

share with \_\_\_ [client's name], we would appreciate a copy of any unrecorded documents such as plats, old deeds, survey notes, reports, and so on that may be in your possession and you feel would help re-establish the common boundary you share with \_\_\_ [client's name].

If you would like to show us any boundary markers or other objects that you feel would help establish the common boundary, a meeting at a date and time convenient to you can be arranged.

During the survey, survey stakes, ribbon, and nails will be used to mark survey points. These should not be confused with the actual corner or line monuments marking the common boundary you share with \_\_\_ [client's name]. Any survey points and ribbon this firm will use will probably **not** be placed on the boundary or represent a common corner. All corners will eventually be monumented by capped by \_\_\_ inch diameter rods inscribed with the name and license number of the surveyor in charge (if not already monumented).

Our employees may have to enter your property to gather information and measure from your corners and points on your property. Measuring on your side of the boundary is necessary to insure that the surveyor will consider all information (even remote sources) before marking the common boundary. Please do not hesitate to call this firm if you object to employees entering your property and using information on your side of the boundary to help reestablish the common boundary.

Should you have any questions, please call or write using the address listed in the letterhead. Your help is appreciated.

or the landowner has told the surveyor to leave the property or stay off the property and the surveyor enters the property. In these cases, the surveyor would be wise to seek the privilege and immunity afforded by the right of entry statute before going on the land (and do so in a tactful manner, if possible).

Liability for civil trespass merely requires the intentional invasion of land in possession of another. While the threshold for civil trespass liability exposure is low, the difficulty with civil trespass arises from the fact that the landowner must prosecute the surveyor with their own resources. As a consequence, the litigation costs will almost always exceed the damages awarded unless there was considerable destruction of property or there is sufficient cause to award punitive damages. Accordingly, if surveyors are careful not to destroy or disturb property, there is little chance a landowner will spend the money required to hold a surveyor liable for civil trespass.

**Right of Entry Law Provides Immunity from Liability Not Lawsuits** — Many surveyors believe that the Right of Entry law means they cannot be sued. In the United States, a person can sue another person for any reason. The surveyor can comply with the Right of Entry law and still be sued. The Right of Entry law means that the surveyor will likely have a complaint for trespass dismissed upon a judicial hearing. Between the time the surveyor is sued and the complaint dismissed, the surveyor will have spent considerable money on legal fees and endured months of unnecessary stress. Accordingly, it is a wise surveyor that continues to employ courtesy rather than arrogance when using the Right of Entry law. When providing the required notice, tact should always be employed by the surveyor even when tact is not required by the law.

**Notice May Serve Several Purposes** — Some surveyors view the provisions set forth in the Right of Entry law as legal requirements that are onerous and requires the help of an attorney to implement. The Right of Entry provisions are based on reasonableness using examples rather than strictures. Accordingly, the notice provision can be met as part of broader marketing and research efforts the surveyor normally undertakes (see the attached sample letter).

Sample Notice Letter

\_\_ [date]

Adjoiner's Address

Re: Notice of Pending Survey

Adjoiner's Name:

On or about \_\_ [date], this firm will be surveying the property of \_\_ [client's name], which is located \_ [nearby road, stream, physical feature], \_\_ [municipality], \_ [county]. Tax assessment records indicate that you may share a common boundary with \_\_ [client's name]. To insure a complete and accurate survey of the common boundary you

# **RIGHT OF ENTRY LAW — WHAT IT IS OR IS NOT**

by

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Maine has had a right of entry law for four years (see 32 M.R.S.A. § 13913). The right of entry law gives the surveyor a limited right to enter private property without permission of the landowner in the performance of surveying services, provided proper notice is given to the landowner or person in possession of the property.

In the four years since the right of entry law has been in effect, there has been some confusion by surveyors, landowners, and government officials regarding the Right of Entry law. The following will hopefully provide some clarity to those that may be confused about the law.

**Right of Entry is Not a Standard of Practice** — The Right of Entry law is not a duty imposed on a surveyor in order to enter all private property. Rather, the statute creates a privilege on behalf of the surveyor giving the surveyor immunity from liability or prosecution for trespass, so long as the surveyor conforms to the requirements set forth in the statute. The Right of Entry law provides an option that the surveyor may use based on a risk analysis.

**Right of Entry Law is Not Absolute** — It appears that some surveyors have only read the title to the Right of Entry law and believe they now have carte blanche right to enter private property. The right to enter property with immunity from prosecution or liability for trespass arises only after the surveyor has complied with the notice provisions set forth in the statute. Even after complying with the notice provisions, the surveyor or surveying assistants cannot cause property damage, may only enter on the land (i.e., not buildings), and must be entering to perform surveying services.

**Right of Entry Law Notice Provisions Are Not Used When Unnecessary** — As mentioned previously, some surveyors have been led to believe that the passage of the Right of Entry law now requires all surveyors adhere to the notice provisions before going on any private property. The Right of Entry law does not compel surveyors to comply with the notice provisions before going on all private property. The Right of Entry law gives surveyors immunity from liability and prosecution if they follow the notice provisions. Accordingly, the Right of Entry law is appropriately applied where there would be a likelihood of prosecution or liability for trespass. Accordingly, the Right of Entry law would not be necessary when the surveyor has express or implied permission from the landowner to enter on their property or there is little chance for prosecution or liability for trespass.

To be liable for criminal trespass, a person, without permission, enters a dwelling, enters a structure that is locked or barred, goes upon posted land, fails to leave when directed by a landowner, or enters land in defiance of an order by the landowner to stay off (see 17-A M.R.S.A. § 402). The practical limitation of the criminal trespass statute is that the surveyor will not be prosecuted for criminal trespass unless the land is posted