Introduction

A. System of Land Ownership

In a system of land ownership such as that of Texas and the rest of the United States, where rights of ownership or use are typically attached to specific pieces of land with defined boundaries, a key role is that of the objective expert who can both describe the shapes and locations of pieces of land in ways that are unambiguous and readily ascertainable and who can interpret the descriptions that others in the past have made of such boundaries, determining where exactly the land described is situated upon the ground. The performance of the role requires expertise and knowledge in a number of specialized areas, including the body of law pertaining to land boundaries and the science of measurements.

The value of this specialist role is one that anyone will appreciate who has ever dealt with the sort of confusing and ambiguous amateur scrambles of descriptive language that landowners have themselves prepared and used in attempting to convey land or rights of use to others. The resulting uncertainties in the locations of tracts and parcels of land comes at a very high cost when each must ultimately be settled by a lawsuit, at worst, or at best by some lengthy negotiation with other interested parties resulting in new instruments correcting the public record. After all, a significant part of the value of land is due to the fact that it can be treated as a reliable commodity, a securely defined thing that lenders may finance and that a buyer may take possession of to use and enjoy with confidence. Otherwise, what is the value of knowing that one owns land, but without the means to know where it actually is? Less than nothing?

Over the past several centuries, as the lands of Texas have passed out of the hands of the sovereign authorities of Spain, Mexico, the Republic of Texas, and the successor to them all, the present State, Texas has become an increasingly complex pattern of ownership rights and rights of use overlaid upon them. Large tracts have been divided over time and resubdivided. Roads have been opened and modified. Mineral estates have been separated from surface ownership. Pipelines have been laid and transmission lines strung. Lands have been conveyed using a variety of descriptions. Lawsuits have been decided and some disputes have remained unresolved.

B. Role of Surveyor

The objective expert in matters of land boundaries is of course the land surveyor. Land surveyors serve multiple functions within the land ownership system which are summarized by four verbs:

- **Dig** - Digging refers to investigations, both the literal search for old evidence of land boundaries as well as the research of public records and archives for the writings of deeds, other grants of land, and a variety of other matters pertaining to land boundaries.

- **Measure** - Measurement, of course, is the activity mainly associated with land surveyors, and for good reason. The ability to determine the relative positions of the spectrum of old evidence by which land boundaries are proven, and to reconstruct positions previously determined, is central to the role surveyors play in helping maintain stable land boundaries.
Judge - While land surveyors are not judges, in practice the role of the land surveyor, if properly performed, greatly reduces the potential for disputes over land boundaries. In a practical sense, when a land surveyor makes decisions about boundary evidence in accordance with settled principles of law, he or she is serving the land ownership system by avoiding creating needless disputes and confusions. This isn't, of course, to say that a land surveyor may unilaterally settle disputes, but a surveyor acting in accordance with how a court would likely rule if presented with the same facts before the surveyor and who can advise the interested parties and/or their attorneys of those facts can help them resolve disputes without expensive litigation.

Preserve - Stability of land boundaries means, among other things, that it will be possible more than fifty years from now to ascertain with relative certainty where today a line or corner of a boundary is established or an existing old boundary monument fixing a boundary is recovered. This preservation of boundary locations includes setting durable and substantial monuments that will be able to be identified with confidence into the future and leaving a more than sufficient record of those boundaries that will make some future surveyor able to reproduce essentially the same with confidence and with as little effort as may be reasonably expected.

Land surveyors work, as do all professionals, to serve needs that exist in their societies. Most members of the professions also pursue their work as a means of making a livelihood, contracting to perform various services to clients directly or indirectly, in exchange for compensation. Over the period since 1836, land surveying in Texas has shifted from being an activity predominantly of public officials and those working immediately under them, paid at rates fixed by law, with bonds in the amounts of sizable sums of money guaranteeing proper performance of duties, to a service offered in a widely varied marketplace in which surveyors are predominantly private consultants contracting with members of the public or public agencies on terms subject to negotiation. As the transformation of land surveying from mainly an activity of government to mainly that of the much less regulated commercial marketplace has taken place, questions as to how private surveyors should conduct themselves arose that in a prior century had been largely answered by the laws setting forth the official duties of surveyors as agents of the Republic and State.

C. History of Regulation of Texas Land Surveying

This discussion of professional surveying ethics deals with how a person licensed as a Registered Professional Land Surveyor in Texas should conduct himself or herself in the performance of professional work. This includes the specific duties and obligations of the licensee, as well as the more general principles that a professional should seek to follow. These fall into two categories: the formal, codified rules laid out by the Texas Board of Professional Land Surveying and the possibly uncodified, but foundational, principles embodied in the reasons why land surveying is a licensed profession in the first place. Over the period of time between the era in which Texas was a part of the Republic of Mexico until the present, the role that land surveyors have played has changed. It is worth reviewing the history of regulation of land surveying, however, to consider the elements that have remained more or less constant.
Land surveying is one of the professions that the citizens of Texas, acting through the legislature, have collectively agreed should be regulated by the State for the protection and benefit of the public. Presently, professional land surveying is licensed by the State under the provisions of the Professional Land Surveying Act of 1991 as amended, codified as Title 6, Subtitle C, Chapter 1071 of the Texas Occupations Code. That 1991 act replaced the prior licensing statute known as the Land Surveying Practices Act of 1979, which itself repealed the Public Surveyors Act of 1955, the law that originally created the category of licensee known as the Registered Public Surveyor.

Under current law, the main category of professional licensure is that of the Registered Professional Land Surveyor. In addition to that license, there is also a specialized license known as the Licensed State Land Surveyor that deals with surveys of certain classes of lands, notably those to which the Permanent School Fund of the State of Texas retains an interest, in the case when field notes and maps representing those surveys are to be filed in the General Land Office. When such field notes and maps are not to be filed in the General Land Office, naturally there is nothing that precludes Registered Professional Land Surveyors as a matter of law from surveying any and all boundaries of both original land grants and lands in which the State retains an interest. The vast majority of land surveying work performed in the State of Texas is done by holders of the former license in the capacity of a Registered Professional Land Surveyor.

1. Land Surveyors in Colonial Texas

While the present law under which Registered Professional Land Surveyors and Licensed State Land Surveyors are licensed by the State is relatively new, land surveying as an important activity has been regulated in some fashion in Texas since before independence in 1836. The fundamental technical system of land ownership dependent upon written documents for the conveyance of land or interests in land has continuously required the involvement of surveyors to both prepare the maps and written descriptions setting forth the boundaries of lands transferred as well as, and as importantly, to interpret the maps and descriptions under which various parties claim their titles to or rights of use of Texas lands. The objective at all times has been to make boundaries definite and ascertainable and to describe those boundaries in ways that can be used by some disinterested expert to identify them upon the ground with the writings in hand.

Note, for example, the provisions of the law enacted in 1827 by the Legislature of the State of Coahuila and Texas (Vol. 1 Gammel’s Laws of Texas, Page 56) that instructed each of the government's Commissioners involved in settling colonists on Texas lands that

Art. 6 He shall take care that no vacant lands be left between possessions, and in order that the lines may be clearly designated, he shall compel the colonists, with the term of one year, to mark their lines, and to establish fixed and permanent corners.

Art. 7 He shall appoint, under his own responsibility, the surveyor, who must survey the land scientifically, requiring him previously to take an oath truly and faithfully to discharge the duties of his office.

The obvious objectives were to promote an orderly settlement with the lands conveyed to
private ownership having definite, identifiable boundaries and the Mexican state legislature recognized that it would require a diligent surveyor with specialized knowledge to accomplish this. In this instance, the Commissioner appointed by the government was in effect the licensing agent, selecting and determining the qualifications of individuals who would be authorized to survey in the various colonies of Texas where immigrants from the United States were arriving to be settled under colonization contracts with the Mexican government.

The values that those articles of the 1827 law promoted were:

- efficiency and avoidance of waste,
- stable and ascertainable boundaries,
- accurate and honest reporting, and
- conformity with the law

2. Texas Constitution of 1836

The commonly accepted figure is that only about 12% of the land area of the Republic of Texas had been lawfully granted under the governments of Spain and Mexico, leaving a vast quantity of unappropriated public lands in Texas upon March 2, 1836, the date of independence. The prospect of acquiring land of their own at favorable prices had attracted many colonists from the United States, where under the law of 1820 for $1.25 cash per acre they could purchase up to 80 acres, to Texas where they could prospectively acquire title to 4428.4 acres of land for less than three cents an acre. One of the first businesses of the Republic was to provide for an orderly system by which the public lands that the Republic had taken possession of could be acquired by private owners as well as used for other public purposes. Section 10 of the General Provisions of the Texas Constitution of 1836 provided among other things that

> with a view to the simplification of the land system, and the protection of the people and the government from litigation and fraud, a general land office shall be established, where all the land titles of the republic shall be registered, and the whole territory of the republic shall be sectionalized, in a manner hereafter to be prescribed by law, which shall enable the officers of the government or any citizen, to ascertain with certainty the lands that are vacant, and those lands which may be covered with valid titles.

Those provisions of that early constitution reflect the general public utility of:

- efficiency and avoidance of waste of land resources,
- readily ascertainable boundaries, and
- reliable land titles

3. Act of 1836

Land, or more specifically, access to private ownership of it, was a significant precipitating factor behind the break of Texas from Mexico in 1836. Certainly, it isn't purely coincidental that on December 22, 1836, one of the first acts of the Congress of the new Republic of Texas (Vol.1 Gammel's Laws of Texas, Pg. 1276) was to establish a General Land Office and to attempt to authorize an orderly process for the surveying of lands to be granted
from the public domain to private owners and for the archiving of the records of those surveys and of the land titles based upon them. Among the provisions of that Act were the division of the Republic into eleven land districts, each with its own land office and a surveyor general to be appointed by the President and confirmed by the senate to run it. The duty of each surveyor general would be

*to examine the field notes and plats of all surveys which have been or may be made within the bounds of his authority [the land district], for the purpose of getting a patent for them and to see that they are correct; and shall certify the same on the same paper on which are the field notes; and shall carefully preserve in his office a copy of all such field notes and plats.*

The Act of 1836 further provided what was in effect a scheme of licensing of deputy surveyors within each district under the regulation of the Survey General of the land district. Specifically, it provided that

*on application of any individual in person to any one of the surveyors general, and producing sufficient testimony of proper qualifications, he shall be deputed by the said surveyor general to survey any where within the bounds of his authority [the land district]; for which deputation the deputee [sic] shall pay the surveyor general the sum of three dollars.*

In other words, the prospective deputy surveyor had to furnish evidence of qualifications, pay a fee, be subject to the regulations and instructions issued by the surveyor general within the land district, to be authorized to survey.

The provisions of the Act of 1836 clearly envisioned land surveying as an activity that would be regulated by the Republic, but by using a dispersed organization appropriate to the difficulty of communications in frontier Texas. In the original scheme, the Surveyors General were agents of the government under the central control of the Commissioner of the General Land Office, and they in turn controlled the activities of their Deputies. The schedule of fees that the surveyors were to receive for their services left little room for haggling (very much unlike the commercial marketplace in which services are offered today). What the Congress of the Republic was evidently trying to design was a system that would be orderly, controlled, and predictable in its results.

4. Act of 1837

On December 14, 1837, the Congress of the Republic of Texas enacted a general law (Vol. 1 Gammel’s Laws of Texas, Pg. 1404) intended to amend and consolidate various laws previously adopted relating to the General Land Office and the surveying of land grants out of the public domain. The 1837 act provided for a land system in which the original scheme of surveyors-general operating within eleven land districts was replaced by one under which a County Surveyor was elected in each county. The County Surveyor's duties were similar to those previously described for the Surveyor General, namely:

*to receive and examine all field notes of surveys, which have been or may*
hereafter be made in said county and upon which patents are to be obtained, and shall certify the same under his hand to the commissioner of the general land office, after having recorded the same in a book to be kept by him for that purpose. [Sec. 9]

To guarantee that the County Surveyor would properly perform the duties of his office, the law required that he post a bond in the sum of ten thousand dollars, payable to the President of the Republic or his successors in office, in a form approved by the board of land commissioners of that county, a body constituted by law to oversee the issuance of land certificates and validation of titles.

The law set out the sums of money that the County Surveyor would be entitled to collect for examining field notes of surveys and authorized him to appoint as many Deputy Surveyors as he thought necessary for the county, allowing him to collect a fee of five dollars from each Deputy appointed and requiring each Deputy give a bond in the sum of five thousand dollars to insure “the faithful performance of the duties of his office.” This bond was payable in a manner similar to the County Surveyor’s bond. The Act of 1837 further contemplated that the County Surveyor would furnish his deputies with such instructions that he might receive from the General Land Office.

Considering that the original surveys out of the public lands made by the surveyors holding the offices of County Surveyor, District Surveyor, or their Deputies constituted perhaps more than ninety percent of the land surveying performed in Texas for several decades afterward, the Act of 1837 was in effect the principal early regulation of land surveying in Texas.

The County Surveyor system set out in the Act of 1837 was if anything simply a more practical and controlled version of the Surveyor Generals envisioned by the Congress of the Republic in 1836. Breaking the administration of land records and surveys down to the scale of a county meant that the County Surveyor would be in residence in the same location as the civil authorities of government and would be dealing with a smaller territory of land and so could, in theory, keep better track of the surveys within it and his Deputies. The clear intent was to make the land ownership system

- orderly,
- controlled, and
- as predictable as possible.

a. Difficulties with County Surveyor System

The constitution of 1836 had stated the intention that laws would be enacted setting forth the manner in which the public lands of Texas would be sectionalized, i.e. subdivided into a regular grid of square 640 acre sections of land, presumably in a manner similar to that followed in the United States at the time. In the event, the Congress of the Republic of Texas did not actually enact such laws requiring the public lands to be sectionalized. There evidently was great public pressure to make desirable public lands available for settlement and neither the money nor the time was available that a survey along the lines of that of the United States’ rectangular survey would have required.
As a result, Texas adopted a system of patchwork grants in which those entitled to land under the laws of the Republic were able in theory to have them located wherever they wished within the available public domain by the County or District Surveyor in which their selection was situated or by one of his Deputies. The resulting system placed those surveyors in roles of responsibility, particularly:

- not to locate land grants in conflict with lands previously surveyed for others,
- to conform to the laws under which the various land grants had been made so that any title issued would not be subject to challenge,
- to survey carefully enough that the grantees actually received the full measure of land to which they were entitled and that the Republic and State gave no more than was authorized by law,
- to report the locations of the lands they surveyed in a manner that the locations could be correctly plotted on a map of the county or district, and
- to inform prospective settlers about the nature and quality of the frontier lands with which the County Surveyor and his Deputies were apt to be most familiar.

During this period of original settlement, the laws of the Republic and then State of Texas continued with the system of Deputy Surveyors working under District and County Surveyors. However, the system failed fairly significantly when the low-value lands of West Texas were surveyed off for railroad companies and other holders of significant quantities of land scrip issued by the State to pay for various other improvements including, most notably, cleaning the channels of certain rivers to improve navigation.

In a system under which surveying was primarily supervised by a County Surveyor whose qualifications centered around having received the most votes at the last election and having posted a bond in the statutory amount, the forces of the market also worked to produce surveys of inferior quality. Large blocks of West Texas and the Panhandle are covered by checkerboards of surveys that were made out of the public domain for the holders of great piles of land scrip issued by the State. Many of the scrips were issued on condition that when a survey was made to locate the lands to which the holder was entitled, a like quantity of land be surveyed out of the public domain for the State as land to be used for the benefit of the public schools.

There clearly was some concern about the accuracy of surveys made by various County Surveyors and their Deputies as reflected in the technical standard enacted into law in 1873, entitled “An Act to secure Uniformity in the Courses and Measurement of Lines by Surveyors” (Vol. 7 Gammel’s Laws of Texas, Pg. 625) requiring that the County and District Surveyors

\[\text{Section 1} \text{ in order to secure uniformity in the courses indicated by the different surveyors' compasses, or other instruments used within their several jurisdictions, shall, in some convenient place at their respective county seats, establish a true meridian, by a substantial monument, to be erected at the expense of the county, and shall adjust or cause to be adjusted, to the said meridian, all such instruments before being used within their respective jurisdictions; and shall keep in his office a standard chain of the true measurement of ten varas, to which all of his chains}\]
used by themselves or their deputies shall be adjusted before being used in the measurement of lines of surveys.

And further providing that

[Sec. 2] All surveyors shall be held responsible to parties interested for any cost that may accrue in rectifying any errors that may occur in their work, by reason of neglect or failure to comply with the requirements [of Section 1].

b. Land Rush in Railroad Scrip

In order to encourage the construction of railroads in Texas, the legislature adopted various laws granting certain railroad companies quantities of land for each mile of track constructed along agreed routes across the state. By 1870, only about 711 miles of track had been constructed and somewhat more than 7,000,000 acres of land granted to the railroads responsible. After 1870, there was an explosion in railroad construction in Texas, the policy of making land grants to railroad companies to encourage construction having been written in the Texas Constitution of 1876. In all, twelve railroad companies received title to a total of 32,400,000 acres of land, roughly eighty percent of it in a period of little more than a decade after 1870.

5. Resurvey Act of 1887

One widespread result of the County Surveyor system, particularly in West Texas and the Panhandle, was that in many cases, the lands granted out of the public domain were so carelessly surveyed and poorly described that new corrective resurveys needed to be made just to be able to determine where, in many cases, those lands and the adjoining lands in which the State of Texas had an interest were located. The result was the Resurvey Act of April 2, 1887 (Vol. 9 Gammel’s Laws of Texas, Pg. 905) that gave the Commissioner of the General Land Office the authority to appoint qualified individuals to make resurveys of lands in which the State retained an interest such as those set aside for the benefit of schools, the university, and the so-called asylums.

One of the more significant qualifications for an appointment to survey under the direction of the Commissioner as provided by this act was the ability to make a bond in the amount of $10,000 similar to that required of County and District Surveyors. This was thought to insure proper execution of the Commissioner’s instructions. The general object of these resurveys performed under authority of the Act was to properly describe lands in which the State had an interest, with fixed, identifiable boundaries and free of the conflicts that had not uncommonly existed between lands previously located out of the public domain. While acting under appointment by the Commissioner in connection with a specific task, these surveyors were known as State Surveyors and they signed in that capacity the maps and field notes they had been requested to produce.

The Resurvey Act of 1887 did not, however, actually appropriate money to pay for the resurveys that the Commissioner of the General Land Office was authorized to have made. Instead, most of the resurveys that were undertaken pursuant to it were funded by the private parties who would benefit from them. As a result, the matter of resurveys was often a commercial transaction between the parties who would actually pay for the work and some
surveyor who hoped to be appointed as State Surveyor, with the persons paying the costs being typically no less interested in keeping costs to a minimum than those for whom the original, faulty surveys had been made.

6. The City Surveyors
The rapid extension of railroads across many parts of Texas in the 1870's and 1880's resulted in two significant trends that effected land surveying work. The first was economic development, including a demand for land in the vicinity of railroads by which commodities and agricultural products could be shipped to market. This required surveys to subdivide larger original land grants in grazing use into smaller tracts suitable for uses such as cotton farms. The second and more permanent trend, one that has lasted through the present, was the rapid growth of cities. While in 1900 fewer than one-fifth of the population of Texas was urban, by 1945 that fraction had grown to roughly half, and in 2008 nearly 90 percent of Texans lived in and around cities.

The rise of cities created a demand for land surveying to subdivide and plat lands into streets and lots, and to assist with other municipal improvements. One important aspect of surveying in cities is that urban land uses tend to be intensive. Buildings in central business districts often fill entire lots. Relatively high land values practically guarantee that land owners will be keenly interested in having well defined boundaries and will not casually relinquish their rights in land when disputes arise.

Several of the larger Texas cities such as Austin, Houston, and San Antonio had city officers in charge of quite a bit of surveying work inside the city limits, both for municipal purposes such as identifying encroachments into public streets and marking lines and grades for the laying of curbing in those streets, as well as for laying out the streets and lots of new additions to the city. The Austin City Ordinances of 1886, for example, provided as follows for an elective office known as “City Engineer”:

At every general election of city officers by the City council, there shall be elected a city engineer, who shall hold his office for a term of two years and until his successor is elected and qualified. He shall be a professional surveyor and engineer, a resident in and qualified voter of the State of Texas and City of Austin, and shall be competent to perform the duties of his office [Art. 211]

One of the more important surveying activities of the Austin City Engineer was set forth as:

It shall be the duty of the city engineer to establish throughout the city initial points and monuments, at least one to each square of four blocks, and from such points to extend the surveys of the city. And it shall also be his duty, when called upon to do so, to locate, establish and survey all lines of property, public or private, in this city, and to make all surveys and calculations for grading or other work to be done on streets, alleys, squares, bridges, culverts, sewers, and other public places in this city; provided that when any line of any public street or property has been surveyed and locate by the city engineer, the same shall not be changed by him or his successors without good cause shown and an order by the
The Austin City Engineer was required to post a bond in the amount of $1,000, a substantial fraction of the annual salary of $1,200 that he was to be paid and it was contemplated that he would also make money by surveying private properties for compensation. Those same Austin ordinances of 1886 provided that

_the city engineer shall receive as compensation for his services, for making any survey of private property, such fees as he may, by agreement with the person requiring the same, be entitled to, not to exceed the fees allowed by law for like services ... _[Art. 218]

Somewhat similar provisions applied in Houston, where the city ordinances provided for the year 1904-1905 that the City Engineer was to be appointed by the Mayor, post a bond in the amount of $5,000 and receiver an annual salary of $3,000.

The Houston City Engineer was also authorized (in the year 1904-1905) to charge for performing surveys for private parties at the following rates:

- $5.00 for survey of one lot,
- $6.00 for survey of two lots adjoining each other,
- $1.25 per lot for survey of all lots over five,
- $7.50 for survey of entire block with subdivisions, when owned by one person.

The duties of the Houston City Engineer were similar to those of the Austin City Engineer previously cited. City ordinances in Houston provided:

_it shall be the duty of the City Engineer, when any person desiring to construct any improvement shall make application for a permit to make such improvement, to make a correct survey of the property, and to fix the lot and block lines of the same, and furnish to such applicant a certificate of such survey, which certificate shall be presented to the Mayor for his approval, and the fee as fixed above shall be charged for such survey. _[Art. 183]

As in Austin, the surveying duties of the Houston City Engineer were intended to stabilize boundaries. This is seen in the further provisions of the Houston code that:

_in no case shall the existing lines be changed or altered, except upon survey by the City Engineer. This and the preceding article intend only to refer to that portion of the lot or block that fronts on the street or street, and the front lines only to be established by the City Engineer.

So, as the need to have surveys made in the larger cities arose, both to fix the lines of streets and to lay out additions, the first solution that the citizens of those cities adopted was to arrange for a public official to carry out that work, paid by a combination of public and private funds and subject to a bond to insure competent and proper performance.
The public purposes evident in the city engineer ordinances were:

- to protect the public interest in streets, alleys, other public places by making city surveying a function of civic government,
- to create stability in boundaries by organizing the surveying of streets and prohibiting arbitrary changes or revisions,
- to promote the orderly creation of new streets and lots, and
- to avoid general loss and waste from incompetent surveying.

7. Licensed State Land Surveyors Act of 1919

The more than 216 million acres of public domain within which County and District Surveyors and their Deputies had worked for decades, were in 1898 officially determined by the Texas Supreme Court to be entirely taken up by private grantees or appropriated for public purposes. There was no more public domain in which a person holding some land scrip might have the quantity to which he or she was entitled surveyed off by a County Surveyor or one of his deputies.

The State retained extensive interests in the school and university lands, however; the former comprising a large fraction of West Texas. The work of many County Surveyors shifted, particularly in those western counties, from organizing the surveying of tracts for patent out of the blank expanse of the public domain to helping prospective purchasers of school land with the application process and such matters as showing them the boundaries of those tracts that often had been surveyed decades earlier. Many sections of school land were sold to owners of adjoining sections, but with a reservation of the mineral estate. When oil was discovered in various parts of Texas, beginning with Spindletop in 1901, there was suddenly considerable interest in determining where exactly the boundaries of private and public mineral estates were located, boundaries that in much of West Texas particularly had only been surveyed mainly on paper.

The irregular patchwork quilt of land grants that the first-come-first-served methods of location followed in Texas had resulted also in scraps of the former public domain having been omitted from the surrounding surveys. Those remaining bits of unsurveyed land known as vacancies - or more exactly, the possibility of their existence - tended to generate considerable interest in locations surrounded by producing oil wells. To keep up with new demand for surveyors who would be authorized to file maps and field notes with the General Land Office in connection with the scramble for oil, the legislature adopted the Licensed Land Surveyors Act of 1919 [Chapter 2 of Title 86, Revised Civil Statutes of 1925] that created the title of Licensed State Land Surveyor. Essentially, the licensing as conceived was a means of supplementing the system of County Surveyors and their Deputies in counties where there simply were not a sufficient number of surveyors to meet the demands of the individuals and companies dealing in lands for oil exploration and development in which the State had an interest. The statute explicitly provided that:

*Land surveyors licensed under these provisions are hereby authorized to perform the duties that may be performed by county surveyors, and shall be subject to the*
direction of the Governor, Land Commissioner, Attorney General and the courts of the State in matters of land surveying in such cases as may come under the supervision of such authorities. [Art. 5276]

All surveyors licensed under the 1919 act were required to post a bond in the amount of $1,000, payable to the Governor, to guarantee that the licensee would

faithfully, impartially and honestly perform all duties of a licensed surveyor, to the best of his skill and ability in all matters wherein he may be employed. [Art. 5275]

While the Act created a Board of Examiners consisting of the Commissioner of the General Land Office and two reputable and experienced land surveyors whose duties included the preparation of a written examination to be administered by mail to applicants for licensure, the law also provided that:

Any applicant who is a reputable surveyor of fifteen years actual experience in the field as such surveyor shall receive a license without examination when he shall have applied therefor, accompanying such application to the Board with the affidavits of three credible persons to the effect that such applicant is a reputable land surveyor of fifteen years actual experience in the field, and upon the payment of a fee of two dollars to said Board [Art. 5282]

The legislature also undertook to regulate the fees that a Licensed State Land Surveyor might charge, limiting them to no more than ten dollars per day

and other expenses incident to the survey as shall be agreed upon between the surveyor and the interested party, whether the same be a private person, a county, a court, or the State [Art. 5279]

All of the foregoing provisions were fairly clearly intended to make large numbers of surveyors available who would be authorized by law to serve most of the functions that County Surveyors previously had.

The values embedded in the Act of 1919 were essentially similar to the County Surveyor system:

- protection of the public by protecting the interest of the State of Texas remaining in the former public lands (particularly those with oil wells on them),
- regulation by working under the control of a public official,
- preventing commercial advantage by licensees by limiting rates of compensation,
- insuring proper performance of duties by a requiring a bond for a relatively large sum of money.

8. Licensed State Land Surveyors Act of 1941

In 1941, the 1919 law dealing with Licensed State Land Surveyors was amended. As before, the role of the Licensed State Land Surveyor under the 1941 act was explicitly described as being equivalent to that of a County Surveyor, acting under directions given by the
Commissioner of the General Land Office:

Land surveyors licensed under this Act are hereby authorized to perform the duties that may be performed by the county surveyors, and shall be subject to the direction of the commissioner of the General Land Office in matters of land surveying in such cases as may come under the supervision of such authorities [Art. 5276]

The 1941 law permitted a licensee to receive more for his services than the 1919 law's maximum amount of ten dollars per day as compensation, allowing instead:

such sums as may be mutually agreed upon between the surveyor and the interested party, including other expenses incident to the survey, whether the same be a private person, a county, a court or the State. [Art. 5279]

The law was also amended to require that all applicants seeking to obtain a license as a Licensed State Land Surveyor had to first take and pass the written examination given by the Board of Examiners. Merely furnishing three affidavits testifying to the applicant's reputation and fifteen years of experience was no longer sufficient.

The bonding requirement began to recede in importance, remaining at the amount of $1,000 even as the licensee's potential income from his services was no longer restrained to a fixed amount per diem.

9. Registered Public Surveyors Act of 1955

It probably isn’t entirely coincidental that the Registered Public Surveyors Act of 1955 (Article 5282a, Vernon’s Texas Civil Statutes) was adopted at a time of increasingly rapid growth in major Texas cities. Certainly, the rationale cited by Section 12 of the act urging its passage as an emergency measure that

many persons are now engaging in the practice of Public Surveying without adequate preparation and qualification therefor, with resulting confusion to persons dealing with such persons,

suggests the sort of situation that is highly problematic in a city where buildings and other valuable improvements are typically constructed relatively close to the supposed parcel boundaries or building setback lines.

The 1955 act created a special license known as that of the Registered Public Surveyor and defined the activity as “Public Surveying” that was to be regulated by law as:

the science or practice of land measurement according to established and recognized methods engaged in and practiced as a profession or service available to the public generally for compensation, and comprises

- the determination by means of survey, of the location or relocation of land boundaries and land boundary corners;
- the calculation of area and the preparation of field note description of surveyed land;
the preparation of maps showing the boundaries and areas of the subdivision of tracts of land into smaller tracts;

the preparation of official plats or maps of said land and subdivisions in compliance with the laws of the State of Texas and the political subdivisions thereof;

and such other duties as sound surveying practice would direct.

The Registered Public Surveyors Act of 1955 specifically exempted various categories of persons from its provisions, including:

- a County Surveyor acting in his official capacity,
- a Licensed State Land Surveyor acting in his official capacity as authorized by law,
- a Registered Professional Engineer when practicing his profession as authorized by law,
- the officer of a state, county, city, or other political subdivision whose official duties include land surveying when acting in an official capacity.


The Land Surveying Practices Act of 1979 repealed the Act of 1955 but retained the designation of Registered Public Surveyor for those licensed under it to practice Public Surveying. The definition of Public Surveying contained in the 1979 act was:

the practice for compensation of determining the boundaries or the topography of real property or of delineating routes, spaces, or sites in real property for public or private use by using relevant elements of law, research, measurement, analysis, computation, mapping, and land description writing. Public surveying includes the practice for compensation of land, boundary, or property surveying or other similar professional practices.

The 1979 Act also created a Texas Board of Land Surveying and consolidated the State Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors into it.

Whereas the Licensed State Land Surveyors Act of 1919 specified the authority of a Licensed State Land Surveyor as being essentially equivalent to that of a County Surveyor, the 1979 Act redefined a Licensed State Land Surveyor as being

a surveyor licensed by the Texas Board of Land Surveying to survey land in which the state or the public free school fund has an interest, or other original surveys, for the purpose of filing field notes in the General Land Office. When acting in this official capacity, such a surveyor is an agent of the State of Texas.

This last provision emphasized the dual status of a licensee under the 1979 Act as “an agent of the State of Texas,” i.e. serving only the interests of the State of Texas, while possibly working under contract for private clients.


The law under which Registered Professional Land Surveyors and Licensed State Land
Surveyors are presently licensed and regulated by the Professional Land Surveying Act of 1991 as amended, codified as Title 6, Subtitle C, Chapter 1071 of the Texas Occupations Code. This current law provides the following definitions:

“Professional surveying” means the practice of land, boundary, or property surveying or other similar professional practices. The term includes:

(A) performing any service or work the adequate performance of which involves applying special knowledge of the principles of geodesy, mathematics, related applied and physical sciences, and relevant laws to the measurement or location of sites, points, lines, angles, elevations, natural features, and existing man-made works in the air, on the earth’s surface, within underground workings, and on the beds of bodies of water to determine areas and volumes for:

(i) locating real property boundaries;
(ii) platting and laying out land and subdivisions of land; or
(iii) preparing and perpetuating maps, record plats, field note records, easements, and real property descriptions that represent those surveys; and

(B) consulting, investigating, evaluating, analyzing, planning, providing an expert surveying opinion or testimony, acquiring survey data, preparing technical reports and mapping to the extent those acts are performed in connection with acts described by this subdivision.

and that

“State land surveying” means the science or practice of land measurement according to established and recognized methods engaged in as a profession or service for the public for compensation and consisting of the following activities conducted when the resulting field notes or maps are to be filed with the General Land Office:

A) determining by survey the location or relocation of original land grant boundaries and corners;

B) calculating area and preparing field note descriptions of surveyed and unsurveyed land or land in which the state or the permanent school fund has an interest; and

C) preparing maps showing the survey results.

D. Summary

The foregoing historical review of the Texas land surveying profession shows several distinct phases. The first was one in which the profession was mainly an activity of public officials and public employees. The protection of the public in this early phase meant protecting
those lands in which the people of Texas had a collective interest, the unappropriated public domain, from fraudulent appropriation and avoiding conflicts in the boundaries of lands granted to private interests. The County Surveyor system that was adopted was essentially a mechanism for organizing the survey of the public domain into various separately title parts. Once the public domain was exhausted, there was much less work for county surveyors and their deputies and the system withered.

The intermediate phase was one in which demand for surveying services overwhelmed the existing organizations such as the systems of County Surveyors and, in the few large cities, the City Engineers, and means were sought to add surveyors to meet the demand while attempting to secure the same standards of faithful performance that had been expected of public officials and public employees.

The present phase is one in which the main public interest is that of the individuals of the public who now collectively own what once was held in common by the people of Texas, of minimizing conflict between competing private interests and of organizing the increasingly complicated overlapping rights of use of fixed lands. The compensation that land surveyors may charge is no longer limited by law but is a matter to be negotiated with prospective clients in the marketplace for services.

In many ways, Registered Professional Land Surveyors and Licensed State Land Surveyors, presently confront a much more complicated ethical situation than any of our predecessors did in that the public interest is no longer as clearly defined as it was when 19th century surveyors were carving out the lands granted from the public domain and the public lands were an equivalent to the State treasury. The purpose of this work is to discuss the various aspects of professional ethics that present day practice in the marketplace for services engages.
I. “Types” of Ethics

A. Ethics Generally

The word “Ethics” is frequently used with different meanings. In its broadest meaning, “ethics” refers to a set of commonly accepted behavioral rules which describe what is acceptable conduct in society. In this broad sense, “ethics” goes far beyond avoiding what is criminal or civilly illegal to include general concepts of decency and honor.

As examples:
- one should be thoughtful and act so as to not inconvenience others;
- one should not gossip.

B. Business Ethics

When people talk about “business ethics,” they may have two very different meanings.

1. The proper meaning of “business ethics” is ethics applied specifically to a business setting. Properly understood, “business ethics” is the result of analysis by those familiar with a particular business environment, its challenges and its limitations, to apply ethical considerations, producing a set of rules for ethical behavior as applied in that business environment. For those engaged in a particular profession, there often is a state or national trade association which promulgates their own set of business ethics, applying ethics to the issues which commonly arise when practicing that particular profession.

As examples:
- *Code of Professional and Ethical Conduct* by the Wisconsin Society of Land Surveyors.

2. Unfortunately, some people misuse the term “business ethics” to imply an approval of watered-down ethical rules, to accommodate greed for money or power in business. They presume that a reduced level of ethical behavior is acceptable to reach business objectives. This is a definition turned in upon itself. “Ethics” cannot include unethical behavior. Such a contortion defeats the purpose of ethics—to encourage a fair society.

C. Legislated Ethics

In a legal context, “ethics” means adherence to rules formally established by statute or the rules of a regulatory agency. Legislated ethics, adopted in statutes or government regulations, are imposed upon those who engage in a certain activity or profession. Because these ethics are governmentally compelled, they are usually limited to restricting behaviors which would otherwise work a fraud on, or bring unfair injury to, others.

The discussions in these materials will focus primarily on the ethical standards promulgated by the statutes and the Regulations of the Texas Board of Professional Land Surveying. However, because the wording of some of those Regulations is extremely broad, the
discussion will also include considerations which approach the general, and sometimes fuzzy, ethical concept of fundamental fairness.

D. The Word “Ethics”

It may be helpful, from the beginning of this topic, to consider changing the word “ethics” to “integrity.” Everyone thinks that he or she is an ethical person, or is a better person than he or she may really be; or becomes convinced that, at least, he or she is more ethical than those around him or her. It may be easier to think meaningfully about ethical issues by using the concept of “business integrity.” Once you start talking about ethics and morality, the discussion slips into argument, with most of us becoming defensive. We all think our intentions are pure and good, thus distorting our judgment, and our ability to closely examine the reality of an issue or situation. As the old saying goes: “We all think we’re better people than we really are.” I have met hundreds of surveyors who can talk about the incompetent surveying practices of others, but I have very, very rarely met one of those other surveyors. Although this material will talk extensively about ethics, it may be helpful to continue to think about business integrity.
II. Marketing

In the marketplace within which clients engage surveyors to provide services, the information that a prospective client has about the available surveyors is particularly important. The projects for which land surveyors are engaged typically vary in size, desired schedule of completion, specialized technology required, and specific expertise, including local knowledge. To make informed choices that serve their specific needs, clients depend significantly upon land surveyors themselves to provide information about capabilities and experience that help them choose. Certain rules of the TBPLS, namely: Rules §663.3, §663.5, and §663.9, apply to the sort of information that land surveyors provide prospective clients or cause to be distributed.

Rule §663.3  Offer to Perform Services

The client or employer is entitled to a careful and competent performance of services. Competence in performance of services requires the exercise of proficiency, reasonable care, and diligence. Therefore, every effort should be made to remain proficient in a field of endeavor, and employment for services to be rendered should not be accepted unless such services can be competently performed. The registrant:

(1) shall accurately and truthfully represent to any prospective client or employer his/her capabilities and qualifications to perform the services to be rendered;

(2) shall not offer to perform, nor perform, services for which he/she is not qualified in any of the technical fields involved, by education or experience, without retaining the services of another who is so qualified;

(3) shall not evade his/her statutory responsibility nor his/her responsibility to a client or employer.

Rule §663.5  Representations

The highest degree of integrity, truthfulness, and accuracy should be paramount in all dealings with, and representations to, others by not misleading in any way the other's understandings of personal qualifications or information regarding a project. The registrant:

(1) shall not allow a person who is not registered or licensed under the Professional Land Surveying Practices Act to exert control over the end product of his/her professional work;

(2) shall not indulge in publicity that is false, misleading, or deceptive;
(3) shall not misrepresent the amount or extent of prior education or experience to any employer or client, nor to the board;

(4) shall not hold out as being engaged in partnership or association with any person or firm unless there exists in fact a partnership or associations;

(5) shall not, without the knowledge and consent of his/her client, recommend to a client services of another for the purpose of collecting a fee for himself for those services.

Rule §663.9 Professional Conduct

(a) The surveyor shall not offer or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, or reward as an inducement to secure any specific surveying work or assignment; provided, however, this rule shall not prevent a professional surveyor from offering or accepting referral fees or from discounting fees for services performed, with full disclosure to all interested parties. Further provided, however, a surveyor may pay a duly licensed employment agency its fee or commission for securing surveying employment in a salaried position.

(b) The surveyor shall not make, publish, or cause to be made or published, any representation or statement concerning his/her professional qualifications or those of his/her partners, associates, firm, or organization which is in any way misleading, or tends to mislead the recipient thereof, or the public concerning his/her surveying education, experience, specialization, or any other surveying qualification.

(c) The public shall be provided every reason for relying upon the surveyor's seals, signatures, or professional identification on all documents, plats or maps, surveyor's reports, plans, or other surveying data on which they appear as a representation that the surveyors whose seals, signatures, or professional identification appear thereon, have personal knowledge thereof and that they are professionally responsible therefor.

A. Advertising

While all Registered Professional Land Surveyors in Texas are expected to meet certain minimum standards of practice, beyond those common features, surveyors and the business organizations through which they may offer surveying services vary considerably in ways that may be relevant to a prospective client’s choice. Ideally, advertising is a way of informing a surveyor’s prospective clients that he or she is available and of describing a particular set of surveying services that the surveyor offers, including any specialties.
The laws under which land surveying is regulated as a profession in Texas specifically give surveyors considerable freedom in how they go about advertising their services. In particular, Title 6, Subtitle C, Chapter 1071 of the Texas Occupations Code contains the following provisions as to advertising by land surveyors in Texas.

Sec.1071.157. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.

(a) The board by rule shall prescribe standards for compliance with Subchapter A, Chapter 2254, Government Code.

(b) Except as provided by Subsection (a), the board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.

(c) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person’s personal appearance or use of the person’s voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person’s advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

In other words, a surveyor may advertise, if for some reason he or she wants to, by virtually any and all media, including those that other Texas businesses use, including:

- direct mail,
- newspaper advertisements,
- internet sites,
- neon signs,
- yard signs,
- bumper stickers,
- promotional giveaway items, and
- television and radio commercials.

The limitation is on the content of the advertising: that it not be a false, misleading, or deceptive representation. The advertising medium, how the advertising content is disseminated to the public, is not subject to restriction.
1. Assist a Governmental Entity in Writing Specifications

One special class of Texas client is the governmental entity. Title 10, Subtitle F, Chapter 2254, Subchapter A of the Texas Government Code defines the term “governmental entity” as:

- a state agency or department;
- a district, authority, county, municipality, or other political subdivision of the state;
- a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project; or
- a publicly owned utility.

Many of these governmental entities contract with land surveyors for professional services and sometimes land surveyors are asked to help develop the specifications describing the service to be rendered in terms possibly including scope, deliverables, and methods and procedures. A surveyor who assists in writing the specification for services with the expectation of being considered as a provider of those same services for which he or she has helped write the specs must be aware that there is a definite potential for an unethical conflict of interest if the specifications are written in a way that unnecessarily favors his or her qualifications.

That is, governmental entities are obligated under Section 2254.004 of Chapter 2254, Subchapter A of the Texas Government Code to contract for services on the basis of competence and qualifications as follows:

Sec. 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR.

(a) In procuring architectural, engineering, or land surveying services, a governmental entity shall:

(1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall:

(1) formally end negotiations with that provider;
(2) select the next most highly qualified provider; and
(3) attempt to negotiate a contract with that provider at a fair and reasonable price.
(c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.


The duty of the governmental entity under the above law is expressly to contract with the most qualified service provider at a fair and reasonable price. A specification written by a surveyor to arbitrarily favor his or her own qualifications or capacities potentially limits the pool of otherwise qualified providers and works against the public interest of procuring services at a fair and reasonable price.

A surveyor assisting in writing a project specification for a governmental entity ought to either:

(a) excuse himself from consideration as a service provider, or
(b) disclose to his client that a potential conflict of interest exists and take great care not to write the specification in such a way as to arbitrary disqualify otherwise capable and qualified service providers.

2. Competitive Bidding Statutes and Rules

As noted above, Title 6, Subtitle C, Chapter 1071 of the Texas Occupations Code contains the following provisions as to advertising and/or competitive bidding by land surveyors in Texas.

Sec. 1071.157. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.

(a) The board by rule shall prescribe standards for compliance with Subchapter A, Chapter 2254, Government Code.

(b) Except as provided by Subsection (a), the board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.

As described in the preceding section, governmental entities are expressly prohibited by the Texas Government Code from procuring the services of a land surveyor by competitive bidding. Their process of selection is required by State law to be based upon proven competence and qualifications. A land surveyor who participates with a governmental entity (the term “governmental entity” including cities, counties, school districts, and public utilities) in an unlawful competitive bidding process is in violation of Chapter 663, Subchapter A of the Texas Administrative Code which provides as follows:

Rule §663.8 Adherence to Statutes and Codes
Strict adherence to practice requirements of related sections of the statutes, the state code, and all local codes and ordinances should be maintained in all services rendered. The registrant:

(1) shall abide by, and conform to, the registration and licensing laws of the state;

(2) shall abide by, and conform to, the provisions of the state code and any local codes and ordinances not consistent with this Act. Any surveyor subdividing land into tracts subject to statutory requirements providing for an approval process by a governing body for such subdivision shall notify the individual whose intent it is to create the subdivision of the existence of the statutory requirements that pertain to and affect the development of the proposed subdivision prior to commencing the survey. It is recommended that this notification be in writing and a copy of which is maintained within the surveyor's permanent records.

(3) shall not violate nor aid and abet another in violating a rule of conduct nor engage in any conduct that may adversely affect his/her fitness to practice;

(4) shall not sign nor impress his/her seal or stamp upon documents not prepared by him/her or under his/her control or knowingly permit his/her seal or stamp to be used by any other person.

(5) shall not submit or request, orally or in writing, a competitive bid to perform professional surveying services for a governmental entity or political subdivision of the State of Texas unless specifically authorized by state law.

(A) For purposes of this section, the board considers competitive bidding to perform professional surveying services to include the submission of any monetary cost information in the initial step of selecting qualified professional land surveyors. Cost information or other information from which cost can be derived must not be submitted until the second step of negotiating a contract.

(B) This section does not prohibit competitive bidding in the private sector.

Source Note: The provisions of this §663.8 adopted to be effective February 25, 1991, 16 TexReg 862; amended to be effective January 1, 2000, 24 TexReg 10332; amended to be effective January 27, 2004, 29 TexReg 635; amended to be effective February 24, 2005, 30 TexReg 848
However, where a prospective client is other than a governmental entity, competitive bidding by land surveyors is not impermissible or necessarily unethical in itself.

3. Representations to Prospective Customers

Advertising fundamentally amounts to a surveyor making certain representations about his or her qualifications, capabilities, and availability. There are a couple of obvious rules about advertising:

- Don’t lie or intentionally create a false impression.
- Don’t make statements that a reasonable person would expect a prospective client to misunderstand in a way that is detrimental to that client’s interest.

For example, if a surveyor were to buy a copy of the patent field notes of an 1838 survey from the General Land Office, while it might be arguably literally true to advertise that he or she has survey records “since 1838”, most people would consider such a claim to be misleading in that it creates the impression that the surveyor has a very extensive set of survey records extending back for about 170 years.

B. Referral Arrangements

It is quite a common and acceptable arrangement that some other person will recommend to a person needing a surveyor’s services that he or she ought to contact some particular surveyor. The favorable recommendations of persons familiar with a surveyor’s qualifications and experience are a very good form of advertising.

Likewise, a land surveyor who for some reason is unable to serve a prospective client will sometimes be asked for a recommendation of another surveyor to contact. That is a perfectly reasonable request and a surveyor ought to have no ethical problem recommending other surveyors who he or she believes to be qualified to do the work requested.

Where the ethical problem arises is where money, gifts, or some other form of compensation is exchanged between the the surveyor with whom the client contracts and the person recommending that surveyor.

1. Referrals and Commissions for Referrals

Land surveyors may not pay kickbacks, commissions, or finder’s fees to secure surveying work, except with certain exceptions. These are specifically set forth in Chapter 663, Subchapter A of the Texas Administrative Code which provides as follows:

Rule §663.9 Professional Conduct
(a) The surveyor shall not offer or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, or reward as an inducement to secure any specific surveying work or assignment; provided, however, this rule shall not prevent a professional surveyor from offering or accepting referral fees or from discounting fees for services performed, with full disclosure to all interested parties. Further provided, however, a surveyor may pay a duly licensed employment agency its fee or commission for securing surveying employment in a salaried position.

(b) The surveyor shall not make, publish, or cause to be made or published, any representation or statement concerning his/her professional qualifications or those of his/her partners, associates, firm, or organization which is in any way misleading, or tends to mislead the recipient thereof, or the public concerning his/her surveying education, experience, specialization, or any other surveying qualification.

(c) The public shall be provided every reason for relying upon the surveyor's seals, signatures, or professional identification on all documents, plats or maps, surveyor's reports, plans, or other surveying data on which they appear as a representation that the surveyors whose seals, signatures, or professional identification appear thereon, have personal knowledge thereof and that they are professionally responsible therefor.

Source Note: The provisions of this §663.9 adopted to be effective February 25, 1991, 16 Tex Reg. 862; amended to be effective January 27, 2004, 29 Tex Reg. 635

In other words, any payment or compensation of a third party for the purposes of arranging for a client to contract with a surveyor for services (“steering” or referring prospective clients to a surveyor) is generally impermissible except when all of the “interested parties”, meaning at a minimum:

- the client and
- anyone else interested in the results of the surveying service rendered,

are aware of the details of an arrangement for paying fees or discounting fees for services as a compensation for referring clients or surveying work. This exception is that in Rule §663.9 (a) quoted above that provides:

this rule shall not prevent a professional surveyor from offering or accepting referral fees or from discounting fees for services performed, with full disclosure to all interested parties.

What that means in practice, is that, say, a surveyor could enter into an agreement with some third party to pay a percentage of all fees that a surveyor collects from clients who
are referred to the surveyor by that third party. However, to be ethically acceptable, those otherwise unsuspecting clients would have to be informed that a percentage of the monies collected from them would be paid to that third party for having arranged to have the surveyor provide the service. That way the client might then decide before retaining the surveyor whether such an arrangement was acceptable to them or not.

Interested parties in many cases may include lenders and title companies, also. They will be relying upon the quality of the work and may want to be aware of any referral arrangement that reveal a basis for selection of the surveyor.

2. Joint Venture Arrangements

It is not uncommon for surveyors to collaborate on certain projects with other professionals who provide additional resources such as special equipment or expertise for a project. This is often done as a temporary joint venture arrangement. It is important that a prospective client be aware that if they contract with a particular surveyor that he or she may need to secure the participation of another professional in order to provide the service.

§663.9 (b) quoted above provides as follows:

*The surveyor shall not make, publish, or cause to be made or published, any representation or statement concerning his/her professional qualifications or those of his/her partners, associates, firm, or organization which is in any way misleading, or tends to mislead the recipient thereof, or the public concerning his/her surveying education, experience, specialization, or any other surveying qualification.*

In other words, a surveyor should not offer services that he or she would depend upon other professionals to provide without informing a prospective client of the arrangement under which they would be performed.
III. Engagement

A. Training & Experience

There is a broad range of professional services which different surveyors offer to their clients. Those services include:

- Boundary surveying
- Vertical Control surveying
- Land title surveying
- Investigative surveying
- Topographic surveying
- GIS data compilation
- Route surveying
- Land (development) planning
- Construction surveying
- etc.

As an RPLS, you are licensed to perform all types of land surveying in Texas. However, the State’s licensing agency, the Texas Board of Professional Land Surveying (“the Board”), does not regulate all types of land surveying services. The Board, by its enabling Act, has traditionally been limited to regulating boundary surveying. The Board does not promulgate rules for surveying services other than boundary surveying. While several of these other types of surveys are addressed in trade association publications, such as the Texas Society of Professional Surveyors’ *Manual of Practice*, they are not specifically regulated by the Board. In addition, there are non-surveying, tangential services which some surveyors offer to their clients, including GIS data compilation or land development planning. These tangential services do not require an RPLS registration at all, yet clients can look to a surveyor with the proper training and experience to help them develop data maps or land plans for the clients’ projects.

The training and practical experience in surveying you have had should provide parameters for the types of surveying you agree to undertake. For example, you should not undertake to conduct a boundary survey, using GPS equipment, if you have had no training in or experience in using GPS equipment. While GPS is merely a tool, not a different type of surveying, you cannot provide “direct supervision” of GPS field work if you are not familiar with what wrong data would look like with GPS. Since Sec. 1071.351(d) of the Licensing Act requires that any surveying work prepared by a person who is not registered must be “performed by an employee under [your] direct supervision,” you could not responsibly provide that service.

Similarly, if you have had no training or background in Texas Department of Transportation (“Tx.DOT”) route surveying practices, you should not undertake such a project without first familiarizing yourself with the TxDOT right-of-way standards and practices. Being registered as an R.P.L.S. does not, by itself, qualify you to ethically offer a particular surveying service. You must have the training and experience to provide that service. Board Rule §663.3 (2).

Does that mean that you must be a Licensed State Land Surveyor (“LSLS”) in order to locate a littoral boundary or to locate the boundaries of on original patent survey? No. As an RPLS, you are fully qualified to develop and present your professional opinion of the locations of boundaries, including boundaries of State owned lands or of original patent surveys. Without being an LSLS, you cannot submit field notes to the General Land Office, but you may certainly provide your clients with your determinations of boundary locations, including boundaries with
State lands or the boundaries of original patent surveys, using the recorded field notes.

Taking the flip side of that question, does your status as an RPLS justify your undertaking to prepare a survey which will include the location of a littoral boundary? Maybe. As an RPLS you have the training to locate a littoral boundary (say, for example, a coastal boundary along the Gulf of Mexico). But you will need to be familiar with the legal requirements to determine if you are looking for the mean high tide or the mean higher high tide, and you will need to be familiar with how to obtain the required readings from NOAA tidal gages for the required number of years. You can research and become familiar with the littoral boundary requirements, but until you do so, you cannot ethically undertake a boundary survey assignment which will require you to locate a coastal boundary.

B. Capacity (equipment, crews, and time)

Before you can ethically undertake a surveying assignment, you need to evaluate your capacity to do the project in terms of the equipment, staffing, and time required. As you know, the Licensing Act (Texas Occupation Code Sec. 1071.351) requires that any surveying work you sign and seal must be performed by you or by an employee under your direct supervision. Clients usually have a time limitation they need to apply for delivery of the surveying products. So the question becomes: Given the context of the other work you have already agreed to do for other clients within their time constraints, do you have the staff and equipment to perform this additional project within the time requirements of this prospective client?

Everyone in a business setting has a natural tendency to welcome and enthusiastically receive new business. We are well aware that our continued livelihood may depend on the new business we obtain. So our instinctive reaction is to express enthusiasm and gratitude for the new business. But ethically, we need to pause long enough to honestly evaluate whether we can meet the standards for performing a responsible survey and meet the scheduling deadline of the client. Failing to judge our staffing, equipment, and time capacities to provide the survey can create an ethical failure by promising a survey which we cannot reasonably expect to accomplish.

When our capacities are short, one way of working around that limitation is to establish a joint venture with another surveying company. A “joint venture” is a partnership, created for the limited purpose of engaging in a particular business project. After the project is completed, the joint venture is concluded, and the two companies continue as separate businesses. In fact the two companies continue as separate businesses throughout the time of the joint venture. There is no merger of the companies or any need to change the corporate or non-corporate status of either company. It is just for this one project, the two companies agree to work jointly to complete the project in partnership. As with any partnership arrangement, there needs to be an agreement among the partners about who will do what work and how the proceeds will be divided. And because of the “direct supervision” requirement, the work will need to be apportioned so that responsible supervision is maintained.

These arrangements can take some effort to construct, but once constructed, two businesses can both enjoy more flexibility in their professional practices than they would have
separately. One benefit to a joint venture is that you can say “yes” to work you otherwise would have to turn down. For example, you have an opportunity to undertake a project larger than your existing staffing, equipment, time, and/or experience would otherwise allow. Yet by joint venturing with another surveying company, you would have the crews and other capacities to do the job.

Can you take on a project you do not have the capacity to do, and then form a joint venture to do the work, without revealing to the client that others, outside your firm, will be working on the project? No. First, Texas Board Rule §663.5 requires “the highest degree of integrity, truthfulness, and accuracy” in all dealings with, and representations to, others by not misleading in any way the other’s understandings of personal qualifications or information regarding a project.” Never knowingly mislead a client. Second, the Licensing Act, Sec. 1071.351(f) requires that professional surveying performed as a joint venture of two or more firms must use the seal of the surveyor having primary responsibility for the venture. The only way to responsibly comply with the statute is to fully disclose to the client in the beginning and to put on the face of the survey products that the work was performed by the joint venture.

C. Conflicts of Interest
Texas Board Rule §663.4, entitled “Conflicts of Interests” states:

“The acceptance of employment, or engagement to perform services, requires the faithful discharge of duty and performance of services, as well as the avoidance of any conflict of interests. All dealings with a client or employer, and all matters related thereto should be kept in the closest confidence. Should an unavoidable conflict of interest arise, the client or employer should be immediately informed of any and all circumstances which may hamper or impair the quality of the services to be rendered. The registrant:

“(1) shall not agree to perform services for a client or employer if there exists any significant financial or other interest that may be in conflict with the obligation to render a faithful discharge of such services, except with the full knowledge, approval, and consent of the client or employer and all other parties involved;

“(2) shall not continue to render such services without informing the client or employer, and all other parties involved, of any and all circumstances involved which may in any way affect the performance of such services, and then only with the full approval of the client or employer;

“(3) shall not perform, nor continue to perform services for a client or employer, if the existence of conflict of interest would impair independent judgment in rendering such services;

“(4) shall withdraw from employment at any time during such employment or engagement when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client or employer;

“(5) shall not accept remuneration from any party other than his/her client or employer for a particular project nor have any other direct or indirect financial interest in other services or phase
of service to be provided for such project, unless the client or employer has full knowledge and so approves;

* * *

1. With an Adjoining, Former Client
   Consider the following fact situation: Four years ago, you performed a survey for Ms. Moore, an elderly widow who, with her husband, had lived on and operated a 680-acre ranch for over 40 years. She was having new fences built along the north boundary of her property, near a county road, and asked for a boundary survey of the ranch. She asked you to show current fences, but informed you that fences on the North, East, and South sides of the ranch were not on the boundaries. She said there were long-standing agreements between the neighboring ranchers to place fences so as to avoid steep slopes, ravines, and multiple creek crossings. You completed that project.

   Last week you were contacted by an attorney who represents the Estate of Mr. Fields, the owner of the ranch just South of the Moore place. The three sibling heirs (all of whom live in California) want a survey of the Fields’ place, in preparation for the sale of the property. The attorney asks you to provide a metes and bounds description of the Fields place’s perimeter, which includes everything Mr. Fields had record title to, plus everything under fence.

   1. Can you take this assignment for the Fields’ Estate, since it may involve a dispute between the Field’s Estate and Ms. Moore?

   2. Can you provide the Fields’ Estate with a metes and bounds description of the conflict areas between the Fields’ record deed line and the occupation lines of fences which are within Ms. Moore’s record deed line?

   3. Should you tell the attorney for the Fields’ Estate that Ms. Moore said she had an agreement with Mr. Fields that the fences were not boundary lines?

   4. Should you provide the Fields’ Estate with a copy of your plat for Ms. Moore from four years ago?

   Issue 1: Yes, under the facts we have, there is no reason why you cannot take this assignment. Unlike an attorney, advocating a client’s position, your professional duty as a land surveyor is to provide your professional opinion as to the location of the record deed lines and to show occupation lines, as they exist on the ground. You never provide a professional opinion as to ownership of any property. That is a legal opinion. You are not an advocate for either Ms. Moore or the Fields’ Estate. While the Board Rules require that you “shall not agree to perform services for a client or employer if there exists any significant financial or other interest that may be in conflict with the obligation to render a faithful discharge of such services,” you have no interest in the ownership of either ranch. One specific limitation you must make clear is that you will describe and depict the record deed lines and the occupation lines. Your metes and bounds description will not imply that the occupation lines around the Fields’ place are record deed...
lines. You should not reference the fences as the “recognized boundary” with an adjoining tract or as the “Fields’ boundary fence”. You have no idea who recognizes or does not recognize the fence to be a boundary, and it will be a decision of the District Court to determine if a fence is someone’s boundary.

Issue 2: Yes, you can provide the Fields’ Estate with a metes and bounds description of the conflict areas between the Fields’ record deed line and the occupation lines of fences which are within the Moore’s record deed line. In fact, the attorneys for either side will need a description of the possible conflict area as a basis for asking the Court to determine the ownership of that area. The Court will need that description to describe in the Judgment the area being awarded to one party or the other. Again, you are not advocating ownership or a change in ownership of the conflict area. You are simply providing a description. There is no conflict of interest which should have any effect on your development of your professional opinion as to the locations of the record deed lines and the occupation lines.

Issue 3: No, you should not tell the attorney for the Fields’ Estate that Ms. Moore said she had an agreement with Mr. Fields that the fences were not boundary lines. It will be for Ms. Moore to decide whether she wants that information held in confidence or revealed to the Fields’ Estate. You have an affirmative duty that “[a]ll dealings with a client or employer, and all matters related thereto should be kept in the closest confidence.” Board Rule §663.4 That confidence is for Ms. Moore to decide whether to waive or not.

There is one important point to be made about your duty to hold matters in confidence. In the law, there is no surveyor/client privilege. Whatever you learn from one side will have to be disclosed in a deposition taken by the other side. While the Board Rule talks as though you must hold matters in confidence, there is no rule of evidence in the law which will protect that information. Confidential privileges are granted by the Courts when public policy justifies a need for confidentiality in professional counseling. In order to insure that a person gets the best possible medical advice for a medical condition, the law recognizes a privilege which a patient has to be able to tell the doctor anything which might relate to a medical condition, without fear that the information might be used against the patient in a civil or criminal proceeding. Similarly, there is a privilege in attorney/client relationships to provide legal advice; and a privilege in priest/penitent relationships to provide spiritual counseling. There is no surveyor/client privilege. The law does not recognize a need for confidentiality in order for a surveyor to provide a survey to a client. If a court orders you to disclose what a client told you, you can be compelled to answer. Therefore, you should consider advising every new client that circumstances may arise when you will not be able to keep information confidential; and therefore, they should not tell you things that they would not want others to be able to discover.

In the fact situation we are discussing, a disclosure of Ms. Moore’s earlier statement to you is not likely to cause Ms. Moore any harm. But that is her call to make, not yours. It is always the patient, the client, or the penitent who holds (and has the right to waive) the privilege, not the professional. But there may be other situations where disclosure of a confidence may be more important to the client. For example if Ms. Moore had told you, off hand, that she knew she didn’t own a strip of land but was waiting 10 years to claim it by adverse possession. An
adverse possessor’s acknowledgment of legal title in another kills the adverse possession claim. Her admission to you, in that case, would destroy any limitation title claim she might make. Still, you should not volunteer that statement to another party. But if compelled, you can be forced to disclose it.

**Issue 4:** No, you should not provide the Fields’ Estate with a copy of your plat for Ms. Moore from four years ago. Just as before, the professional opinion you delivered to Ms. Fields is for her to decide whether to disclose or not. Also as before, while you should not disclose that information voluntarily, if compelled to do so, you will be required to provide the information in your files through legal process.

2. **Licensed State Land Surveyor’s Duties**

Is there a potential conflict of interest when an LSLS is hired by a property owner to survey land which may have:

- a shortage/excess in patented area?
- a vacancy?
- an overlap with an adjoining patent?

An LSLS is different from an RPLS in at least one important way: while the RPLS is a certified registrant of the State, an LSLS is a State Official, with a duty to disclose certain information to the General Land Office. A Licensed State Land Surveyor is an agent of this state when acting in that official capacity. Texas Occupations Code, §1071.355. An LSLS takes an official oath stating that the person “will faithfully, impartially, and honestly perform all the duties of a licensed state land surveyor to the best of the person’s skill and ability in all matters in which the person may be employed.” Occupations Code, §1071.255. Every LSLS has a continuing duty to the State to disclose discovered evidence of “undisclosed” State-owned land. The Licensing Act contains what is commonly known as “the disclosure clause,” which states:

**Sec. 1071.360. DISCOVERY OF UNDISCLOSED LAND.** A licensed state land surveyor who discovers an undisclosed tract of public land shall:

(1) make that fact known to any person who has the tract enclosed; and

(2) forward a report of the existence of the tract and the tract’s acreage to the commissioner.

**Situation 1:** An LSLS is hired by a property owner in the surveyor’s capacity as an RPLS to provide a survey of a ranch involving two original patent surveys and part of a third. The surveyor discovers that, in fact, there is a vacancy, 60 varas wide, running between the two original patent surveys and continuing north through lands occupied by two other private property owners. What duties of disclosure, if any, does the surveyor have?

The LSLS has a statutory duty to inform any party occupying any part of the vacancy area and the General Land Office of the vacancy. There is no discretion, and the statutory duty of “the disclosure clause” overrides the duty of confidentiality otherwise applicable through the
Situation 2: An LSLS is hired by a property owner in the surveyor’s capacity as an RPLS to provide a survey of a ranch involving two original patent surveys and part of a third. The surveyor discovers that, in fact, there is a little over 12 acres of excess acreage in one of the two original patent surveys. What duties of disclosure, if any, does the surveyor have?

None. Corrected field notes may be filed with the GLO, but those corrected notes do not have much effect, unless the property owner wants to pursue an application with the GLO for issuance of a deed of acquittance. But there is no statutory, regulatory, or ethical requirement that the GLO or any other property owner (other than the client) be notified.

Situation 3: An LSLS is hired by a property owner in the surveyor’s capacity as an RPLS to provide a survey of a ranch involving two original patent surveys and part of a third. The surveyor discovers that, in fact, one of the two original patent surveys overlaps into an adjoining patent survey to the north. What duties of disclosure, if any, does the surveyor have?

None. This situation is the same as any other discovery of an apparent conflict between two adjoining property owners. The LSLS has no disclosure obligation to the State, and the confidentiality provision of Board Rule §663.4(6) prohibits the LSLS from notifying the adjoining land owner, without the knowledge and consent of your client.

D. Communications with Clients

1. Initially - Contracts

There is no ethical requirement in the Texas statutes or Board Rules which mandates you to have a written contract with your client. However, a written agreement can serve several benefits. Primarily, it provides a signed record of the terms of the professional services agreement. And in addition, it provides written proof of disclosures you made to the client. For ethics compliance, those disclosures can include the items discussed below.

Why are disclosures in writing so important? Clients hear a large number of terms and statements during their initial contacts with a surveyor. Very often, even “sophisticated” clients are unfamiliar with many surveying terms and are generally unfamiliar with or misunderstand what a survey represents and how a surveyor performs the survey. Studies have found that a group of people, hearing a presentation involving unfamiliar terms, even when the material is clearly presented, remember only about 30 percent of what they were told. The natural tendency of our brains is to disregard fact statements that make no sense to us or which seem, at the time, to have no significance. Later, no one ever says “I don’t remember being told . . . .” They always say “I wasn’t told . . . .” When a fact becomes significant later, the client will be outraged that you “never told us” that fact. In reality, you did tell them. They just don’t remember it. With a written statement in a contract, you will have proof of what they were told.

a. Sub-contractors and Joint Ventures

If you have formed a joint venture to do a project, or if you will be sub-contracting all or part of the work, a written disclosure within the contract provides you with proof that the
b. Disclosing Limitations of Surveying Capacities

There are several elements which influence surveying, especially in field work, which are beyond your control—bad weather, a lack of boundary monumentation, latent conflicts with adjoinder descriptions, etc. Often, however, an initial agreement is made with a client which simply states an expected fee and a delivery date. Those simplicities most often occur when the agreement to provide the survey was without the benefit of a written contract. A written contract allows a place for some standard language which advises the client that the initial cost estimate is an estimate only and presumes that records, monumentation, and adjoinders are reasonably available, and is subject to weather and other obstructions beyond of your control.

c. Disclosing Limitations on Confidentiality

As we discussed above, Board Rule §663.4(6) requires you to hold confidential matters received from the client in confidence, but there is no rule of evidence in the law which will protect that information. There is no surveyor/client privilege. Therefore, you should advise every client, in writing, that you will hold in confidence matters you receive from them, but that circumstances may arise when you will not be able to keep information confidential; and therefore, they should not tell you things that they would not want others to be able to discover.

Additionally for LSLS’s doing work for any private party, “the disclosure clause” of the Licensing Act, Sec. 1071.360 requires you to disclose both to the General Land Office and to all other property owners who are occupying undisclosed State-owned lands that you have located a vacancy which effects their property. Therefore, every agreement you have with a client should contain a disclosure that a discovery of “undisclosed” State-owned land must, by law, be disclosed to both the State and to all apparently-affected property owners.

d. Clarifying Services Provided and Services Not Provided

Clients, even experienced clients, often do not clearly understand what a survey represents. There is a big difference—often missed—between being an expert consultant, to being a project advisor. Technical expertise is required to provide professional assistance to a client. But to be a project adviser is to work with the client to design and direct a property acquisition or land development.

For example, a client who is purchasing property may look at a plat of survey and say “This depicts the land I am buying,” or “This depicts the surveyor’s representation to me of what the Seller is selling to me.” As you should know, these statements are not true.

A plat of survey is not:

- a title opinion (you do not have a law license to give legal opinions);
- a title policy (you do not have a registration with the Texas Department of Insurance to issue title insurance policies);
• a warranty of title in the Seller—what the seller has to sell or what the buyer is buying.

A plat of survey is a depiction of your findings and professional conclusions of the locations of the boundaries of the subject property, as reconstructed from a record description you were provided by the client, after comparing that description with the descriptions of adjoining properties and the physical evidence on the ground.

There can be a real problem is the lack of clarity between complete thoroughness and commercial reasonableness. The first part of the issue is the type of survey to be provided: boundary, land title, etc. The second part of the issue is the retracement being requested. This second part is the overlooked part that generates different interpretations. Let’s look at this second part of the issue.

If the surveyor is being provided with a metes and bounds description of a tract to survey, most surveyors intend the survey to reconstruct the description they were provided, comparing it to current descriptions of adjoining tracts, and checking for monuments of record dignity. For example, if a surveyor is provided with a 1997 metes and bounds description and asked to provide a boundary survey of that tract, the surveyor should do research to confirm that description in the 1997 deed, research adjoiners, and then reconstruct the 1994 description on the ground to confirm monuments of record dignity and reset missing monumentation. (Let’s call this a type 1 survey). However, some attorneys for buyers or title companies (after a problem has been found) want each survey to be an historical retracement survey, starting from the original patent survey and coming forward with each devising conveyance to re-establish the accuracy of the described properties out of the sovereign to the present day. (Some call this an historical retracement survey. For simplicity, let’s call this a type 2 survey.) This type 2 historical retracement is certainly more thorough and may find problems that the first type of analysis would not find. But unless we want every survey to costs several thousands of dollars (which the parties will not be willing to pay for), then a moderate type 1 survey must be understood as the service being provided as commercially reasonable.

A good analogy is the annual physical check-up you get from your doctor. You go in, they take a blood sample, urine sample, listen to your heart and lungs, poke around a bit, maybe run an EKG on your heart, check reflexes, and look into you eyes and throat. This is a type 1 check up, and it costs about $300. A type 2 check up would be the kind of medical exam you get if you are scheduled to be on the next space shuttle. They put you into the hospital, do all sorts of scans and tests and spend about $40,000. The type 2 exam is certainly more thorough and may find things that the type 1 exam will miss. Does that make the doctor you went to for your annual checkup negligent for not checking you into the hospital and doing a type 2 exam? No. Negligence is a legal question of “reasonably prudent practices”. Would you like to have known that you had a spot of liver cancer when you had your last annual physical? Of course, but that is not the test. The test for negligence is: was the doctor reasonably prudent in evaluating the type 1 medical exam? If all annual checkups cost $40,000, very few people will go to the doctor.

The same is true of land surveys. The point is to be clear about what services you are and are not providing. The surveyor cannot be forced to become a guarantor of a pristine title. Title
companies do not warrant title. They simply offer an indemnity contract under several conditions. The plat of survey does not depict what the buyer is buying. That is a legal opinion.

The title company does not do a title abstract. They do research for their own benefit in preparing their indemnity agreement, not as a representation of title. They are very sensitive about that, because their liability would increase enormously if they were actually warranting title. In fact, because of the liability issue, very few title companies will provide an abstract of title any more. The TSPS Manual of Practice calls for the client to provide the matters the client wants depicted. The ALTA standards require the client to provide complete legible copies of the documents the client wants depicted. Your engagement agreement should be clear on who is to provide the documents of title encumbrances which the Client wants depicted, and it should also be clear if the survey is a reconstruction of the legal description provided to the surveyor or if the survey is a full retracement survey from the original patent survey(s) covering the property.

Another example of a situation needing clarification in the beginning about what services are and are not being provided is a surveyor asked to divide a 23-acre tract into three parcels, with the client showing the surveyor, on the ground, the locations of the intended dividing lines. As an expert consultant, you can provide metes and bounds descriptions of the three tracts and a plat depicting the division. That is different from being a project advisor– to design a subdivision which meets subdivision platting requirements, site development regulations of the local municipality, or building sites for particular uses. There is a big difference between providing a survey and being a project advisor. Make sure you have the same understanding the client has about what services you are providing.

Often clients have little or no knowledge of the development requirements which will apply to a particular parcel. Subdivision platting may not be required for a family partition but would be required for sale of tracts and/or development. You may provide project advisory services, but be as clear as you can with your client when a project is undertaken what services you are providing and what services you are not providing. It is important to make clear in your contracts what your survey represents and what it does not represent. The best way to do that is in writing within an engagement contract. As a surveyor, you are providing your expertise to provide information to your client. You are not acting as a project advisor to tell the client whether this is a property the client should buy or how the property might be developed (or limited in its development). If you wish to be a project advisor to a client, then be clear with your client that the client is hiring you to be more than a surveyor consultant, and get paid for shepherding the client through the purchase process.

2. Responding to Inquiries  Dealing with an Angry Client

No one likes to be criticized, and when that criticism is coupled with anger, it is an unpleasant experience. When confronted with an angry client (or on hearing that a client is on the phone, calling for you, and you know you are already two weeks late with the project, and it still is not done), there are the two natural reactions: fight or flight – to bow up and fight back with accusations of your own, or to duck the call. Both are usually bad choices. One of the two primary reasons for ethics complaints against professionals is not that the professional service
provider messed up, but that, when confronted with the mistake, the service provider got arrogant and attacked, or hid from the client (which builds frustration and then anger in the client).

In dealing with an angry client, presume, at least initially, that the client has a positive intent. As hard as it is to do, think to yourself:

“Even if we disagree, he is doing what he thinks is right.”
“Even is she is wrong, she is motivated by the same things I am, which is to get a professional result for this project.”
or “Her intentions are as valid as mine, even though we disagree.”

Do not duck the call. It always goes better than you think it will.

However, there will be times when things go wrong in a project, and there will be a time when it is your fault. There also will be times when it is not. If it is your fault, the better approach is: (a) agree; (b) apologize; and (c) act to repair the damage as best you can. If it is not your fault, as good as righteous indignation feels, it is better to (a) try to appreciate the client’s perspective; (b) acknowledge his/her point of view; and (c) offer to assist, if you can, to provide another solution to the client’s underlying concern. That may or may not be do-able, but it is worth a try.

3. Dealing with Secondary Confidential Information

E-mails

One way confidential information may be inadvertently sent to other parties is through string e-mails. During the course of a transaction, the surveyor or a party to the transaction sends an e-mail to someone outside the confidential relationship. For example, you get an e-mail from your CADD operator within your office, asking about something that the County’s Engineer would know. You, in turn, forward that e-mail to the County Engineer, asking him to provide you with the answer to the inquiry. The problem is that the e-mail sent to you by your CADD operator had a string of earlier messages below it from your client, containing information which was not appropriate to let out of the office. Transmitting a chain of messages can result in a mistake of this nature that could have a substantial impact on the transaction or the relationships of the parties. It is important to keep confidential information confidential. Be careful about sending out e-mails which add onto an existing chain of messages.

Metadata

Another confidentiality issue involves “metadata” that can be imbedded in documents that are transmitted to other parties on CDs or as attachments to e-mail messages. The term “metadata” is commonly used to refer to data about, or within, a document that is not apparent on the face of the document but can be retrieved or discovered by the use of various software or word processing techniques.

One level of information that is covered by the term “metadata” involves the information
about a document that is disclosed when one selects the Properties function under the File menu with respect to a document. The information disclosed includes the name and type of document; the dates on which it was created, modified, printed, and most recently accessed; the size of the document; and other optional data. In general, this type of information is not going to have harmful consequences.

But another type of information that is covered by the term “metadata” involves information internal to the document showing additions, deletions, and perhaps comments that were made during the course of preparing the document. The disclosure of this type of information could conceivably breach a duty of confidentiality to a client.