

Unlicensed Practice of Land Surveying

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1. Introduction

The non-licensed practice of land surveying is often numerous and widespread. In many cases members of the public are innocent victims. In other cases members of the public are willing participants, preferring to sacrifice quality for the low price and quick speed often provided by the non-licensed practitioner.

2. Practice of Land Surveying Defined

The Maine Legislature, in 32 M.R.S.A. § 13901(6), defines the practice of land surveying to be “any service or work involving the application of special knowledge of the rules of evidence and boundary laws, principles of mathematics and the related physical and applied sciences for measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds of bodies of water. This service or work shall be for the purposes of determining areas and volumes, for the monumenting of property boundaries and for the platting and layout of lands and subdivisions of land, including topography, alignment and grades of streets and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys.” (underline mine)

3. Practice Prohibited

The Maine Legislature, under 32 M.R.S.A. § 13904(1), has prohibited the practice of land surveying by persons unless the individual is licensed as a professional land surveyor or specifically falls under an exemption enumerated under 32 M.R.S.A. § 13912. The exemptions are few. It should be noted that there is no landowner exemption sometimes found in other state licensing acts.

4. Rationale

There are two overriding reasons for restricting the practice of land surveying to licensed surveyors. First, fixing boundaries involves the delineation of a line that is or will become a demarcation between two or more persons. Persons will spend considerable money on the erection of valuable improvements in reliance on the soundness of their title and the location of their common boundary. In boundary disputes, small inaccuracies often become large problems. The improper location or the inadequate description of the common boundary may jeopardize the title and the improvements that are subsequently erected. Life savings can be spent correcting a problem. In some cases strife and even bloodshed have resulted over disputed boundary locations.

“[L]and line cases usually generate a lot of heat and sometimes violence. These disputes involve the ownership of strips of land often only a few inches wide. For one reason or another, the narrower the strip of land in dispute, the more intense the feeling between the parties. Also, the less the property in dispute is worth, the greater the hostility. Before the case reaches the lawyers, angry words have usually passed between the parties. Sometimes a gun has been drawn, and before the case is over, a fight is not unusual. Now and then a party takes a ‘pot-shot’ at his adversary; homicides are not unknown. Brother has slain brother; kin have fought kin; and neighbor has killed neighbor. It sometimes happens that the best and most reasonable citizens becomes involved in a land line suit, and nothing herein is intended to criticize or poke fun at such unfortunate persons. No man should be criticized for defending his rights.” Justice Robert G. Gillespie, “Some Animadversions on Land Line Cases,” 33 *Mississippi Law Journal* 151 (March 1962)

In this State, and all states for that matter, the courts have dealt with hundreds of cases that involve disputed boundaries. Consequently, every State has recognized the importance of properly locating and describing boundaries and have restricted the establishment and retracement of boundaries to licensed surveyors. To allow such an important and potentially litigious service to be performed by the landowner or layperson would merely exacerbate an existing problem or create a problem where none existed previously.

Second, the retracement of boundaries involves both technical knowledge and legal knowledge. There are many persons who have the technical knowledge required to make surveying measurements but lack the legal knowledge to fix boundaries with accuracy and certainty. Likewise there are many persons who have

the legal knowledge but lack the technical knowledge. For want of one or the other, many boundary problems are created. The licensing act recognizes that both the technical knowledge and legal knowledge must be garnered by education and experience and proven by comprehensive testing. Furthermore, the maintenance of the knowledge is required by mandatory continuing education.

There are some individuals that will argue that only the technical knowledge is required in the subdivision of property. This statement shows a shallow knowledge for the complexities involved in creating boundaries. Similar logic would allow a seamstress to sew up cuts on the human body. The simple subdivision, no less than the complex subdivision, requires a knowledge of subdivision regulations, familiarity with environmental restrictions, understanding of surveying standards, monumentation to protect the lot owner's investment, and the skill necessary to write an adequate description that will permit the accurate retracement of the boundaries many years later. Again, the Maine Legislature has mandated land subdivisions be done by licensed surveyors. First, 33 M.R.S.A. § 652 says "No plan may be accepted for recording unless all of the following criteria are met....2. Seals. Be embossed with the seal of [a] ... registered land surveyor; 3. Signature. Contain the signature and address of the person who prepared the plan...." Furthermore, all municipal subdivisions require monumentation be set. Maine statute, 30-A M.R.S.A. § 4406(2), says "No person may sell or convey any land in an approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed...." Returning to the definition of the practice of land surveying, clearly the practice of land surveying includes "the monumenting of property boundaries" (32 M.R.S.A. § 13901(6)).

5. Liability for Non-Licensed Practice

There are four common mechanisms for holding non-licensed survey practitioners liable for their acts. First, 32 M.R.S.A. § 13904(1) provides that "a person may not practice land surveying ... unless the person is licensed in accordance with this chapter." Failure to abide by this regulation subjects the person to criminal prosecution, the violation of which is a Class E crime (32 M.R.S.A. § 13904(3))

Second, the Maine Legislature has provided possible civil remedies against non-licensed individuals under the Uniform Deceptive Trade Practices Act (10 M.R.S.A. §§ 1211-1216). Under 10 M.R.S.A. § 1212, an unlicensed practitioner is likely to be guilty of “Pass[ing] off ... services as those of another” (10 M.R.S.A. § 1212.1(A)); “caus[ing] likelihood of confusion or of misunderstanding as to ... certification by, another” (10 M.R.S.A. § 1212.1(C)); “represents that ... services have ... approval, characteristics, ... or quantities that they do not have, or that a person has ... approval, status, [or] affiliation ... he does not have” (10 M.R.S.A. § 1212(E)); “represents that ... services are of a particular standard, quality or grade...” (10 M.R.S.A. § 1212.1(G)); or “engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding” (10 M.R.S.A. § 1212.1(L)).

Under the Uniform Deceptive Trade Practices Act, “a complainant need not prove competition between the parties or actual confusion or misunderstanding” (10 M.R.S.A. § 1212.2). Furthermore, “Proof of monetary damage, loss of profits or intent to deceive is not required” (10 M.R.S.A. § 1213). Where there have been intentional deceptive trade practices, attorney fees may be awarded to the complainant (10 M.R.S.A. § 1213).

Third, the non-licensed individual is subject to all tort claims such as negligence, misrepresentation, etc. that a licensed individual would ordinarily be exposed to for the failure to perform a surveyor’s duty in a reasonable manner. However, the non-licensed person can be expected to have more difficulty in defending their conduct. First, their conduct will be judged on the same basis as a licensed surveyor - that of similarly situated licensed surveyors in the same or similar circumstances. In other words, the non-licensed practitioner would be exposed to liability if they breach conduct expected from licensed surveyors. Furthermore, the non-licensed practitioner, contrary to the licensed surveyor, will likely have numerous licensed expert witnesses able and willing to testify against the non-licensed practitioner’s standards and procedures.

Fourth and finally, most courts refuse to entertain any legal action by a non-licensed practitioner against their client when the non-licensed practitioner is attempting to collect a fee owed the non-licensed practitioner (See e.g., *U.S. Nursing*

Corporation v. Saint Joseph Medical Center, 842 F.Supp. 1103 (N.D. Illinois, E.D. 1994); *Roberts V. State of Arizona*, 880 P.2d 1159,179 Ariz. 613 (1994); *Lawler And Company v. Hare*, 587 So.2d 387 (Ala. 1991); *D.R. Gallo Builders, Inc. v. Travelodge International, Inc.*, 263 Cal.Rptr. 689, 215 Cal.App.3d 221 (1989)). This has been true even where the client knew the individual was not licensed yet still sought the individual's surveying services. Consequently, the non-licensed individual is without legal recourse in collecting fees that a client refuses to pay, regardless of the basis for the refusal.

6. Recommendations

There are no straightforward recommendations that will effectively deal with the unlicensed practice of land surveying. Evidence of misconduct is often difficult to come by since the unlicensed practitioner is often sly enough to practice out of sight and without leaving a paper trail. In the few cases where documents are required, the unlicensed practitioner is often able to find a licensed surveyor willing to sell their integrity along with their seal and signature. Sadly, where evidence is available, criminal prosecution by the district attorney or Attorney General is often slow or simply refused. The injured landowner and licensed practitioner are often compelled to pursue remedies in civil court that are time consuming, expensive, and do not always provide relief. Civil suits often bring counter-suits. The letter to cease practice will often bring disparaging replies or be ignored.

One action that has provided some measure of justice with relative ease (provided the facts are clear and truthful) is the filing of an affidavit in the Recorder of Deeds office of the county where unlicensed practice has occurred. A rendition of truthful facts has usually caused title attorneys some concern regarding the title and consequently scared off potential buyers — at least until a licensed surveyor examines the boundaries and resolves any boundary problems. The following or similar affidavit is often used:

Affidavit to Illuminate the Record

1. I, __, am a licensed surveyor in the State of __.
2. My office is located at __.
3. In providing surveying services in the town of __, county of __, State of Maine, I came across a document dated __, titled __, depicting apparent boundary directions, distances, corner monuments, and other surveying and boundary related matters.

4. On or before __, this document was ____ [in the possession of __/recorded in book __, page __].
5. The information found in this document is all or substantially the same as found in the descriptions for deeds found in deed book __, page __; deed book __, page __; and deed book __, page __.
6. The document contains the name of __ in addition to __, the reputed name of the landowner.
7. The document does not contain the seal of a licensed land surveyor.
8. A careful examination of the 199__ Roster of Professional Land Surveyors promulgated by the State of Maine Board of Licensure for Professional Land Surveyors does not include the names shown on the document.
9. It is my professional opinion that the document fairly appears to be the platting and layout of lands, subdivision of land, or the preparation and perpetuation of property descriptions that represent a survey.
10. Maine statute 32 M.R.S.A. § 13901(6), defines the practice of land surveying to be “any service or work involving the application of special knowledge of the rules of evidence and boundary laws, principles of mathematics and the related physical and applied sciences for measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds of bodies of water. This service or work shall be for the purposes of determining areas and volumes, for the monumenting of property boundaries and for the platting and layout of lands and subdivisions of land, including topography, alignment and grades of streets and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys.”
11. It is my professional opinion that the document and resulting description does not meet the current minimum standards of surveying practice as promulgated by the Board of Licensure for Professional Land Surveyors.
12. Affiant further saith not.

Dated at __, State of __, this __ Day of __ 19__

typed name

State of Maine
County of __
Town of __, ss

Personally appeared the above named __ and made oath to the truth of the foregoing statements and also acknowledged this instrument to be his/her free act and deed.

typed name
Notary Public

7. Conclusion

In concluding this report, it should be noted that the unlicensed practice of land surveying will not be eliminated regardless of the ease or availability of civil

remedies and intensity of prosecution by authorities. The land surveying profession can take steps to identify and warn unlicensed practitioners about their conduct, disseminate information to protect innocent landowners, and educate conspiring landowners about the risk they incur by knowingly using unlicensed practitioners.