

1 BEFORE THE OREGON STATE BOARD OF EXAMINERS
2 FOR ENGINEERING AND LAND SURVEYING

3 In the Matter of:
4 TERRY L. JONES

 | Case No. 3140
 | FINAL ORDER BY DEFAULT

5
6 On or about November 5, 2019, the Oregon State Board of Examiners for Engineering
7 and Land Surveying (Board) properly served a Notice of Intent to Assess a Civil Penalty
8 (Notice) on Terry L. Jones (Jones). The Notice assessed a civil penalty in the amount of \$1,000
9 and it designated the Board file on this matter as the record for purposes of establishing a *prima*
10 *facie* case upon default. Jones did not request a hearing. Therefore, upon consideration of the
11 facts and law, the Board enters the following Order:

12 **FINDINGS OF FACT AND ULTIMATE FACTS**

- 13 1. At all relevant times, Jones was an Oregon Professional Land Surveyor, registration
14 number 02507PLS.
- 15 2. On or about September 27, 2018, Jones began surveying work for Fidelity National Title,
16 along Hawk Street in unincorporated Neskowin, Oregon, County of Tillamook. Attorney
17 for Fidelity National Title, Daniel Womac, was Jones's primary contact on the project.
- 18 3. Jones agreed to allow Womac to send out the notices of entry for the survey work Jones
19 would perform.
- 20 4. Jones did not mail, personally deliver, or post notices of entry for his survey to any
21 owners or occupants of Hawk Street. No member of Jones's survey field crew or other
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1 employee or agent of Jones mailed, personally delivered, or posted notices of entry for
2 his survey to any owners or occupants of Hawk Street.

- 3 5. On or about November 7, 2018, Jones and his field crew – who were employees or agents
4 of Jones -- commenced the surveying of Hawk Street, which consisted of locating the
5 existing road, and utilities in relation to the existing right of ways and private property
6 boundaries.
- 7 6. While conducting this survey, Jones, his field crew, or both entered the property of some
8 of the private landowners on Hawk Street.
- 9 7. On or about March 5, 2019, 20 of the 32 property owners wrote or stated that notice of
10 Jones and his crew were going to enter their property to conduct survey work was never
11 provided by Jones or his crew members¹. The other 12 property owners did not respond.
- 12 8. On August 8, 2019, the Oregon State Board of Examiners for Engineering and Land
13 Surveying (Board) voted to issue Jones a Notice of Intent to Assess Civil Penalty for
14 failing to provide proper notice prior to entering properties.

15 **APPLICABLE LAW**

- 16 1. ORS 672.047(4) provides that a registered professional land surveyor, or any employee
17 or agent of the land surveyor, may not enter upon land for the purpose of surveying,
18 performing other survey work or establishing a permanent survey monument without first
19 providing notice to the landowner by first class mail or by personal notice. If the land is
20 occupied by a person other than the landowner, notice must also be given to the occupant
21 by first class mail or by personal notice. Notice that is given by first class mail must be
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¹ Or by anyone else, including Womac.

1 mailed at least seven days prior to the entry onto the land. Notice that is given by
2 personal notice must be hand-delivered to the landowner or occupant or be posted in a
3 conspicuous place where the landowner or occupant may reasonably be expected to see
4 the notice. The notice shall give the professional land surveyor's name, address,
5 telephone number, purpose, availability of the survey and the presence of any temporary
6 or permanent monuments or other markers to be left on the land.

- 7 2. Under 670.325 (1), the Board may impose a civil penalty of up to \$1,000 per violation of
8 its laws and rules.
- 9 3. Under 670.325 (1), the Board may impose a civil penalty of up to \$1,000 per violation of
10 its laws and rules.


11 **CONCLUSIONS OF LAW**

- 12 1. Jones was an independent contractor hired by Fidelity National Title and therefore Daniel
13 Womac -- the attorney for Fidelity National Title -- was not Jones's employee or agent.
- 14 2. Because Daniel Womac was not the professional land surveyor conducting survey work
15 on Hawk Street, and because Daniel Womac was not Jones's employee or agent, any
16 notice of survey Daniel Womac may have provided to a property owner or occupier, does
17 not satisfy ORS 672.047(4).
- 18 3. Because neither Jones, nor his employees or agents, provided the notice required by ORS
19 672.047(4) to any of the owners or occupiers of the properties on Hawk Street, before
20 entering those properties for the purpose of surveying, Jones violated ORS 672.047(4).
- 21 4. The conduct described above is the basis for imposition of a civil penalty under ORS
22 672.325. Pursuant to 672.325(1), the Agency may impose a maximum civil penalty of
23 \$1,000.

1 **ORDER**

2 For the reasons above, the Board HEREBY assesses civil penalty against Terry
3 Jones in the amount of \$1,000 for violating ORS 672.047(4).
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5 DATED this 14 day of January, 2020.
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8 _____
9 Daren L. Cone, PE, PLS, President
Oregon State Board of Examiners for
Engineering and Land Surveying

10 **NOTICE**

11 Civil penalties, if unpaid, may be recorded and filed with the county clerks as liens against
12 property 10 days after the expiration of the statutory appeals period (70 days after issuance of
13 this order). Make checks payable to the Oregon State Board of Examiners for Engineering and
Land Surveying.

14 **APPEAL RIGHTS**

15 You are entitled to judicial review of this order in accordance with ORS Chapter 183.482. You
16 may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon
17 within 60 days from the date of service of this order.
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