

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

In the Matter of:  
Dan Gilbert

Case No. 2022-20  
FINAL ORDER BY DEFAULT

On or about February 22, 2023, the Oregon State Board of Examiners for Engineering and Land Surveying (Board) properly served a Notice of Intent to Assess a Civil Penalty (Notice) on Dan Gilbert (Gilbert) via certified mail. The Notice proposed to assess a civil penalty in the amount of \$250. It designated the Board file on this matter as the record for purposes of establishing a *prima facie* case upon default. Gilbert did not request a hearing. Therefore, upon consideration of the facts and law, the Board enters the following Order:

**FINDINGS OF FACT AND ULTIMATE FACTS**

1. At all relevant times, Gilbert was a licensed Oregon land surveyor, registration number 60121PLS.
2. On or about April 22, 2022, a survey crew working under Gilbert's direct supervision and control entered property belonging to Klay Smith, located at 56833 Columbia River Highway, in Warren, Oregon, in order to establish the property boundary for Smith's neighbor.
3. Neither Gilbert nor his crew provided Smith with notice as required by statute prior to entering his property to establish the boundary.
4. Establishing a property is survey work that should be performed in conformance with the standards of professional practice.
5. Gilbert applied his seal and signature to CS# 6932, the Record of Survey for this project, filed on August 1, 2022 with the Columbia County Surveyor.

## APPLICABLE LAW

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2 1. ORS 672.047(4) provides, in pertinent part, that a registered professional land surveyor may  
3 not enter upon land for the purpose of performing survey work without first providing notice  
4 to the landowner by first class mail or by personal notice. If the land is occupied by a person  
5 other than the landowner, notice must also be given to the occupant by first class mail or by  
6 personal notice. Notice that is given by first class mail must be mailed at least seven days  
7 prior to the entry onto the land. Notice that is given by personal notice must be hand-  
8 delivered to the landowner or occupant or be posted in a conspicuous place where the  
9 landowner or occupant may reasonably be expected to see the notice. The notice shall give  
10 the professional land surveyor's name, address, telephone number, purpose, availability of  
11 the survey and the presence of any temporary or permanent monuments or other markers to  
12 be left on the land.
- 14 2. ORS 672.002(10) defines "supervision and control," in part, as accepting responsibility that  
15 the work product is in conformance with standards of professional practice.
- 17 3. OAR 820-005-0080 provides, in pertinent part, that applying the licensee's seal and signature  
18 to a document is a means of performing supervision and control.
- 19 4. Under ORS 670.325(1), the Board may impose a civil penalty of up to \$1,000 per violation  
20 of its laws and rules.
- 21 5. OAR 820-015-0060 provides that, in establishing the amount of a civil penalty to be assessed  
22 pursuant ORS 672.325, the Board may consider the following factors: (a) the nature, gravity  
23 and magnitude of the violation; (b) prior violations, including administrative, civil or  
24 criminal proceedings in any state; (c) whether the violation was repeated or continuous; (d)  
25 whether the violation was an inadvertent act or an intentional act; (e) the history of the  
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1 respondent in taking steps necessary or appropriate to correct any violation; (f) the  
2 opportunity for and the difficulty in correcting the violation at issue; and (g) whether  
3 measures have been put in place to prevent reoccurrence. In considering the factors set forth  
4 above, the applicable factors may be given varying weight depending upon the circumstances  
5 of the violation.

- 6 6. Under ORS 672.200(6), the Board may suspend, revoke, or refuse to issue, restore, or renew  
7 a certificate or permit, or may reprimand an individual enrolled as an intern or holding a  
8 certificate or permit for violating a rule of professional conduct prescribed by the board.  
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#### 10 CONCLUSIONS OF LAW

- 11 1. Because Gilbert applied his seal and signature to the Record of Survey for this project,  
12 Gilbert was in supervision and control of the project.
- 13 2. Because Gilbert was in supervision and control of the project, he accepts responsibility that  
14 the work product is in conformance with standards of professional practice.
- 15 3. Because establishing a boundary is survey work that should be performed in conformance  
16 with the standards of professional practice, Gilbert was required to provide Smith with notice  
17 prior to him or his crew entering Smith's land to perform that work.
- 18 4. Because Gilbert failed to provide Smith with notice as required by statute prior to entering  
19 Smith's land to perform survey work, Gilbert violated ORS 672.047(4)
- 20 5. The conduct described above is the basis for discipline under ORS 672.325(1) and ORS  
21 672.200(6). Pursuant to ORS 672.200(6), the Board may suspend, revoke, or refuse to issue,  
22 restore, or renew a certificate or permit, or may reprimand an individual holding a certificate  
23 or permit for violating a rule of professional conduct prescribed by the board without  
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1 amending its notice. The Board proposes to assess a civil penalty of \$250 for Gilbert's  
2 violation of ORS 672.047(4) detailed above.

3 **FINAL ORDER**

4 For the reasons above, the Board assesses a civil penalty in the amount of \$250 against  
5 **Gilbert for violating ORS 672.047(4).**

6  
7 DATED this 9<sup>th</sup> day of May, 2023.



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10 Sean W. St. Clair, PE, President  
11 Oregon State and of Examiners for  
12 Engineering and Land Surveying

13 **NOTICE**

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

18 **APPEAL RIGHTS**

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