



PROPERTY RIGHTS AND LANDOWNERS RESPONSIBILITIES

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(This Fact Sheet is one of three dedicated to property rights and landowner responsibilities. It can stand alone or be used with the others in the series)

Private property is a fundamental component of America's economic system. Interest in property allows a landowner to use that property in a variety of ways that the landowner values. Since land is generally locally owned and managed, it makes sense that the landowner understands and appreciates how other people use and enjoy their land. This fact sheet is the second of three on private property rights. *(For an introduction to property rights, please see Understanding Property Rights? FORFS 99-3)* This fact sheet briefly outlines the importance of property rights and landowner responsibilities in managing the land and cites the pertinent state laws regarding property rights.

PROPERTY AS A "BUNDLE OF STICKS"

It is often best to think of property rights as a "bundle of sticks". Each stick represents a use to which a landowner can put property. For example, one stick represents a landowner's development rights. A second stick may represent the mineral rights. A third stick may represent some interest in air. Each of these rights entitles a landowner to use, exchange, or disposition of their land.

But, with this said, a landowner may have these rights to do with land what is deemed appropriate for themselves; however, a landowner should remember that their property should not be abused in a way that interferes with another person's use and enjoyment of their property. It is often this side of the property rights debate that is often forgotten.

Landowner Responsibility for Property

A landowner not only has the right to use land as they see fit, but a landowner needs to remember that owner "A's" uses can impact owner "B's" enjoyment of property. In essence, there is a relationship or "social contact" between and among landowners. It is important how they care and use their land, not only in the present, but also in the future.

Typically, these relationships have been enforced through the use of common law in the protection from things such as nuisance or trespass.

Under common law, a landowner can sue a neighbor who is producing noxious odors or smells which impacts a landowners use and enjoyment of property. The courts have ruled that such landowner behavior does not have to result in a physical trespass of activities, but simply a diminished expectation in the use of property. This idea of rights and relationships regarding property is best summarized by Mark Pollott, who in his book says, *"Those who created the Constitution's property protection provisions saw property as being a complex of rights and relationships rather than a physical or symbolic object."*

The Common Law or judge made law is based on culture and the customs of society. The strength of common law

rests on its reliance on judicial precedence where previous cases are guides to future legal decisions. Common law therefore is slow to change. In contrast, statutory laws are statutes passed by the legislature with implementing rules drafted by federal or state agencies. Sometimes statutory law contradicts the intent or deliberateness of common law. This has especially been the case with land use law and environmental regulations.

Nuisance and Trespass in Property

For purposes of this discussion, private property will be analyzed through two common law ideas: nuisance and trespass. Susan Buck defines a *nuisance* as “no one may act so as to unreasonably interfere with the property rights of another.”

More specifically there are two types of nuisances identified under the law each with specific application to property rights:

Public nuisance - an activity that adversely affects the health, safety, welfare or comfort of the public. (Buck, 1996, p. 69)

Examples= polluting water or air, etc.

Private nuisance - unreasonable interference with the enjoyment of a person’s land.

(Buck, 1996, P.70)

Examples= throwing trash over the fence

Trespass - any person who knowingly or not, enters another person’s property without permission, except for *attractive nuisances*

(KRS 381.231).

An attractive nuisance is anything that, if it were not present, would not attract someone to the property. A good example is a pond. Children may not normally come on the property if not for the pond. This makes for an attractive nuisance.

DRIFTS, LOGS, AND TIMBER

This statute commonly termed the “Timber Trespass Law” was enacted in 1994. It sets forth how awards will be issued in timber trespass cases. It is possible that this legislation may pertain to both forest owners and silvicultural and timber harvesting operators.

KRS – 364.130 Liability of person entering upon and cutting timber growing upon land of another – Measure of damages.

(1)... any person who cuts or saws down...or causes to be cut or sawn. timber growing upon the land of another. shall pay to the rightful owner of the timber three (3) times the stumpage value of the timber and... three (3) times the cost of any damages... UNLESS... That prior to cutting:

(2) (a) 1. A signed statement was obtained from the person whom the defendant believed to be the owner of all trees scheduled to be cut that:

- a.** All of the trees to be cut were on his property and that none were on the property of another: and
- b.** He has given his permission, in writing, for the trees on his property to be cut; and

2. Either:

- a. A written agreement was made with owners of the land adjacent to the cut that the trees to be cut were not on their property; or
- b. Owners of the land adjacent to the cut were notified in writing, delivered by certified mail, restricted delivery, and return receipt requested, of the pending cut and they raised no objection, the court may render a judgement for no more than the reasonable value of the timber, ...damages.. and legal costs.

(2) (b) ...if no written objection was received from the persons notified within seven (7) days from the date of the signed receipt of mail, it shall be presumed, for the purposes of setting penalties only, that the notified owner had no objection to the proposed cut.

RECOMMENDATIONS WHICH MIGHT HELP AVOID NON-COMPLIANCE

- **Both loggers and landowners know the boundaries and make sure they are clearly marked.**
- **Sell or buy timber with a signed contract.**
- **Contact adjacent landowners as in section 364.130 (2) 2. b. Both loggers and landowners can be held responsible for this.**
- **Both loggers and landowners should stipulate boundaries and boundary marking in timber sale contracts.**

REMEDIES FOR PROPERTY RIGHTS PROBLEMS

Property rights are based on common law and statutory law can contradict common law – hence many of the property rights problems of today.

Property ownership allows for a landowner to value what is important about this particular resource. One landowner's use and enjoyment of property will differ from another landowner's use and enjoyment of property. For instance, one neighbor may use his/her land to grow trees for timber harvesting, yet the neighboring landowner may enjoy his/her land for the tranquility and wildlife habitat. These are potentially conflicting land use values, though both are valued by the individual landowner, but require some degree of understanding.

The timber landowner should ensure that in harvesting his/her trees best management practices are used that don't impair streams, rivers, or lakes nearby, thus potentially interfering with another landowner's enjoyment of property. For instance, improper time harvesting can cause sediment problems downstream and result in flooding or loss of wildlife habitat, especially fisheries.

It is these multiple values placed by landowners on their property that determines a land's use and relationship for a community. One important point: Private property also provides for local solutions to problems. Because land use focuses on proximal relationships within a community, local problems often rest with local resolution that hinges on local customs and understandings.

Other steps to take to protect your interests:

1. Maintain legible copies of any contracts or purchase orders.
2. Maintain any notes made during telephone conversations and any memoranda you may have made before or after the event causing you concern

3. Keep all correspondence received or sent before or after any agreements.
4. Regardless of the nature of your problem, if it can be photographed or videotaped, do so on a periodic basis.
5. If you believe any dispute will not be resolved quickly, contact your local attorney. If he or she is not familiar with agricultural law, ask them to consult with one who is.
6. If scientific issues are involved, contact your local agent immediately. If your Local County Agent is not an expert on your problem, contact the nearest University, which specializes in the type of problem you have and ask for a qualified person to come immediately.
7. After making contact with any scientific person, ask what should be preserved for the purpose of laboratory or chemical testing to help establish cause of loss and what testing can be done to rule out alternative causes.
8. For the purpose of real estate, it is recommended that the owner, or someone entrusted by the owner, walk the boundaries of the land at least once per year to insure boundaries have not been violated and other unwanted land uses are not committed.

*Martin & Martin, P.A., PO Box 117, Lakeland, FL 33802-0117. *Necessary steps to protect your interests.*

CONCLUSION

Property rights go further than “it’s my land and I can do with it whatever I choose”, but also requires a responsibility on behalf of the landowner to insure land use activities do not interfere with another’s persons use and enjoyment of their property. Remember, too, that this nation’s economic system is predicated on the use, exchange, and disposition of private property. Landowners, though, should always remember that as with any right comes responsibilities.

Opposing values often create conflict. How this conflict is handled is crucial to managing natural resource issues. Often many local use conflicts can be resolved simply by landowners talking to one another and working out their differences. When this fails owners and communities turn to legal or legislative remedies to solve problems. Landowner responsibility and local solutions are influential in managing property rights.

ADDITIONAL READING

Buck, Susan. 1996. *Understanding Environmental Law and Administration*, 2nd edition, Island Press.

Edgens, Jefferson G. “Understanding Private Property Rights” FORFS 99-3, Department of Forestry, University of Kentucky Cooperative Extension Service.

McEvoy, Thom J. 1998. *Legal Aspects of Owning and Managing Woodlands*. Island Press.

KRS 364.130 Timber Trespass

Pollott, Mark. *Grand Theft Avenue Petit Larceny: Property Rights in America*. Pacific Research Institute. 1993.

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