

Idaho Board of Licensure of Professional Engineers And Professional Land Surveyors

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Board Home Page <http://www.ipels.idaho.gov>

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NEWS BULLETIN

41ST EDITION

INTRODUCTION

This NEWS BULLETIN is distributed a minimum of twice per year by the Idaho State Board of Licensure of Professional Engineers and Professional Land Surveyors to inform the public and the State's Professional Engineers and Professional Land Surveyors of those events which significantly affect the professions.

LEGISLATION PASSES – LAW CHANGES EFFECTIVE JULY 1, 2008

The Idaho Legislature passed House Bill No. 380 which results in numerous changes to the licensing law, the law on plats and vacations, and the law on Corner Perpetuation and Filing. Specifically, the changes include the following:

- Consistently uses the terminology “license” or “licensure” for professional engineers and professional land surveyors and consistently uses the term “certificate holder” for engineer interns and land surveyor interns
- Uses the term “engineer intern” rather than “engineer-in-training” and uses the term “land surveyor intern” rather than “land surveyor-in-training
- Empowers the Board to promulgate rules of continuing professional development for professional engineers not to exceed sixteen (16) hours annually
- Removes obsolete language in regard to the Board record keeping requirements and the annual report to the Governor
- Eliminates interviews with Board Members for those who seek assignment to a third or subsequent administration of an examination and substitutes specific time and academic course work in order to be reassigned
- Allows the Board to waive prescriptive education and experience requirements for applicants for license by comity if the applicant has been licensed in another jurisdiction for a minimum of eight (8) years, has no outstanding disciplinary action, and is in good standing under a licensing system which, in the opinion of the Board, maintains substantially equivalent professional standards as those required under Idaho law
- Clarifies ambiguities between the licensing law and the Administrative Procedures Act and increases the maximum administrative penalty that can be assessed from \$2,000 to \$5,000
- Removes obsolete language regarding replacement of wall certificates
- Clarifies that the Attorney General prosecutes allegations of criminal acts
- Eliminates obsolete language regarding oaths administered to land surveyor assistants for the faithful performance of duty

- Changes the minimum monument size for certain corners in subdivisions from 5/8 inch by 30 inch long to 5/8 inch by two feet long
- Clarifies that professional engineers are required to show land survey monuments on their plans in order to allow for their preservation

Please visit our web site at <http://www.ipels.idaho.gov> to see the law changes which go into effect July 1, 2008.

DISCIPLINARY ACTIONS

The following final formal actions have been taken by the Board since publication of NEWS BULLETIN no. 40 in November of 2007

Docket No. 08.05 – IN THE MATTER OF TIMOTHY W. BREWER, P.L.S. Following an audit of his Continuing Professional Development records, Mr. Brewer stipulated to violating Board Administrative Rules pertaining to maintaining records of Continuing Professional Development and/or making truthful professional statements. Brewer was admonished and paid an administrative penalty of \$500 and has furnished records of CPD for the period requested.

Docket No. 08.11 – IN THE MATTER OF JOHN H. KINNEY, P.E./L.S. Following an audit of his Continuing Professional Development records, Mr. Kinney stipulated to violating Board Administrative Rules pertaining to maintaining records of Continuing Professional Development and/or making accurate professional statements. Kinney was admonished and paid an administrative penalty of \$500 and has furnished records of CPD for the period requested.

Docket No. 08.13 – IN THE MATTER OF JON S. McDANIEL, P.L.S. Following an audit of his Continuing Professional Development records, Mr. McDaniel stipulated to violating Board Administrative Rules pertaining to maintaining records of Continuing Professional Development and/or making truthful professional statements. McDaniel was admonished, paid an administrative fine of \$500 and has furnished records of CPD for the period requested.

Docket No. 08.22 – IN THE MATTER OF LESLIE D. KILLINGSWORTH, P.E. Mr. Killingsworth stipulated to a reprimand and a revocation of his license as a professional engineer in Idaho. Killingsworth pled guilty to the felony crime of wire fraud after which the Oregon State Board of Examiners for Engineering and Land Surveying refused to allow him to renew his expired license as a professional engineer and the Washington Board for Professional Engineers and Land Surveyors revoked his license as a professional and land surveyor.

Docket No. 08.35 – IN THE MATTER OF DAN K. CUMMINGS, P.L.S. Following an audit of his Continuing Professional Development records, Mr. Cummings stipulated to violating Board Administrative Rules pertaining to maintaining records of Continuing Professional Development. Cummings was admonished and has furnished records of CPD for the period requested.

SURRENDER OF LICENSES

Docket No. 08.10 – IN THE MATTER OF JAMES L. KELLER, P.E./L.S. Following an audit of his Continuing Professional Development records, Mr. Keller chose to surrender the professional land surveyor portion of his combined license.

Docket No. 08.12 – IN THE MATTER OF W.B. KREMER, P.E./L.S. Following an audit of his Continuing Professional Development records, Mr. Kremer chose to surrender the professional land surveyor portion of his combined license.

CHANGES IN BOARD COUNSEL AND PROSECUTOR POSITIONS

After over 25 years as Counsel to the Board, Morgan W. “Woody” Richards has decided to step down from that position. In recent years, Angela Richards has been co-counsel to the Board, but she too is moving in other directions. The Board has retained Michael Kane as Board Counsel. Kane had previously served for approximately ten years as Administrative Prosecutor on disciplinary matters before the Board. Taking Kane’s position as Administrative Prosecutor is Kirtland Naylor.

BOARD EXPRESSES OPINION ON INVOLVEMENT OF SURVEYORS IN CONDOMINIUMS

The Board reviewed an inquiry from Larry J. Hodge, P.E./L.S. in which he asked the Board “I’m wondering if you could enlighten me on how you think the surveying world, including the Board, has come to the conclusion that condo plats must be done by a PLS.” The Board responded that it relies upon Idaho Code Section 55-1527 which states

“55-1527. ZONING LAWS APPLIED WHERE NOT INCONSISTENT. Except where inconsistent with the provisions or purposes of this act, state and local laws relating to plats, recording, subdivisions or zoning shall apply to condominiums and to projects as herein defined.”

The Board also relied on Idaho Code Section 50-1309, which states, in pertinent part,

“The professional land surveyor making the survey shall certify the correctness of said plat and he shall place his seal, signature and date on the plat.”

BOARD EXPRESSES OPINION ON ELECTRONIC DOCUMENTS SUBMITTED FOR GIS

The Board reviewed an inquiry from John Root, P.L.S. in which he asked the Board questions and expressed concerns about Twin Falls County requesting an electronic copy of plats and Records of Survey for inclusion in the County Assessor’s GIS system. His concern was over the requirement that final documents be sealed, signed and dated. The Board responded by quoting Idaho Code Section 54-1202(14) which defines “signature” as

“(14) Signature. The term “signature” shall mean either: an original handwritten message identification containing the name of the person who applied it; or a digital signature which is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; and must be linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.”

The Board said that one way to protect the work product would be to apply a digital signature, as defined above, to the document. That way, if it is altered, the digital signature would be invalidated. Digital signatures are available from commercial vendors.

Further, Idaho Code Section 54-1215(3)I states

“The seal, signature and date shall be placed on all original documents in such a manner that such seal, signature and date are reproduced when the original document is copied. The application of the registrant’s seal, signature and date shall constitute certification that the work thereon was done by him or under his responsible charge. Each plan or drawing sheet shall be sealed and signed by the registrant or registrants responsible for each sheet. In the case of a business entity, each plan or drawing sheet shall be sealed and signed by the registrant or registrants involved. **Copies of electronically produced documents, listed in paragraph (b) of this subsection, distributed for informational uses such as for bidding purposes or working copies, may be issued with the registrant’s seal and a notice that the original document is on file with the registrant’s signature and date. The words “Original Signed By:” and “Date Original Signed:” shall be placed adjacent to or across the seal on the**

electronic original. The storage location of the original document shall also be provided. Only the title page of reports, specifications and like documents need bear the seal, signature and date of the registrant.” **(Emphasis added)**

By following the steps shown **bold and underlined above** you will meet the requirement of having sealed and signed and dated a hard copy. If the document is altered, you have the opportunity to compare it to the original hard copy.

Finally, you could ask for a written request from the public official who desires an electronic copy, then place a statement of intent on the document as to its intended use; for example, “For GIS Purposes Only” and “Not Intended to be a Final Work Product.”

BOARD RECORDS GO DIGITAL

The Board has obtained software and hardware to allow digital scanning of applications and other documents. The Board has also contracted to have existing files digitally imaged. Over the years the number of file cabinets in the Board office has grown to the point that they occupy a significant portion of the office and we look forward to being able to utilize that space for other purposes.

BOARD EXPRESSES OPINION ON STAMPING OF PRELIMINARY ROAD PLANS AND PRELIMINARY PLATS

George Yerion, P.L.S. wrote the Board and asked some questions which were prefaced with the statement “I was reviewing a Subdivision Application at the Planning & Zoning office today. Included in the drawings were Preliminary Road Plans prepared by a surveying company. The Planning & Zoning Commission used those drawings to approve the Subdivision.” The following are the questions Mr. Yerion asked and the answers provided by the Board.

Question: Some surveyors prepare the Preliminary Road Plans showing horizontal and vertical alignments. Is that allowed according to the current definitions of surveying & engineering?

Answer: The current definition of land surveying relates only to boundaries, which would include the horizontal alignment, but not the vertical, which would fall in the realm of the licensed professional engineer. If prepared by an engineer or surveyor, preliminary road plans which include only horizontal alignment must be sealed and signed by either the surveyor or engineer, but if they contain both horizontal and vertical alignment they must be sealed, signed and dated by the engineer or both the surveyor and engineer.

Question: Preliminary Plats are sometimes submitted by engineers and sometimes by surveyors. I don’t recall that either the Preliminary Road Plans or the Preliminary Plats are ever sealed. The Planning and Zoning Commission uses those drawings to make policy decision[s] (i.e. subdivision and road approval). Should these preliminary drawings be sealed?

Answer: Under Idaho Code Section 54-1215(3)(b), effective July 1, 2007, if prepared by a professional engineer or a professional land surveyor, Preliminary Plats and Preliminary Road Plans that are “intended to be relied upon to make policy decisions important to the life, health, property or fiscal interest of the public” must be sealed, signed and dated.

BOARD SCHEDULES HEARINGS ON RULE MAKING

The Board has scheduled Public Hearings on possible amendments to the Administrative Rules of Procedure, Rules of Professional Responsibility, Rules of Corner Perpetuation and Filing and Rules of Continuing Professional Development. The Public Hearings will be held at the following dates, times and locations:

- July 14, 2008 8:00 a.m. North Idaho College, Coeur d'Alene
- July 15, 2008 8:00 a.m. Fish and Game Office, Lewiston
- July 18, 2008 8:00 a.m. ITD Headquarters, Boise
- July 28, 2008 8:00 a.m. University Place, Idaho Falls
- July 28, 2008 1:00 p.m. ISU Student Union, Pocatello
- July 29, 2008 8:00 a.m. CSI Taylor Building, Twin Falls

Please attend and provide input on the content of the Rules.

BOARD REVISES OPINION ON SURVEYORS SEALING AND SIGNING LEGAL DESCRIPTIONS

At the February 2008 Board Meeting, Jack Clark, P.L.S. asked the Board to reconsider its previously expressed opinion regarding the sealing of legal descriptions prepared by professional land surveyors who have not performed a survey in the field of the land being described. At the February 2008 meeting, the Board created a subcommittee consisting of Gary Young, P.E./L.S. and John Howe, P.L.S. with advice and input from attorney Mike Kane and Executive Director David Curtis, P.E. to reevaluate the interpretation and interrelationships of Idaho Code Section 54-1202(6), 54-1215, 54-1227, 55-1902(9), and 55-1904(2). Following is that analysis.

The following article from the 31st edition of the Board NEWS BULLETIN (June 2001) is the opinion previously expressed by the Board on the matter.

“BOARD EXPRESSES OPINION ON LEGAL DESCRIPTIONS

Daniel Hayhurst, P.L.S. of Lewiston, Idaho asked the Board three questions regarding the preparation of legal descriptions. The questions and the answers provided by the Board follow.

QUESTION Should legal descriptions written by professional land surveyors in the State of Idaho be sealed by them?

ANSWER Yes, we believe that a professional land surveyor ***SHOULD*** seal, sign and date legal descriptions written by them, but unless an actual field survey has been performed by the professional land surveyor, the requirement to do so is not imposed by either statute or administrative rule.

QUESTION Does it make any difference if the legal description is based on a field survey done by the surveyor or is based on office work only (using deed descriptions and recorded surveys by other surveyors)?

ANSWER Yes [it does make a difference], but we provide the following additional analysis. Idaho Code section 54-1202(f) defines “land surveying” and “professional land surveying” as

“ . . . responsible charge of **surveying of land** to determine the correct boundary description, to convey, to establish or reestablish land boundaries, or to plat lands and subdivisions thereof.”
(Emphasis added)

The Board is of the opinion that in order for a person to have practiced land surveying, they must have performed some “surveying of land”, which the Board interprets to mean a field survey. A legal description prepared without a field survey using deed descriptions and recorded surveys by other surveyors would not constitute the practice of surveying, would not require a

professional land surveyor license to prepare, and thus would not, in our opinion, be considered to fall within any of the categories listed in Idaho Code section 54-1215(3)(b) requiring a professional seal, signature and date.

QUESTION [Idaho Code section] 54-1215(3)(b) states that “The seal, signature and date shall be placed on all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or governmental agency.” Do legal descriptions fall into any of these categories?

ANSWER A legal description prepared following a field survey is one of the end products of that field survey, and would, in our opinion, be a “report” under Idaho Code section 54-1215(3)(b) which would require a seal and signature. A legal description prepared without a field survey using deed descriptions and recorded surveys by other surveyors would not constitute the practice of surveying, would not require a professional land surveyor license to prepare, and thus would not, in our opinion, be considered to fall within any of the categories listed in Idaho Code section 54-1215(3)(b) requiring a professional seal, signature and date.”

Mr. Clark’s concern was primarily with the Board opinion that a professional land surveyor “. . . **SHOULD** seal, sign and date legal descriptions written by them, but unless an actual field survey has been performed by the professional land surveyor, the requirement to do so is not imposed by either statute or administrative rule.” His concern was founded in his belief that the public perception of a document which contains the seal of a professional land surveyor is an indication that a survey has been performed. He asked the Board to consider changing its opinion and advising professional land surveyors **NOT** to seal legal descriptions unless they are based on a survey in the field of the land being described.

Below are the sections of Idaho Code which the Board indicated to Mr. Clark that they would review in light of his request.

54-1202(9) (Effective July 1, 2008)

(9) "Professional land surveying" and "practice of professional land surveying" mean responsible charge of surveying of land to determine the correct boundary description, to convey, to establish or reestablish land boundaries, or to plat lands and subdivisions thereof. Any person shall be construed to practice or offer to practice professional land surveying who engages in professional land surveying, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional land surveyor, or who represents himself as able to perform or who does perform any professional land surveying service or work or any other service designated by the practitioner which is professional land surveying.

54-1215

(3)(b) The seal, signature and date shall be placed on all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or governmental agency. . . .

54-1227 (Effective July 1, 2008)

54-1227. Surveys -- Authority and duties of professional land surveyors and professional engineers. Every licensed, professional land surveyor is hereby authorized to make land surveys relating to the sale or subdivision of lands, the retracing or establishing of property or boundary lines, public roads, streets, alleys, or trails; and it shall be the duty of each licensed professional land surveyor, whenever making any such land survey, to set permanent and reliable magnetically detectable monuments, the minimum size of which shall be

one-half (1/2) inch in least dimension and two (2) feet long iron or steel rod unless special circumstances preclude use of such monument; and such monuments must be permanently marked with the license number of the professional land surveyor responsible for placing the monument. Professional engineers qualified and duly licensed pursuant to this chapter may also perform those nonboundary surveys necessary and incidental to the work customarily performed by them.

55-1902(9)

(9) "Survey" shall mean the locating and monumenting of points of lines which define the exterior boundary or boundaries common to two (2) or more ownerships, except those boundaries defining ownership in established and ongoing mineral extraction operations; or which reestablish or restore public land survey corners in accordance with established principles of land surveying by or under the supervision of a surveyor.

55-1904(2)

55-1904. Records of survey -- When filing required. After making a survey in conformity with established principles of land surveying, a surveyor shall file a record of survey with the county recorder in the county or counties wherein the lands surveyed are situated. A record of survey shall be filed within ninety (90) days after completing any survey which:

- (1) Discloses a material discrepancy with previous surveys of record;
- (2) Establishes boundary lines and/or corners not previously existing or of record;
- (3) Results in the setting of monuments at corners of record which were not previously monumented; or
- (4) Produces evidence or information which varies from, or is not contained in, surveys of record relating to the public land survey, lost public land corners or obliterated land survey corners.

After reviewing and reevaluating the pertinent statutes, the Board concluded that the opinion as expressed in the previous NEWS BULLETIN article is not correct. The question turns on whether or not the preparation and dissemination of a legal description, prepared by a professional land surveyor who has not performed a survey, fits under the mandatory sealing and signing provisions of Section 54-1215(3)(b). The most likely answer to this question is that such work of a surveyor for a client is a report. Although the word "report" is not defined in the statute, Black's Law Dictionary (Sixth Edition) defines the word "report" to mean: "An official or formal statement of facts or proceedings. To give an account of, to relate, to tell, to convey or disseminate information." It appears that the preparation and dissemination of a legal description prepared without having first performed a survey fits within the generally accepted definition of a report. Under those conditions, under the mandatory terms of the Section 54-1215(3)(b), the registrant must seal and sign his or her work.

NEW SEALS TO SAY "LICENSED" INSTEAD OF "REGISTERED"

As reported elsewhere in this NEWS BULLETIN, House Bill No. 380, among other things, changed the terminology of the engineers and surveyors act to consistently use the term "license" or "licensee" or "licensure" when referring to a professional engineer or a professional land surveyor. Idaho Code provides that the design of the professional seal shall be as determined by the Board. Prior to July 1, 2008, the effective date of HB 380, the standard seal indicated that the PE or PLS was "Registered." Beginning July 1, 2008, the seal specification will require the use of the word "Licensed" in keeping with the language in the amended statute. PE's and PLS's who have a seal that says "Registered" may continue to use those seals, or they may choose to obtain a new seal which uses the term "Licensed." If you choose to do the latter, you are required to submit a copy of the seal along with your signature to the Board office.

BOARD TO AUDIT CPD FOR LATE RENEWALS

At its meeting in June 2008 the Board voted to authorize the audit of Continuing Professional Development records of individuals subject to the continuing professional development requirements if they renew their license three (3) or more months after it is due. All licensees are encouraged to renew their license in a timely manner and are reminded that practice on an expired license is a criminal misdemeanor under Idaho Code Section 54-1222.

BOARD DISCUSSES USE OF CURRENT CODES AND STANDARDS

A Building Official for a local jurisdiction has notified the Board that he frequently receives submittals from professional engineers on building projects and the computer software utilized to aid in the design is based on a version of the Building Code which is not the version most recently adopted by the jurisdiction. The Board encourages all professional engineers to obtain and use current and up-to-date software in relation to codes and standards. To do otherwise might well be considered a violation of the Rule of Professional Responsibility entitled "Standard of Care" which requires licensees to "perform in accordance with the standard of care for the profession" and further states that the licensee is "under duty to the party for whom the service is to be performed to exercise such care, skill and diligence as others in that profession ordinarily exercise under like circumstances."

BOARD OPINION ON MONUMENTING AND RECORD OF SURVEY

Jack Clark, P.L.S. posed two questions to the Board regarding the issue of when the law requires that a Record of Survey be prepared and filed. Paraphrased, the questions and the Board answers to them are as follows:

Question: When a surveyor does "preliminary work" but does not place monuments in the field, is he or she required to file a Record of Survey?

Answer: Work done by a professional land surveyor that does not include monumenting is not a "survey" under current law, hence the preparation of and filing of a Record of Survey is not required when there is no monumenting. Idaho Code Section 55-1902(9) defines a "survey" as "the locating and monumenting of points of lines which define the exterior boundary or boundaries common to two (2) or more ownerships . . . or which reestablish or restore public land survey corners in accordance with established principles of land surveying . . ." (**Emphasis added**) Idaho Code Section 55-1904 states, in pertinent part "After making a survey in conformity with established principles of land surveying, a surveyor shall file a record of survey with the county recorder in the county or counties wherein the lands surveyed are situated." (**Emphasis added**) If no survey has been performed, then no Record of Survey need be prepared and recorded.

Question: When the "preliminary work" is eventually used as the basis for the preparation of a legal description, is it necessary to file a record of survey?

Answer: As discussed in another article in this NEWS BULLETIN, the preparation of a legal description on the basis of preliminary work, but not monumentation in the field, would constitute a "report," and under Idaho Code Section 541215 would be required to be sealed, signed and dated, but a "report" and a "survey" are not the same thing. As stated in the previous answer, in order for a "survey" to have been done, the surveyor must located and monumented the points. Without doing both, a "survey" has not been performed, and if a survey has not been performed, then no Record of Survey need be prepared and recorded.

Both the above answers are somewhat complicated by the language of Idaho Code Section 54-1227, which states, in pertinent part, "Every licensed professional land surveyor is hereby authorized to make land surveys relating to the sale or subdivision of lands, the retracing or establishing of property or boundary lines, public roads, streets, alleys, or trails; and it shall be the duty of each licensed professional land surveyor, whenever making any such land survey, to set permanent and reliable magnetically detectable monuments . . ." Since "survey" is not defined in Title 54 Chapter 12 of Idaho Code, the Board has relied upon the definition of "survey" contained in Title 55 Chapter 19 of Idaho Code.

ANONYMOUS COMPLAINTS

Historically, the Board has been reluctant to investigate anonymous complaints. The justification for the reluctance is rooted in the right of the accused to face his or her accuser. In addition, the Rules of Professional Responsibility require a licensee to notify another licensee in writing if they discover a material error, omission or discrepancy in the work of the other licensee. In rare instances, the Board has initiated preliminary investigations on the basis of anonymous complaints when the anonymous complaint is accompanied by evidence which seems to substantiate the complaint, and the continued practice might imperil the public health, safety or welfare. The Board encourages all license holders to abide by the Rules of Professional Responsibility in regard to notification of discovery of discrepancy so that we can truly function as self-governing professions.

IN MEMORY OF THOSE RECENTLY DECEASED

William H. Bishop, CE 8673, Portland, Oregon
Norman S. Crossley, CE 690, Boise, Idaho
Richard K. DeCamp, PLS 5719, Wasilla, Alaska
Lawrence C. Hancock, CE 5205, Cordova, Alaska
William Douglas Kimmel, PLS 6285, Boise, Idaho
Dennis W. Lewis, LS 11575, Boise, Idaho
Melvin G. Lewis, CE/LS 730, Caldwell, Idaho
Karl F. McCullough, CE 2034, Florence, Oregon
W. Leroy Meyer, CE/LS 1545, Boise, Idaho
Ervin Olen, CE 3426, Boise, Idaho
Ward W. Ristau, ME 6701, Bellevue Washington
Richard E. Wilhite, EE 869, Sonora, California