

Timber Theft and Trespass – Quick Reference

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The unapproved cutting of timber is all too common in Kentucky. It occurs due to outright theft of valuable timber as well as unintentional harvesting due to poor boundary designations or misunderstandings. This factsheet provides information for both woodland owners selling timber as well as those wanting to protect timber on how to assess and reduce risk.

Issues associated with timber theft and trespass can be complex. Parties involved directly in trespass or theft need to have a thorough understanding of the issues and should consult University of Kentucky, Cooperative Extension Service Publication, FOR-109 “Timber Theft and Trespass”.

ASSESSING RISK

The following situations increase the risk of timber theft or timber trespass:

- Landowners who do NOT live on the property or in the community (absentee owners).
- Owners who live in or adjacent to their woodlands, but are not able to see or visit all of their property.
- Lands where there is an ongoing boundary dispute or deed overlap, or where there has been a historical difference of opinion on boundary lines.
- An adjacent timber harvest is under way or proposed.
- Woodlands that contain large high-quality timber of valuable species.

To help decrease potential for loss, the following recommendations should be considered:

Deeds and Boundary Marking - Make a copy of the deed and keep it available. Also have your boundaries clearly marked and/or posted. Even if you have not had your property recently surveyed, it is wise to mark the boundaries.

Contact Adjacent Landowners - Contact adjoining landowners and let them know you value your woodlands and are interested in protecting the property and currently do not plan on harvesting timber. If you do not live on the property or are unable to walk it readily, 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 surrounding properties or on your property.

Get Help from a Professional Forester - Have the Kentucky Division of Forestry develop, free-of-charge, a Forest Stewardship Plan for your woodlands. The forester can advise you if you have any merchantable timber. Further, hire a consulting forester to determine the timber value. This cruise 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.



WOODLAND OWNERS WITH AN ADJACENT TIMBER HARVEST, TRESPASS OR THEFT

If you are having trees cut without authorization, contact law enforcement immediately and indicate that a crime is being committed. Also contact a consulting forester as they can provide immediate recommendations on how to proceed. They can also assist law enforcement. If you have just found that you have had unauthorized cutting on your property you have either one or five years to seek legal restitution depending upon the specifics of your situation. If you receive a written notification of an impending harvest on an adjacent property, you must respond quickly as required by the Timber Trespass Law (see following page). Get information on where the proposed boundaries are and review the boundaries to determine if they are correct. If you believe the boundaries to be incorrect or are unsure, the

¹Stringer, J. 2008. Timber Theft and Trespass. University of Kentucky, Cooperative Extension Service publication FOR-109. Available from your County Cooperative Extension Service office or online at www.ukforestry.org.

law requires that you respond within SEVEN days that you object to the boundary description and object to a harvest to that boundary line. It would be prudent to provide a written response. If you do this and a trespass is committed you can sue for triple the value of the stumpage removed and triple any damages (see below).

WOODLAND OWNERS SELLING TIMBER

Woodland owners that are preparing to sell timber need to take the precautions necessary to ensure that the harvesting stays on their property and protect themselves from the liability that can occur when a harvesting operation strays onto an adjacent property. It is important to understand that as the landowner you have a responsibility for the conduct of the harvest. The following steps will help reduce the potential for timber trespass:

Clearly Mark Timber Sale Boundaries - This is one of the most important steps in avoiding a timber trespass onto your neighbors' property. This may require a survey prior to harvest. If the boundaries are clearly marked prior to a harvest and everyone involved is aware of the boundaries, the chances of making an error are small. If you are uncertain of the property boundary, mark the timber sale boundary well inside of the property boundary leaving an uncut buffer between the harvest and the boundary zone.

Sell Timber with a Contract - In the contract clearly state the boundaries, refer to a deed and/or map if appropriate, and make sure that the marking used to define the boundaries of the timber sale are adequately described in the contract.

Notify Adjacent Landowners - According to the Kentucky Timber Trespass civil law (KRS 364.130 - drifts, logs, and timber) adjacent property owners to a harvest should be notified in writing of the impending harvest at least seven days prior to the harvest. This should be done to ensure that the adjacent property owner has time to review the boundaries. If written notification is not provided according to the provisions in this law and a cut occurs on an adjacent property that owner can sue for three times the stumpage value of the timber cut and three times any damages. If written notification was provided and they did not respond within seven days or they did respond but did not object then they can only be compensated for the value of the stumpage cut and the cost of fixing any damages. KRS 364.130 does not indicate whether it is the timber sellers or timber buyer's responsibility to provide the written notification.

Therefore it is important to ensure that provisions are made to accomplish the notification.

Indicate Border Trees - Provide information on how border trees are to be handled in the timber sale contract, and inform the adjoining landowner of how you have instructed the logging to deal with the border trees.

Oversee the Harvest - It is prudent to ensure that the boundaries are being adhered to. Being on-site or having someone check on the harvest is a good safeguard and can also help with many other aspects and concerns that a woodland owner would have regarding the harvest.

Get Assistance - One of the best ways to help ensure that a woodland owner can be protected from errors during a timber harvest is to use a consulting forester to sell the timber. The consultant will sell, help develop a contract and oversee the harvest. They will make sure that all the provisions in the contract are adhered to and other issues outside of boundaries, such as water quality, the use of a competent logger and logger performance, and tax issues associated with the sale revenue are attended to.

CRIMINAL AND CIVIL LAW

It is a crime to trespass and steal timber. In Kentucky, trespass in a wooded area is a Class B misdemeanor with a \$250 fine and 90 days in jail when a fence is crossed. If no fence was crossed and someone knowingly crossed the boundary it is a \$100 fine. Proof of the latter generally requires the boundaries to be marked or clearly designated, and/or proof that the person had been notified of clear boundary designations. If either of these occurred and over \$300 of timber was removed then the person could be charged with a Class D felony theft punishable by one to five years in prison. Victims have the right to be compensated for the value of the timber stolen and the cost of repairing damages (including damages from a trespass if no timber was cut). However, to obtain compensation above and beyond what is provided for by criminal law or if the person cutting your timber was not convicted then you can sue under the Timber Trespass Law (civil law KRS 364.130). This law indicates that you can sue for triple compensation of stumpage value and damages if you were not contacted in writing seven days prior to when the adjacent harvest started, or if you were notified and you objected to the harvest and boundaries as they were presented. If you are directly involved in a trespass refer to the publication "Timber Theft and Trespass" referred to on the previous page.