

# MAINE REAL ESTATE NEWS



Department of Professional and Financial Regulation - Office of Licensing & Registration  
Maine Real Estate Commission

## From the Director's Desk

Carol J. Leighton

### LEGISLATIVE CHANGES WILL REQUIRE CHANGES TO COMMISSION RULES

The changes to the Brokerage Act (Title 32, Chapter 114) enacted by the Legislature and signed by Governor Baldacci will become effective on July 1, 2006. The statutory changes will require the Real Estate Commission to propose changes to the current rules. During the next several months the Commission will begin the process of reviewing the current rules to determine what changes may need to be made to implement the statutory changes. In addition, the Commission has appointed an ad hoc Education Committee to review the current course competencies set for the broker, associate broker and sales agent pre-license courses. The ad hoc Education Committee is expected to make recommendations to the Commission for changes to the current pre-license curriculum, which may include changes to the course topics for each level of license and the number of classroom hours.

The Commission will issue a special edition of the newsletter notifying licensees and other interested parties of the proposed changes to the rules and the rule hearing date and time. In addition, a notice will be posted on the Commission's homepage as well as the traditional notice of state agency rulemaking notices that appear every Wednesday in 5 regional newspapers (*Bangor Daily News, Kennebec Journal, Portland Press Herald, Lewiston Sun-Journal and the Central Maine Morning Sentinel*).

## Commission Legislation Enacted - Changes Effective July 1, 2006

"An Act to Amend the Real Estate Brokerage Laws" (LD 1525 - Public Law #378) A copy of the Public law is posted on the Commission homepage - ([www.state.me.us/pfr/olr/categories/cat38.htm](http://www.state.me.us/pfr/olr/categories/cat38.htm))

Several significant changes have been made to the Brokerage Act (Title 32, Chapter 114). The following are highlights of the statutory changes, effective on July 1, 2006:

- Creates transaction broker presumption and standards of practice;
- Requires all agent-client listing agreements and buyer representation agreements to be in writing and to include a minimum of 4 specific contract provisions;
- Requires brokerage trust accounts to be maintained in "federally insured accounts" which may impact trust accounts currently maintained in credit unions;
- Requires sales agent applicants to pass state test in addition to the sales agent course;
- Repeals examination requirement for associate broker license applicants (applicants already licensed as sales agents on the effective date will be required to comply with the examination requirement); and,
- Increases the number of mandatory continuing education hours from 15 to 21.

### INSIDE THIS ISSUE

### PAGE

Director's Desk	1
Legislative Changes	2, 8-11
Current Cases	3-7

## OTHER LEGISLATIVE CHANGES OF INTEREST TO REAL ESTATE LICENSEES

Public laws posted on Commission homepage ([www.state.me.us/pfr/olr/categories/cat38.htm](http://www.state.me.us/pfr/olr/categories/cat38.htm))

### LD 159 - Public Law #161 - *An Act to Restrict Undocumented Mortgage Agreements* - effective 9/17/05

PL 161 prohibits buyers, sellers and settlement agents in a residential mortgage loan closing from agreeing to side deals not reflected on closing documents if those side deals have the effect of overstating the contract sales price. Any violation of this law constitutes a violation of the Maine Unfair Trade Practices Act.

### LD 1509 - Public Law #344 - *An Act to Amend the Laws Governing the Manufactured Housing Board* - effective 9/17/05

Section 12 of PL #344 [10 MRSA §9021 (1)] amends a section of the Manufactured Housing Board law that prohibited real estate licensees from "selling or brokering" new manufactured homes without a license issued by the Manufactured Housing Board. The new law permits an active real estate licensee to sell or broker new manufactured housing if the sale includes a dealer or dealer-developer licensed by the Manufactured Housing Board. The relevant provision of the new law is as follows:

"Active licensees of the Real Estate Commission are exempt from the licensing requirement for selling or brokering used manufactured housing and new manufactured housing if such housing is sold or offered for sale by a licensee of the board."

### LD 1525 - Sections 1 [10 MRSA §8003-C (6)] and 24, 25 & 26 [33 MRSA §§172, 173 (2) & 173 (2-A)] - Public Law #378 - *Unlicensed Practice; private cause of action enacted and Seller Disclosure Requirement changes* - effective July 1, 2006.

The Maine Association of Realtors® proposed legislation (LD 1484) during the most recent legislative session. After public hearing, the legislative committee voted to move sections of LD 1484 into the Commission's bill (LD 1525). Unlicensed practice, private cause of action and seller disclosure information were moved to LD 1525 and are part of Public Law 378.

The private cause of action permits private trade associations or the individual involved in a transaction to file for injunctive relief against a person for unlicensed brokerage practice. The changes to the seller disclosure requirements found in Title 33 clarify that a residential home seller is required to make certain property disclosures, including heating costs.

### LD 1532 - Public Law #339 - *An Act to Protect Maine Citizens from Lead Hazards that Harm Maine Children and Families*- effective 9/17/05

Public law 339 requires residential home sellers selling homes built prior to 1978 to give to potential buyers a lead-based paint hazard disclosure form prepared by the Department of Health and Human Services. Landlords will also be required to provide a similar disclosure form prepared by the Department of Health and Human Services to prospective tenants. The lead-based paint hazard disclosure statement required by PL 339 is in addition to the Federal lead-based paint disclosure requirement.

The Department of Health and Human Services is required to post and maintain the forms required by PL 339 on the Internet in a format that is easily downloadable. The Commission's home page will include a link to the lead-based paint hazard disclosure site as soon as it is available.

#### ***Did you know you can check license status on-line?***

Go to [www.maineprofessionalreg.org](http://www.maineprofessionalreg.org), and click on the green button that says "find a licensee". Scroll to the bottom of the screen and select "start search", then choose "Real Estate Commission" from the drop-down list. Type in individual's last name and click on "find licensee". This is linked to our licensing database; information is updated in real time.

## Current Cases

*Karen L. Bivins, Deputy Director*

*On January 20, 2005 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:*

1. David H. Depot of Auburn, Maine. Depot is an associate broker who failed to disclose a criminal conviction in a timely manner. In December 2002 Depot was licensed as a sales agent. In December 2004 he submitted an associate broker license application and disclosed that he had been convicted of "Driving to Endanger" in March 2003. Depot had not previously notified the Commission of the conviction.

Depot was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

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2. Bryce E. Hamilton of Portland, Maine. Hamilton is a broker who failed to disclose to a buyer that there was debris on the property being purchased.

Hamilton provided an opinion of value for a mortgage company on a residential property the company acquired through foreclosure. He reported to the company that the property was occupied and that there was substantial debris inside the house and around the lot. The mortgage company began the eviction process, and instructed Hamilton to have the debris removed once the property was vacated. However, the debris from inside the house was removed, but not from the around the lot.

Hamilton listed the property for sale and prepared a property disclosure form. He did not indicate on the form that debris was scattered on various sections of the lot. Buyers for the property were found in January, when the property was covered with snow. The debris was not visible. The sale closed while the property was still covered with snow, and it was not until later that the buyers discovered tires, a bicycle, appliances, mattresses, numerous pieces of wood and metal and various other sundry items discarded around the property.

Hamilton was found in violation of 32 M.R.S.A. § 13067(1)(D). He agreed to pay \$500.00 to the complainants.

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3. Patrick A. Jameson of Lewiston, Maine. Jameson is a sales agent who failed to disclose a criminal conviction. Jameson stated on his sales agent license application that he had not been convicted by any court of any type of crime. The Director learned that Jameson had been convicted of "Theft by Unauthorized Use of Property" in 1999. After being

contacted by the Director, Jameson submitted an amendment to the application disclosing the conviction.

Jameson was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$300.00.

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4. Brian R. Seekins of Bangor, Maine. Seekins is a sales agent who failed to disclose a criminal conviction. Seekins stated on his sales agent license application that he had been convicted of what he described as "3 speeding tickets in the 1980's." The Director learned that Seekins had been convicted of "Criminal Trespass" in 1986. After being contacted by the Director, Seekins submitted an amendment to the application disclosing the conviction.

Seekins was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191. He agreed to pay a fine of \$200.00.

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5. Roger Whitehouse of Mexico, Maine. Whitehouse is a designated broker who failed to include information on a property disclosure form.

Whitehouse listed for sale 5 acres of land. He also prepared a property disclosure form which included copies of the deed and an attachment about protective covenants. During the time the property was listed, the seller notified Whitehouse of a letter received from the Maine Department of Transportation ("MDOT") stating that the seller was required to notify any buyer of the property that MDOT intended to acquire an interest in the property.

Whitehouse met with the seller and an MDOT employee to discuss the matter. Whitehouse then placed a copy of the MDOT letter in his files, but did not amend the property disclosure form to include the information about the interest to be acquired by MDOT.

Whitehouse again listed the property with his agency at the expiration of the previous agreement. He updated the property disclosure form to include information about MDOT's interest and placed it in the agency transaction file. However, the packet of information for presentation to buyers included the older disclosure form instead of the updated form. Subsequently, the property was purchased by buyers who were not informed of MDOT's interest until the closing.

## Current Cases (continued from Page 3)

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

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6. Donald R. Whitten of Gardiner, Maine. Whitten is a sales agent who failed to disclose criminal convictions. Whitten stated on his sales agent license application that he had been convicted of "Operating Under the Influence" in 1988, "Theft by Unauthorized Taking" in 1990, and a criminal traffic violation in 1991. The Director learned that Whitten had been convicted of "Theft by Unauthorized Taking" in 1988 and in 1996. After being contacted by the Director, Whitten submitted an amendment to the application disclosing the additional convictions.

Whitten was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to the revocation of his license.

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*On March 24, 2005 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:*

1. Justin W. Douglass of Portland, Maine. Douglass is a sales agent who failed to disclose a criminal conviction in a timely manner. In November 2003 Douglass was licensed as a sales agent. On February 24, 2005 he notified the Director that he had been convicted of "Operating Under the Influence" on January 18, 2005.

Douglass was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

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2. Stephen E. Hall of Guilford, Maine. Hall is an associate broker who failed to act in a reasonably prudent manner in order to avoid error.

Hall had listed property for sale and the listing had expired. A buyer then contacted Hall about property for sale and Hall told the buyer about the property that had been listed. The buyer and the seller negotiated verbally and the buyer asked Hall to prepare a written offer for him. The offer was prepared and Hall faxed it to the buyer for signature. He requested that the buyer send the \$500.00 deposit along with the signed document. The buyer sent the signed document but did not send the deposit. Hall obtained the sellers signature on the purchase and sale agreement but did not disclose that the deposit had not been

received. When the transaction did not go forward, the seller asked Hall for the deposit. Hall then informed the seller that no deposit had been received.

Hall was found in violation of 32 M.R.S.A. § 13067(1)(H). He agreed to pay \$500.00 to the seller.

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3. April J. Keene of Augusta, Maine. Keene is an associate broker who failed to properly complete two license applications. Keene was licensed in February 2003 as a sales agent. She was licensed as an associate broker in February 2005. As part of the 2005 license, Keene stated that she had not been convicted by any court of any offense. She also submitted a criminal background form which indicated that she had used the name of April Jane Spencer in the past. Keene had not included that information as part of the sales agent license application in 2003. A criminal check showed a conviction for April J. Spencer for "Illegal Possession of Liquor by a Minor" in 1986. Keene submitted a written amendment to her license application disclosing the conviction.

Keene was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$200.00.

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4. Henry G. LaBrie, III of Kennebunk, Maine. LaBrie is a designated broker who failed to disclose a criminal conviction in a timely manner. On February 20, 2005 LaBrie notified the Director that he had been convicted of a Class E offense of "Refusing to Sign Uniform Traffic Ticket" on December 6, 2004.

LaBrie was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

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5. Sandra L. LaPlante of Camden, Maine. LaPlante is an associate broker who made a false statement on her sales agent license application. In October 2002 LaPlante submitted her sales agent license application and stated that she graduated from high school in Ontario, Canada in 1967. In January 2005 LaPlante submitted an associate broker license application and stated that she graduated from Camden Hills Regional High School in Maine in 2004. Subsequently LaPlante submitted a written explanation of her statements and a copy of her high school equivalency diploma issued in December 2004.

LaPlante was found in violation of 32

## Current Cases (continued from Page 4)

M.R.S.A. § 13067(1)(D). She agreed to pay a fine of \$1,000.00.

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6. Neil Oelstrom of Scarborough, Maine. Oelstrom is a broker who failed to disclose to a buyer information about the actual owner of the property being purchased.

Oelstrom listed property for sale and knew that the property was owned by the sister of the person who was acting as the seller. A buyer contracted to purchase the property with the brother of the actual owner, not knowing that the real owner was the sister. Before the closing, the sister conveyed title of the property to her brother and numerous liens were attached, delaying the transfer of title for several months.

Oelstrom was found in violation of 32 M.R.S.A. § 13067(1)(H). He agreed to pay a fine of \$1,000.00.

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7. David M. Reed of South Portland, Maine. Reed is an associate broker who failed to disclose a criminal conviction in a timely manner. On January 31, 2005 Reed notified the Director that he had been convicted of "Operating Under the Influence" on December 5, 2004.

Reed was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

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8. Roger W. Whitehouse of Mexico, Maine. Whitehouse is a designated broker who improperly released a disputed earnest money deposit.

Whitehouse listed property for sale, and subsequently a buyer was found who entered into a purchase and sale agreement with the seller. When the sale did not close, Whitehouse contacted the parties about signing release forms returning the deposit to the buyer. It was later determined that the seller did not agree to pay the deposit to the buyer. Whitehouse made a decision that the buyer was entitled to the deposit but did not notify the parties in writing or give them a 30 day notice before releasing the deposit to the buyer.

Whitehouse was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 320 Section 3(I) of the Maine Real Estate Commission Rules. He agreed to pay a fine of \$500.00 and to pay \$100.00 to the seller.

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*On April 21, 2005 the members of the Commission ratified their decisions reached after hearings involving the following licensees:*

1. Amy J. Halsey of Augusta, Maine. Halsey is an associate broker who failed to disclose a criminal conviction in a timely manner. Halsey became licensed as a sales agent in 2001. In December 2004 she was licensed as an associate broker. On the day the license was issued, the Commission received a letter from Halsey disclosing that she had been convicted of "Negotiating a Worthless Instrument (Class E)" on February 6, 2002. Halsey had not previously disclosed the conviction.

Halsey was found in violation of 32 M.R.S.A. § 13195. She was ordered to pay a fine of \$300.00.

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2. Jeffrey C. Irving of Falmouth, Maine. Irving is a sales agent who failed to disclose criminal convictions. Irving stated on his sales agent license application that he had been convicted of "Operating Under the Influence," "Driving to Endanger," and "Habitual Offender," the most recent of which occurred in 1989. The Director learned that Irving had been convicted of "Disorderly Conduct" in 1977 and "Assault (Class D)" in 1995. After being contacted by the Director, Irving provided some additional information about the convictions.

Irving was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He was ordered to pay a fine of \$600.00.

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*On April 21, 2005 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:*

1. Jennifer L. Berry of Bowdoinham, Maine. Berry is a sales agent who failed to disclose a criminal conviction in a timely manner. Berry was licensed as a sales agent in May 2002. On March 4, 2005 she notified the Director that she had been convicted of "Operating After Suspension" in December 2004.

Berry was found in violation of 32 M.R.S.A. § 13195. She agreed to pay a fine of \$200.00.

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2. David B. Brown of Hallowell, Maine. Brown is an associate broker who failed to disclose criminal convictions when applying for a license and failed to disclose a criminal conviction in a timely manner. Brown was licensed as an associate broker in April 2001 and disclosed on the

## Current Cases (continued from Page 5)

license application a conviction for "Disorderly Conduct" in 1968. On March 29, 2005 Brown notified the Director that he had been convicted of "Operating After Suspension" in March 1993, November 1998, November 1999, and July 2004.

Brown was found in violation of 32 M.R.S.A. §§ 13191(1) and 13195. He agreed to pay a fine of \$300.00.

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3. Roger I. Holt III of Brewer, Maine. Holt is a sales agent who failed to disclose criminal convictions. Holt stated on his sales agent license application that he had been convicted of "OUI" three times between 1986 and 2002, and had a speeding violation in 2002. The Director learned that Holt had been convicted of "Criminal Trespass (Class E)" in June 1979 and "Harassment (Class E)" in March 1981. After being contacted by the Director, Holt submitted a written amendment to the application disclosing the additional convictions.

Holt was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

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4. Eric R. Humes of Portland, Maine. Humes is an associate broker who failed to disclose a criminal conviction in a timely manner. On March 3, 2005 Humes notified the Director that he had been convicted of "Criminal Speeding" on January 7, 2005.

Humes was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

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5. Duane L. Jellison of York, Maine. Jellison is a designated broker who failed to protect the interests of his client. In 1994 Jellison's agency listed for sale a parcel of land in Kittery. A purchase and sale agreement was negotiated for one of the lots and one of the provisions of the contract was that the seller agreed to escrow \$1,000.00 until the town of Kittery accepted the road in the subdivision. At the closing, the licensee from Jellison's agency agreed to take the check for the \$1,000.00 for the agency to hold as escrow agent.

Jellison determined that it was not his policy to hold money for other than pending transactions. The check was returned to the law firm that closed the sale, asking that the law firm act as closing agent. The check was sent back and forth several times between the law firm and the agency, with

neither wishing to act as escrow agent for the money. No efforts were made to contact the parties to the purchase and sale agreement about making other arrangements for holding the money pending approval of the road.

When the road was finally approved in 2004, the escrow money could not be located by either Jellison or the closing agent.

Jellison was found in violation of 32 M.R.S.A. § 13067(1)(G). He agreed to pay to the seller the amount of the escrowed money, \$1,000.00.

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*On May 19, 2005 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:*

1. Kevin J. Champagne of Scarborough, Maine. Champagne is a sales agent who failed to disclose a criminal conviction in a timely manner. On March 4, 2005 Champagne notified the Director that he had been convicted of "Place Bait to Entice Deer" on December 15, 2004.

Champagne was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

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2. Mary T. Honan of Falmouth, Maine. Honan is a real estate broker who failed to protect and promote the interest of her client with absolute fidelity.

Honan represented the seller of residential property that was under contract to be purchased by a buyer who agreed to complete some work on the house that was required by the lending institution. Some of the seller's possessions were still at the property, although the seller was no longer living there. Honan did not provide a written agreement about the nature and extent of the work to be completed, nor did she suggest to her client that a written agreement was appropriate prior to allowing the buyer to have access to the property. The seller later visited the property, found that the buyer had removed some of her belongings, and appeared to be remodeling the property without her permission. A dispute arose, which was resolved and the sale closed.

Honan was found in violation of 32 M.R.S.A. § 13067(1)(G). She agreed to pay a fine of \$600.00.

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3. Stephen F. Miller of Auburn, Maine.

## Current Cases (conclusion)

Miller is a sales agent who failed to disclose a criminal conviction. Miller stated on his sales agent license application that he had been convicted of "Operating after Suspension" in 1983, "Hunting or Having a Loaded Firearm in or on a Motor Vehicle" in 1992 and "Threatening Display of Weapon" in 2000. The Director learned that Miller had been convicted of "Tax Law Violation, Part 3, Title 36" in 1990. After being contacted by the Director, Miller submitted an amendment to the application disclosing the 1990 conviction.

Miller was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

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4. Randy D. Povelite of Livermore Falls, Maine. Povelite is an associate broker who failed to disclose criminal convictions. Povelite stated on his sales agent license application in 1994 that he had not been convicted of a crime. He stated on his associate broker license application in 1997 that he had not been convicted of a crime. In March 2005 the Director received information that Povelite had been convicted of "Disorderly Conduct" in 1977, "Operating Under the Influence of Liquor" in 2003 and "Operating after Suspension" in 2004. After being contacted by the Director, Povelite submitted his license renewal application and disclosed the 1977, 2003 and 2004 convictions.

Povelite was found in violation of 32 M.R.S.A. §§ 13067(1)(A) and (F), 13191, and 13195. He agreed to pay a fine of \$900.00.

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*On June 16, 2005 the members of the Commission ratified their decisions reached after hearings involving the following licensees:*

1. Kathleen F. Scott of Scarborough, Maine. Scott is a designated broker who failed to complete 15 hours of approved continuing education prior to the expiration of her license.

As part of her license renewal application, Scott certified that she had completed 15 hours of

approved continuing education. After an audit, it was discovered that Scott completed only 12 hours of approved continuing education for renewal of her license.

Scott was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). She was ordered to pay a fine of \$700.00; to submit documentation of successful completion of 3 clock hours of approved continuing education; and to submit documentation of successful completion of 15 hours of approved continuing education with her next license renewal application.

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2. Hollis C. Tedford III of New Harbor, Maine. Tedford is a broker who failed to complete 15 hours of approved continuing education prior to the renewal of his license.

As part of his license renewal application, Tedford certified that he had completed 15 hours of approved continuing education. After an audit, it was discovered that he had completed only 12 hours of approved continuing education for renewal of his license. Tedford was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). He was ordered to pay a fine of \$1,000.00; to submit documentation of successful completion of 3 clock hours of approved continuing education, and to submit documentation of successful completion of 15 hours of approved continuing education with his next license renewal.

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On June 16, 2005 the members of the Commission accepted a consent agreement entered into by the Director and Audra L. Purington of Brunswick, Maine. Purington is a sales agent who failed to disclose a criminal conviction in a timely manner. On March 19, 2005 Purington notified the Director that she had been convicted of "Operating Under the Influence" on June 22, 2004.

Purington was found in violation of 32 M.R.S.A. § 1395. She agreed to pay a fine of \$200.00.

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### On-Line License Renewal - New and Improved!

Start at [www.maineprofessionalreg.org](http://www.maineprofessionalreg.org), and click on the button that says "renew an existing license." You will need to know your license number. A valid credit card and email address are also required. If you have problems with this system, please call (207) 624-8518.

## Legislative Changes - Something for Everyone!

The statutory changes enacted by PL 378 are the most sweeping changes to the Brokerage Act in over ten years. The changes will affect brokerage practice, trust accounts and other brokerage records, listing agreements and buyer representation agreements, continuing education requirements, and the licensing requirements for sales agents and associate broker applicants. As mentioned in this month's "Director's Desk," many of the statutory changes will require that the Commission adopt changes to the rules to fully implement the statutory changes. The rulemaking process will be extensive and most likely not be complete until sometime in mid-winter 2006. What follows is a brief summary of the legislative changes to be effective July 1, 2006:

### *Statutory Changes, Part 1*

Transaction broker. The term "transaction broker" is a term that has been used in the brokerage community in Maine for many years. General use of the term, however, does not mean that there has been a good understanding of what a transaction broker should or should not do in a transaction. The enactment of PL 378 to be followed by amendments to Chapter 330 of the Commission's rules will establish the standards of practice for a licensee acting as a transaction broker. The statutory changes creating the "transaction broker" role are as follows:

Definition of transaction broker. [32 MRSA §13271 (13-A) - page 6 of PL 378]

"Transaction broker" means a real estate brokerage agency that provides real estate brokerage services to one of 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."

Presumption of transaction broker. [32 MRSA §13282 - page 12 of PL 378]

"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.

Transaction broker duties; prohibited acts; no vicarious liability and actual knowledge; information. [32 MRSA §§13283 - pages 14 & 15 of PL 378]

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 in 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;

*(continued)*

### Legislative Changes (continued from Page 8)

- 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 3<sup>rd</sup> 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."

### *Statutory Changes, Part 2*

Brokerage agreements. [32 MRSA §13177-A, page 2 of PL 378]

The statutory changes will require buyer representation agreements to be in writing and to include the same minimal requirements as listing agreements. In addition, the term "brokerage agreement" as used in this section is defined as an agreement between the real estate brokerage agency and a client. Brokerage agreements executed in compliance with this section will create an agent-client relationship with fiduciary duties owed to the client.

The brokerage agreement section is as follows:

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.

*(continued)*

## Legislative Changes (continued from Page 9)

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.

### *Statutory Changes, Part 3*

Trust accounts. [32 MRSA §13178 - pages 2 & 3 of PL 378]

Two changes to the trust account section: 1. requires all trust accounts to be maintained in a federally insured financial institution authorized to do business in this State; and, 2. authorizes the Commission to adopt, by rule, the standards for maintaining trust account and supporting records.

Designated brokers will need to confirm that the agency trust account is in a federally insured account authorized to do business in Maine. Designated brokers who have a trust account in a credit union will need to confirm that the insurance extends to all deposits in the trust account, and not just for deposits held for members of the credit union. Currently, insurance available for credit union accounts is limited to members of the credit union, which means that deposits held for persons who are not members of the credit union would not be covered by insurance. The change to the trust account section will require that insurance coverage extends to all deposits held in trust.

The Commission will propose rules to update the trust account and supporting record requirements to permit electronic records. More information on the proposed rules will be provided at a later date.

### *Statutory Changes, Part 4*

Real estate brokerage records. [32 MRSA §13184 - page 3 of PL 378]

This section authorizes the Commission to adopt, by rule, the types of brokerage records (in addition to trust account supporting records) that need to be maintained by the agency, including retention schedules and format. Again, more information on the proposed rules will be provided at a later date.

### *Statutory Changes, Part 5*

Continuing education. [32 MRSA §§13196 (2)(A)(B)(C), 13197 (1) - pages 3 & 4 of PL 378]

The number of clock hours to renew an active license will increase from 15 clock hours to 21 clock hours effective July 1, 2006. In addition, the number of clock hours needed to reactivate an inactive license will be increased by 6 hours incrementally: inactive up to 2 years - 21 clock hours; inactive more than 2 years but less than 4 years - 28 clock hours; inactive more than 4 years but less than 6 years - 36 clock hours.

*(continued)*

## Legislative Changes (conclusion)

### *Statutory Changes, Part 6*

[Pre-license examination requirements](#) [32 MRSA §§13199 (2-A), 13200 (2) - page 4 of PL 378]

Effective July 1, 2006, sales agent license applicants will be required to satisfactorily complete a course of study meeting Commission established guidelines and pass the sales agent examination. Associate broker license applicants will not be required to pass an examination but will be required to have practiced as a sales agent for 2 years and satisfactorily complete the associate broker pre-license courses.

Special transition note: Sales agents already licensed on the effective date (July 1, 2006) will be required to comply with the examination requirement. In other words, sales agents licensed on July 1, 2006 or before who qualified for the sales agent license by successfully passing the sales agent course will be required to pass an examination, in addition to the other requirements, to qualify for the associate broker license. Sales agents licensed on July 1, 2006 or before who qualified for the sales agent license by passing an examination will be required to meet all other requirements, except passing another examination to qualify for the associate broker license.

## Maine Revenue Service asked the Commission to inform real estate licensees of the following law change effective July 1, 2005:

### Casual Rentals of Living Quarters in the State of Maine subject to 7% Sales Tax

All rentals of living quarters will be subject to Maine state sales tax of 7% effective July 1, 2005. This includes rentals of homes, vacation homes, cottages, condominiums and camps that are offered for rent to transient guests. Anyone so renting such living quarters must register with Maine Revenue Services to obtain a sales tax account; then charge, collect and remit this tax to the State. Previous to this change in law, these rentals were regarded as "casual rentals" and not subject to the Maine sales tax if the person only rented one property. Rental properties handled by rental agencies or real estate agencies have always been subject to the 7% tax.

For more detailed information:

Details on the July 1, 2005, law change, specific exemptions, and how to register:  
<http://www.maine.gov/revenue/salesuse/Casualrentals.pdf>

Details on general rental of living quarters:  
<http://www.maine.gov/revenue/salesuse/Bull32.pdf>

*Have you downloaded new change of license and agency record modification forms yet? Go to [www.maineprofessionalreg.org](http://www.maineprofessionalreg.org), click on the "apply for a license" button, and select "R" for real estate. From our home page, look for the link that says "applications, forms and publications."*

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Total licensees, as of  
May 31, 2005:

Agencies  
1264

Designated Brokers  
1076

Brokers  
1254

Associate Brokers  
1863

Sales Agents  
1967

Inactive licensees  
(all types)  
1512

Total: 8936

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