

# 16

## **ATTORNEY GENERAL'S MODEL LANDLORD-TENANT LEASE**

### **§ 16.1 Attorney General's Model Residential Lease**

### **§ 16.2 Guide to the Model Lease**

In 1989 the Maine Legislature authorized the Attorney General to write and distribute model lease. In 2014, the Maine Human Rights Commission received a grant to modify the lease to raise awareness of issues specific to the Maine Human Rights Act and federal Fair Housing Act.

This latest version of a model lease was developed by the Maine Attorney General and the Maine Human Rights Commission to provide landlords and tenants with an example that is both reasonable and understandable. It is intended as a teaching tool that provides basic information about the law and raises awareness of areas where further research is advisable. It does not include all of the laws applicable to landlords and tenants.

The Attorney General does not guarantee that this model lease accurately reflects current Maine or federal housing laws. If you would like additional information on landlord and tenant rights and obligations go to Chapter 14 of the Attorney General Consumer Law Guide, [www.maine.gov/ag/consumer/consumer\\_law\\_guide.shtml](http://www.maine.gov/ag/consumer/consumer_law_guide.shtml) or contact us at:

Office of the Attorney General  
Consumer Protection Division  
Consumer Information & Mediation Service  
6 State House Station  
Augusta, Maine 04333-0006  
Phone: 800-436-2131 or 207-626-8849

[https://www.maine.gov/ag/consumer/complaints/complaint\\_form.shtml](https://www.maine.gov/ag/consumer/complaints/complaint_form.shtml)

## § 16.1 Attorney General's Model Residential Lease

### SAMPLE MAINE RESIDENTIAL LEASE

#### 1. PARTIES TO THIS LEASE

The parties to the lease are:

LANDLORD

TENANT

Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

Telephone \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

#### 2. MANAGING AGENT

If the landlord employs an agent to manage this residence, the agent is:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

#### 3. RESIDENCE LOCATION

This residence is a house \_\_\_\_\_, apartment \_\_\_\_\_, mobile home \_\_\_\_\_ (check one).

It is located at:

\_\_\_\_\_

\_\_\_\_\_ ME (Zip): \_\_\_\_\_

Floor: \_\_\_\_\_ Apartment number: \_\_\_\_\_

#### 4. LENGTH OF LEASE

The landlord will rent this residence to the tenant for \_\_\_\_\_ months. This term shall begin on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at noon and end on \_\_\_\_\_.<sup>1</sup>

<sup>1</sup> The lease can specify that it ends on a date certain. If the parties continue their landlord tenant relationship after the lease expires without executing a new lease, it becomes a "month to month" tenancy and either party can terminate with 30 days written notice. See 14 M.R.S. § 6002 for laws specific to month to month tenancies.

5. RENT PAYMENTS

- A. *Rental Amount.* The rent for this residence is \$ \_\_\_\_\_ a month. The tenant shall pay the rent for each month on the \_\_\_\_\_ day of that month.
- B. *Paying the Rent.* The rent should be paid to:\_\_\_\_\_. The landlord may assess a penalty of \_\_\_\_\_% (up to 4%) of the monthly rent once payment is 15 or more days late.<sup>2</sup>
- C. *Additional Charges.* In addition to the monthly rent, the tenant also agrees to pay the landlord the following charges (describe the reason for the charge, the amount, and when it should be paid):

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6. SECURITY DEPOSIT

- A. *Amount of Security Deposit.*<sup>3</sup> The tenant has agrees to pay the landlord \$ \_\_\_\_\_ as a Security Deposit. (enter amount not to exceed two months' rent). The landlord will keep the Security Deposit separate from the landlord's own money.
- B. *Return of the Security Deposit.* The landlord will return the entire Security Deposit to the tenant at the end of the lease if the following conditions are met:
  - (1) The apartment is in good condition except for (a) normal wear and tear or (b) damage not caused by the tenant, the tenant's family, invitees or guests;
  - (2) The tenant does not owe any rent or utility charges which the tenant was required to pay directly to the landlord; and
  - (3) The tenant has not caused the landlord expenses for storage and disposing of unclaimed property.

If the landlord deducts money from the tenant's Security Deposit, the landlord will provide the tenant a list of the items for which the tenant is being charged and return to the tenant the balance of the Security Deposit.

The landlord will return the Security Deposit, or the remaining balance, to the tenant no more than thirty (30) days after the tenancy ends.

<sup>2</sup> The penalty for late payment of rent is set forth in the law. See 14 M.R.S. §6026. Rent increases are also subject to legal limits. See 14 M.R.S. §§ 6015-6016.

<sup>3</sup> The provisions governing security deposits are legal requirements found in 14 M.R.S. §§ 6022, 6031 through 6038. These provisions do not apply to buildings with 5 or fewer units one of which is owner occupied.

7. SERVICES PROVIDED BY THE LANDLORD

Utilities and services shall be paid by the parties as follows (examples listed)

UTILITIES / SERVICES <sup>4</sup>	LANDLORD	TENANT
Electricity <sup>5</sup>	_____	_____
Heating Oil	_____	_____
Natural Gas	_____	_____
Sewerage	_____	_____
Trash Removal	_____	_____
Yard Maintenance	_____	_____
Snow Removal	_____	_____
Air Conditioning	_____	_____
Hot Water	_____	_____
Cold Water	_____	_____
Telephone	_____	_____
Cable Television	_____	_____
Internet Services	_____	_____

The landlord will also provide the following services:

\_\_\_\_\_

\_\_\_\_\_

8. FURNISHINGS PROVIDED BY THE LANDLORD: (these are examples not legal requirements)  
 Included are stove, refrigerator, drapes, smoke alarms, cable boxes, etc.

9. TENANT RESIDENTIAL RESPONSIBILITIES

- A. *Use Only as a Residence.* The tenant agrees that the residence will be used only as a residence, except for incidental use in trade or business (such as telephone solicitation of sales or arts and crafts created for profit). Such incidental uses will be allowed as long as they do not violate local zoning laws or affect the landlord’s ability to obtain fire or liability insurance. The total number of persons residing in this residence cannot exceed \_\_\_\_\_.

<sup>4</sup> If the Landlord is responsible for heat under the lease, he or she must maintain a reasonably healthful indoor temperature in the unit. 14 M.R.S. § 6021(6). If the tenant is responsible for utilities under the lease, he or she has the right to request information about the unit’s energy efficiency. 14 M.R.S. § 6030-C.

<sup>5</sup> There are laws that govern heat and utilities in common areas and the tenant’s right to pay utilities and offset the rent if the Landlord fails to pay as agreed. 14 M.R.S. §§ 6024-6024-A.

- B. *Damage.* The tenant agrees not to damage the apartment, the building, the grounds or the common areas or to interfere with the rights of other tenants to live in their apartments in peace and quiet. Damage (other than normal wear and tear) caused by the tenant, the tenant's family, invitees, service animal or guests shall be repaired by the tenant at the tenant's expense. Upon the tenant's failure to make such repairs the landlord, after reasonable written notice to the tenant, may make the repairs and the tenant shall be responsible to the landlord for their reasonable cost.
- C. *Alterations.* No alteration, addition or improvement to the residence shall be made by the tenant without the prior written consent by the landlord.<sup>6</sup>
- D. Tenant agrees to promptly notify the landlord if he knows, or suspects, an infestation of bedbugs in the unit and agrees to cooperate with the Landlord and any pest control agent to remediate<sup>7</sup>

#### 10. LANDLORD RESIDENTIAL RESPONSIBILITIES<sup>8</sup>

- A. *Legal Use Of The Residence.* The landlord agrees not to interfere with the tenant's legal use of the residence.
- B. *Residence Must Be Fit To Live In.*<sup>9</sup> The landlord promises that the residence: (1) complies with applicable housing codes; (2) is fit to live in<sup>10</sup>; and (3) is not dangerous to the life, health or safety of the occupants. The landlord agrees to: (insert list that parties agree to such as)
- a. maintain structural components, such as roofs, floors, and chimneys in reasonably good repair
  - b. maintain dwelling in a reasonably weather tight condition
  - c. provide adequate keys and locks
  - d. keep common areas such as lobbies and stairwells clean and free of hazards
  - e. keep electrical, plumbing and heating systems in good repair and maintain any appliances which are provided with the rental.
  - f. test for radon<sup>11</sup>
- C. Landlord agrees to the following accommodations for tenant's disability (insert list)<sup>12</sup>

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<sup>6</sup> Landlords must accommodate persons with disabilities in accordance with 5 M.R.S. §4582-A.

<sup>7</sup> Both tenant and landlord are required to comply with the Maine Bedbug Law 14 M.R.S. §6021-A.

<sup>8</sup> Landlords need to be aware that the law prohibits discriminating against tenants based on race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin, familial status or recipients of government assistance. This includes asking certain questions, or making discriminatory statements, related to protected class status 5 M.R.S. §4581-A.

<sup>9</sup> Instead the landlord and the tenant may agree in writing that the landlord will pay a specified reduction in rent and in exchange the tenant will accept specified conditions that may violate the warranty of fitness for habitation. 14 M.R.S. §6021(5).

<sup>10</sup> Under certain limited circumstances tenants may make repairs and deduct the cost from the rent. See 14 M.R.S. §6026. This law does not apply to buildings with 5 or fewer units on of which is occupied by the landlord.

<sup>11</sup> Landlord is legally required to do radon testing in certain circumstances. See 14 M.R.S. § 6030-D for more information.

<sup>12</sup> Landlord must make reasonable accommodations for tenant's disabilities see 5 MRS §4582-A for more information. .

## 11. LANDLORD ENTRY INTO THE RESIDENCE

Except for emergencies, the landlord may enter the apartment only during reasonable hours and after obtaining the tenant's consent at least 24 hours in advance. The tenant may not unreasonably withhold consent to the landlord to enter the residence.<sup>13</sup>

## 12. BUILDING RULES

The tenant agrees to obey the following rules: (these are examples not legal requirements)

1. No smoking<sup>14</sup>
2. No pets (note service animals are not pets)<sup>15</sup>
3. No parking, storage or accumulation of debris on the lawn/yard
4. No candle burning
5. Keep premises in a sanitary condition
6. Maintain reasonable peace and quiet.

## 13. NOTIFYING THE LANDLORD OR TENANT

A. *Notices to the tenant.* Unless otherwise required in this lease or by law, any notice from the landlord to the tenant will be valid only if:

- (1) it is in writing; and
- (2) it is addressed to the tenant at the residence and personally delivered to the tenant's residence or sent by mail. The effective date of a notice will be the day it is personally delivered to the residence or, if it is mailed, two days after the date it is postmarked.

B. *Notices to the landlord.* Unless otherwise required in this lease or by law, the tenant will give all required notices to the landlord in writing, delivered personally or sent by mail to the landlord or, if appropriate, to the landlord's managing agent at the address given in this lease. The effective date of a notice will be the day it is personally delivered to the residence or, if it is mailed, two days after the date it is postmarked.

## 14. SUBLEASING

The tenant agrees not to sublease or assign this residence without the prior written consent of the landlord.

## 15. OCCUPANTS

The residents listed below shall be the sole occupants of the leased premises:

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<sup>13</sup> Access to the rented premises is governed by 14 M.R.S. §6025.

<sup>14</sup> Written notice of the smoking policy has to be provided to tenants. 14 MRS § 6030-E.

<sup>15</sup> Service animals must be allowed. For more information on service animals, see 5 M.R.S. § 4582-A(3).

16. PETS<sup>16</sup>

The tenant may \_\_\_\_\_ may not \_\_\_\_\_ (check one) maintain pets in the residence. If the tenant is allowed to have pets, only the following pets may live in the residence:

\_\_\_\_\_  
\_\_\_\_\_

17. CONDITION OF RESIDENCE AT THE TIME LEASE IS SIGNED

Prior to signing this lease the landlord and the tenant did \_\_\_\_\_ did not \_\_\_\_\_ (check one) inspect together the residence. If they did inspect the residence, their findings were as follows:

A. *Residence defects.* The following substantial defects were observed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. *Landlord work or repairs.* The following work or repairs to be done by the landlord were agreed upon:<sup>17</sup>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. *Tenant work or repairs.* The following work or repairs to be done by the tenant were agreed upon (indicate whether tenant or landlord is responsible for the expense):<sup>18</sup>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. *Conditions that will remain unchanged.* The following residential conditions were agreed would remain unchanged:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>16</sup> Service animals are not pets and cannot be subject to a pet policy including limitations on weight, breed or additional security deposits and insurance.

<sup>17</sup> Whenever repairs or renovations are made to a unit built before 1978 the landlord must give lead paint notices as provided in 14 M.R.S. §6030-B.

<sup>18</sup> Tenants with disabilities must be allowed to make alterations to reasonably accommodate them. The tenant can be required to pay for them and can be required to remove them at the end of the tenancy. 5 M.R.S. § 4582-A(1).

18. WHEN THE LEASE ENDS

When the lease ends, the tenant agrees to return the residence in the same condition as it was at the start of the lease, except for normal wear and tear and except for those inspection items which were noted at the time this lease was signed and not repaired. The tenant will have to pay for damage to the residence only if the damage was caused by the tenant or the tenant’s family, invitees, service animal or guests. The tenant shall remove all personal property<sup>19</sup> and return the keys.

19. BREACH

Any violations of the provisions of this agreement by the Tenant will be deemed breach of the lease and the Landlord may pursue legal remedies including an action to evict the tenant.<sup>20</sup>

If the Landlord violates any provisions of this lease, the tenant may sue to enforce its terms. By signing this lease the tenant does not waive any rights he has under the law.

20. SIGNATURES

The tenant and landlord have each received identical copies of the lease, (including the smoking policy) each copy signed and dated by both landlord and tenant.

_____	_____
(date)	(tenant)
_____	_____
(date)	(tenant)
_____	_____
(date)	(landlord)

<sup>19</sup> If the tenant leaves personal property on the premises, the landlord must follow 14 M.R.S. § 6013 to remove it.

<sup>20</sup> If it becomes necessary to resort to legal action the landlord and the tenant should consult lawyers. The Attorney General’s Office cannot give legal advice. The eviction process is governed by 14 M.R.S. § 6001-6008 and Maine Rule of Civil Procedure 80 D. It requires certain notice to the tenant, a court filing served on the tenant by the sheriff and a hearing. The tenant should appear at the hearing and may assert defenses such as the landlord breached the warranty of habitability or is evicting the tenant in retaliation for complaining about code violations. The landlord must follow the legal eviction procedure and cannot force the tenant out by changing the locks or removing the furniture etc. See the Attorney General’s Guide to Landlord Tenant Law for more information on the laws governing evictions.



## § 16. 2. Guide to the Model Lease

This section briefly describes the key provisions of this model lease and the most relevant Maine landlord-tenant laws.

### A. Lease Sections 1-2: Parties To This Lease

The names and mailing addresses of the landlord, tenant and managing agent, if any, are entered here.

### B. Lease Section 3: Residence Location

This lease can be used for any residence: house, apartment, mobile home, etc. If the residence is an apartment then the apartment number and floor should be noted.

### C. Lease Section 4: Length Of Lease

This section establishes the **Initial Rental Period** the tenant has a right to occupy the premises. During this lease term, assuming the tenant does not breach the lease, the landlord may not increase the rent *nor* evict the tenant. On the other hand, if the tenant is evicted for breach of the lease or leaves the residence before the end of the lease term then the tenant will be responsible for however many months of rent remain unpaid and also for any damage to the premises.<sup>21</sup> If the tenant does unjustifiably move before the lease has expired the landlord must make a good faith effort to find a new tenant to rent the premises. The amount of rent this new tenant pays will then be subtracted from the amount the departing tenant owes.<sup>22</sup>

If the tenant stays beyond the end of the lease the tenant becomes a “month-to-month” tenant. This is called a “tenancy at will;” Maine law provides the tenant certain rights. For example, the landlord cannot *increase the rent* or *evict* the tenant without giving the tenant written notice of at least *45 days*.<sup>23</sup> This 45-day notice must expire on or after the date through which rent has been paid. Either the landlord or the tenant can end this “month-to-month” lease by giving *30 days* written notice.<sup>24</sup>

If the “month-to-month” tenant (1) causes or allows substantial damage to the residence, or (2) causes a nuisance in the residence, or (3) causes or allows the residence to become unfit for habitation, or (4) violates or permits a violation of the law regarding his occupancy (*e.g.*, running an illegal business in the residence), or (5) is 14 days or more behind in paying rent, then the landlord can end the lease with only *7 days* notice to the tenant.<sup>25</sup> However, if the eviction is due to late rent then this 7-day eviction notice is revoked if the tenant pays the full amount before the 7 days are up.

The landlord’s eviction notice must explain the reasons for eviction.<sup>26</sup>

In general, when a tenant becomes a “month-to-month” tenant all the terms of this model lease remain in effect, except for terms that are in conflict with the State law regulating a tenancy at will (*e.g.*, if the expired lease had set forth other eviction procedures than those discussed above).

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<sup>21</sup> 14 M.R.S. § 6010.

<sup>22</sup> 14 M.R.S. § 6010-A.

<sup>23</sup> 14 M.R.S. § 6015.

<sup>24</sup> 14 M.R.S. § 6002.

<sup>25</sup> 14 M.R.S. § 6002.

<sup>26</sup> 14 M.R.S. § 6002(1-2).

Whenever a tenant refuses to leave once the lease ends or the “month-to-month” tenancy ends, after the required 30 days’ notice, then the tenant is responsible for any unpaid rent and damages. The amount of rent owed will be calculated as a *pro rata* share of the regular monthly rent. For example, if the monthly rent is \$300 and the tenant stayed 6 days beyond the end of the lease then the tenant would owe the landlord \$60 in unpaid rent.

The landlord can bar the a “month-to-month” tenant at the end of the lease by informing the tenant in writing at least 30 days before the end of the Initial Rental Period. If this happens the tenant must leave the residence no later than the last day of the Initial Rental Period.

### ***E. Lease Section 5: Rent Payments***

The monthly rent should be entered here. If the landlord intends to make additional charges, these should be separately stated in Lease Section 5(C). For instance, the landlord may charge a proportionate amount of the heating bill to the tenant. The determination of the tenant’s fair share and the date that it is due should be separately stated.

If there is a late charge, it must be stated in Lease Section 5(B). Late fees should be no more than a reasonable estimate of the landlord’s damages caused by late payment. Maine law requires the landlord to inform a tenant of any late fee, in writing, at the time the landlord and tenant enter into a rental agreement. The late fee *cannot exceed* 4% of one month’s rent and cannot be charged until the rent payment is 15 days late.<sup>27</sup>

Landlords are required by statute to provide written receipts for each rental payment and each security deposit payment received partially or fully in cash from the tenant. This receipt should include the following information: the date of the payment; the amount paid; the name of the party for whom the payment is made; the period for which payment is being made; a statement that the payment is either for rent or for security deposit; the signature of the person receiving the payment; and the name of that person printed in a legible manner. A rent card retained by the tenant and containing the above information will satisfy these requirements.<sup>28</sup>

*Please Note: These rent payment laws do not apply if the building has five or fewer apartments, one of which is occupied by the landlord.*

### ***F. Lease Section 6: Security Deposits***

Lease Section 6 describes the tenant’s “security deposit.” Landlords often require their tenants to make an initial “security deposit” payment that will protect them against unpaid rent or damage to the residence caused by their tenant. Pursuant to 14 M.R.S. Chapter 710-A, Security Deposits on Residential Rent Units, this security deposit must be returned to the tenant unless the tenant has failed to pay the rent due or caused damage to the residence beyond “normal wear and tear.” (The phrase “normal wear and tear” does not include conditions corrected by routine cleaning or painting.) Here is part of the definition found at 14 M.R.S. § 6031(1):

“Normal wear and tear” means that deterioration which occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of his household or their invitees or guests. The term “normal wear and tear” does not include sums or labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash.

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<sup>27</sup> 14 M.R.S. § 6028.

<sup>28</sup> 14 M.R.S. § 6022.

The landlord may keep all or part of the deposit and use it to pay for damages caused by the tenant's carelessness, accidents or neglect. The landlord cannot unjustly refuse to return the tenant's deposit. The tenant can sue the landlord in Small Claims Court for the return of a deposit not properly returned.

*Please Note:* This model lease allows the landlord to also deduct from the security deposit charges the tenant has specifically agreed to pay<sup>29</sup> and the costs of storing and disposing of unclaimed property.

Landlords may also accept a surety bond instead of a security deposit.<sup>30</sup>

Maine has also enacted the following additional statutory protections for security deposits:

- (1) A landlord may not make the tenant pay a security deposit of greater than an amount equal to two months rent.
- (2) The landlord must keep the tenant's security deposit in a bank account separate from the landlord's other funds and protected in case of bankruptcy, foreclosure or sale of the building. The landlord is not statutorily required to pay the tenant interest on it. The tenant has the right to request the bank location and account number in which the security deposit is being held.
- (3) The landlord is required to return the tenant's security deposit, or provide a written statement for the reasons for keeping the deposit, within twenty-one days if the tenant is a tenant-at-will. If the tenant is still within the initial term of the written lease<sup>31</sup> this period can be extended for as long as thirty days.
- (4) If the landlord fails to return the tenant's security deposit, or refuses to supply the tenant with a written statement as to why the tenant's money is being held, the landlord gives up all legal rights to withhold any part of it.
- (5) In order to receive back the security deposit the tenant should notify the landlord by certified mail that the tenant intends to bring a legal action after seven days. The landlord must return the whole deposit within the seven days in order to avoid a lawsuit.
- (6) If the landlord willfully refuses to return the deposit and fails to provide the required itemized explanation, then the landlord can be held liable for double damages, reasonable attorney's fees, and court costs.<sup>32</sup>
- (7) If the landlord transfers ownership in the apartment building before the end of this lease the landlord must also transfer the security deposit to the new owner of the building.<sup>33</sup>

*Please Note:* The Maine security deposit law does not apply to buildings of five apartments or fewer, one of which is occupied by the landlord. Still, it is a breach of your lease (contract) with the landlord if the landlord improperly refuses to return your security deposit.

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<sup>29</sup> See Lease Section 5(C).

<sup>30</sup> 14 M.R.S.A. §§ 6031, 6039.

<sup>31</sup> See Lease Section 4(A).

<sup>32</sup> 14 M.R.S.A. § 6031-6038.

<sup>33</sup> 14 M.R.S.A. §6035.

### *G. Lease Section 7: Services Provided By the Landlord*

Lease Section 7 details the landlord and tenant's responsibilities for utilities. Landlords may not charge a tenant for electricity to the common areas or areas not within the tenant's residence (e.g., electricity for the building's hot water heater). This restriction can be waived if both parties have agreed in writing that the tenant will pay for such costs in return for a specific reduction in rent or other fair consideration, which approximates the actual cost of electricity to the common areas.<sup>34</sup>

Pursuant to Maine law the landlord generally cannot deny tenants in residences with more than one living unit access to cable television service.<sup>35</sup>

In cases where the landlord assumes responsibility for utilities, a disconnect cannot occur until the utilities company notifies the tenant and allows the tenant the opportunity to assume responsibility for future service. Tenants cannot be forced to pay utility charges which are the landlord's responsibility. Any tenant assuming responsibility for future service, and paying the utility, may deduct the amount paid from any amount due the landlord.<sup>36</sup>

If the landlord agrees to provide heat for the residence the Maine law requires that:

- (1) The landlord maintains an indoor temperature which is not so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;
- (2) The residence's heating facilities must be capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; and
- (3) The heating facilities are operated so as to protect the building equipment and systems from freezing.<sup>37</sup>

If a landlord fails to pay for a utility service which is in the name of the landlord, then the tenant can pay for the utility service and deduct the amount paid from the rent due the landlord.<sup>38</sup>

However, in return for a specific reduction in an apartment's current rent, a landlord and a tenant can enter into a specific written agreement which must be separate from their lease agreement, to maintain an indoor temperature between 62 and 68 degrees. Such reduced heat agreements cannot be entered into if anyone under the age of 5 or over the age of 65 resides in the rental unit. The law authorizing such agreements, 14 M.R.S. § 6021(6-A) reads as follows:

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<sup>34</sup> 14 M.R.S. § 6024.

<sup>35</sup> 14 M.R.S. § 6041.

<sup>36</sup> 14 M.R.S. § 6024-A; 35-A M.R.S. §§ 704-706

<sup>37</sup> 14 M.R.S. § 6021(6).

<sup>38</sup> 14 M.R.S. § 6024.

**6-A. Agreement regarding provision of heat.** *A landlord and tenant under a lease or a tenancy at will may enter into an agreement for the landlord to provide heat at less than 68 degrees Fahrenheit. The agreement must:*

- A. Be in a separate written document, apart from the lease, be set forth in a clear and conspicuous format, readable in plain English and in at least 12-point type, and be signed by both parties to the agreement;*
- B. State that the agreement is revocable by either party upon reasonable notice under the circumstances;*
- C. Specifically set a minimum temperature for heat, which may not be less than 62 degrees Fahrenheit; and*
- D. Set forth a stated reduction in rent that must be fair and reasonable under the circumstances.*

*An agreement under this subsection may not be entered into or maintained if a person over 65 years of age or under 5 years of age resides on the premises. A landlord is not responsible if a tenant who controls the temperature on the premises reduces the heat to an amount less than 68 degrees Fahrenheit as long as the landlord complies with subsection 6, paragraph B or if the tenant fails to inform the landlord that a person over 65 years of age or under 5 years of age resides on the premises.*

## **H. Lease Section 8: Furnishings Provided by the Landlord**

This section outlines any furnishings provided by the landlord.

## **I. Lease Section 9: Tenant Residential Responsibilities**

Lease Section 9 describes the uses the tenant can make of the residence and the tenant's obligation not to misuse the residence.

Unless differently agreed to the tenant can use the residence only as a residence and for incidental business activities (e.g., telephoning, making arts and crafts). Even these incidental activities will not be allowed if local zoning ordinances do not allow them.

If the tenant damages the apartment and does not repair it the landlord can make the necessary repairs and then charge the tenant.

All alterations to the residence must be approved.

*Please Note:* Under the federal Fair Housing Act persons with disabilities have a right to make reasonable modifications.

### *J. Lease Section 10: Landlord Residential Responsibilities*

Lease Section 10(A) prohibits the landlord from interfering with the tenant's legal use of the residence.

Lease Section 10(B) requires the landlord to keep the residence safe and habitable. This parallels the Maine statutory Warranty of Habitability. Under this statute all Maine landlords are prohibited from renting dwellings that are unfit for human habitation. All residences must be reasonably safe and decent places to live.<sup>39</sup> If a rented residence is unfit or unsafe to live in, the tenant can force the landlord to fix the problem by taking the landlord to court. For the tenant to win such a case the following requirements must be followed *exactly*:

- (1) The condition complained of must be a serious one; it must be one that makes the residence unsafe or unhealthy (*e.g.*, broken windows, toilet malfunctions, rotting stairs, electrical hazards, oil burner problems, leaks in ceiling).
- (2) The condition must not be one, which was caused by the tenant or the tenant's family.
- (3) The tenant must have given the landlord reasonably prompt written notice of the problem and also have allowed a reasonable amount of time for the problem to be fixed.
- (4) The tenant must be fully up-to-date in rent payments at the time the tenant gives the landlord written notice.

There are specific protections for tenants faced with bedbugs.<sup>40</sup>

If the landlord does not repair the unsafe or unhealthy condition within a reasonable time after written notice, the tenant should talk to an attorney about going to court. The judge may order that the tenant's rent be lowered, that the tenant receive a partial rent rebate, or that the landlord fix the dwelling. *Warning*: the law states that a tenant can sign away the right to complain about certain conditions.<sup>41</sup> For example, the tenant may negotiate a written lease that charges a lower rent in return for the landlord not supplying heat.<sup>42</sup>

The landlord *cannot* increase your rent if your rental unit violates this warranty of habitability.<sup>43</sup>

**Withholding of Rent.** Generally, state law does *not* permit tenants to withhold rent. If the tenant believes the landlord has breached the warranty of habitability then the tenant's usual remedy is to go to court and seek relief. However, if the landlord has breached the warranty of habitability and the reasonable cost of repairing the residence is less than \$250 or an amount equal to one half of the tenant's monthly rent, whichever is greater, the tenant can notify the landlord *in writing* of the tenant's intention to correct the condition at the landlord's expense.

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<sup>39</sup> 14 M.R.S. § 6021.

<sup>40</sup> 14 M.R.S. §6001 (1-A).

<sup>41</sup> 14 M.R.S. § 6021(4)(B).

<sup>42</sup> 14 M.R.S. §6021 (5).

<sup>43</sup> 14 M.R.S. § 6016.

If the landlord fails to comply within 14 days after being notified by the tenant, *or as promptly as conditions require in case of emergency*, the tenant may arrange to have the repairs made. After submitting to the landlord an itemized statement of the tenant's expenses in making a repair, the tenant may deduct from the rent the reasonable cost of the repairs. For example, the tenant can hire a licensed oil burner repairperson to come in and fix the oil burner if the apartment is without heat. This statute can also be applied to the cost of buying oil if the landlord has allowed the oil to run out.

*Please Note: This right to repair and then deduct the cost from the rent the tenant owes does not apply if the residence is an owner-occupied building of five (5) or less dwelling units.*<sup>44</sup> Tenants deducting rent pursuant to this statute should first read the statute carefully and make certain all requirements are met.

If a landlord fails to pay for utility services (such as gas, electricity, water or telephone) that are in the name of the landlord, the tenant may pay for the utility service and deduct the amount paid from the rent due to the landlord.<sup>45</sup>

### ***K. Lease Section 11: Landlord Entry Into The Residence***

Lease Section 11 parallels current requirements of State law. This section allows the landlord to enter the residence at a reasonable time after giving the tenant reasonable notice and obtaining the tenant's permission. Tenants cannot unreasonably withhold their permission. Except in the case of an emergency or if it is impractical to do so, the landlord must give the tenant reasonable notice of intent to enter. Twenty-four (24) hours is presumed to be a reasonable notice.

The landlord is allowed to enter the rental unit in order to make necessary or agreed-upon repairs, alterations, improvements, or to show or inspect the apartment. If the landlord makes an illegal or unauthorized entry or makes repeated demands for entry which have the effect of harassing, the tenant can recover actual damages or \$100 whichever is greater, obtain an injunction and the tenant's reasonable attorney's fees.<sup>46</sup>

### ***L. Lease Section 12: Building Rules***

All landlord-building rules must be in writing and a copy given to the tenant. These rules can deal with such issues as parties, snow removal, parking, etc.

### ***M. Lease Section 13: Notifying the Landlord or Tenant***

This section does *not* require that the tenant be personally handed this notice, only that it be delivered to the residence. If notice is mailed it is effective 2 days after the postmark

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<sup>44</sup> 14 M.R.S. § 6026.

<sup>45</sup> 14 M.R.S. § 6024-A; 35-A M.R.S. § 706.

<sup>46</sup> 14 M.R.S. § 6025.

### *N. Lease Section 14: Subleasing*

Subleasing is only allowed if the landlord agrees in writing. Consent cannot be withheld without good reason. A tenant who sublets his or her apartment is still responsible to the landlord for all the rent, which is due under the lease and for any damage by the people subletting or their guests.

### *O. Lease Section 15: Occupants*

This section allows the parties to limit the persons who actually reside in the leased premises.

### *P. Lease Section 16: Pets*

This section allows the parties to agree on whether pets will be allowed to live in the residence. Service animals are **not** considered pets under Maine law.

### *Q. Lease Section 17: Conditions of Residence at the Time Lease is Signed*

Tenants should carefully inspect the residence before signing the lease and list all defects. This inspection will protect the tenant and the landlord from disagreements at the end of the lease as to which defects were present when the lease began and which defects were caused by the tenant.

### *R. Lease Section 18: When the Lease Ends*

This section outlines the manner in which the residence will be returned to the landlord.

Abandoned Property. Pursuant to 14 M.R.S. § 6013, property is considered abandoned if it is left on the premises after the tenant has vacated or terminated and has not claimed it within fourteen days after written notice (first class mail with proof of mailing) has been sent to the tenant's last known address. State law outlines the manner in which a landlord must deal with abandoned property including providing notice to the former tenant, proper storage of the items and return to the owner within specified timeframes before being sold by the landlord.



(2) *Property Worth More Than \$750*

Abandoned property valued over \$750 must be reported to the State Treasurer.<sup>47</sup> The Treasurer may authorize the landlord to sell the property.<sup>48</sup>

***S. Lease Section 19: Breach***

This section outlines the remedies for breach of contract.

Eviction. If the tenant is still within the initial rental period, then this section allows the landlord to evict only if the tenant substantially breaches the lease or fails to leave at the end of the lease. The landlord is required to inform the tenant in writing of the lease violation and to give the tenant notice that the tenant has 10 days to correct the violation (e.g., stop-having parties that disturb other tenants). If the tenant fails to correct the violation the landlord will send a second notice informing the tenant that the lease will end in 30 days. At that point, if the tenant has not left, the landlord can go to court and seek an order evicting the tenant.

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<sup>48</sup> 33 M.R.S. § 1818(2).

If the tenant is 14 days late with the rent, the landlord can end the lease with only 7 days' notice for failure to pay rent. However, if the tenant pays before the 7-day period expires the lease does not end. Tenants at will (tenants without a lease) can be evicted if they are 7 days late with their rent.<sup>49</sup> However, this model lease will continue to allow the tenant to be 14 days late before the lease is considered breached. Of course, if the initial lease term expires and the tenant becomes a month-to-month tenant, the landlord can terminate the tenancy if the tenant is 7 days late in paying rent. The lease can be terminated immediately and without prior warning if the tenant's actions are dangerous to other persons or the physical structure of the building.

No matter what the reason for the termination of the lease, the landlord must notify the tenant in writing why the lease is being terminated and what the tenant's rights are if a court eviction proceeding is commenced (a "Forcible Entry and Detainer" action).

If the initial lease term has expired and the tenant has become a month-to-month tenant, then the landlord must adhere to the State statutes regulating month-to-month tenancies ("tenancies-at-will"). This means the landlord must give the month-to-month tenant a full thirty days notice before requiring the tenant to leave the apartment. But the landlord does not have to have a reason for the eviction. The eviction notice must be made regulating month-to-month tenancies. This means the landlord must give the month-to-month tenant a full 30 day notice before requiring the tenant to leave the apartment. But the landlord does not have to have a reason for the eviction. The eviction notice must be made to expire upon a rent day. Similarly, if the month-to-month tenant decides to leave the apartment the tenant must give the landlord a full 30 day notice before moving out.<sup>50</sup> Remember, under this model lease if the tenant stays after the end of the initial rent period the tenant is automatically converted into a month-to-month tenant (a tenancy-at-will) and at that point both parties must usually give a full thirty days notice before ending the tenancy.

If the tenant has become a month-to-month tenant then Maine law allows the landlord to end the tenancy with only 7 days notice (instead of 30 days notice) for the following acts:

- (a) The tenant has caused substantial damages to the apartment;
- (b) The tenant has caused or permitted a nuisance within the residence;
- (c) The tenant has caused or permitted the residence to become unfit for human habitation;
- (d) The tenant has violated or permitted a violation of the law regarding his occupancy of the residency (e.g., conducting an illegal business in the residence); or
- (e) The tenant is 7 days or more behind in rent (however, the lease will not end if the tenant pays before the 7 days expire).

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<sup>49</sup> 14 M.R.S. § 6002(2).

<sup>50</sup> 14 M.R.S. § 6002.

The landlord must give the month-to-month tenant specific written notice, listing the specific reasons why the landlord is terminating the tenancy without a full thirty days notice. If the reason for the eviction is that the tenant is 7 or more days behind in rent, then the notice must state that if the tenant pays the rent owed within 7 days after the tenant has received the notice, the tenant will not have to leave.<sup>51</sup> The notice must also include the following:

After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated.

In other words, if the tenant pays all back rent and the landlord's eviction expenses (filing fees, the cost of serving you with the eviction complaint, but not the landlord's attorney fees), then the tenant will not be evicted.

It is also important to remember that if a month-to-month tenant has not been evicted and decides to leave the apartment anyway, the tenant must give the landlord a full thirty days written notice before the day the rent is due of the tenant's intention to leave. If the tenant does not, then the landlord may keep the security deposit for unpaid rent. For example, if the tenant gives only 14 days notice then the tenant could be charged for the next month's rent. Of course, the landlord has a duty to make every effort to find a new renter as soon as practicable.<sup>52</sup> If a new renter is quickly installed the tenant who failed to give 30 days notice would only have to pay a pro rata share of the next month's rent.

Forcible Evictions. Maine law does provide tenants limited protection against unfair and unreasonable evictions. Whether the tenant has a written lease or a verbal agreement (month-to-month tenancy), the tenant cannot be forcibly thrown out of a rental unit without first receiving a written "Notice To Quit" and a court order. No landlord has the right to break into the tenant's home, move the tenant's belongings, lock the tenant out of the home or turn off the heat or utilities. Law enforcement officers (*i.e.*, the local police or the county sheriff) are the only persons who can legally remove the tenant and the tenant's property and then only after (a) a District Court hearing has been held and the tenant has had a chance to be heard in that court hearing; and (b) a court judgment, specifying an eviction date, has been awarded to the landlord.<sup>53</sup>

Once the tenant receives the eviction notice, the tenant has the right to a court hearing. Sometime after the expiration of the written Notice To Quit and at least seven days before the eviction hearing, the tenant will receive a summons from a deputy sheriff to appear in District Court for the hearing.<sup>54</sup>

Once the tenant receives this summons the tenant should seek legal advice. The eviction hearing is generally referred to as a "forcible entry and detainer action" (FED). It is at this hearing that the tenant will receive the only chance to disprove the landlord's claim of breach of lease (*e.g.*, unpaid rent, damage to the apartment, uninhabitable<sup>55</sup>, etc.) as stated in this seven day notice.

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<sup>51</sup> 14 M.R.S. § 6002(1).

<sup>52</sup> 14 M.R.S. § 6010-A.

<sup>53</sup> 14 M.R.S. §§ 6003-6005.

<sup>54</sup> 14 M.R.S. §§ 6001-6016.

<sup>55</sup> 14 M.R.S. § 6002(3).

Once the judge has reached a decision, either side has ten business days to appeal the decision. After the time for the appeal ends, if the decision favors the landlord, the court will issue a “Writ of Possession” giving the local police or the sheriff the power to remove the tenant from the property. If a tenant fails to leave the residence within 48 hours after being served with the Writ of Possession then the tenant becomes a trespasser and the tenant’s goods are considered abandoned property.<sup>56</sup>

*Please Note:* Maine law does *not* prohibit evictions during the winter months.

Maine law levies stiff penalties for illegal evictions. Illegal evictions include but are not limited to, the following:

- (a) The landlord interrupts the tenant’s vital utilities (heat, lights, etc.);
- (b) The landlord does not allow the tenant access to the tenant’s apartment; or
- (c) The landlord seizes the tenant’s property.<sup>57</sup>

Upon finding that an illegal eviction has occurred, the court can order the landlord to pay the tenants damages, expenses, and reasonable attorney’s fees.<sup>58</sup>

Retaliatory Evictions are Illegal. Maine law prohibits landlords from evicting a tenant because the tenant has formally complained about living conditions. Such evictions are called “retaliatory” and are illegal. Maine law creates a presumption<sup>59</sup> that an eviction action was started in retaliation against the tenant if, within six months prior to the start of the eviction action, the tenant has:

- (1) Asserted his warranty of habitability rights pursuant to 14 M.R.S. § 6021;
- (2) Complained to a local or state housing official that the residence violated building, housing, sanitary or other codes or ordinances;
- (3) Complained in writing or made a written request to the landlord to make repairs on the premises as required by any applicable building, housing or sanitary code or by the warranty of habitability, or as required by the written lease between the parties.<sup>60</sup> An eviction can also be a retaliatory eviction if it is commenced because the tenant joined a tenant’s organization.<sup>61</sup>

### ***T. Lease Section 20: Lease Signatures***

Before signing remember that both parties should initial any handwritten additions or corrections. Each party should receive a copy of the *signed* lease.

### ***U. Required Landlord Disclosures***

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<sup>56</sup> 14 M.R.S. § 6005.

<sup>57</sup> 14 M.R.S. § 6014.

<sup>58</sup> 14 M.R.S. § 6014 (2).

<sup>59</sup> 14 M.R.S. § 6001(3).

<sup>60</sup> 14 M.R.S. § 6001(3).

<sup>61</sup> 14 M.R.S. § 6001(4).

There are various disclosures required by Maine and federal law to the tenant. The most important disclosures relate to the danger of lead paint in pre-1978 residences.<sup>62</sup>

Landlords must disclose their policy as to smoking on the premises pursuant to 14 M.R.S. § 6030-E(3).

### *V. Unfair Discrimination*

Federal and state laws prohibit unfair discrimination. In Maine, special court procedures are provided for enforcement of these laws.<sup>63</sup> For example, any discrimination against children is generally prohibited. It is unlawful to ask if someone has children or to have special rules, which apply only to children. There are four exceptions to this rule. Landlords can limit the number of occupants:

- (1) In a building of two units, one of which is occupied by the owner;
- (2) In government subsidized housing for older persons, as defined by law;
- (3) In the rental of four or fewer rooms of a house occupied by the owner; and
- (4) In non-commercial rental of housing by religious groups.

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<sup>62</sup> The following are exempt from the federal lead paint disclosures requirement:

- (1) Housing projects built after 1977;
- (2) Housing for the elderly (one or more persons 62 years of age at the time of initial occupancy) or disabled, unless any child who is less than 6 years of age is expected to reside in the housing;
- (3) Any 0-bedroom dwelling, including efficiencies, studio apartments, dormitory housing, military housing, and rentals of individual rooms in residential dwellings;
- (4) Transactions involving leasing agreements of 100 days or less where no lease renewal or extension can occur, e.g., vacation rentals, and hotels;
- (5) Housing that has been certified by a licensed inspector to be “lead-based paint free,” that is, free of paint or other surface coatings that contain lead with levels equal to or greater than 1.0 milligrams per square centimeter or 0.5 percent by weight.
- (6) Housing for sale at foreclosure; and
- (7) Renewals of existing leases in which the owner has previously disclosed all information required and where no new information has come into possession of the owner. Renewals include the renegotiations of existing lease terms and/or signing a new lease.

<sup>63</sup> 5 M.R.S. § 4613.

Landlords may not refuse to show or rent a unit, or impose different terms or conditions on the basis of race, color, sex, physical or mental handicap, religion, ancestry, national origin, familial status, or because of the receipt of any kind of public assistance. Landlords must accept general assistance vouchers for rent.<sup>64</sup>

Landlords may not refuse occupancy because the tenant requires the assistance of a seeing eye or a hearing ear dog unless the building consists of two units one of which is occupied by the owner. The definition of “service animal” for housing includes animals other than dogs, and includes animals which are necessary to mitigate the effects of emotional/mental disabilities, including “companion” or “emotional support” animals.

For further information or to make a complaint of unfair discrimination, contact the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333 (207) 624-6050.

### ***W. When The Apartment Building Is Sold***

When a landlord sells the tenant’s residence the buyer usually must honor the tenant’s lease terms. Therefore, if the tenant has a written lease, normally the tenant can stay until the lease expires.

### ***X. If Another Form Lease Is Used***

If a different lease format is used, both parties should review the clauses and compare them to the clauses in this model lease. This will help you determine how the lease you are signing affects your rights under the law.

Regardless of the lease format, there are certain Maine tenant rights that cannot be waived, no matter what the lease says:

- (1) The landlord cannot charge a tenant for the months remaining on the lease after the tenant is evicted or leaves unless the landlord makes a good faith effort to re-rent the residence.<sup>65</sup>
- (2) Late fees may not exceed 4% of one month’s rent.<sup>66</sup>
- (3) Security deposit rights are the same for all tenants, whether there is a written lease or not.<sup>67</sup> Please note: this law does not apply to a residence which is part of a building of no more than 5 dwellings, one of which is occupied by the owner.
- (4) Landlords cannot unfairly charge tenants for utilities.<sup>68</sup>
- (5) Landlords cannot disclaim the Maine Warranty of Habitability unless the lease specifically charges a lower rent in return for unsafe conditions.<sup>69</sup>
- (6) Tenants have the right to repair serious problems and deduct the cost (up to \$500 or one half of the monthly rent) from the rent. This law does not apply to owner-occupied buildings with 5 or fewer units.<sup>70</sup>

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<sup>64</sup> 5 M.R.S. § 4582.

<sup>65</sup> 14 M.R.S. § 6010-A.

<sup>66</sup> 14 M.R.S. § 6028.

<sup>67</sup> 14 M.R.S. §§ 6031-6038.

<sup>68</sup> 14 M.R.S. §§ 6024, 6024-A and 35-A M.R.S. §§ 704-706.

<sup>69</sup> 14 M.R.S. § 6021.

<sup>70</sup> 14 M.R.S. § 6026(2)

- (7) Landlords cannot unreasonably enter the tenant's residence.<sup>71</sup>
- (8) Landlords can terminate the lease and evict a tenant for a substantial breach of the lease but they cannot forcibly eject the tenant (*e.g.*, by changing the locks or removing furniture). Only a law enforcement officer can force the tenant to leave and only after a court hearing in which the court orders eviction.<sup>72</sup>
- (9) Landlords must handle tenant abandoned property in accordance with the law.<sup>73</sup>
- (10) The landlord cannot evict a tenant in retaliation for complaining about living conditions or joining a tenant's organization.<sup>74</sup>
- (11) Landlords cannot unfairly discriminate against tenants and must accommodate disabilities including allowing service animals pursuant to 5 M.R.S. § 4582-A.
- (12) Landlords violate the Maine Unfair Trade Practices Act<sup>75</sup> if they use lease provisions that have the effect of waiving a tenant's statutory rights.<sup>76</sup> Further, the Maine Legislature has specifically declared <sup>77</sup> that the following lease provisions are unenforceable and violations of the Maine Unfair Trade Practices Act:
  - (a) Any provision that absolves the landlord from liability for the negligence of the landlord's agents;
  - (b) Any provision that requires the tenant to pay the landlord's legal fees in enforcing the rental agreement, unless the tenant has wantonly disregarded the terms of the rental agreement;
  - (c) Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and
  - (d) Any provision that requires the tenant to acknowledge that the provisions of the rental agreement, including tenant rules, are fair and reasonable.

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<sup>71</sup> 14 M.R.S. § 6025.

<sup>72</sup> 14 M.R.S. §§ 6001-6016.

<sup>73</sup> 14 M.R.S. § 6013 and 33 M.R.S.A. § 1818.

<sup>74</sup> 14 M.R.S. § 6001.

<sup>75</sup> 5 M.R.S. § 207.

<sup>76</sup> 14 M.R.S. § 6030(1).

<sup>77</sup> 14 M.R.S. § 6030(2).