



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BOARD OF LICENSURE OF FORESTERS
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

Janet T. Mills
Governor

Anne L. Head
Commissioner

**Public Rulemaking Hearing
Friday September 15, 2023**

Location: **Central Conference Room**
 221 State Street
 Augusta ME 04330

Time: **1:00 p.m.**

I. CALL TO ORDER

II. PUBLIC RULEMAKING HEARING
 ▪ Chapter 100: Code of Ethics

III. ADJOURNMENT

Next meeting is currently scheduled for Thursday, September 28, 2023

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PRINTED ON RECYCLED PAPER
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Rule as proposed in May 2023

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 100: CODE OF ETHICS

Summary: This chapter defines unprofessional practice as failure to comply with the Code of Ethics adopted by the board in this chapter.

1. Code of Ethics; Unprofessional Practice

The following Code of Ethics defines the conduct of foresters in their relations with clients, employers, other professionals, and the public. Unprofessional practice includes but is not limited to any failure to comply with the Code of Ethics.

2. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. Client. “Client” means person or entity who has entered into an agreement for services with a forester or the forester’s employer.
2. Conflict of interest. “Conflict of interest” means a situation when a forester has a duty to more than one person or entity but cannot equally represent the actual or potential adverse interests of both parties. This includes when a forester’s personal interests or concerns are inconsistent with the best interests of a client.
3. Fiduciary responsibility. “Fiduciary responsibility” means the obligation to act in the best interests of the client within accepted forestry practice.
4. Forester. “Forester” means a person who holds a license from the Board as a forester or an intern forester. The roles in which a forester may provide services include but are not limited to the following:
 - A. Procurement, which means purchasing forest products that have commercial value;
 - B. Consulting, which means providing services through private practice or employed by an entity whose services are available to the general public;
 - C. Public services, which means providing services to a government entity; or

- D. Landowner or management assistance, which means providing services to a wood buying entity which may offer or perform forestry services.
 - 5. Management. “Management” means the planning and implementation of proven and accepted scientific forestry methods, appropriate to the specific forest conditions, to achieve a desired or improved result compared to current conditions.
 - 6. Stumpage. “Stumpage” means the value of standing trees.
 - 7. Supplier. “Supplier” means a landowner or other entity selling stumpage or severed forest products.
 - 8. Timber appraisal. “Timber appraisal” means the process or methodology of developing an opinion or estimate of value of stumpage or timber value. Timber appraisal is not an offer of a purchase price by a prospective buyer or a published history of past payment for similar property but may be partially based on such history.
3. Obligations to Clients, Suppliers and Employers

A forester bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting.

1. General Duty

A forester must act towards the client, supplier, and employer in all professional matters with loyalty, fidelity, and integrity in word and deed.

2. Prior to providing services, a forester must disclose to a client or supplier:
- A. To whom the forester owes a fiduciary duty with respect to the agreement;
 - B. Whether the forester is procuring or soliciting forest products that have a commercial value;
 - C. Any financial or purchase interest the forester or the forester’s employer has in the land or timber including the forester’s or forester’s employer’s interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester; and

D. Any contracts to sell forest products exclusively to a particular market, mill, or purchaser.

3. Confidentiality

A forester must not disclose information concerning the forester's current or former client or employer without the client's or employer's express permission, except as required by law.

4. Conflicts of Interest

A. Generally. A forester must avoid a conflict of interest, or the appearance of a conflict of interest. If a conflict of interest a conflict is discovered, the forester must

- (1) Promptly and fully disclose the conflict to the client or employer in writing; and
- (2) Either act immediately to resolve the conflict or obtain written consent from the client or employer.

B. Disclosure. The disclosure required by subparagraph (A)(1) above must include, but not be limited to:

- (1) The nature of the conflict;
- (2) The role in which the forester proposes to provide the services (e.g., procuring, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
- (3) The person or entity paying for the services and how payments are to be made; and
- (4) A description of any confidential client information that may be disclosed to the person or entity paying for the services.

C. Arising from timber appraisals. In the event that a conflict of interest arises as a result of a timber appraisal, the forester must disclose the conflict to the former client or employer and secure permission to share the appraisal information.

5. Truthful Reporting

A forester must provide truthful reports of forest conditions, health and quality based on current accepted forestry standards and knowledge.

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

- (1) Administering or overseeing a timber harvest; or
- (2) Undertaking a client engagement that is expected to result in physical alteration of a parcel.

Notwithstanding the foregoing, where a written agreement is required under this section, an exception may exist for minor, urgent or unforeseen circumstances.

C. If a written agreement is requested or required under this chapter, it must include the following provisions:

- (1) Disclosures as described in this chapter as applicable, specifically:
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- (h) An estimated completion schedule.

7. Fee Disclosure

Prior to providing services, a forester must disclose all direct and indirect costs or obligations of the services to be provided. This disclosure must include the rates, commissions and methods by which compensation must be calculated and any estimate of the overall cost of the services to be provided. If circumstances cause the fee estimate to become significantly inaccurate, the forester must consult the client and convey a revised estimate to the client as soon as practicable thereafter.

8. Fees

Fees may be negotiated on any mutually agreeable basis. No fee may be established upon a predetermined result or value. With respect to timber appraisals, a forester may not accept a fee based upon the value of the timber being appraised, nor may a forester have any legal or equitable interest in the property being appraised.

9. Client Funds

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retain records that accurately reflect the receipt of and debiting of client funds to the forester.

10. Due Care

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11. Client Objectives

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12. Qualified

A forester must perform only those services for which the forester is qualified by education or experience.

13. Other Experts

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A forester must only sign or seal those plans, reports, prescriptions, maps and specifications personally prepared by the forester or produced under the direct supervision or review of the forester. Any maps or property descriptions prepared for public record by a forester must clearly disclose "not a legal survey."

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A forester must base public comment on forestry matters on accurate knowledge and must not distort or withhold pertinent information to substantiate a point of view.

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A forester must comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

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1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, must be accurate, factual and objective.

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A forester must perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

STATUTORY AUTHORITY: 32 M.R.S. § 5506(3)

EFFECTIVE DATE:

Redline Demonstrating Changes from Rule as Proposed in May 2023

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STATUTORY AUTHORITY: 32 M.R.S. § 5506(3)

EFFECTIVE DATE:

Clean Version of Current Proposed Rule

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A forester must only advertise in a dignified and truthful manner, stating the services the forester is qualified and prepared to perform. Such advertisements may include references to fees charged, but they may not include references to past clients served without their prior written consent.

5. Supervision of Unlicensed Individuals

A forester must comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

5. Obligations to Other Foresters

1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, must be accurate, factual and objective.

2. Duties of Sponsor

A forester must perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

STATUTORY AUTHORITY: 32 M.R.S. § 5506(3)

EFFECTIVE DATE: