The Legalities of Timber Trespass

draft excerpt from UK Extension Series Publication on Timber Trespass by Jeff Stringer

As we commonly define timber trespass, the unapproved cutting of trees and removal of timber, it actually encompasses two distinct violations of law.

- First moving onto another’s property can be a violation of trespass law as described below.
- Secondly, knowingly cutting and removing timber without approval is a theft (normally a felony theft). Both trespass and theft are violations of criminal law. The removal of timber is also a violation of civil law as will be discussed below.

Criminal Trespass

Let us first deal with the criminal statues. As indicated above, knowingly moving onto another person’s property is a trespass. However, under Kentucky law the most severe criminal trespass provisions do not apply to trespass in the woods only buildings. In the woods or open spaces, if the trespass knowingly occurs through a fence then the trespass could be a 2nd degree trespass, classified as a Class B misdemeanor, and carries a maximum fine of $250 and 90 days in county jail. If no fence was encountered and a person knowingly entered or unlawfully stayed on a piece of property then the punishment is a $100 fine. The latter would generally require that the boundary was marked in some manner and it was reasonable that an individual would know that a boundary was being crossed. If damage was done during a trespass the rightful owner of the land could be awarded compensation for these damages that occurred during the trespass. If boundaries are not well marked and definitive boundary descriptions were not provided it might be difficult to prove trespass under Kentucky law. In this case, if timber that was cut as part of an unknowing trespass the rightful owner would be eligible to receive compensate for the value of the timber cut.

Criminal Theft

Theft is a separate criminal issue that implies intent to steal property. In this case, if timber was cut and removed and worth over 300 dollars it would be considered a Class D felony theft. Typically this is punishable by 1 to 5 years in prison. The violator could also be made to pay restitution for the stolen timber to the rightful owner.

To summarize the criminal law associated with timber theft, if an individual is charged with criminal trespass and felony theft they would be subject to fines and potentially jail time. The woodland owner could be entitled to compensation for timber cut and damages.
Civil Law

To obtain further compensation a woodland owner having their timber cut would have to pursue civil action. This would entail use of Kentucky’s timber trespass law KRS (Kentucky Revised Statute 364.130). This law provides for civil damages in the case of a timber trespass. The law provides for two levels of damages. The law awards triple compensation of the value of the stumpage cut and triple the value of damages unless the following conditions were met:

1. The logger or timber buyer was cutting on an adjacent property and had written permission or had a contract to be cutting timber on that property, and

2. The adjacent woodland owner was notified in writing using a certified letter delivered at least seven days in advance of the beginning of the logging job and the adjacent landowner did not object to the logging or make contact with the person that sent the certified letter.

If these conditions were met then the adjacent landowner that had timber cut could only be subject for one times compensation of stumpage values and damages.

Summary

To summarize the legalities, a trespass only occurs if a fence is crossed or the boundaries are marked or clear designated and a person knowingly crosses them. If this is the case the person can be charged with a class D misdemeanor. If the trespass is accompanied by the cutting and removal of timber worth over $300 dollars then the person can be charged with criminal felony theft and subject to imprisonment. Regardless the landowner could be entitled to compensation for the timber cut and any damages to the property. If further compensation is sought it must be done under civil law, namely KRS 364.130, commonly referred to as the timber trespass law. This law states that the rightful owner of the timber is entitled to three times the stumpage value of the timber and three times damages unless the logger has a contract to be harvesting timber on a neighboring tract of timber. Further the rightful owner of the timber on the adjacent property must have been notified in writing (using a certified letter) at least seven days before the cut on the neighboring property begins. If the logger has a written permission to be cutting on a neighboring property and written notification was provided to the adjacent landowner and a cut over occurs the adjacent landowner only is obligated to one times the stumpage value and one times damages.