

TIMBER TRESPASS IN A NUTSHELL

Understanding, Preventing, and Obtaining Compensation for Wrongful Tree Cutting

By David A. Hepler and Janna Aginsky, Summer 2008

What are timber trespass laws and why do we need them?

Forestland owners and city dwellers alike know that the trees on their properties have great value—sometimes economic value, sometimes esthetic or emotional value, and sometimes all of the above. The term “timber trespass” generally refers to unpermitted cutting of trees and other vegetation on someone else’s property. Timber trespass laws in effect throughout the United States are geared toward helping property owners protect the value of their trees in two critical ways: first, by establishing stiff penalties (in some cases, as much as triple the amount of actual losses), which strongly discourage loggers or neighbors from cutting trees without the true property owner’s permission; and second, by compensating property owners for damage to or loss of their trees as a result of unpermitted cutting. The same pot of money thus represents both a stick that punishes the wrongdoer, and a carrot to compensate the damaged property owner for his or her loss.

How does a property owner establish a timber trespass claim?

The plaintiff in a timber trespass case must establish certain facts or circumstances in order to receive the benefit of the law. Like most property laws, timber trespass is a creature of state law. This means that the exact requirements for establishing a timber trespass claim vary from state to state. In order to determine the exact elements for a timber trespass claim in your state, you should consult with a qualified property lawyer licensed in your state. However, there are some general principles and concepts that recur in most states, particularly in the Northwest.

1. **The plaintiff must own the real property.** To recover damages for timber trespass, a plaintiff must establish that he or she is the owner of the land from which the trees were removed, including the true boundary line between the parties. The property owner need not have a present possessory interest in the property in order to bring a successful claim; this means that holders of contingent remainders (for example, what’s left after a life estate) and lenders may be able to collect damages for wrongfully cut trees.
2. **The defendant must have entered onto plaintiff’s real property.** As for any trespass action, the plaintiff must show that the defendant entered onto plaintiff’s property. If the defendant merely hauled logs away from a neutral location, the plaintiff is unlikely to recover damages.
3. **The defendant must have some level of mental culpability.** In some circumstances a defendant will be liable for timber trespass even if the defendant thought he was on property that he was entitled to log. Most states “shift the burden of proof” with regard to this requirement for intent, such that a plaintiff need not show that the defendant intended to cut trees on plaintiff’s property—rather, it is up to the defendant to show that he had some reason to think he was within his right to cut the trees in question.

The law makes a substantial distinction between defendants who knowingly go onto another's property to cut trees, and defendants who inadvertently cross the line. In Oregon, for example, anyone who removes a tree knowing (or if he should have known) that it belongs to someone else is liable for treble damages, whereas a trespasser who only casually or mistakenly cuts another's tree or shrub is liable only for double damages; in Washington, intentional timber trespass renders a defendant liable for triple damages while unintentional timber trespass only generates actual damages liability. Damages are discussed further below.

Some states, including Oregon, provide partial protection for loggers who have committed timber trespass in good faith. These limitations of liability are intended to shield commercial loggers from being overly penalized for taking a few trees from the wrong side of a property line. Oregon's exception caps a commercial logger's liability at actual damages (that is, no treble or double damages) if the logger was operating under a signed contract with someone the logger reasonably believed owned the subject property, if the contract included a metes and bounds legal description of the subject property, and if the property boundaries were flagged or staked by the owner.

How long does a property owner have to file a claim?

The statute of limitations for a timber trespass article varies from state to state, but is typically two or three years from the time of discovery of the unpermitted cutting. In Washington, for example, a timber trespass plaintiff has three years from the time that he discovered (or could have reasonably discovered) the damage to bring suit. In Oregon, on the other hand, a plaintiff has six years from the date of the damage to file a claim.

What damages can a timber trespass plaintiff recover?

The core concept underlying timber trespass damages is usually derived from the value of the land before versus after the damage. If a trespasser severs mature, merchantable trees, the practical method of determining damages is by examining the "stumpage" value of the standing timber, which means the market value of the timber before it is cut.

In instances of residential timber trespass or cutting of ornamental plants, including shrubs, other factors may be considered in determining the actual damages. For example, the value of the damaged vegetation in providing shade, privacy, wind screen and beauty may enter into the analysis.

Many states allow timber trespass plaintiffs to recover double or triple the amount of actual damages suffered. As mentioned above, this multiplier concept is intended to create a real disincentive for loggers and other cutters to be sloppy in their determination of what they're allowed to cut.

A property owner may be obligated to mitigate his damages following a timber trespass. For example, if a timber trespasser has logged a portion of your property and left some of the felled timber lying on the property, you may be obligated to try to salvage the value of the cut timber. Additionally, a timber trespass plaintiff may experience a reduction in his damages award to the extent that the timber trespasser improved the plaintiff's property with roads or other improvements.

The mitigation and deduction of improvement value concepts may factor into the “multiple damages” calculation. As an example: I own 100 acres of timberland, and you knowingly log five acres of my property. The value of the wrongfully cut standing is \$25,000. You leave \$10,000 worth of logs lying conveniently next to a road that you constructed at a cost of \$5,000, and I decide to let those logs rot as they lie rather than having them hauled off. My damages (if this took place in Oregon) would likely be determined to be (\$25,000 minus \$10,000 minus \$5,000) x 3, or \$30,000. If, on the other hand, the facts from the above example were all the same except you did not build a road or leave any logs lying on my land, my damages would be \$25,000 x 3, or \$75,000.

Most states allow a timber trespass plaintiff to recover its attorney fees as well as the reasonable cost of reforesting the property. In some states, including California and Washington, a timber trespass plaintiff may also recover damages for emotional distress suffered by the property owner.

Prevention

Common sense provides the best approaches toward preventing timber trespass. Good practices include:

1. **Be familiar with your property.** Visit your property frequently, or at least periodically, so that you remain aware of what is happening on and around it. If you are unable to visit your property personally, ask your contractors, neighbors or other locals for periodic updates about what is going on in the area.
2. **Pay close attention to logging operations.** If a neighbor is logging, find out who the logging contractor is and make sure the contractor knows that you are watching and that you care.
3. **Mark your property boundaries.** Paint markings and signage on and between trees can greatly reduce unintentional timber trespasses.

Conclusion

A monetary award cannot bring back mature trees that have been cut illegally. But the specter of treble damages makes people think twice about what they are cutting, and also provides compensation for property owners whose trees or shrubs have been. Common sense behavior, vigilance and legal advice, when necessary, can decrease the likelihood of loss and increase the probability of compensation after a timber trespass has occurred.

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