

SURVEYOR'S RIGHT OF ENTRY LAWS

by
Knud E. Hermansen

Knud is a licensed professional land surveyor, professional engineer, and attorney at law. He teaches at the University of Maine and has a consulting practice specializing in boundary disputes, title, land development, liability, and easements. <http://www.umaine.edu/set/svt/articles/>

Approximately half the states have laws that permit surveyors in the performance of surveying services to enter upon lands without permission or legal consequences. These laws are known as right of entry laws. There is no common law right for surveyors to enter property to perform surveying services. Consequently, without statutory protection, surveyors may be liable for civil or criminal trespass if they enter onto property without permission. (Civil trespass is defined as the intentional invasion of land in possession of another.) Civil or criminal trespass could subject a surveyor to monetary damages, restitution, fines, or even jail.

Almost all states allow surveyors to enter private property without fear of legal reprisal if the surveyor is an employee of the government or doing surveying on behalf of the government or a government agency. For example, almost all states have right of entry laws for official surveys necessary to lay out public improvements. Many states allow surveyors to enter upon lands to perform topographic surveys or access a geodetic control station. (See e.g., Alabama Code § 9-4-13 & Idaho Code § 54-1230) Unfortunately, these laws do not help or protect surveyors performing private surveys. To aid surveyors performing private surveys, several states have enacted laws allowing surveyors the right to enter land to perform private surveying services.

The typical right of entry law for surveying services allows a surveyor and surveying assistants, during the performance of surveying services, to enter or cross lands without the consent of the owner or person in possession. An alternative form of the law does not give the surveyor permission to enter land; rather, the alternative law gives immunity to the surveyor and assistants from trespass. In other words, if the surveyor or assistants do trespass, they can't be prosecuted.

A careful examination of the right of entry law should be done before attempting to rely upon the law. The typical right of entry law does not provide comprehensive civil or criminal liability protection for all acts on

property. Surveyors will be liable for damage to personal property. In other words, kicking an aggressive neighbor's dog or trimming a bush to enable the instrument person to see the prism could impose civil liability.

Entry on property is generally limited to methods and locations necessary to perform surveying services in a reasonable manner. Entering buildings to get out of the rain or fishing in the nearby stream during lunch break could constitute a trespass.

Many right of entry laws require surveyors to give reasonable notice, when possible, to the owner before entering their lands. (Regardless whether the law requires notice, it is courteous practice to do so.) Failure to provide reasonable notice could remove the protection afforded by the right of entry law. Those states with laws that have a notice provision generally do not require that the landowner actually receive notice, only that the surveyor make a reasonable attempt to provide notice. A letter sent to the address listed in the tax records would suffice for reasonable notice.

Laws that provide protection from trespass do not always protect the means or method of access. A surveyor in Wisconsin discovered this shortcoming in the Wisconsin law. The limitation in the Wisconsin law cost the surveyor over \$1,000 for driving in a restricted area when attempting to reach a section corner (Department of Natural Resources v. Bowden, 254 Wis.2d 625, 2002 WI.App 129, 647 N.W.2d 865).

If a surveyor is practicing in a state that has a right of entry law, the surveyor should become familiar with its provisions. For those surveyors practicing in states that do not have a right of entry law, consider advocating for one. Considerable relief is afforded by a right of entry law when a police officer shows up after a call from an irate neighbor or the surveyor is being threatened with a lawsuit for mental anguish and emotional distress after a surveying assistant crosses the complainant's property holding a machete and pointed prism pole.

Surveyor Right of Entry Laws by State

Alabama..... AL ST § 11-7-11
Alaska..... AS § 34.65.010 & 34.65.020
Arizona..... A.R.S. § 33-104

Arkansas	A.C.A. §§ 17-48-303 & 17-48-204
California	West's Ann.Cal.Civ.Code §§ 8774 & 846.5
Colorado	C.R.S.A. § 18-4-515
Connecticut.....	C.G.S.A. § 52-557
Florida.....	F.S.A. § 472.029
Illinois	ILCS 225 § 330/45
Kentucky.....	KRS § 322.470
Louisiana.....	LSA-R.S. 14 § 63
Massachusetts.....	M.G.L.A. 266 § 120C
Michigan	M.C.L.A. §§ 54.122-54.124
Minnesota	M.S.A. § 505.31
Mississippi	Miss. Code Ann. § 73-13-103
Missouri	V.A.M.S. § 327.371
Montana.....	MCA 70-16-111
Nevada	N.R.S. § 625.335
New Jersey	N.J.S.A. §§ 45:8-44.1 & 45:8-44.2
New Mexico.....	NMSA § 61-23-30
Oklahoma.....	21 Okl.St. Ann. § 1835
Oregon	O.R.S. § 672.047
Tennessee	T. C. A. § 62-18-124
Texas	Vernon's Ann.Texas Civ.St. Art. § 5282c
Vermont.....	27 V.S.A. § 4
West Virginia	W. Va. Code, § 29-2-9
Wisconsin.....	W.S.A. § 59.73