County Agent Update on Timber Theft - January 2008

Contact: Jeff Stringer, Department of Forestry, University of Kentucky
859-257-5994 stringer@uky.edu

This update is provided specifically for county agents regarding timber trespass. Timber theft issues have garnered significant publicity with articles in local, regional, and national news outlets. This update is provided to give you background information. Also a press release has been developed by Agriculture Communications, a radio release has been produced, and a FOR publication is the in the works. This fact sheet provides basic information that can be used to advise landowners and provide local educational information. When the FOR is released they will be distributed in county packets.

All materials can be obtained in the agents section of www.ukforestry.org.

Extensions role is to provide education on the issue and the following is a brief outline of issues associated with timber trespass (see page 3 for current status for potential legislative changes) that will get you up-to-speed.

**Timber trespass** is the unauthorized cutting of trees that have commercial value (timber). Timber trespass can result from:

- purposeful theft (theft implies intent), or
- unintentional harvesting of timber due to unclear boundary lines or ownership disputes.

Understand the difference between timber theft (the intention stealing of timber) and unintentional trespass.

**All timber trespass is a crime.** If timber is removed from the site it is generally a felony theft and if damages occur to the land during the theft is it viewed as destruction of real property. All of which is subject to criminal and civic prosecution.

**Why is timber theft receiving attention?** Local law enforcement does not understand the issue and generally are not equipment to investigate. In many instances landowners are told to proceed with a civil case. This involves hiring attorney, surveyors (possibly) and in all cases a consulting forester. This stacks the deck against the landowner that has timber stolen. Unscrupulous loggers know this and timber theft continues unabated. **THE PROBLEM OBVIOUSLY HAS GOTTEN BAD ENOUGH THAT IT HAS GARNED PUBLIC ATTENTION THAT MAY POTENTIALLY GENERATE NEW LEGISLATION.**

**Geographic Scope of the Problem.** Timber trespass occurs all over Kentucky. The worse cases of timber theft have occurred in eastern and southeastern Kentucky.

**How does timber theft normally occur?**

1. The most common type of theft occurs when an unscrupulous individual has been legally harvesting a stand of timber and purposefully harvests beyond a known boundary onto the property of an adjacent landowner.
2. The second situation involves the blatant harvest of timber owned by absentee landowners. In this scenario, absentee ownerships are found by searching public records. Once the absentee ownership is located, logging equipment is moved to the site expressly for the purpose of stealing the timber. In this case it is not unusual for the illegal harvesting to spread to adjacent ownerships.

3. The third situation involves the stealing of one or a few high value trees. This theft often occurs discretely without the use of a full scale logging operation.

**Kentucky’s timber trespass law** (KRS 364.130), sets financial penalties for timber trespass (unintentional and outright theft). It also provides a set of rules for notifying adjacent landowners of an impending harvest. These rules, for use by landowners selling timber and for loggers cutting this timber, are designed to help minimize the chance of unintentional trespass. The following bullets provide the basics of the timber trespass law:

- If no written notification is provided of an impending harvest the adjacent owner that has had their timber cut without authorization gets 3 times the stumpage value and 3 times any damages (fixing the land and property destroyed or damaged, professional services, etc.)
- If written notification is provided to an adjacent landowner and the landowner does not respond or does not object and a trespass occurs then the rightful owner gets only the stumpage value and only the cost of fixing damages.
- Written notice must be given at least seven days in advance of a harvest and can be obtained through an agreement with the adjacent landowner or through certified mail, return receipt requested.
- The adjacent landowner has seven days to respond.

**Felony Theft** The timber trespass law above provides for compensation as a civil case. However, timber trespass can be viewed as felony theft and be prosecuted accordingly.

**Properties at risk for theft**

1. Owners that do not live on the property, especially those that do not live in the community (absentee owners).
2. Lands where there is an ongoing boundary dispute.
3. Woodlands where an adjacent timber harvest is underway or proposed.
4. Woodlands that contain large high quality timber of valuable species.

**Advice for landowners selling timber and loggers.**

1. Clearly mark or identify timber sale boundaries.
2. Buy or sell timber with a contract that clearly states the boundaries and make sure that everyone involved in the harvest knows the boundaries.
3. Notify landowners that have property adjacent to the timber sale boundary in writing of the impending harvest (per the timber trespass law KRS 364.130) at least seven days prior to the harvest.

**Advice for landowners that have timber at risk.**

1. Make a copy of your deed and keep it available.
2. Have boundaries clearly marked so that they can be readily seen from adjacent properties.
3. Contact adjoining landowners and let them know that you have interest in growing your timber or woodlands and do not plan on harvesting any timber.
4. If you do not live on the property ask adjacent owners to watch your property and provide them with your contact information. Ask them to contact you if they see any harvesting activity on your property.
5. It would also be wise to have a Forest Stewardship Plan developed by the Kentucky Division of Forestry for your property. This is free-of-charge and the forester can advise you if you have any valuable timber and if it is at risk from theft. Also contact a consulting forester. If you have just obtained the property you should have the consulting forester conduct a cruise to determine the timber value. This can be used to determine the basis for capital gains if you are planning on selling timber in the future and the consultant can also alert you to potentially valuable timber that might be at risk relative to timber theft.

**What to do if a trespass is ongoing or has been discovered.**
The key to recovering losses is to discover the trespass while it is occurring. In the case of timber theft, notify local law enforcement and contact a consulting forester right away. The consulting forester is extremely helpful as they understand logging and timber and can quickly assess the gravity of the situation. They can provide critical and timely advice that might be valuable in determining and minimizing losses. If the theft has already occurred it is still advisable to contact both local law enforcement and a consulting forester as soon as possible.

**Legislative Update**
- The Appalachian Roundtable ([www.appalachianroundtable.com](http://www.appalachianroundtable.com)) a nonprofit organization is spearheading efforts to establish further legislation in 2008 regarding timber theft. They will probably be offering at least one and potentially two bills on this issue.
- The county sheriffs association and its president are behind the effort to help deal with this issue and maybe actively supporting legislation.
- KDF and KFIA are well aware of the pending legislation.
- KFIA and myself (I have gone on record) are supportive of the need to stop timber theft and believe that any legislation that can aid in stopping the problem WITHOUT hurting honest logging businesses or landowners selling timber is a good thing.
- I personally believe that the laws on the books if vigorously pursued by local law enforcement and supported by the judiciary would fix the problem. However, the reality of this happening with a shot in the arm is probably slim.