

The Fight Against Unlicensed Practice

By Glen Thurow*, PS, CFedS

“The difficult we do immediately. The impossible takes a little longer.”

Slogan of US Army Special Forces

A new tool has been added in the constant fight against unlicensed practice; the Surveyor of Record affidavit. This important tool became effective on July 1, 2017 by being codified in the Engineering and Surveying Practice Act. In part, the Act states the following:

Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] as individuals or through a business entity.¹

The Act defines business entity as “... a corporation, professional corporation, limited liability corporation, professional limited liability corporation, general partnership, limited partnership, limited liability partnership, professional limited liability partnership, a joint stock association or any other form of business, whether or not for profit.”² In short, this covers anyone in the surveying business in New Mexico including sole proprietors. The Act further states:

In the case of practice through a business entity other than a partnership[^], services or work involving the practice of surveying may be offered through the business entity; provided the person in responsible charge of the activities of the business entity that constitute the practice of surveying is a professional surveyor who has **authority to bind the business entity by contract**.³ (emphasis mine)

Does this mean that the surveyor must sign all contracts for a business entity that involves surveying? I think not. But it does mean that the surveyor should have the ability to speak for the business entity in all surveying related manners and bind the company legally. This suggests that the surveyor could sign a contract on behalf of the business entity. Often this means being identified as a company officer. Now here is the very important change:

In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.⁴

* The views expressed herein are solely those of the author and do not necessarily reflect the opinion of the NM Board of Licensure for Professional Engineering and Professional Surveyors.

[^] Surveying partnerships require one of the partners to be licensed and that individual automatically becomes the surveyor of record. The same is true for the individual surveying practitioner. In either case they are still considered a business entity and must file an affidavit.

Partnerships and sole proprietors will not normally have an officer. That's okay. The required filing is simplified in those instances. The surveyor can file the affidavit directly without the necessity of a corporate officer. Limited liability companies normally have members, and based on their operating agreements the proper company designee can be determined.

How does this help in the fight against unlicensed practice? Any business entity performing surveying services as defined by the Act, or offering surveying services to the public must have a surveyor of record on file with the board. If they don't they're violating the law and the board will act. Any surveyor who signs and stamps plats on behalf of a business entity needs to have an affidavit on file before doing so. If the business entity involved is a corporation or limited liability company, it also needs to have an officer of the company acknowledge and accept the individual as the surveyor of record. This is done so that business entities cannot claim that they had no knowledge that an individual has claimed to be the surveyor of record and therefore have no obligations under the law.

A question also arises if a company has more than one licensed surveyor on staff. Does each licensee need to file an affidavit? No, only one. This does not mean that the surveyor of record is responsible for the work of other licensees. Each individual licensee is still responsible for the work conducted under her supervision, signature, and seal as is the company for which the licensee works.

The affidavit requirement will enhance accountability within the profession. It will help to curtail unlicensed practice, and those surveyors who would abet unlicensed practice by stamping the work of others, acknowledging that they are responsible for the work of a company and are able to legally bind that company contractually. Officers of a company will acknowledge the surveyor's ability to do the same. Will this eliminate unlicensed practice completely? Probably not. Some licensees will continue to stamp the work of others without being in responsible charge. They do so at their peril. Anytime a complaint is filed with the board the first stop will be the affidavit file.

The affidavit and instructions for completion are available of the board's website. While the new requirement took effect on July 1, 2017, a grace period for compliance is granted. An email reminder will be sent out prior to enforcement. However, Benchmark readers are encouraged to file the affidavit as soon as possible.

Questions concerning the affidavit and filing process can be directed to the Board of Licensure staff in Santa Fe.

¹ The Engineering and Surveying Practice Act, July 1, 2017 61-23-27.9 B

² Ibid., 61-23-3 D

³ Ibid., 61-23-27.9 B

⁴ Ibid., 61-23-27.9 C