

November 2016

# SIDE SHOTS

Professional Land Surveyors of Colorado

Volume 47, Issue 4



## GAME OF STONES

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# Rule of the Month

## The Succession of Responsible Charge, Board Rule 2.2 et. al.

By Earl Henderson, PLS

The definition of Responsible Charge of Land Surveying found in Board Rule 2.2 is a long and extensive description of what constitutes being in responsible charge. There's even a test in (c) to determine if you meet the criteria. I'm not going to take up pages to type in the rule and this article is not meant to describe what constitutes responsible charge. What I would like to concentrate on is an issue that has come to light on a number of occasions in which a PLS in responsible charge of a project departs the service of the company that is contracted to complete that project and a succeeding PLS must take over the surveying for the project and become the PLS in responsible charge from that time forward. Believe me, it can get even more complicated than that last sentence.

It's very important though to understand that the rules allow for this situation. It's common sense that they will arise. PLS's change jobs. And it never seems to happen when all their projects have just ended. So there needs to be a pathway through which a project can be taken over by a succeeding PLS. And if you read (e) you'll see that this part of the definition anticipates it happening. But make sure you read the whole paragraph. The last portion carries the load. "... and shall take professional and legal responsibility for documents signed and sealed under his/her responsible charge." What that means is simple. If you stamp and sign a document, you will be held fully responsible for being fully in responsible charge for every aspect that went into creating that document. That's common sense too. It's true for every document we stamp and sign.

But here's a twist. What if monuments are set for a survey but suddenly the PLS in responsible charge, and whose license number appears on those monuments, departs the company. What happens then? The succeeding PLS can't be held responsible for the monuments that were set by the departing PLS, but the plat hasn't been stamped, signed or deposited yet.

The coordination for such a situation, where an initial licensee departs a company in the midst of ongoing projects, to monument property corners with the appropriate license number and have the licensee in responsible charge stamp, sign and date the plat can surely get complicated. However, the statutes and rules are clear on a number of issues related to this situation.

1. Board Rule 2.2, Definitions-Responsible Charge of Land Surveying. This rule is very thorough and complete. But this is not to say that the licensee in responsible charge cannot change mid-project. It does; however, state the requirements for being in, or taking over, responsible charge. Take a minute and re-read this rule. It's worth the time.
2. 38-51-102(12) defines a Land Survey Plat as showing the information developed by a monumented land survey where one or more monuments are set.
3. 38-51-107(1) requires that when a monument is set pursuant to 38-51-104 a Land Survey Plat is required to be deposited by the licensee whose license number appears on the monument.
4. 38-50-101 (1)(c) requires that the Land Survey Plat be deposited within 12 months of the monument being set.
5. 38-51-104(1)(b) requires that the durable cap affixed to a monument set bear the license number of the licensee responsible for the establishment of the monument.
6. 38-51-104(6) requires that no monument shall bear the license number of more than one licensee.

It is important to note that the statutes and rules create responsibilities for the licensee in responsible charge to set monuments that bear the license number of that licensee and deposit plats accordingly. The company at which the licensee is employed does not bear the burden of these responsibilities even though the company may bear a responsibility to its licensed employees, client and the project contractually, ethically and otherwise. Therefore, it is likely in the best interest of all parties involved for the licensee and his/her former company to complete such a land survey project cooperatively. The departed licensee can create a Land Survey Plat on their own to document the setting of the monuments, but that's going to require a lot of duplication of effort (i.e. research, drafting, field work, etc.) that had hopefully already occurred at their old company because the survey had already gotten to the point of setting monuments.

A successor licensee may assume responsible charge or control of a project and complete the project as long

as he/she exercises the extent of responsible charge or control required by the statutes and rules. By assuming responsible charge for a project the successor licensee assumes full professional responsibility from that time forward, not for any monuments set or plats deposited prior to becoming the licensee in responsible charge. But that successor licensee should make themselves fully aware of, and comfortable with, the documentation and decisions that have already gone into the project by the departed licensee. So the company needs to be aware that there will also be some duplication of effort in this case too. But it's necessary for the successor licensee to establish themselves as being in responsible charge and to then move forward with the project.

It is also important to note that these requirements are independent of financial burdens on any of the parties involved. The law doesn't really care about the financial burden. The law just wants the survey to get done correctly regardless of the costs.

There appear to be at least four possible scenarios applicable to this issue for when a licensee departs a company during a project.

1. The project has started but not been developed to the point at which monuments have been set or plats deposited. In this scenario a successor licensee at the company can take over responsible charge of the project and become fully responsible for it, set monumentation with their own PLS number, and stamp and sign plats to be deposited.
2. The project has been developed to the point at which monuments have been set bearing the license number of the licensee in responsible charge, but that licensee then departs the company prior to the plat being stamped, signed and deposited.
  - a. The licensee and the company can work cooperatively to complete the Land Survey Plat and have it stamped, signed and deposited by the licensee that no longer works for that company but who remained in responsible charge of that project even though the licensee had departed the company. The departed licensee obviously doesn't need to remain in responsible charge for the duration of the project, but only until the plats indicating their monuments were set are stamped, signed and deposited. During that transition time a successor licensee can be in the process of taking over responsible charge of the project.
  - b. A successor licensee can take over responsible charge of the project. However, the successor licensee cannot remove or alter the monuments previously set by the

initial licensee. Doing so would constitute a Class Two (2) Misdemeanor pursuant to CRS 18-4-508. Therefore the successor licensee would be required to note the monuments of the initial licensee as found and not set. This situation does not remove the obligations of the initial licensee to deposit a Land Survey Plat on this particular project pursuant to 38-51-107(1).

3. The project has been completed, monuments were set bearing the license number of the initial licensee in responsible charge, and the Land Survey Plat was completed, stamped, signed and deposited by the initial licensee in responsible charge all prior to the initial licensee departing the company. In this scenario, the project, or at least the current phase of the project, has been completed. However, if the company continues with further aspects of the project that require additional monumentation, a successor licensee can take over responsible charge and note that the earlier monuments bearing the license number of the initial licensee were found and not set.

This article probably doesn't describe all the possible scenarios for situations in which a licensee departs a company in the midst of monumented land surveys. It is the responsibility of the initial licensee in responsible charge, and/or successor licensee taking over responsible charge, to act according to the statutes and rules, sometimes even in the face of pressure from company directors because they are the ones who care about the financial burden. The result of the requirements set forth in 38-51-104(1)(b) are that the licensee in responsible charge, and whose license number appears on the monument cap, will be held fully responsible for the monuments that were set under their responsible charge and that bear their license number along with all aspects that led to those monuments being set, and for documenting those set monuments on a Land Survey Plat.

In my opinion, if you find yourself and/or your company in the situation described in number 2 above, the best way to resolve it is to act in cooperation with (or as) the departed licensee. It's not always easy. Departures aren't always smooth or congenial. But cooperation, in addition to being professional, is the only attitude that will result in the best possible outcome for the project, the survey, the company, the licensee, and the client. After all, without cooperation, we would all be in our lifeboats all alone, and no one wants that. We're a community.

Be safe out there. ■