



19 Community Drive • Augusta, Maine 04330 • (207) 622-7501 • Fax: (207) 623-3590

## **Testimony in Opposition to LD 2035 (“An Act Regarding Disclosure of Flood Risk by Sellers of Real Estate”)**

**J. Andrew Cashman on behalf of the Maine Association of REALTORS®**

**January 3, 2024**

Senator Carney, Representative Moonen and members of the Joint Standing Committee on Judiciary, my name is Andy Cashman. I am the Founder of Resolve Government Relations®. We represent the Maine Association of REALTORS®, a professional trade association established in 1936 with over 6,500 members statewide. REALTORS® grow Maine's economy and build Maine communities. Our members represent buyers and sellers involved in both residential and commercial real estate transactions. Our membership also includes industry affiliates, such as lenders, closing agents, title agents, appraisers, building inspectors, surveyors, etc. The Maine Association is chartered by the National Association of REALTORS® (NAR), the largest trade association in the country.

The Maine Association of REALTORS® opposes LD 2035. The bill would require sellers of residential and commercial real estate to make disclosures regarding flood maps, flood zones, flood insurance, and past flood damage. While flood disclosures ensure that potential buyers are well-informed about the flood risk associated with a property, we oppose the bill because there are many factors that could create harm, confusion, and liability for parties involved in a real estate transaction if it were to pass. Sellers are already required to disclose any known defects to the property when listed for sale and this would include any known flood damage. Any impacts to the value, use, or safety of the property as a result of flood damage must already be noted under existing seller disclosure law. Seller disclosure is regulated under 33 M.R.S. Section 173. I have attached a copy of the statute for your convenience. Sellers are required to disclose “[a]ny known defects[.]” (33 M.R.S. Section 173(5)) “Known defect” is defined as follows: “a condition, known by the seller, that has a significant adverse effect on the value of property, significantly impairs the health or safety of future occupants of the property or, if not repaired, removed or replaced, significantly shortens the expected normal life of the premises.” (33 M.R.S. Section 171(1)) (attached)

Furthermore, buyers are also responsible for conducting their own due diligence during the real estate transaction. A property's inclusion on a FEMA flood insurance rate map is part of that process, and well as if there would be requirement of flood insurance.

- Premium rates for insurance are unique to the insured as is the risk associated with the party responsible, factoring in credit scoring. Requiring disclosure of premiums would unfairly make the seller insured's personal information public and would not



REALTOR® - is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®



necessarily be helpful to the buyer whose own personal information would need to be assessed before their flood insurance would be obtained.

- Another determinant of flood insurance is whether there is a mortgage on the property and what amount of coverage the insured chooses to have.

A required disclosure that puts sole reliance on FEMA maps poses a significant liability:

- Historically, FEMA maps are known to be out of date and mandatory disclosures based on this data could open the door to additional legal concerns.
- FEMA maps for Maine being used are from March 2002.

We also have privacy concerns about requiring disclosure of whether *“(4) Any past disaster-related aid was provided related to the property or a structure on the property from federal, state or local sources for the purposes of flood recovery and, if so, the date and amount of each payment”*:

- Such information is not solely determinative of a property's flood risk but instead is a private financial matter based on an individual's circumstances and it is not something to be disclosed.
- The current seller disclosure law provides the potential buyer with enough relevant information to make an informed decision around the property and its value or risk without impeding on seller privacy.

As mentioned, existing law already requires a seller to disclose flood damage to a property. It would be duplicative and confusing to pass LD 2035. A seller's disclosure requirement extends to all known problems with a property – singling out another required disclosure over others implies a greater value of one issue over all others. A one-size-fits-all additional disclosure requirement could pose more harm than good for some properties. Creating an imbalance of focus on flood related issues and devaluing the property based on its other features. Properties who have not historically been prone to flooding under this requirement could face unnecessary stigmatization, making it harder to sell the property, even if mitigation efforts to reduce flood risk have been taken.

We believe that potential purchasers should be informed and educated about all aspects of the property they are considering and support consumer education and choice as it relates to all parties involved in the transaction. At the bottom of this testimony, you will find referenced paragraph 12 entitled “Due Diligence” from the Maine Association of REALTORS® Purchase and Sales Agreement that is filled out by REALTORS® when buyers make an offer to purchase property. Paragraph 12 reminds buyers of the aspects of the property they should investigate, including flood risks and water damage and any defects.

If this Committee finds it preferable to the proposed bill, we would be willing to provide further consumer education by amending our Residential Property Transaction Booklet. This booklet includes a wealth of information for home buyers and REALTORS® give these booklets to buyer clients to assist them as they consider their decision to buy a property. Relevant portions of the booklet include topics such as "Condition of Structure, Systems and Components" and "Environmental Hazards and Issues on the Property and Surrounding Areas" and we would be willing to add an explicit reference to flood risk and damage if that would be helpful.

In addition to concerns regarding seller privacy and inaccurate data reliance, mandatory repetitive disclosures could pose a regulatory burden on an already strained housing market. We do not need additional barriers to housing where protections for buyers are already in place. It's important to find balance in providing valuable resources/education to buyers but also avoiding unintended consequences that could negatively impact property valuation, market dynamics, and the overall efficiency of real estate transactions in our state.

For these reasons, we oppose LD 2035 and respectfully urge you to vote Ought Not To Pass. Thank you for your time and consideration.

---

*Attachments: 33 MRS Sections 171 and 173 as referenced on page 1 of the testimony*

*\*Reference: Paragraph 12 from the Maine Association of REALTORS® Purchase and Sales Agreement:*

12. DUE DILIGENCE: Neither Seller nor Licensee makes any warranties regarding the condition, permitted use or value of Sellers' real or personal property, or any representations as to compliance with any federal, state or municipal codes, including, but not limited to, fire, life safety, electrical and plumbing. Buyer is encouraged to seek information from professionals regarding any specific issue or concern.

☐ Buyer's obligation to close under this Agreement is not subject to any due diligence investigations. Buyer is relying completely upon Buyer's own opinion as to the condition of the property.

☐ Buyer's obligation to close under this Agreement is subject to Buyer's satisfaction with the results of any due diligence investigations undertaken. Buyer shall have \_\_\_\_\_ days from the Effective Date of this Agreement to perform such due diligence investigations as Buyer deems necessary which may include, but are not limited to, any or all of the following:

General Building	Square Footage	Zoning	Survey/MLI	Habitat Review/Waterfowl
Sewage Disposal	Code Conformance	Pests	Lead Paint	Shoreland Septic
Water Quality	Registered Farmland	Pool	Flood Plain	Energy Audit
Water Quantity	Environmental Scan	Insurance	Chimney	Lot Size/Acreage
Air Quality	Smoke/CO Detectors	Mold	Tax Status*	Arsenic Wood/Water (see par 13)

**§171. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1999, c. 476, §1 (NEW).]

**1. Known defect.** "Known defect" means a condition, known by the seller, that has a significant adverse effect on the value of property, significantly impairs the health or safety of future occupants of the property or, if not repaired, removed or replaced, significantly shortens the expected normal life of the premises.

[PL 1999, c. 476, §1 (NEW).]

**2. Seller.** "Seller" means the owner of the residential real property that is for sale, exchange, sale under an installment contract or lease with an option to buy.

[PL 1999, c. 476, §1 (NEW).]

**3. Property disclosure statement.** "Property disclosure statement" means a written disclosure form prepared by a seller pursuant to section 173.

[PL 1999, c. 476, §1 (NEW).]

**4. Purchaser.** "Purchaser" means a transferee in any of the types of transactions described in section 172.

[PL 1999, c. 476, §1 (NEW).]

**5. Real estate contract.** "Real estate contract" means a contract for the transfer of ownership of residential real property by any of the ways described in section 172.

[PL 1999, c. 476, §1 (NEW).]

**6. Residential real property.** "Residential real property" means real estate consisting of one or not more than 4 residential dwelling units.

[PL 1999, c. 476, §1 (NEW).]

**SECTION HISTORY**

PL 1999, c. 476, §1 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular and First Special Session of the 131st Maine Legislature and is current through November 1, 2023. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

**§173. Required disclosures**

Unless the transaction is exempt under section 172, the seller of residential real property shall provide to the purchaser a property disclosure statement containing the following information: [PL 1999, c. 476, §1 (NEW).]

**1. Water supply system.** The type of system used to supply water to the property. If the property has a private water supply, the seller shall disclose:

- A. The type of system; [PL 1999, c. 476, §1 (NEW).]
- B. The location of the system; [PL 1999, c. 476, §1 (NEW).]
- C. Any malfunctions of the system; [PL 1999, c. 476, §1 (NEW).]
- D. The date of the most recent water test, if any; and [PL 1999, c. 476, §1 (NEW).]
- E. Whether the seller has experienced a problem such as an unsatisfactory water test or a water test with notations; [PL 1999, c. 476, §1 (NEW).]

[PL 1999, c. 476, §1 (NEW).]

**2. Insulation.**

[PL 2005, c. 378, §25 (RP); PL 2005, c. 378, §29 (AFF).]

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

- A. The type of heating system or source; [PL 2005, c. 378, §26 (NEW); PL 2005, c. 378, §29 (AFF).]
- B. The age of the heating system or source; [PL 2005, c. 378, §26 (NEW); PL 2005, c. 378, §29 (AFF).]
- C. The name of the company that services the heating system or source; [PL 2005, c. 378, §26 (NEW); PL 2005, c. 378, §29 (AFF).]
- D. The date of the most recent service call on the heating system or source; [PL 2005, c. 378, §26 (NEW); PL 2005, c. 378, §29 (AFF).]
- E. The annual fuel consumption per heating system or source; [PL 2019, c. 37, §1 (AMD).]
- F. Any malfunctions per heating system or source within the past 2 years; and [PL 2019, c. 37, §1 (AMD).]
- G. The date of the most recent inspection of the chimneys and vents for the heating system or source; [PL 2019, c. 37, §2 (NEW).]

[PL 2019, c. 37, §§1, 2 (AMD).]

**3. Waste disposal system.** The type of waste disposal system used on the property. If the property has a private waste disposal system, the seller shall disclose:

- A. The type of system; [PL 1999, c. 476, §1 (NEW).]
- B. The size and type of the tank; [PL 1999, c. 476, §1 (NEW).]
- C. The location of the tank; [PL 1999, c. 476, §1 (NEW).]
- D. Any malfunctions of the tank; [PL 1999, c. 476, §1 (NEW).]
- E. The date of installation of the tank; [PL 1999, c. 476, §1 (NEW).]
- F. The location of the leach field; [PL 1999, c. 476, §1 (NEW).]
- G. Any malfunctions of the leach field; [PL 1999, c. 476, §1 (NEW).]

- H. The date of installation of the leach field; [PL 1999, c. 476, §1 (NEW).]
  - I. The date of the most recent servicing of the system; [PL 1999, c. 476, §1 (NEW).]
  - J. The name of the contractor who services the system; and [PL 1999, c. 476, §1 (NEW).]
  - K. For systems within shoreland zones, disclosures on septic systems required by Title 30-A, section 4216; [PL 1999, c. 476, §1 (NEW).]
- [PL 1999, c. 476, §1 (NEW).]

**4. Hazardous materials.** The presence or prior removal of hazardous materials or elements on the residential real property, including, but not limited to:

- A. Asbestos; [PL 1999, c. 476, §1 (NEW).]
  - B. Lead-based paint for pre-1978 homes in accordance with federal regulations; [PL 2011, c. 96, §5 (AMD).]
  - C. Radon; [PL 2019, c. 234, §1 (AMD).]
  - D. Underground oil storage tanks as required under Title 38, section 563, subsection 6; and [PL 2019, c. 234, §2 (AMD).]
  - E. Methamphetamine; [PL 2019, c. 234, §3 (NEW).]
- [PL 2019, c. 234, §§1-3 (AMD).]

**5. Known defects.** Any known defects; and  
[PL 2017, c. 181, §2 (AMD).]

**6. Access to the property.** Information describing the means of accessing the property by:

- A. A public way, as defined in Title 29-A, section 101, subsection 59; and [PL 2017, c. 181, §3 (NEW).]
  - B. Any means other than a public way, in which case the seller shall disclose information about who is responsible for maintenance of the means of access, including any responsible road association, if known by the seller. [PL 2017, c. 181, §3 (NEW).]
- [PL 2017, c. 181, §3 (NEW).]

## SECTION HISTORY

PL 1999, c. 476, §1 (NEW). PL 2005, c. 339, §3 (AMD). PL 2005, c. 378, §§25,26 (AMD). PL 2005, c. 378, §29 (AFF). PL 2011, c. 96, §5 (AMD). PL 2017, c. 181, §§1-3 (AMD). PL 2019, c. 37, §§1, 2 (AMD). PL 2019, c. 234, §§1-3 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular and First Special Session of the 131st Maine Legislature and is current through November 1, 2023. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.