

TIMBER TRESPASS IN KENTUCKY

by Jeff Stringer

Photos courtesy: Jeff Stringer

Timber harvesting operations can be done in a manner that conserves the land and limits water quality problems through the use of Best Management Practices (left) or they can be conducted carelessly with little regard for the land, remaining trees, or water quality (above). Intentional timber trespass operations rarely show any regard for the land and, the resulting damage, can have long lasting negative impacts.



Timber trespass is the term commonly used in forestry circles to describe the unapproved cutting of trees and the removal of timber. Timber trespass includes the unintentional cutting of timber due to boundary mistakes or disputes as well as timber theft, the intentional stealing of timber. This article provides information on the legal implications of both unintentional cutting and intentional timber theft. It also provides information to woodland owners who are planning on harvesting timber on how to avoid unintentional trespass as well as how to help protect woodlands from timber trespass.

THE LEGALITIES OF TIMBER TRESPASS

The legalities of timber trespass can be confusing. As we commonly define timber trespass—the unapproved cutting of trees and removal of timber—it actually encompasses two distinct violations of criminal law, a trespass and a theft. The unauthorized removal of timber is also a violation of civil law, as will be discussed in this article.

To simplify the discussion, let us focus on the most common situations involved with timber and logging. As indicated previously, knowingly moving onto another person's property is considered a criminal trespass if someone knowingly crosses a fence (a Class B misdemeanor with a maximum fine of \$250 and 90 days in jail) or if they knowingly cross an unfenced boundary in the woods (a misdemeanor with a \$100 penalty and no jail time). If the boundaries are not well marked or designated in the woods, a criminal trespass might be hard to prove. Regardless of whether the damage was done as part of a criminal trespass or as part of unintentionally crossing a boundary, the rightful owner of the land could be awarded compensation for damages that occur to the land, such as fixing roads or skid trails that were built or damaged, costs associated with removing tops and debris, and other costs that the landowner incurred. Also, if timber was cut and removed, the rightful owner could get compensated for the value of the timber that was lost.

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, it would be considered a Class D felony. Typically, this is punishable by one to five years in prison. The violator could also be made to pay the rightful owner restitution for the stolen timber. *(continued on page 2)*



Photo courtesy: Daniel Bowker

Determining the value of timber lost often starts with consulting foresters measuring remaining stumps and applying several techniques to determine volume and value loss. Woodland owners experiencing a timber trespass can be eligible for triple the damages.

To obtain further compensation, however, a woodland owner whose timber was cut without authorization would have to pursue civil action. This would entail use of Kentucky's timber trespass law KRS (Kentucky Revised Statute) 364.130 that provides for two levels of damages. The law awards triple compensation for the value of the stumpage (the value of timber as it stands uncut) 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 operation and the adjacent landowner did not object to the logging or make contact with the person who sent the certified letter within seven days of receipt of the letter.

If the logger had a contract to log a neighboring tract, proper prior notification was done, and an adjacent landowner did not object within seven days, the adjacent landowner who had timber cut could only

be subject to compensation for the actual stumpage value and cost of damages, not three times. It is important to note that under this civil statute, there is a one-year statute of limitations that starts upon discovery of the trespass.

To summarize the legalities, a criminal trespass only occurs if a fence is crossed or the boundaries are marked or clearly designated and/or if a person knowingly crosses a boundary. If the trespass is accompanied by the cutting and removal of timber worth over \$300, 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 within one year after discovery of the trespass. Kentucky's timber trespass law allows for triple damages and triple stumpage values if there was no prior notification and other stipulations of the law were not adhered to.

HOW TIMBER TRESPASS OCCURS

Unintentional cutting of timber typically occurs due to one of several reasons. A logger can unknowingly cross an unmarked boundary in the woods, or a woodland owner does not know the correct boundary line and directs a logger onto the neighbor's property, or there is a boundary dispute. These scenarios indicate that the landowner who is selling timber should know where the boundaries are and have them clearly marked. Oftentimes, this is not the case, and woodland owners and loggers should be aware and deal with this situation.

Intentional cutting of timber, commonly referred to as timber theft, occurs by one of several means. It is not uncommon for an absentee ownership to be located and a logging operation set in motion to purposefully steal the timber. It is also not uncommon for a logging operation that is legitimately cutting a tract of timber to knowingly cross a boundary to steal trees. The last situation involves the theft of only one or a few high-value trees from a property.

Some properties and ownerships are more at risk for trespass and theft than others. Your property is at risk for timber trespass if:

- You are an absentee owner.
- There is remote, secluded access to your woodlands.
- Your woodlands contain high-value timber.
- There is a logging operation on an adjoining property.
- Your boundaries are not fenced or clearly marked.

HOW TO PROTECT YOURSELF

There are a number of things that can be done to help reduce the chance of timber trespass. If you are a woodland owner who is getting ready to cut timber, you should:

1. Clearly mark 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.

Woodland owners who are not planning on a timber harvest should:

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. Be sure to provide them with your contact information. Ask them to contact you if they see any harvesting activity on your property, and ask them to inform you if they are planning a harvest.
5. Contact the Kentucky Division of Forestry to have a Forest Stewardship Plan developed for your property. This is free of charge, and the forester can advise you whether you have any valuable timber, whether it is at risk from theft, and whether management could enhance your woodlands.
6. Contact a consulting forester and have a cruise conducted to determine 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.

If you are made aware of an ongoing trespass, contact local law enforcement. Tell them the situation, indicating that a trespass and a felony theft is occurring and that you want the individuals off your property and the case investigated. It is also prudent to contact a consulting forester as they may be able to provide you and local law enforcement with critical information that can help an investigation.

Unfortunately, timber trespass is all too common in Kentucky, and timber theft continues to be a problem. While Kentucky has laws to deal with these issues, law enforcement is often ill-equipped to investigate timber trespass, and law enforcement and the courts do not pursue timber trespass aggressively. Further, the civil statutes require that individuals who have had timber cut provide significant monetary resources toward proving a case of timber trespass. This upfront financial burden, coupled with the less-than-certain outcome of recouping these expenses, causes many woodland owners to back away from civil action. Unfortunately, these conditions seem to indicate that timber trespass and timber theft will continue to occur unless something changes to treat timber trespass as a serious crime.

Regardless, protecting your timber and woodland assets is not something that can be taken lightly. Be alert to situations that might make your timber more prone to theft. Recognize that timber trespass is a possibility, and take measures to help minimize your risk. If you are selling timber or a logger engaged in a legal harvest, it

Photo courtesy: Jeff Stringer



Kentucky's woodlands can contain some very valuable trees. For example, a single veneer tree of the right species and size can be worth hundreds to thousands of dollars. If the woodlands contain high value trees, have absentee owners, and/or are adjacent to a timber harvesting operation then they are at an increased risk for timber trespass.

is your responsibility to ensure that you harvest within the boundary. If you are a landowner who might have a woodlands at risk, you should realize that timber theft is a possibility and work proactively to reduce the threat.

For further information about timber trespass in Kentucky, consult the University of Kentucky Forestry Extension publication titled "Timber Trespass." This publication can be obtained from your county Cooperative Extension office or at www.ukforestry.org.

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