


Oregon State Board of Examiners
for Engineering and Land Surveying

Overview of Current Law Enforcement Issues

2013 Conference
Professional Land Surveyors of Oregon
Friday, January 25, 2013 → Salem Conference Center

OSBEELS Investigators
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Purpose of Presentation

- o Outline powers and duties of OSBEELS, the Law Enforcement Committee (LEC), and the Regulation Department
- o Chart investigation and hearing procedures
- o Identify grounds for disciplinary action
- o Review types of disciplinary actions
- o Discuss trouble spots for compliance
- o Hold question and answer session



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Organizational Info



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graph TD; OG[Oregon Governor] --> OSBEELS[OSBEELS Board]; OSBEELS --> ES[Executive Secretary]; ES --> EA[Executive Assistant]; EA --> Admin[Administration]; EA --> Enforce[Enforcement]; EA --> Reg[Regulation]; Admin --> AS[Office of Special Affairs]; Admin --> AT[Accounting and Finance]; Admin --> AI[Administrative Services]; Enforce --> ASpec[Administrative Support Services]; Reg --> Insp[Inspection];
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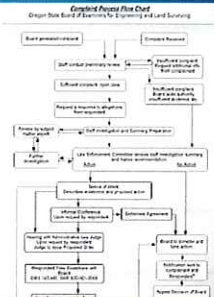
Standing Committees

- Examinations & Qualifications
- External Relations
- Finance
- Law Enforcement
- Professional Practices
- Rules & Regulations

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Overview Complaint Process

- Complaint received
- Conduct preliminary evaluation and/or open case
- Respondent has 14-days to respond to allegations
- LEC review: determine issue or not a Notice of Intent (NOI)
- Respondent has 21-days to respond to NOI
- Conduct Informal Conference or hearing with OAH/AJ
- Board approves Final Order listing violation and sanction



Complaint Process Flow Chart
Oregon State Board of Accountancy, Examiners and Licensure

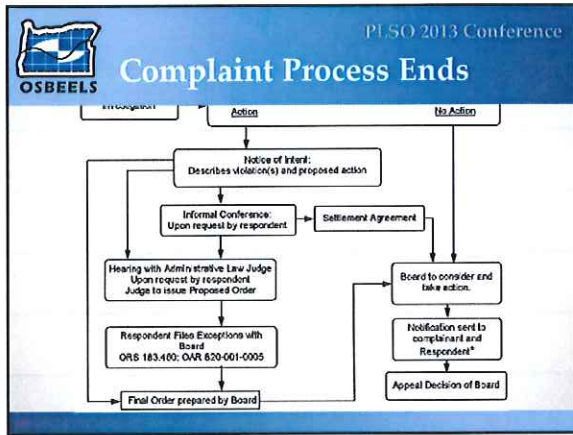
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Complaint Process Begins



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    graph TD
      A[Board generated complaint] --> B[Complaint Received]
      B --> C[Staff conduct preliminary review]
      C --> D[Sufficient complaint: open case]
      C --> E[Insufficient complaint: Request additional info. from complainant]
      E --> C
      D --> F[Request a response to allegations from respondent]
      F --> G[Staff Investigation and Summary Preparation]
      G --> H[Review by subject matter expert]
      G --> I[Law Enforcement Committee reviews staff investigation summary and makes recommendation: Action / No Action]
      H --> I
      I --> J[Further Investigation]
      J --> H
  
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LEC Statistics: 2011-2012
 For January 25, 2011 to January 25, 2013


- 149 - Number of Cases Opened (128 current cases)
- 99 - Number of Cases Closed (includes the total number of disciplinary actions listed below)
- 49 - Number of Cases Closed, Disciplinary Action
 - 1 - License revocation
 - 2 - License surrendered
 - 7 - Permanent retirement w/o reinstatement
 - 10 - Suspension
 - 2 - Respondent action in lieu of penalty
 - 42 - Civil penalty

LEC Statistics: 2011-2012
 For January 25, 2011 to January 25, 2013


- 96 - Number of Cases Closed
 - 53 - Professional Engineers (55%)
 - 19 - Professional Land Surveyors (20%)
 - 0 - Professional photogrammetrist
 - 24 - Unlicensed practice (25%)
- 49 - Number of Cases Closed, Disciplinary Action
 - 35 - Professional Engineers (71%)
 - 10 - Professional Land Surveyors
 - 0 - Professional photogrammetrists
 - 4 - Unlicensed practice

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Trouble Spot 1: CPD


- o Continuing Professional Development (CPD) requirements ensure that professional engineers, land surveyors, and photogrammetrists, and certified water right examiners sustain continuing competency.
- o OAR 820-010-0635 requires every registrant to obtain 30 professional development hour (PDH) units during each biennial renewal schedule:
 - o Submit your CPD Organizational Form with payment
 - Keep a copy of the Form for your records
 - o Delinquent payment or lack of Form will delay renewal
 - Not authorized to offer professional practices
 - o Retain 5-years of supporting documentation
 - Submit documentation only in response to an audit

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CPD Audit Success 1

- o **First and foremost:** respond to audit letters.
- o Keep current your CPD Form and documentation.
- o Ensure your CPD Organizational Form listings match supporting documentation.
- o Securely file your supporting documentation.
- o **Certifying course you did not take means you submitted false documentation to the Board.**
- o Reconstructing your documentation means you have not maintained them and are in violation.
- o Retire your registration if you are not staying current on CPD requirements.

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CPD Audit Success 2

- o If you are audited, do not rely on a friend to give you the correct information to comply with a CPD Audit!
- o Utilize Board staff to assist you if you do not understand what is required when you receive an audit notice.
- o Questions?
 - o Contact OSBEELS Account Specialists:
 - o Tina Sorensen, Amelia Volker
 - o 503-362-2666
- o **It is too late to avoid a likely sanction if your file is transferred to the Regulation Department for investigation.**


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Trouble Spot 2: Titles

ORS 672.007, Acts constituting practice of engineering, land surveying or photogrammetric mapping. For purposes of ORS 672.002 to 672.325:***


(2) A person is practicing or offering to practice land surveying if the person:

- (a) By verbal claim, sign, advertisement, letterhead, card or in any other way implies that the person is or purports to be a land surveyor;
- (b) Through the use of some other title implies that the person is a land surveyor; or
- (c) Purports to be able to perform, or who does perform, any land surveying service or work or any other service that is defined by ORS 672.005 as the practice of land surveying.***

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Complying with Titles

- o 2011 Salary & Benefits Survey, American Council of Engineering Companies of Oregon (ACEC):
 - o The Survey discussed salaries and benefits for individuals with the title of "engineer," but who were not required to be OSBEELS registered. Under ORS 672.007(1), use of the title is defined as engineering. Unlicensed persons therefore are violating ORS 672.045.
 - o The Board sent ACEC a letter on December 11, 2011, asking them to consider information it published in the Benefits Survey regarding the use of "engineer" title by unlicensed persons in member firms.
 - o The Board has issued sanctions in such cases.
- o This issue applies to surveyors and surveying firms as well.
 - o Ensure that only licensed persons have the title of "land surveyor," "professional land surveyor," or "registered professional land surveyor."


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What is Prohibited?

ORS 672.045 Prohibited activities relating to practices of engineering, land surveying or photogrammetric mapping. A person may not:

- (1) Engage in the practice of engineering, land surveying or photogrammetric mapping without having a valid certificate or permit to so practice issued in accordance with ORS 672.002 to 672.325.
- (2) Falsely represent, by any means, that the person is authorized to practice engineering, land surveying or photogrammetric mapping.
- (3) Present or attempt to use the certificate or permit of another or the seal of another.
- (4) Attempt to use an expired or revoked certificate or permit.
- (5) Falsely impersonate any registrant of like or different name.
- (6) Practice engineering, land surveying or photogrammetric mapping when not qualified.
- (7) Buy, sell or fraudulently obtain any certificate or permit required by ORS 672.002 to 672.325.
- (8) Aid or abet the buying, selling or fraudulently obtaining of any certificate or permit required by ORS 672.002 to 672.325.
- (9) Engage in the practice of engineering, land surveying or photogrammetric mapping under cover of a certificate or permit obtained or issued fraudulently or unlawfully or under fraudulent representations or mistake of fact in a material regard.
- (10) Give any false or forged evidence of any kind to the State Board of Examiners for Engineering and Land Surveying or to any member of the board in obtaining or attempting to obtain a certificate or permit required by ORS 672.002 to 672.325.

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ORS 672.005(2): Surveying

ORS 672.005, Additional definitions. As used in ORS 672.002 to 672.325, unless the context requires otherwise: "(2) "Practice of land surveying" means doing any of the following:

- (a) Providing or offering to provide professional services that apply mathematics, geodesy and other sciences and involve:
 - (A) The making of geometric measurements and gathering of related information pertaining to: (i) The physical or legal features of the earth; (ii) Improvements on the earth; or (iii) The space above or below the earth; or
 - (B) The development of measurements and information described in subparagraph (A) of this paragraph into graphics, data, maps, plans, reports, descriptions, projects or other survey products.
- (b) Performing geodetic surveys.
- (c) Establishing, reestablishing or replacing boundaries or geodetic control monuments or reference points.
- (d) Locating, relocating, establishing, reestablishing or retracing any property lines or boundaries for any tract of land, road right-of-way or easement.
- (e) Making any survey for the division or subdivision of a tract of land or for the consolidation of tracts of land.
- (f) Locating and laying out alignments, positions or elevations for the construction of fixed works.
- (g) Performing or offering to perform any investigation, interpretation or evaluation of, or any consultation or testimony about, any of the services described in paragraphs (a) to (f) of this subsection.
- (h) Collecting, preparing, manipulating or modifying data related to activities described in paragraphs (a) to (f) of this subsection, other than acting as a scrivener.
- (i) Performing photogrammetric mapping.
- (j) Making surveys that involve horizontal or vertical mapping control or geodetic control.

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ORS 672.025(3): Surveying

ORS 672.025, Practice of land surveying without registration prohibited; seal required.


- (1) No person shall practice land surveying in this state unless the person is registered and has a valid certificate to practice land surveying issued under ORS 672.002 to 672.325.
- (2) Every registered professional land surveyor shall, upon registration, obtain a seal of the design authorized by the State Board of Examiners for Engineering and Land Surveying. Every final document including drawings, specifications, designs, reports, narratives, maps and plans issued by a registrant shall be stamped with the seal of and signed by the registrant. The signature and stamp of a registrant constitute a certification that the document was prepared by the registrant or under the registrant's supervision and control.
- (3) Notwithstanding the provisions of ORS 672.005(1), a registered professional engineer not also registered as a professional land surveyor shall not establish, reestablish or restore land boundaries, corners or monuments between lands not held in common ownership or intended for conveyance.

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Trouble Spot 3: PLS/PE

- o Engineers are authorized to engage in specific acts of land surveying defined under ORS 672.005(1)(c-e).
 - o Determine area or topography.
 - o Establish lines, grades or elevations, or to determine or estimate quantities of materials requires, removed or in place.
 - o Surveying required for design and construction layout of engineering and architectural infrastructure.
- o Engineers are not authorized to engage in land surveying that involves boundaries as per ORS 672.025(3).
 - o Accurately represent the professional services of your registration to the public, to your peers, and to contracting agencies.




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Offering Services

OAR 820-010-0720, Advertising for or Offering to Perform Services without Employing a Licensee; Engineering, Land Surveying and Photogrammetry Offices

- (1) A licensee or firm, partnership, corporation, limited liability company, joint stock company, or other organization shall not advertise for or offer to perform or perform professional services for which a license is required unless the licensee or organization has a full-time partner, manager, officer or employee licensed to practice in the discipline for which a license is required.
- (2) Licensees and organizations shall not advertise for or offer to perform or perform professional services for which a license is required but for which they do not hold, or have a qualified person who holds, a license and thereafter seek to employ persons who hold a qualifying license. ***




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Trouble Spot 4: Entry

ORS 672.047, Right of entry by land surveyor; compensation for damages caused; notice; removal of survey markers.

- (1) Subject to subsection (4) of this section, a registered professional land surveyor, or any employee or agent of the land surveyor, may enter on foot, where practicable, upon any land for the purpose of surveying or performing any survey work and may establish permanent survey monuments as allowed by rule of the State Board of Examiners for Engineering and Land Surveying. ***
- (4) A registered professional land surveyor, or any employee or agent of the land surveyor, may not enter upon land for the purpose of surveying, performing other survey work or establishing a permanent survey monument without first providing notice to the landowner by first class mail or by personal notice. If the land is occupied by a person other than the landowner, notice must also be given to the occupant by first class mail or by personal notice. Notice that is given by first class mail must be mailed at least seven days prior to the entry onto the land. Notice that is given by personal notice must be hand-delivered to the landowner or occupant or be posted in a conspicuous place where the landowner or occupant may reasonably be expected to see the notice. The notice shall give the professional land surveyor's name, address, telephone number, purpose, availability of the survey and the presence of any temporary or permanent monuments or other markers to be left on the land. ***




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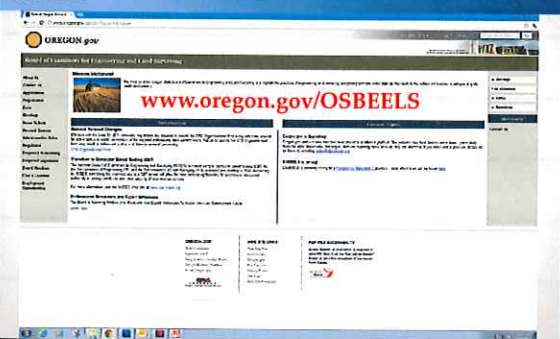
Right of Entry Success

ORS 672.047 gives professional land surveyors the exclusive right to enter private lands upon proper notice. To comply, you must:

- o First provide notice to the **landowner** by first class mail or by personal notice. If the land is occupied by a person other than the landowner, notice must also be given to the **occupant** by first class mail or by personal notice.
- o Notice that is given by first class mail must be mailed at least **seven days prior to the entry onto the land**. Notice that is given by personal notice must be **hand-delivered** to the landowner or occupant or be **posted in a conspicuous place** where the landowner or occupant may reasonably be expected to see the notice.
- o The **notice shall give** the professional land surveyor's name, address, telephone number, purpose, availability of the survey and the presence of any temporary or permanent monuments or other markers to be left on the land.


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Basis for Legal Action
 ORS 672.200, Grounds for suspension or revocation of certificate or permit or refusal to issue, restore or renew certificate or permit; grounds for reprimand. The State Board of Examiners for Engineering and Land Surveying may refuse to issue, restore or renew, or may suspend or revoke a certificate or permit, or reprimand any individual enrolled as an intern or holding a certificate or permit:
 (1) For violation of any provision of ORS 672.045;
 (2) For gross negligence, negligence or incompetence in the practice of engineering, land surveying or photogrammetric mapping;
 (3) For conviction of a felony, or of a misdemeanor involving the practice of engineering, land surveying or photogrammetric mapping; or
 (4) For any violation of the rules of professional conduct prescribed by the board.


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OAR: Rules of Conduct
 OAR 820-020-0005, Preamble
 OAR 820-020-0015, Registrants Shall Hold Paramount the Safety, Health and Welfare of the Public in the Performance of their Professional Duties
 OAR 820-020-0020, Registrants Shall Perform Services Only in the Areas of Their Competence
 OAR 820-020-0025, Obligation of Registrants to Issue Statements only in an Objective and Truthful Manner
 OAR 820-020-0030, Obligation of Registrants to Act in Professional Matters for Each Employer or Client as Faithful Agents or Trustees, and to Avoid Conflicts of Interest
 OAR 820-020-0035, Obligation of Registrants to Avoid Improper Solicitation of Professional Employment
 OAR 820-020-0040, Examination Subversion
 OAR 820-020-0045, Obligation Not to Engage in Unprofessional Behavior

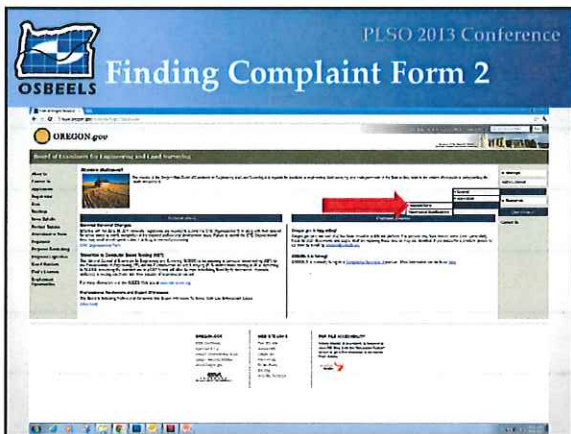

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Finding OSBEELS















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Contact OSBEELS

OSBEELS Investigators:
503-362-2666
Allen McCartt
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www.oregon.gov/osbeels

Email us at osbeels@osbeels.org

