other information pertinent to the insulation shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer. The fact that information pertinent to the insulation is not available shall be conveyed, in writing, when such is the case.~~

Section 17. Heating Disclosure

A licensee listing a single-family residential property, a multifamily property or a commercial property with a residential component, and a licensee representing a buyer in such transactions when the property is not listed with an agency, shall ask the seller for the following information regarding the heating system(s) and/or source(s):

A. Type(s);

B. Date of installation(s);

C. Name of company who services system/source(s);

D. Date of most recent service call;

E. Annual consumption per system/source;

F. Malfunctions per system/source within the past 2 years.

Such information and any other information pertinent to the heating system(s) and/or source(s) shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer. The fact that information pertient to the heating system(s) and/or source(s) is not available shall be conveyed, in writing, when such is the case.

CHAPTER 360: PREREQUISITES TO LICENSURE BY INDIVIDUALS

Section 3. Approval of Qualifying Educational Program

A. Syllabus. The program sponsor shall submit the course syllabus, on a form furnished by the Director, meeting the minimum course competencies set for each course as described in section 6 of this chapter for each pre-licensure course offered. The syllabus, at a minimum, must contain:

1. Name, address, phone number of the sponsor;
2. Name, address, phone number of the instructor;
3. Course title;
4. Course start and end dates;
5. Class session times;
6. Course text titles and publishers;
7. A class session-by-session breakdown of the content and concepts to be covered, with quiz and test dates noted;
8. Grading policy; and,
9. Attendance policy.
10. Final course examination and answer key.

The course sponsor shall submit the syllabus and the filing fee to the Director at least fourteen (14) days prior to the first class session. A syllabus received less than fourteen (14) days prior to the first class session will be assessed a late filing fee.

~~**Section 5. Examinations**~~

~~Examinations shall be written to test the minimum competencies established by the Commission for each level of licensure. A minimum grade of 75% shall be required to pass the examination. The number of questions for each examination shall be as follows:~~

~~A.~~	~~Associate Broker~~	~~150;~~
~~B.~~	~~Sales agent~~	~~100;~~
~~C.~~	~~Nonresident~~	~~100;~~
~~D.~~	~~License renewal~~	~~100;~~
~~E.~~	~~License reactivation~~	~~100.~~

Section 6~~5~~. Commission Established Minimum Competencies

A. The Commission shall establish minimum competency requirements for all levels and types of licensure. Educational models and examinations shall be designed to satisfy these requirements.

B. The Commission, on an annual basis, shall review the minimum competencies required for all levels and types of licensure.

CHAPTER 370: CONTINUING EDUCATION

Section 2. Definition of Terms

A. Real Estate Educational Program. Real estate educational program shall be defined as a planned learning experience of at least two (2) hours, designed to promote development of knowledge, skills, and attitudes pertaining to real estate brokerage.

B. Program Sponsor. A Program Sponsor shall be defined as that individual, group of individuals, or organization responsible for the development, coordination, administration and delivery of a program.

C. Program Instructor. A Program Instructor shall be defined as an individual appointed to impart knowledge or information to licensees participating in a program.

D. ~~Correspondence Course~~ Distance Education. A continuing education ~~correspondence~~ distance education course ~~shall be defined as a planned learning experience of at least two hours which the licensee completes individually.~~ is a program whereby instruction does not take place in a traditional classroom setting but rather where teacher and student are apart and instruction takes place through other media. Distance education programs include but are not limited to those which are presented through interactive classrooms,

computer conferencing, interactive computer, the internet and by written correspondence course.

E. Core Educational Requirement. A core educational requirement shall be defined as a three hour course which includes all of the Commission approved components for a core course. The commission prescribed curriculum for this course may be obtained from the Director.

Section 3. Program Criteria

A. Subject Matter. Consistent with 32 M.R.S.A. §13197, the following real estate related topics shall be acceptable subject matter for educational programs:

1. Property valuation;
2. Construction;
3. Contract and agency law;
4. Financing and investments;
5. Land use, planning, zoning and other public limitations on ownership;
6. Landlord-tenant relationships;
7. License laws, rules and standards of professional practice;
8. Taxation;
9. Timeshares, condominiums and coop eratives;
10. Staff supervision and training;
11. Office management;
12. Any additional topic which is approved by the Director.

B. ~~Written~~ Examination. Each ~~correspondence~~ distance education course must include a comprehensive ~~written~~ examination to be completed by the licensee before a grade or credit may be awarded. A copy of the examination must accompany the application for program approval.

Section 4. Administrative Procedure

A. Applications. An application adopted by the Commission for program approval shall be furnished by the Director. This application shall require information on the following:

1. Sponsor;
2. Instructor qualifications;
3. Content and methodology;
4. Length of program;
5. Learning objectives;
6. Assessment of learning objectives;
7. Requirement for completion.

The completed application and the fee shall be submitted to the Director. Applications submitted after the first course session will be assessed a late filing fee.

~~B. Waiving the Application Fee. The Director may waive the application fee if the program is offered:~~

~~1. At no cost to participants; or~~

~~2. Live in a remote part of the state requiring the sponsor to incur travel and lodging expenses.~~

~~C~~B. Program Evaluation. A program evaluation shall be required and the results shall be made available to the Director upon request. An evaluation form may be obtained from the Director. A summary of student evaluations shall be submitted when an application for renewed approval is submitted.

~~D~~C. Reporting Program Changes. A change in a submitted or approved program application shall be reported to the Director. A change in program content or instructor shall be reviewed and approved in advance of the scheduled program.

~~E~~D. Program Approval. The Director, within thirty (30) days of receipt of a completed application, shall notify the sponsor, in writing, of the terms and duration of the approval, or the reasons for denial.

~~F~~E. Appeal of the Decision of the Director to "Deny Program Approval." A sponsor who is aggrieved by denial of program approval may request a hearing to appeal the decision. Such request shall be made in writing, and shall be submitted within thirty (30) days of receipt of denial of application.

~~G~~F. Program Completion ~~List~~. The sponsor, following program delivery, shall ~~prepare, in duplicate, an alphabetically arranged list of licensees who have completed the program. One copy shall be~~ issue a certificate of course completion to each licensee successfully completing the course and prepare a roster of licensees successfully completing the course. ~~retained by the sponsor~~ The sponsor shall retain the roster of licensees completing the course for a period of not less than three (3) years ~~and the second copy and participant recording fee shall be sent to the Director within thirty (30) days after delivery of the program~~.

~~H~~G. Program Renewal. An application adopted by the commission for program renewal shall be furnished by the Director. This application shall require information on the following:

1. Sponsor;
2. Instructor;
3. Length of program;
4. Title;
5. Program approval number;
6. List of dates, times, and locations course was held;
7. List of future dates, times, and loca tions;
8. Statement by sponsor on the extent to which the identified learning objec tives were met;
9. Description of any changes imple mented to ensure that the learning ob jectives will be met in the future; and
10. Summary of student evaluations.

The completed application and the fee shall be submitted to the Director.

~~I~~H. Approval Expiration. Sponsors who promote and conduct continuing education courses as approved once the course approval has expired, may be subject to suspension or revocation of approval of additional continuing education courses.

Section 5. Program Advertisement

An advertisement for an educational program shall include the following:

A. A course description sufficient to identify the subject matter to be covered;

B. Identification of the level of instruction;

C. Identification of the method or format of instruction;

D. A statement of program objectives; and

E. Notice indicating the program has been approved by the Director for continuing education and the number of clock hours to be received upon satisfactory completion of the program.

Section 7. Limitations on Obtaining Clock Hours

A. A licensee shall complete an educational program in its entirety in order to be eligible for continuing education approval.

~~B. A licensee shall not repeat the same course within a four (4) year period for license renewal purposes, except as provided in Section 10 Subsection A.~~

~~C~~B. A licensee, for purposes of renewal or reactivation, shall use only those clock hours which were accumulated during the two (2) years immediately preceding such renewal or activation.

~~D~~C. An instructor who teaches an approved program shall receive clock hour approval for that program only once.

~~E~~D. Licensees who wish to use a continuing education ~~correspondence~~ distance education course to activate or renew a real estate license must complete the ~~correspondence~~ distance education course with a minimum grade of 85%.

~~CHAPTER 380: FEES~~

~~SUMMARY: This chapter establishes fees charged by the Commission for examinations, licensing and miscellaneous services.~~

~~Section 1.Examination Fees~~

~~A. License Examination $100.00~~

~~B. License Re-Examination $100.00~~

~~C. Failed Exam Review $20.00~~

~~Section 2. Biennial License Fees~~

~~A. Real Estate Agency$100.00~~

~~B. Real Estate Broker $100.00~~

~~C. Associate Real Estate Broker $100.00~~

~~D. Real Estate Sales Agent 100.00~~

~~E. Inactive License $85.00~~

~~Section 3. Education Fees~~

~~A. Continuing Education Course Application $60.00~~

~~B. Continuing Education Late Filing Fee 100.00~~

~~C. Continuing Education Correspondence Course Application (per clock hour)$40.00~~

~~D. Continuing Education Individual Request $20.00~~

~~E. Continuing Education Roster Recording (per participant, minimum fee $2.00) - $ .50~~

~~F. Pre-license Syllabus Application $90.00~~

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Proposed Rules .... *cont. from page 3*

~~G. Pre-license Syllabus Late Filing Fee 100.00~~

~~Section 4. Miscellaneous Fees~~

~~A. Records Modifications (address, employer, name, etc.) $20.00~~

~~B. License Certifications $20.00~~

~~C. Copies per page (no charge if cost is less than $1.00) $ .25~~

CHAPTER 390 LICENSING PROCEDURES AND REQUIREMENTS

~~Section 1. Times of License Examinations~~

~~License examinations shall be administered at least monthly and at such additional times and locations as may be deemed necessary.~~

~~Section 2. Identification of Applicant~~

~~An examination applicant, at the examination site, shall present a form of identification which includes a photograph. The identity of the individual shall be determined prior to taking the examination.~~

~~Section 3. Cheating During Examination~~

~~An applicant who cheats during an examination shall be denied that examination and shall not be allowed to apply for an examination for a period of one (1) year.~~

The remaining sections of this chapter previously numbered 4 through 11 are renumbered 1 through 8 with no other changes.

FIND A LICENSEE ONLINE @ www.maineprofessionalreg.org.

The Office of Licensing and Registration (OLR) is pleased to announce that **FIND A LICENSEE** online is now functional. You can look-up a licensee of any of the regulatory boards and commissions under OLR's umbrella. Information displayed includes status of license, expire date and agency affiliation, if applicable. Agency records also include the designated broker and a list of all currently affiliated licensees.

To look-up a licensee, visit OLR's website at the address above and click on **FIND A LICENSEE.**

You can also access the all the Commission's forms and applications by clicking on **VIEW LIST OF LICENSED PROFESSIONS** and choosing REAL ESTATE BROKERS from the pop-up list. Scroll down the page, click on Applications, Forms & Publications and choose the document you need from the list.

OFFICE OF LICENSING & REGISTRATION PROPOSES AMENDMENTS TO RULE CHAPTER 10

The Office of Licensing & Registration (OLR) recently proposed amendments to Chapter 10 regarding the establishment of fees. You may have noticed that the fees section of the Commission's rules is stricken from the new rules proposal. This is due to the proposed incorporation of the Commission's fee structure into Chapter 10. Following are selected portions of the proposed amendments to Chapter 10 applicable to real estate licensees.

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
041 OFFICE OF LICENSING AND REGISTRATION

Chapter 10: ESTABLISHMENT OF LICENSE FEES

Summary: This chapter establishes fees for professional and occupational licenses and registrations issued by the Office of Licensing and Registration.

1. Definitions

Unless the context otherwise indicates, the following words have the following meanings:

1.3d party. "3d party" refers to a fee for a standardized license examination that is paid directly by the applicant to the organization administering the examination or its designee.

2.OLR. "OLR" means the Office of Licensing and Registration.

2. Establishment of Fees; Effective Dates

OLR shall charge the license and other fees indicated in §§ 3 and 4 below. For initial licenses, and for applications and examinations, the fees set out below shall become effective upon the effective date of this chapter. For renewal licenses, the fees set out below shall become effective with the first renewal cycle occurring on or after the effective date of this chapter.

The license and other fees of OLR boards and regulatory functions not listed below are set by the statute and implementing rules governing the particular board or regulatory function.

3. Fees Applicable to All Boards and Regulatory Functions Listed in §4

Except as otherwise indicated, the fees listed below apply to all boards and regulatory functions listed in §4 below:

1.Replacement license $10

2.Verification of licensure $10

4. Fees to be Charged For Particular Occupational and Professional Licenses and Registrations and Related Fees

The following fees shall be charged for the licenses, registrations, permits and other services listed in subsections 1–40 below. For any given license or registration, the designated fee shall apply to both initial issuance and renewal unless otherwise indicated. The term of a license or registration ends on the uniform expiration or renewal date established for that license or registration by law.

35. Real Estate Commission

Real Estate Agency	2 yr	$100
Real Estate Broker	2 yr	$100
Associate Real Estate Broker	2 yr	$100
Real Estate Sales Agent	Limited 2 yr	$100
Real Estate Sales Agent Extension	Limited 1 yr	$100
Inactive License	2 yr	$85
Examination Fee	NA	3rd party
Continuing Education Course Application	NA	$60
Continuing Education Late Filing Fee	NA	$100
Continuing Education Distance Education Course Application (per clock hour)	NA	$40
Continuing Education Individual Request	NA	$20
Pre-license Syllabus Application	NA	$90
Pre-license Late Filing Fee	NA	$100
Record Modification (address, employer, name, etc.	NA	$20
Copies per page (no charge if cost is less than $1.00)	NA	$.25

CURRENT CASES

Karen L. Bivins, Deputy Director

On October 18, 2001 the members of the Commission accepted a consent agreement entered into by the Director and Terry L. Berry of Gardiner, Maine. Berry is the designated broker who failed to produce documents to the Director.

As part of an investigation, Berry was asked to submit his written agency policy for review. The policy was reviewed by the Commission staff. Berry was asked to make changes and submit a revised policy. No response was received. Berry was asked two more times for a revised policy. No response was received.

Berry was found in violation of 32 M.R.S.A. § 13067(1)(L). He agreed to pay a fine of $500.00 and to submit immediately his revised policy.

On October 18, 2001 the members of the Commission accepted a consent agreement entered into by the Director and J. Paul Bureau of Scarborough, Maine. Bureau is a designated broker who allowed practices within his company not in compliance with Commission statutes and rules.

Bureau has an agency policy allowing appointed agency and disclosed dual agency. He allowed a standard of practice within his company in which licensees did not obtain from buyers written consent to appointed agency and disclosed dual agency. In addition, he allowed a standard of practice in which licensees were not consistent in obtaining from sellers written consent to appointed agency and disclosed dual agency. Bureau also allowed agency affiliates to use a property disclosure form that was not in compliance with current disclosure requirements. Additionally, Bureau allowed agency affiliates to use a listing agreement which offered subagency to other companies, although his agency policy did not permit the practice.

Bureau was found in violation of 32 M.R.S.A. §§ 13067(1)(H) and 13067(1)(I)(1). He agreed to pay a fine of $2,200.00; to establish company procedures consistent with his written agency policy; to revise his company listing agreement and property disclosure form; and to submit various agency related documents for a period of three months.

On October 18, 2001 the members of the Commission accepted a consent agreement entered into by the Director and Donald E. Carpenter of Ellsworth, Maine. Carpenter is a broker who failed when listing property for sale to obtain information necessary to make property disclosures to buyers.

Carpenter listed for sale a parcel of land. During the listing process, he did not obtain information necessary to prepare a property disclosure form for distribution to potential buyers. Subsequently, buyers were found for the property, a written offer was prepared, and the buyers did not at any point in the transaction receive written property disclosure information.

Carpenter was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 330 Section 15(A) of the Maine Real Estate Commission Rules in effect at the time. Carpenter agreed to pay a fine of $200.00.

On October 18, 2001 the members of the Commission accepted a consent agreement entered into by the Director and Richard C. Trott III of Bangor, Maine. Trott is an associate broker who failed to notify the Director of a material change to the qualifications of his original license application within 10 days of the change.

Trott was originally licensed in 1998. In 1999 he was convicted of operating under the influence, criminal trespass, and criminal threatening. He did not notify the Director of the convictions within 10 days. In August 2001, Trott submitted his associate broker license application and did disclose the 1999 convictions.

Trott was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of $100.00.

On October 18, 2001 the members of the Commission accepted a consent agreement entered into by the Director and Donald J. Vachon of Lewiston, Maine. Vachon is a sales agent who failed to disclose a criminal conviction. Vachon stated on his sales agent license application that he had not been convicted of a crime by any court. After the license was issued, the Director learned that Vachon had been convicted in 1977 of theft by unauthorized taking. After being contacted by the Director, Vachon submitted an amendment to the application disclosing the conviction.

Vachon was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of $100.00.

On November 15, 2001 the members of the Commission ratified their decision reached after a hearing on that date involving Laurie L. Therrien of Auburn, Maine. Therrien is a sales agent who entered into a consent agreement on June 14, 2001 in which she agreed to pay a fine of $100.00 by August 15, 2001. She did not pay the fine.

Therrien was found in violation of 32 M.R.S.A. § 13067(1)(M). Her sales agent license was suspended until such time as she pays the $100.00 fine imposed previously, and pays an additional fine of $500.00.

On November 15, 2001 the members of the Commission ratified their decision reached after a hearing on October 18, 2001 involving Georgia C. Chomas of Auburn, Maine. Chomas is a designated broker who was previously ordered to produce her written agency policy and to pay a fine of $500.00 by May 21, 2001. The policy was not produced and the fine was not paid until the day of the hearing, October 18, 2001.

Chomas was found in violation of 32 M.R.S.A. §§ 13067(1)(L) and (M). She was ordered to pay a fine of $1,000.00.

On November 15, 2001 the members of the Commission accepted a consent agreement entered into by the Director and Mack W. Gwinn of Levant, Maine. Gwinn is a sales agent who filed a false license application. Gwinn stated in the application that he had not had any professional license suspended or revoked. Subsequent to the license being issued, the Director learned that Gwinn had a real estate broker license revoked in North Carolina.

Gwinn was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (B), and (D). He agreed to the immediate revocation of his sales agent license.

On November 15, 2001 the members of the Commission accepted a consent agreement entered into by the Director and Grace C. Drapeau of Rochester, New Hampshire. Drapeau is a designated broker who was requested to produce information about the activities of her agency affiliates during the time period when she was not properly licensed. She submitted some information, but was asked to provide more specific information and documents. She failed to comply with the request.

Drapeau was found in violation of 32 M.R.S.A. § 13067(1)(L). She agreed to pay a fine of $300.00 and to submit the requested information and documents.

On January 24, 2002 the members of the Commission accepted a consent agreement entered into by the Director and John E. Maguire of Ellsworth, Maine. Maguire is a broker who failed to obtain property disclosure information, to treat as confidential information provided by a client, and demonstrated incompetency in the preparation

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of an agency clause in a purchase and sale agreement.

Maguire showed property listed with his agency to potential buyers. The buyers signed a document stating that they were representing themselves and that Maguire would be representing the sellers. He showed the buyers two lots that were for sale. At some point he provided property disclosure information for one of the lots, but provided no disclosure information for the other lot. The buyers asked for sample documents for preparing their offer, and Maguire gave them copies of actual documents from previous transactions, including the names and social security numbers of the parties.

Maguire later prepared a written offer for the buyers in which he completed an agency clause by stating that he was representing the buyers. At a later point, the word "buyer" was changed to something that is now illegible, but which Maguire indicated is probably "seller." Maguire stated that while working with the buyers, he represented them when he showed them property listed with other companies and represented the sellers when he showed the buyers property listed with Maguire's company.

Shortly after the buyers' offer was accepted, it was discovered that the seller owned an abutting lot and not the lot that the buyers believed they were purchasing. The transaction was terminated.

Maguire was found in violation of 32 M.R.S.A. §§ 13067(1)(A) and (F), 13281(2)(B), and Chapter 330 Section 15(B) of the Maine Real Estate Commission rules in effect at that time. He agreed to pay a fine of $1,000.00 and to complete one educational course.

On January 24, 2002 the members of the Commission accepted two related consent agreements entered into by the Director and George F. West, and Ronald D. Gallant, both of Milbridge, Maine. West and Gallant are brokers with the same company.

In the early 1990s West listed shorefront property for sale with the agency. The sellers did not have much information about the property. After learning from the town that there were no records about the septic system, West entered "unknown" on most items pertaining in that section of the disclosure form. He did enter on the form that the system was located in a shoreland zone and that no dishwasher or garbage disposal emptied into the system. He also indicated that the system had not malfunctioned in the previous 180 days. The property was later sold.

Several years later, the people who purchased the shorefront property listed it for sale with West. West sent the sellers a property disclosure form to complete. They entered on the form that the septic system had a 500 gallon tank and that they obtained that information from the former plumbing inspector. They also indicated that the tank was "probably" on the side of the house and that they had no problems with the tank. They checked the leach field information as unknown. The sellers also indicated that the system complied with current plumbing codes. No other information was included in the septic system section of the disclosure form. West did not add any additional information.

Two years later West again listed the property for sale. West completed a property disclosure form by transferring the information from the previous form to a new document. He did not include the statement from the sellers that they obtained information from the previous plumbing inspector. West did not advise his clients during any of the listing periods that the property disclosure form should state that information was unknown if the sellers did not have actual knowledge about any aspect of the property, or if the information could not be verified. West did not review the property disclosure forms or ensure that they were complete. The forms contained blank lines with no information.

In October 1998 a licensee from West's agency showed the property to a couple interested in the property. The water pipes had been drained for the upcoming winter. The next day, the buyers talked to Gallant about the property, and requested more information. Gallant went to the property to visually verify some of the information requested by the buyers, and reviewed the listing file. He did not consult West about the buyers' inquiries. Gallant sent a letter to the buyers with the information they requested, and included a statement that the former owner had inherited the property and had no information about the septic system or the well. He also provided the name of the current plumbing inspector. The buyers contacted the plumbing inspector and were told that the town had no records about the septic system.

Gallant also included in his letter a hand drawn sketch he made of the property showing the property lines, the location of the house and attached garage, and the driveway. He drew in a circle near the entrance of the street location between the driveway and the property line. In the circle he wrote "well."

The buyers entered into an agreement with the sellers to purchase the property. Six months after the closing the buyers sent a letter to Gallant explaining that because of various problems with the septic system, it had been necessary to locate the well. The well was not where Gallant indicated in his sketch, but was actually located in the center of the driveway closer to the house than the street entrance. The property line was also not as depicted in the sketch.

West was found in violation of two counts of 32 M.R.S.A. § 13067(1)(G). He agreed to pay a fine of $1,200.00 and complete one educational course. Gallant was found in violation of 32 M.R.S.A. §§ 13067(1)(G) and (H). He agreed to pay a fine of $400.00 and to complete one educational course.

On January 24, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Grace C. Drapeau of Rochester, New Hampshire. Drapeau is a designated broker who continued to conduct brokerage in Maine after the expiration of her license and before it was renewed.

Drapeau was found in violation of 32 M.R.S.A. §§ 13003, 13067(1)(I)(2) and 13067(1)(K). She agreed to pay a fine of $50.00.

On January 24, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Deborah J. Mullins of Bangor, Maine. Mullins is an associate broker who failed to notify the Director of a material change to the qualifications of her original license application within 10 days of the change.

Mullins was originally licensed as an associate broker in 1983 and was continuously licensed as such until July 7, 2001 when the license expired. On September 21, 2001 the license was renewed. On the renewal application Mullins disclosed a September 14, 1999 conviction of "Operating Under the Influence" which was a Class D offense. She did not notify the Director of the conviction within 10 days.

Mullins was found in violation of 32 M.R.S.A. § 13195. She agreed to pay a fine of $100.00.

On January 24, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Martha J. Mahoney of Caribou, Maine. Mahoney is a real estate broker who failed to thoroughly complete a property disclosure form.

In 1996 Mahoney listed residential property for sale with the agency. She gave the agency's preprinted property disclosure form to the seller for completion. The seller wrote that the water supply was a drilled well located in the front yard, the waste disposal system consisted of a 500 gallon steel tank located in front of the deck which had not malfunctioned, and a leach field which was on the side of the garage and had not malfunctioned, and that there were no problems with moisture, leakage or other problems with the roof.

The form provided spaces for other required information pertaining to various

aspects of the property, which the seller left blank. Mahoney did not take steps to obtain the information or to complete the form. Mahoney listed the property again in 1997, at which time she did not discuss the property disclosure form with the seller or revise the form.

In September 1998 Mahoney showed the property to a buyer, who entered into a purchase and sale agreement with the seller. The offer was contingent upon a general building inspection. After the inspection, the buyer requested that the seller repair a leak in the ceiling/roof of the breezeway prior to closing. The buyer and seller agreed to an addendum to the contract to repair the ceiling/roof. Mahoney did not amend the property disclosure form to include the problem with the breezeway ceiling/roof. The buyer eventually withdrew from the transaction after determining that the repairs were not satisfactory.

In December 1998 Mahoney listed the property again. She gave a preprinted property disclosure form to the seller to complete. The seller entered the same information that she entered in 1996. Mahoney did not discuss the information with the seller and did not add any information to the form.

Mahoney was found in violation of 32 M.R.S.A. § 13067(1)(F), 2 counts of § 13067(1)(G), and Chapter 330 Section 15(A) of the Maine Real Estate Commission Rules in effect at that time. She agreed to pay a fine of $1,500.00.

On February 21, 2002 the members of the Commission accepted a consent agreement entered into by the Director and E. Leonard Scott of Falmouth, Maine. Scott is a designated broker who failed to advise his clients about the ramifications of the financing arrangements being pursued by the buyers of their property.

A sales agent licensed with Scott's company listed a residential property for sale at a price of $67,900.00. Subsequently, interested buyers made an offer to purchase the property for $64,000.00 with a deposit of $500.00. The offer required a conventional mortgage of 80 percent of the purchase price, with a 20 percent down payment. The buyers faxed to the sales agent a copy of their personal check for $500.00 with the understanding that they would send the check by overnight mail.

A mortgage broker working with the buyers proposed a loan structure which included a purchase price of $80,000.00 with a down payment of $4,000.00 and a second mortgage held by the sellers for $12,000.00. The mortgage broker explained that after closing, the second mortgage would be discharged for $1.00. After the sales agent and Scott discussed the proposal further with the mortgage broker and were told that the arrangement was common and legal, the sales agent contacted the sellers and detailed the proposal.

The sellers asked Scott to fax the proposal to their son, who was a certified public accountant. After reviewing it, their son told Scott that the proposal would not be acceptable under federal guidelines, was not legal and that Scott should not be asking the sellers to agree to it.

About a week after the original offer was received, the sales agent contacted the buyers asking for the earnest money deposit, which had not been received. The buyers agreed to send the funds right away. Nothing was received and neither the sales agent nor Scott notified the sellers.

The sales agent prepared another offer from the buyers with the terms as outlined by the mortgage broker. The buyers signed the document and it was sent to the sellers. They signed the offer, but included a list of additional terms to be met. Shortly thereafter, the mortgage broker submitted on behalf of the buyers a revised offer to purchase the property for $65,000.00 with a deposit of $1,000.00 and the sellers holding a second mortgage of $12,000.00. The sellers rejected the offer.

After discovering that the earnest money deposit had never been collected, Scott informed the sellers that he would give them $500.00 when the property was eventually sold. The property was sold about one month later, and Scott paid the sellers $500.00.

Scott was found in violation of 2 counts of 32 M.R.S.A. § 13067(1)(G), and § 13067(1)(H). He agreed to pay a fine of $2,500.00.

On February 21, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Gary J. Samia of Sanford, Maine. Samia is a designated broker who allowed an agency affiliate to engage in activity for which that affiliate was not licensed.

A sales agent in Samia's company prepared a "broker price opinion" for a mortgage company. The mortgage company paid a fee of $100.00 for the service. The sales agent conducted a drive-by inspection of the property, prepared and completed an opinion form provided by the mortgage company, and affixed her name and company information on the form. The sales agent did not include the required disclaimer as required by 32 M.R.S.A. § 14004(2), nor did the sales agent hold the type of license necessary for rendering an opinion of value under that statute.

Samia was found in violation of 32 M.R.S.A. § 13067(1)(I)(2). He agreed to pay a fine of $500.00.

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From the Director's Desk

continued from front page ...

disclosure of confidential information between licensees at the first contact. The second proposal repeals the insulation disclosure, one of the four mandatory property disclosure rules, and replaces it with a heating disclosure (Chapter 330, Section 17-see page 2 of this edition). The insulation disclosure rule was adopted in 1981 in response, in part, to the oil embargo and resulting consumer complaints from the late 1970's and has been amended several times since adoption. Most recently, the Commission found that the insulation disclosure information was most often not known and visual inspections of attics and exterior walls (when possible) by licensees did not provide meaningful information. The Commission determined that limiting the disclosure to insulation fails to address the real concern, which is the type and consumption of the heating system and / or heating source.

For the most part, the other proposed amendments are in response to outsourcing of the examination (see related article on front page) and the recently enacted continuing education audit process. The proposed changes, by Chapter, are as follows: Chapter 360, Section 3 will require pre-license course sponsors to include a final course examination and answer key when applying for course approval and Section 5 repeals the former examination scoring requirements; Chapter 370, Section 2 [D] replaces the definition of correspondence course with a new definition of distance education and corresponding changes to the definition appear in Sections 3 [B] and 7[D], Section 4[B] repeals the waiver of the continuing education program fee, Section 4 [G] repeals the requirement that the course sponsor submit to the Commission a list of licensees completing the course and pay a recording fee for each participant and replaces it with the requirement that the sponsor issue course certificates and Section 7 [B] repeals the prohibition of a licensee repeating the same course within a 4-year period; Chapter 380 is repealed and will be adopted as Chapter 10 (see explanation below); and Chapter 390, Section 1,2 and 3 repeal administrative rules governing the former examination process. (The proposals are found on pages 2, 3 and 4 of this edition.)

The Real Estate Commission is one of 39 regulatory agencies within the Office of Licensing and Registration ("OLR"). The OLR Director has the authority to adopt fees for all of the 39 agencies, including the Commission. OLR fees are part of Chapter 10 and the Commission's fees are listed in Section 35. The proposed amendment to Chapter 10, Section 35 will adopt all of the Commission's current fees except the examination fees (fee is now paid directly to the examination vendor as part of the outsourcing of the examination) and the $.50 per participant continuing education roster fee (see pages 3 & 4 of this edition).

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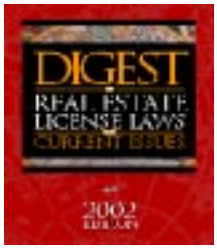

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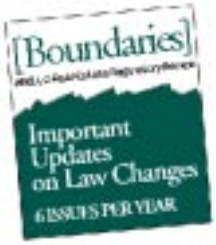

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