

PART XXIX. TEXAS BOARD OF LAND SURVEYING

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661.	GENERAL RULES OF PROCEDURE AND PRACTICE	661.1
663.	STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT	663.1

Authority: The provisions of this Part XXIX issued under Acts 1979, 66th Leg., p. 1261, ch. 597, §§1-29, effective June 13, 1979 (Texas Civ. St. art. 5282c, §§1-29), unless otherwise noted.



CHAPTER 661. GENERAL RULES OF PROCEDURE AND PRACTICE

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THE BOARD**§661.1. Name.**

The name of the board shall be Texas Board of Land Surveying. For the purpose of brevity in succeeding sections this organization shall be subsequently referred to as the "board."

Source: The provisions of this §661.1 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.2. Headquarters.

The headquarters of the board shall be in Austin, Texas.

Source: The provisions of this §661.2 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.3. Chairman.

The chairman shall be the executive officer of the board. When present, he shall preside at all meetings. The chairman shall appoint such committees as the board may authorize from time to time. The chairman shall sign all certificates. The chairman shall perform all other duties usually pertaining to the office of chairman and permitted by law.

Source: The provisions of this §661.3 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.4. Vice Chairman.

The vice chairman shall, in the absence or incapacity of the chairman, exercise the duties and shall possess all the powers of the chairman, as permitted by law.

Source: The provisions of this §661.4 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.5. Executive Secretary.

The executive secretary shall conduct and care for all correspondence in the name of the board. The executive secretary shall maintain all records prescribed by law. The executive secretary shall keep a record of all meetings and maintain a proper account of business of the board. The executive secretary shall be custodian of the official seal and affix same to all certificates and other official documents upon the orders of the chairman or of the board, or both. The executive secretary shall check and certify all bills and check all vouchers (claims) and shall approve same, and shall perform such other duties as directed by the board. The board shall furnish the executive secretary the necessary equipment, supplies, and stenographic assistance, paying for the same directly on vouchers (claims) handled as prescribed herein and by law.

Source: The provisions of this §661.5 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.6. Bond.

The executive secretary shall furnish a surety bond to the board in the amount of \$5,000, the premium for which shall be paid from the funds of the board.

Source: The provisions of this §661.6 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.7. Executive Committee.

The Executive Committee shall consist of the chairman of the board, who shall be chairman *ex officio*, the vice chairman, and one other member. Its duties shall be to transact all business instructed by the board, during the intervals between board meetings, and to report thereon to the board at its meeting. It shall also recommend to the board such actions in respect to policies and procedures as it may consider desirable.

Source: The provisions of this §661.7 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.8. Standing Committees.

For the purpose of administering examinations there shall be two standing committees.

- (1) The Licensed State Land Surveyors Committee shall prepare, administer, and grade the licensed state land surveyors examination. This committee shall be made up of the commissioner or his authorized representative and all of the licensed state land surveyors on the board. A quorum shall be any three of its members.
- (2) The Registered Public Surveyors Committee shall prepare, administer, and grade the registered public surveyors examination. This committee shall be made up of all members of the board. A quorum shall be six of which three must be registered public surveyors.

Source: The provisions of this §661.8 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.9. Special Committees.

Special committees shall have such duties as may be assigned by the chairman of the board, with the consent of the board.

Source: The provisions of this §661.9 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.10. Financial.

Payment of all salaries and other operating expenses of the board shall be made by itemized vouchers (claims) on the land surveying fund. Such vouchers (claims) shall be approved by the executive secretary of the board. The executive secretary shall maintain complete records of the financial transactions of the board as prescribed by the state comptroller and by law.

Source: The provisions of this §661.10 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.11. Vacancies.

If for any reason, a vacancy shall occur in the board, the chairman shall call a special meeting for the purpose of preparing a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in the office of the chairman, the vice chairman shall call the meeting.

Source: The provisions of this §661.11 adopted to be effective May 30, 1980, 5 TexReg 1969.

MEETINGS

§661.21. Regular Meetings.

Four regular meetings shall be held each year, one each in January, February, July, and August in Austin, Texas, or at such time and place as the majority of the board may designate.

Source: The provisions of this §661.21 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.22. Special Meetings.

Meetings may be called at any time by order of the chairman, or, in his absence or inability to act, by the vice chairman, or may be called by the executive secretary on the written request of three members. Notice of all regular and special meetings shall be mailed out by the executive secretary to each member at his last known address at least one week prior to said meeting unless majority of the members of the board unanimously waive such notice. When executive sessions of the board are called, the chairman shall appoint one member as recorder.

Source: The provisions of this §661.22 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.23. Notice of Meetings.

Notice of meetings shall be published and posted in compliance with the requirements of the Administrative Procedure and Texas Register Act.

Source: The provisions of this §661.23 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.24. Proceedings.

Robert's Rules of Order shall govern the proceedings of the board except as otherwise provided in this chapter or by statute.

Source: The provisions of this §661.24 adopted to be effective May 30, 1980, 5 TexReg 1969.

DEFINITIONS OF TERMS

§661.31. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Act—The Land Surveying Practices Act of 1979.

Certificate of registration and certificate of licensure—A certificate of registration is a license to practice public and surveying in Texas. A certificate of licensure is a license to practice state land surveying in Texas.

Hearing—An adjudicative proceeding concerning the issuance, refusal, suspension, revocation of licenses, or registration certificates, or both, after which the legal rights, duties, or privileges of an applicant or licensee are to be determined by the board.

Renewal—The payment of a fee annually as set by the board within the limits of the law for the certificate of registration or the certificate of licensure.

Rule—Any board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the board. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the board and not affecting private rights or procedures. This definition includes substantive regulations.

Seal—The seal of the board shall be as illustrated, and shall be of a size commercially designated as a two-inch seal, the measurement being two inches between each pair of opposite corners of the exterior octagonal frame.

Source: The provisions of this §661.31 adopted to be effective May 30, 1980, 5 TexReg 1969.

APPLICATIONS, EXAMINATIONS, AND LICENSING

§661.41. Applications.

- (a) The board will receive at any time applications from persons who qualify by law and wish to apply to take an examination for registration to practice public land surveying or state land surveying, or both, in Texas. Applications received by the board shall be examined by the executive secretary for conformity with the sections governing applications as established by the board. Applications accompanied by proper fees and in the form prescribed by the board shall be entered in the records of the board. Applications not accompanied by proper fees or not conforming entirely with these sections shall be returned to the applicant. Application forms in duplicate will be furnished by the board. One application is to be returned to the office of the board, the other retained in the applicant's file. Each applicant for registration shall be required to furnish all information requested on the application form. The application form shall contain general information regarding the applicant, a recent photograph, other registration and memberships, references and qualifications, formal education information with transcripts of college work, personal surveying experience, instructions for filing the form, and a sworn affidavit concerning information contained in the application, and a record of the board.
- (b) The application shall be neatly typed or lettered and all questions must be answered. If the answer is negative, use the word "no" or "none." It is the applicant's responsibility to see that all references, transcripts of college work, and any other information required or requested by the board, is received in the office of the board on or before June 15 or December 15 in order for the applicant's file to be considered for the ensuing examination. Experience time will be counted only up to the date of the filing of the application with fee. Applications will not be considered if essential information is lacking. It is important that the experience record of the applicant be completed in detail giving character of work performed, particularly with respect to percentage of time engaged in boundary land surveying as opposed to engineering surveying, title of position, employer, amount of time, and responsibility in each engagement listed. Experience in responsible charge will be counted only if under the direct supervision of a registered public surveyor. Give total time in actual land boundary surveying in each engagement. If the space provided in the forms is not sufficient, the applicant may attach as many sheets as are necessary. If the experience is of the character that it cannot be described properly in the tabulated form, he may submit a complete narrative account of his education, professional, or business career. All documents filed with the application shall remain in the permanent files of the board.
- (c) Application files are considered initiated the date the application is received with fee. If an application is not received within six months after date of receipt of reference forms and required information, that file will be closed and the applicant so notified at his last known address. There is a one-year limitation on all applications, beginning with the date of initiation.
- (d) No credit will be considered for experience obtained in violation of the Land Surveying Practices Act of 1979 or any applicable prior Act governing the surveying profession. Only that experience obtained in regular full-time employment will be considered in evaluating the applicant's record. Full time employment is defined by the board as a minimum of 40 hours per week, for a total collective period of time as required by law. In certain instances, the board may require additional proof of such employment.
- (e) Each application shall be attested to before a notary public or other official qualified by law to administer oaths.

Source: The provisions of this 661.41 adopted to be effective May 30, 1980, 5 TexReg 1969; amended to be effective December 12, 1983, 8 TexReg 4982.

Notes of Decisions: Licensed public surveyors had no such justiciable or legal right as would authorize them to maintain declaratory judgement suit to, in effect, compel registered professional engineers to procure license as public surveyors before they, at some future date, practiced public surveying. *Parrish v. Phillips*, 401 S.W. 2d 347 (Civ. App. 1966) ref. n.r.e. A person is not prohibited, disqualified or made ineligible for registration as a Registered Public Surveyor, merely because such person has been convicted of a felony or because such person is an alien not eligible for U.S. citizenship. Op. Atty. Gen. No. C-490 (1965). A county surveyor could not legally make private surveys, for compensation, of lands in his county without being licensed under art. 5282a (repealed) unless otherwise exempted from those requirements. Op. Atty. Gen. No. M-285 (1968). A county surveyor may not engage in the private practice of land surveying without being registered or licensed pursuant to the Land Surveying Practices Act of 1979 (art. 5282 c), nor is a person eligible to election as county surveyor unless at the time such person takes office the person is registered or licensed pursuant to the Act. Op. Atty. Gen. No. MW-541 (1983). Primary purpose of act providing for licensing of public surveyors was to promote public interest rather than economic interest of those practicing surveying. *Parrish v. Phillips*, 401 S.W. 2d 347 (Civ. App. 1966) ref. n.r.e.

§661.42. Fees.

- (a) The application fee is \$50. Each applicant for registration or licensure shall submit a cashier's check or money order for \$50 with his application. This fee is not returnable. The first registered public surveyor examination fee is \$50, which entitles the applicant to one examination. All subsequent examinations will be \$100.
- (b) The first licensed state land surveyor examination fee is \$50, which entitles the applicant to one examination. All subsequent examinations will be \$100.
- (c) The fee for reciprocal applicants shall be \$50 for each examination.
- (d) The fee for filing an original licensed state land surveyor bond shall be \$5.00.
- (e) New registrants will be required to pay a prorated fee as of date of registration.

Source: The provisions of this §661.42 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.43. References.

- (a) All references shall be chosen carefully for their personal knowledge of the applicant's experience and qualifications. All applicants shall submit to the board the names and complete addresses, including zip codes, of not less than three references unrelated to the applicant. All such references shall be registered or licensed surveyors and have personal knowledge of the applicant's surveying experience and qualifications.
- (b) Except in the event an applicant states that the reference requirement cannot be met otherwise, members of the board shall not be given as references. The board prefers that when an applicant is employed by an organization that includes registered public surveyors, that the applicant use only one reference from a registered public surveyor who is associated with him in such organization. The board reserves the right to ask for additional references.

Source: The provisions of this §661.43 adopted to be effective December 30, 1980, 5 TexReg 1969; amended to be effective December 12, 1983, 8 TexReg 4982.

§661.44. Rejections.

Should the board reject the application of any applicant, the fee accompanying the application will be retained by the board as an application fee. In case an application is rejected for any reason, the applicant will be notified by certified mail. The applicant may thereafter file with the board any further evidence or reason to support claim for reconsideration. It is the policy and intention of the board to give a rejected applicant every reasonable opportunity to support claims for reconsideration and to consider such evidence as may have been omitted from, or overlooked, in the original application or examination. An applicant may apply for, and, at the discretion of the board, be granted an interview to state his case.

Source: The provisions of this §661.44 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.45. Examinations.

- (a) Registered public surveyor examinations shall be written and so designed to aid the board in determining the applicant's knowledge of surveying, mathematics, surveying laws, and his general fitness to practice the profession as outlined in the Act. The examinations will cover a two-day period and the applicant will be notified at least 10 days in advance. If an applicant fails to respond to two successive notifications, the applicant's file will be closed and will not be reopened without the filing of a new application and fee.
- (b) Calculators will be permitted to be used during any examination, but shall not be programmable. Any calculator being used by an examinee during an examination, determined by the board to be programmable shall cause immediate disqualification of the applicant for that examination.
- (c) A grade of 70% on each section of the examination will be considered a passing grade.
- (d) An applicant taking the examination for the second time will be required to repeat only those portions of the first examination on which the applicant made less than 70%. Applicants for subsequent examinations will be required to repeat the entire examination.
- (e) In filing an updated application the applicant must update his experience record and secure a reference from each employer since the date of his original application. An applicant who has not changed employers since the date of his original application must secure a recent reference from his employer.
- (f) Licensed state land surveyors' examinations shall be written and so designed to reflect the applicant's knowledge of the history, files, and functions of the General Land Office, survey construction, legal aspects pertaining to state interest in vacancies, excesses, and unpatented lands, and familiarity with other state interests in surface and subsurface rights as covered by existing law.

- (g) The licensed state land surveyor examination will be in two four-hour sections and each part graded independently. If an applicant scores less than 70% on either part, that applicant will be required to file an updated application with fee and repeat the entire examination.

Authority: The provisions of this §661.45 issued under Acts 1979, 66th Leg., p. 1261, ch. 597, §9, effective June 13, 1979, as amended (Texas Civ. St. art. 5282c, §9(a)).

Source: The provisions of this §661.45 adopted to be effective May 30, 1980, 5 TexReg 1969; amended to be effective December 25, 1981, 6 TexReg 4634; amended to be effective December 12, 1983, 8 TexReg 4982.

§661.46. Certificate of Registration/Licensure.

- (a) The number appearing on the licensed state land surveyor's certificate of licensure is the bond filing number of such licensee and is only for recordkeeping purposes. The licensed state land surveyor shall be required to furnish proof annually, as of the date of renewal of the bond, of a nature satisfactory to the board, that such bond is in full force and effect.
- (b) At the time the applicant receives his certificate of registration/licensure, he will also be instructed to secure an impression seal of the type specified by the board. As soon as the registrant has secured his impression seal, he shall make an imprint thereof and shall forward said imprint to the board for its files. A rubber stamp is not considered an impression seal, but may be used at the discretion of the licensee.

Source: The provisions of this §661.46 adopted to be effective May 30, 1980, 5 TexReg.

§661.47. Reciprocal Registration.

- (a) Applicants applying for reciprocal registration under section 20 of the Act shall file with the board application forms as described in these sections and other forms as required by the board.
- (b) The board shall determine whether the licensing standards of the governmental authority under which the reciprocal applicant is licensed are substantially equivalent to those standards required in the State of Texas.
- (c) If the board determines that such standards are not substantially equivalent, the board may require the reciprocal applicant to take and pass all or any part of the 16-hour examination required for applicants under the Land Surveying Practices Act, §15.
- (d) Any cost for administering a reciprocal examination for this board by another state will be at the expense of the applicant.

Source: The provisions of this §661.47 adopted to be effective May 30, 1980, 5 TexReg 1969; amended to be effective December 12, 1983, 8 TexReg 4982.

HEARINGS

§661.61. Purpose of These Sections.

The purpose of these sections is to provide for a simple and efficient system of procedure before the board, to insure uniform standards of practice and procedure, notice of board actions, and a fair and expeditious determination of proceedings before the board. These sections shall be liberally construed with a view towards the purpose for which they were adopted.

Source: The provisions of this §661.61 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.62. Filing of Documents.

All complaints, motions, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the board shall be filed with the executive secretary. They shall be deemed filed only when actually received in the board's office.

Source: The provisions of this §661.62 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.63. Complaints Officer.

One registered member shall be appointed by the chairman as the complaints officer of the board. It shall be the duty of the complaints officer to review all complaints filed against persons licensed under this present Act and recommendations to the board regarding further action. The complaints officer shall have no voice in the rendering of a final decision on any matter reviewed by him.

Source: The provisions of this §661.63 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.64. Computation of Time.

- (a) *Computing time.* In computing any period of time prescribed or allowed by these sections, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.
- (b) *Extensions.* Unless otherwise provided by statute, the time for filing any pleading may be extended by order of the executive secretary, upon written motion duly filed with him prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need therefor is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

Source: The provisions of this §661.64 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.65. Agreements To Be in Writing.

No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding before the board shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This section does not limit a person's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

Source: The provisions of this §661.65 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.66. Service in Rulemaking Proceedings.

Service of a proposed rule or amendment of any existing rule shall be governed by section 5(A), *et seq.*, of the Administrative Procedure and Texas Register Act.

Source: The provisions of this §661.66 adopted to be effective May 30, 1980, 5 TexReg 66.

§661.67. Conduct and Decorum.

Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the executive secretary, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

Source: The provisions of this §661.67 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.68. Appearances Personally or by Representative.

Any person may appear and be represented by an attorney at law authorized to practice law before the highest court of any state.

Source: The provisions of this §661.68 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.69. Motions.

Any motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefor. If based upon matters which do not appear of record, it shall be filed with the executive secretary, who shall act upon the motion at the earliest practicable time.

Source: The provisions of this §661.69 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.70. Amendments.

Any pleading may be amended at any time upon motion; provided that the complaint upon which notice has been issued shall not be amended so as to broaden the scope thereof.

Source: The provisions of this §661.70 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.71. Incorporation by Reference of Board Records.

Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the board except such documents or entries which are protected from public disclosure by law. This section shall not relieve any party of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof, if any, imposed by law.

Source: The provisions of this §661.71 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.72. Motions for Postponement, Continuance, Withdrawal, Dismissal of Other Matters before the Agency.

- (a) Motions for postponement, continuance, withdrawal, or dismissal of other matters which have been duly set for hearing, shall be in writing, shall be filed with the executive secretary, and distributed to all interested persons, under a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding.
- (b) Failure to comply with the provisions of this section, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the executive secretary, may result in the dismissal of matter in issue, with prejudice to refiling.
- (c) Once an application has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the executive secretary without the consent of all parties involved.

Source: The provisions of this §661.72 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.73. Place and Nature of Hearings.

All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the board shall designate another place of hearing in the interest of the public.

Source: The provisions of this §661.73 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.74. Presiding Officer at Hearings.

- (a) The chairman is delegated by the board the authority to preside at hearings, make and issue final orders, decisions, and recommendations for the board concerning the issuance, refusal, revocation, or suspension of licenses, registration, and certificates. He also shall have the authority to rule upon the admissibility of evidence and amendments to pleadings, and by quorum vote of the board may recess any hearing from day to day.
- (b) The executive secretary shall have authority to administer oaths and examine witnesses.

Source: The provisions of this §661.74 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.75. Notice and Hearing.

- (a) An applicant or licensee is entitled to at least 20 days' notice and a hearing after his original application for examination has been refused.
- (b) Notice of hearing for refusal, cancellation, or revocation may be served personally by the board or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address.
- (c) In the event that notice cannot be effected by either of these methods after due diligence, the board may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs. The board shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his business activities.

Source: The provisions of this §661.75 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.76. Order of Procedure in Hearings.

- (a) In all hearings the board shall be entitled to open and close. After all persons have completed the presentation of their evidence the chairman may call upon any party or the staff of the board for further material or relevant evidence upon any issue to be presented at further public hearing after notice to all parties of record.
- (b) The executive secretary shall direct all persons to enter their appearances on the record. If exceptions to the form or sufficiency of a pleading have been filed in writing at least three days prior to the date of hearing, they shall be heard; otherwise not.

Source: The provisions of this §661.76 adopted to be effective May 30, 1980, 5 TexReg

§661.77. Dismissal without Hearing.

The executive secretary may entertain motions for dismissal without a hearing for the following reasons: failure to prosecute; unnecessary duplication of proceedings or *res adjudicata*; withdrawal; moot questions; or lack of jurisdiction.

Source: The provisions of this §661.77 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.78. Rules of Evidence.

In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable prudent men in the conduct of their affairs. The chairman shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

Source: The provisions of this §661.78 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.79. Documentary Evidence and Official Notice.

- (a) *Documentary evidence may be received in the form of two copies.* On request, all parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the chairman may limit those admitted to a number which are typical and representative, and may, in his discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the chairman shall require that all persons of record or their representatives be given the right to examine the documents from which such abstracts were made.
- (b) *Official notice may be taken of all facts judicially cognizable.* In addition, notice may be taken of generally recognized facts within the area of the board's specialized knowledge. All persons shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the board and its staff may be utilized in evaluating the evidence.

Source: The provisions of this §661.79 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.80. Limitations on Number of Witnesses.

The chairman shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

Source: The provisions of this §661.80 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.81. Exhibits.

- (a) *Form.* There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular hearing.
- (b) *Tender and service.* The original of each exhibit offered shall be tendered to the chairman for identification; one copy shall be furnished to the executive secretary, and one copy to each other party of record or his attorney or representative.
- (c) *Excluded exhibits.* In the event an exhibit has been identified, objected to, and excluded, the chairman shall determine whether or not the person offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the chairman with his ruling, and shall be included in the record for the purpose only of preserving the exception.
- (d) *After hearing.* Unless specifically directed by the chairman, an exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the chairman allows an exhibit to be filed after the conclusion of the hearing, copies of the late-filed exhibit shall be served on all parties of records.

Source: The provisions of this §661.81 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.82. Offer of Proof.

When testimony is excluded by ruling of the board the person offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The board may ask such questions of the witness as they deem necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross examination may be preserved without making an offer of proof.

Source: The provisions of this §661.82 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.83. Depositions.

The taking and use of depositions in any proceeding shall be governed by section 14 of the Administrative Procedure and Texas Register Act.

Source: The provisions of this §661.83 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.84. Subpoenas.

Subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a pending proceeding may be issued by the executive secretary in accordance with the Land Surveying Practices Act of 1979.

Source: The provisions of this §661.84 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.85. Oral Argument.

Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the chairman. A request for oral argument may be incorporated in exceptions, brief replies to exceptions, motions for rehearing, or in separate pleadings.

Source: The provisions of this §661.85 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.86. Final Decisions and Orders.

All final decisions, recommendations, and orders of the board shall be in writing and shall be signed by the chairman. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision, recommendation, or order shall be delivered or mailed to any party and to his attorney of record.

Source: The provisions of this §661.86 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.87. Administrative Finality.

- (a) A decision is final, in the absence of a timely motion for rehearing, and is final and appealable on the date of rendition or the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.
- (b) If the executive secretary finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

Source: The provisions of this §661.87 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.88. Motions for Rehearing.

A motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the executive secretary within 25 days after the date of rendition of the final decision or order.

Source: The provisions of this §661.88 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.89. Rendering of Final Decision, Recommendation, or Order.

The final decision, recommendation, or order must be rendered within 60 days after the date the hearing is finally closed.

Source: The provisions of this §661.89 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.90. Notice of Board's Order.

- (a) Any order refusing an application shall state the reasons for refusal, and a copy of the order shall be delivered immediately to the applicant.
- (b) An order revoking or suspending a license shall state the reasons for the revocation or suspension, and a copy of the order shall be delivered immediately to the licensee.
- (c) Delivery of the board's recommendation of refusal, revocation, or suspension may be given by:
 - (1) personal service upon an individual applicant or licensee; or
 - (2) sending such notice by United States certified mail addressed to the business premises of the applicant or licensee.

- (d) Notice is complete upon performance of any of the actions referred to in subsection (c) of this section.

Source: The provisions of this §661.90 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.91. The Record.

- (a) The record of a hearing shall include:
- (1) all pleadings, motions, and intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and rulings on them;
 - (5) proposed findings and exceptions;
 - (6) any decision, opinion, or report by the chairman presiding at the hearing; and
 - (7) all staff memoranda or data submitted to or considered by the board in making the decision.
- (b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.

Source: The provisions of this §661.91 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.92. Ex Parte Consultations.

Unless required for the disposition of *ex parte* matters authorized by law, the chairman delegated the authority to render decisions or to make findings of fact and conclusions of law in hearings may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

Source: The provisions of this §661.92 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.93. Appeals.

Appeals will be in accordance with Texas Civil Statutes article 5282c and the Administrative Procedure Act.

Source: The provisions of this §661.93 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.94. Suspension of these Sections.

In any case in which a public emergency or imperative public necessity so requires, the board may suspend the operation of these sections.

Source: The provisions of this §661.94 adopted to be effective May 30, 1980, 5 TexReg 1969.

ENGINEERS PRESENTLY PRACTICING SURVEYING

§661.101. Registered Professional Engineer in Texas.

An engineer now engaged in the practice of land surveying may continue to do so until June 13, 1980, or, if he has an application pending with the board, until such time as the board has taken action on such application.

Source: The provisions of this §661.101 adopted to be effective May 30, 1980, 5 TexReg 1969.

TEMPORARY PERMITS

§661.111. Temporary Permits for Land Surveyors.

Upon written notification, as outlined in section 4(5) of the Land Surveying Practices Act of 1979, a temporary permit to practice for not more than 60 days in any calendar year will be granted, provided that the person applying shall be legally qualified to so practice in another state and shall have filed with this board an application for reciprocal registration and shall have paid the fee required. Such exemption shall continue only for such time as the board requires for the consideration of the application for registration.

Source: The provisions of this §661.111 adopted to be effective May 30, 1980, 5 TexReg 1969.

BRANCH OFFICES**§661.120. Branch Offices.**

If a registered public surveyor or a firm offering or soliciting surveying services maintains offices in one or more localities, each office must be staffed with a registered public surveyor in a full-time resident capacity. The practice of surveying or the solicitation of surveying services is to be construed as intended by the Land Surveying Practices Act, §§3, 18, and 21.

Source: The provisions of this §661.120 adopted to be effective August 19, 1986, 11 TexReg 3485.

FIRMS FURNISHING SURVEYING CREWS**§661.121. Firms Furnishing Surveying Crews—Principal.**

Any firm furnishing land surveying crews must have a registered public surveyor as a principal in that firm.

Source: The provisions of this §661.121 adopted to be effective May 30, 1980, 5 TexReg 1969.

SURVEYOR-IN-TRAINING**§661.131. Minimum Education and Application Fees.**

Applicants under section 15(d) of the Act shall have a high school education or its equivalent. The application fee for a surveyor-in-training shall be \$50 and such application shall be valid for four years.

Source: The provisions of this §661.131 adopted to be effective May 30, 1980, 5 TexReg 1969.

§661.132. Basic Examinations.

- (a) Surveyor-in-training applicants with a high school education or its equivalent, who have a minimum of two years experience, of which an aggregate of 1-1 years must be in boundary land surveying, may take fundamentals of surveying portion of the examination.
- (b) Surveyor-in-training applicants with 32 semester hours of study or its academic equivalent in any combination of courses in civil engineering, land surveying, mathematics, photogrammetry, forestry, or land law and the physical sciences, and a minimum of one year experience in boundary land surveying may take the fundamentals of surveying and computation portions of the examination. If an applicant makes 70% or better on each portion of the examination, a surveyor-in-training certificate will be issued to the applicant. An applicant failing any portion of the examination will be required to make 75% or greater on the second examination and pay the fee as required in subsection (b)(4) of this section. If applicant fails a second examination, a new application and fee will be required.
 - (1) Upon successful completion of the fundamentals of surveying portion of the examination, the applicant shall be certified as a surveyor-in-training.
 - (2) A surveyor-in-training applicant who has a high school education or its equivalent and has become a surveyor-in-training under subsection (a) or (b) of this section may, after receiving an additional two years boundary land surveying experience and upon completion of a course of study as outlined by the board, tailored to that individual's needs and geographic location, may then be permitted to pay the remaining fees and to take the remainder of the examination and if the applicant passes, then he is registered.
 - (3) It is the responsibility of the applicant to update his application each year on or before the anniversary date thereof. If a surveyor-in-training applicant does not update the application within 30 days after the anniversary date of his application, such application will be closed and the applicant so notified at his last known address.
 - (4) The examination fee for a surveyor-in-training shall be prorated to 1 of the first examination fee for each portion of the examination taken. This fee entitles the surveyor-in-training applicant to one examination.
 - (5) A certificate as a surveyor-in-training does not entitle an individual to practice as a registered public surveyor. Any applicant withdrawing from the surveyor-in-training program after being certified as a surveyor-in-training shall reapply as provided for under the appropriate section of the Act, and shall not be eligible for further consideration as a surveyor-in-training and shall pay the fee, as set by the board, for subsequent examinations and shall be required to repeat the entire examination.

Source: The provisions of this §661.132 adopted to be effective May 30, 1980, 5 TexReg 1969.

CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

<u>Section No.</u>	<u>Section Name</u>
663.1.	Ethical Standards.
663.2.	Intent.
663.3.	Offer to Perform Services.
663.4.	Conflict of Interests.
663.5.	Representations.
663.6.	Unauthorized Practice.
663.7.	Maintenance of Standards.
663.8.	Adherence to Statutes and Codes.
663.9.	Professional Conduct.
663.10.	Disciplinary Rules.
663.11.	Certification and Monumentation of Surveys.

§663.1. Ethical Standards.

- (a) Inasmuch as the practice of the land surveying profession is essential to the orderly use of our physical environment, and, inasmuch as the technical work resultant thereof has important effects on the welfare, property, economy, and security of the public, the practice should be conducted with the highest degree of moral and ethical standards. And inasmuch as the state legislature has vested in the Texas Board of Land Surveying the authority, power, and duty to establish and enforce standards of conduct and ethics for public surveyors and licensed state land surveyors to ensure compliance with and enforcement of the Texas Board of Land Surveyors, the following standards of responsibility and rules of conduct are hereby promulgated and adopted by the board.
- (b) So that every applicant for registration as a public surveyor or licensed state land surveyor shall be fully aware of the great obligation and responsibility due the public, the standards of responsibility are promulgated by the board. In furtherance of this intent, every registrant should endorse the standards of responsibility.

Source: The provisions of this §663.1 adopted to be effective May 30, 1980, 5 TexReg 1969.

§663.2. Intent.

- (a) The intent shall be:
- (1) to create standards of responsibility as guidelines for the profession; and
 - (2) to create rules of conduct for governance of the profession.
- (b) The rules shall be binding on all registrants, but nothing contained therein shall be construed to supersede the statutory law of the state.
- (c) The board shall determine what acts constitute violation of the rules and shall institute appropriate disciplinary action which may lead to the revocation of the registration in accordance with the state statutes.

Source: The provisions of this §663.2 adopted to be effective May 30, 1980, 5 TexReg 1969.

§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 capabilities and qualifications to perform the services to be rendered.
- (2) Shall not offer to perform, nor perform, services for which he 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 statutory responsibility nor his responsibility to a client or employer.

Source: The provisions of this §663.3 adopted to be effective May 30, 1980, 5 TexReg 1969.

§663.4. Conflict of Interests.

The acceptance of employment, or engagement to perform services, creates the duties of agent toward the client or employer, requiring 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;
- (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, and then only upon reasonable notice to the client or employer;
- (5) shall not accept remuneration from any party other than his client or employer for a particular project, nor have any other direct or indirect financial interest in other service or phase of service to be provided for such project, unless the client or employer has full knowledge and so approves; and

- (6) shall keep inviolate the confidences of his client or employer, except as otherwise required in the rules of conduct.

Source: The provisions of this §663.4 adopted to be effective May 30, 1980, 5 TexReg 1969.

§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 enter into a partnership or any agreement in which any person not legally and actually qualified to perform the services to be rendered has any control over his independent judgment as related to the welfare, property, economy, and security of the public;
- (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 as accurately and truthfully represent to a prospective client or employer the costs and completion time of a proposed project as is reasonably possible;
- (5) shall not hold out as being engaged in partnership or association with any person or firm unless there exists in fact a partnership or association; and
- (6) shall not recommend to a client services of another for the purpose of collecting a fee for himself for those services.

Source: The provisions of this §663.5 adopted to be effective May 30, 1980, 5 TexReg 1969.

§663.6. Unauthorized Practice.

All reasonable assistance in preventing the unauthorized practice of land surveying should be given the board. Unauthorized practice should not be aided in any way. The registrant:

- (1) shall make known to the board any unauthorized practice of which he has personal knowledge;
- (2) shall divulge any information, of which he has personal knowledge, related to any unauthorized practice to the board upon request of the board or its authorized representatives; and
- (3) shall not delegate responsibility to, nor in any way aid or abet, an unauthorized person to practice, or offer to practice.

Source: The provisions of this §663.6 adopted to be effective May 30, 1980, 5 TexReg 1969.

§663.7. Maintenance of Standards.

Aid should be given the board in maintaining the highest standards of integrity and competence of those in its subject profession and occupation. The registrant:

- (1) shall furnish the board with any information that comes into his possession, indicating that any person or firm has violated any of the provisions of the registration laws or code; and
- (2) shall furnish any information he might have concerning any alleged violation of the registration laws or code upon request of the board or its authorized representatives.

Source: The provisions of this §663.7 adopted to be effective May 30, 1980, 5 TexReg 1969.

§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 all local codes and ordinances;
- (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 fitness to practice; and
- (4) shall not sign nor impress his seal or stamp upon documents not prepared by him or under his control or knowingly permit his seal or stamp to be used by any other person.

Source: The provisions of this §663.8 adopted to be effective May 30, 1980, 5 TexReg 1969.

§663.9. Professional Conduct.

Competitive bidding for professional surveying services is not in the best interest of the public and is a form of solicitation and is a conduct contrary to the practice of all learned professions in the State of Texas; therefore:

- (1) the surveyor shall not offer or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific surveying work or assignment; providing and excepting, however, that a surveyor may pay a duly licensed employment agency its fee or commission for securing surveying employment in a salaried position.
- (2) The surveyor shall not make, publish, or cause to be made or published, any representation or statement concerning his professional qualifications or those of his partners, associates, firm, or organization which is in any way misleading, or tends to mislead the recipient thereof, or the public, concerning his surveying education, experience, specialization, or any other surveying qualification.
- (3) The public shall be provided every reason for relying upon the surveyors' seals, signatures, or professional identification on all documents, plats or maps, surveyors' 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: The provisions of this §663.9 adopted to be effective May 30, 1980, 5 TexReg 1969.

§663.10. Disciplinary Rules.

The surveyor shall not:

- (1) violate any provision of the Land Surveying Practices Act of 1979 or disciplinary rule thereof;
- (2) circumvent or attempt to circumvent any provision of the Land Surveying Practices Act of 1979 or disciplinary rule thereof through actions of another;
- (3) participate, directly or indirectly, in any plan, scheme, or arrangement attempting to or having as its purpose the evasion of any provision of the Land Surveying Practices Act of 1979;
- (4) fail to exercise reasonable care or diligence to prevent his partners, associates, or employees from engaging in conduct which if done by him, would violate any of the provisions of the Land Surveying Practices Act of 1979;
- (5) engage in any illegal conduct involving moral turpitude;
- (6) engage in any conduct that discredits or attempts to discredit the profession of surveying;
- (7) permit or allow himself, his professional identification, seal, form, or business name, or his service to be used or made use of, directly or indirectly, or any manner whatsoever, so as to make possible to create the opportunity for the unauthorized practice of surveying by any person, firm, or corporation of this state;
- (8) perform any acts, allow any omission, or make any assertions or representations which are fraudulent, deceitful, or misleading, or which in any manner whatsoever, tend to create a misleading impression;
- (9) injure or attempt to injure or damage the professional reputation of another by any means whatsoever; provided and except, however, that this shall not relieve the surveyor of the obligation to expose unethical or illegal conduct to the proper authorities or preclude a frank but private appraisal of surveyors or other persons or firms considered for employment; or
- (10) aid or abet, directly or indirectly, any unlicensed person in connection with the unauthorized practice of surveying or any firm or corporation in the practice of surveying unless carried on in accordance with the Land Surveying Practice Act of 1979.

Source: The provisions of this §663.10 adopted to be effective May 30, 1980, 5 TexReg 1969.

§663.11. Certification and Monumentation of Surveys.

When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Land Surveying Practices Act of 1979, §2(1) or (3)), the land surveyor shall set, or leave as found, sufficient, stable, and reasonable permanent survey markers to represent or reference the property or boundary corners, angle points, and points of curvature or tangency. All survey markers shall be shown and described with sufficient evidence of the location of such markers on the surveyors' plat. If the land surveyor shall prepare a written description of the surveyed premise, he shall include in that written description:

- (1) reference to and a description of the survey markers as shown on the plat; and
- (2) the seal and signature of a registered or licensed surveyor.

Authority: The provisions of this §663.11 issued under Acts 1979, 66th Leg., p. 1261, ch. 597, §9, effective June 13, 1979, as amended (Texas Civ. St. art. 5282c, §9).

Source: The provisions of this §663.11 adopted to be effective May 29, 1982, 7 TexReg 1749.

