

Timber Trespass

By

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As the service forester for Mercer and Lawrence Counties, I receive, on average, one call every 10 days concerning timber trespass. Based on this data, timber trespass appears to be a serious problem. Therefore, I would like to address the legal procedures a landowner has available when dealing with a timber trespass issue.

Timber trespass issues have been around for a long time. The earliest legislation enacted in Pennsylvania was the Act of March 29, 1824. This act gave landowners the right to seek triple damages. This act was amended in 1939 and again in 1971. It was repealed with the enactment of the Pa Crimes Code in 1972. For a period there was no specific legislation dealing with timber trespass. Then in 1984 the PA Crimes Code was amended to add restitution for theft of standing timber in the amount of twice the value of the timber taken.

In 1994, the Pennsylvania Forestry Association added Act 10 as a result of lobbying efforts. This addition addressed the conversion of timber. Conversion occurs when a person cuts or removes timber of another without that persons consent. This act was amended in 2001 to include the cost of obtaining a survey.

Although the interest of a timber trespass situation lies with the timber value, the real issue that is in question concerns the property line location. Once the trespassed woodlot owner determines the exact property line location (this usually requires the services of a registered surveyor), then restitution can be sought. There are two legal processes that can be pursued; the criminal process and the civil process. Lets compare these two processes.

The criminal process occurs when the state police are called and the case is turned over to the District Attorney's office. At this point, you are more or less out of the picture because it is the DA's case. If the DA believes there is sufficient evidence to convict, then charges will be filed and the defendant will be prosecuted. Sufficient evidence must prove intent and it must prove intent beyond a reasonable doubt.

If a landowner pursues the civil process, that landowner maintains private control of the proceedings by becoming the complainant. The

evidence required for a conviction does not have to prove intent beyond a reasonable doubt. There only needs to be a “preponderance of evidence” to tip the scales of justice in the favor of the complainant.

The liability in a civil action concerning timber trespass covers the usual customary cost of establishing the value of the cut timber, complying with Erosion and Sedimentation Pollution Control regulations, necessary surveys, and one of the following: 3 times the timber’s market value IF the act was deliberate; 2 times the timber’s market value if the act was due to negligence; or the market value if the removal was due to the person (logger or landowner) had reasonable basis for believing the land was his.

Bringing a civil action has certain advantages over a criminal action. First off, proof of intent is required for criminal liability. This can be difficult because it’s hard to determine what an individual is thinking. The burden of proof in a criminal action must be proven “beyond a reasonable doubt”. However, as previously mentioned, a civil action of requires a “preponderance of evidence”. The maximum amount of damages in a criminal case is 2 times the timber’s market value but for a civil case it’s 3 times the timber’s market value.

An alternative to Act 10 of 1994 is Act 27 of 2001, the Agricultural Crop Destruction (ACD) Act. Developed to cover damaged field crops, by definition the ACD includes trees and timber products. Compensatory and punitive damages, reasonable investigative expenses, reasonable attorney’s fees, and other cost associated with litigation are recoverable. Recoverable values are limited to 3 times the market value of the “crops” prior to the damage.

Recovering damages due to timber trespass can be time consuming and frustrating to say the least. The answer is prevention. Make sure your property is surveyed and mark the lines, not just the corners. Periodically inspect your property so that any trespass is caught in a timely manner. Also periodic inspections can help prevent adverse possession. A trespasser to land can acquire title through adverse possession after 21 years of continuous, open, exclusive, and hostile use of the land.

I sincerely hope that you readers will never have to deal with timber trespass issues. However, if you own forestland my experience indicates otherwise. In closing, I would like to thank Judge H. William White, Venango County Court of Common Pleas for providing most of the information presented in this article.