

Timber Trespass

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QUESTION:

I own 60 acres of land. I hadn't walked a certain part of my property for about a year, but when I did walk it last week, I saw that a large portion of my timber was cut and removed. I did not give my permission to anyone to cut down my trees. It is estimated that approximately \$20,000.00 worth of timber was taken, not to mention the mess that has been made of my property. What recourse do I have against the person(s) responsible for this trespass?

ANSWER:

Taking someone's timber without authority to do so is referred to as 'timber trespass.' Timber trespass is all too common in our area. The trespass may be characterized by the degree of the logger's fault, ranging from intentionally cutting someone else's trees, to doing so by accident, as in the case of a well-founded, but mistaken belief as to the location of a boundary line. The recourse available to the land owner depends first on the extent of the logger's fault. The State may also file criminal charges against the logger under certain circumstances. Let us look at some of the range of possibilities, beginning with the most innocent of circumstances.

Any trespass is grounds for a lawsuit and the trespasser is responsible for the damages caused by the trespass, even if there was no negligence, or carelessness, involved. So, if I am cutting down a tree on my land, and I have taken every reasonable precaution to avoid the tree falling on my neighbor's land, I am still liable if a freak wind suddenly arises and blows the tree onto my neighbor's land and into her tree, causing damage. I have to compensate my neighbor for the damage I did, even if I was not negligent in anything I did.

The question then becomes the amount of the damages that I owe my neighbor. Do I pay only the timber value of the tree I destroyed or do I have to pay the cost of replacing the tree? The answer to this question might depend on whether the tree was in the front yard or the back yard.

If the tree was in the front yard, it might have landscaping value: the maple tree located in the woods three hundred feet behind the house is not worth the same amount as the maple tree I planted in the front yard twenty years ago for esthetic reasons. Assuming a totally accidental event caused the tree to be lost, the value might range from the value of the timber involved, plus clean-up and incidental damages, to the replacement cost of the tree if it has value beyond its

timber value, including, for example, landscape value. If the tree has landscape value, the amount of the damages is equal to the cost of replacing the tree. The cost of replacing a twenty or thirty foot tree can amount to thousands of dollars. On the other hand, the value of a tree with timber value only, may be one or two hundred dollars.

So far we have discussed the situation in which the person who did the damage was less than negligent. Now let's assume that the person cutting or damaging trees without authority is negligent. Negligent means the person has failed in some respect to act in a reasonable manner. For example, I may be negligent if my neighbor and I have informally agreed on a certain boundary line, and I cut down trees on his side of the line without making any effort to determine the actual location of the boundary line.

If the person doing the cutting is found to be negligent, he or she will be liable for damages in an amount not less than three and not more than 10 times the market value of the timber, in addition to any other measure of damages. In other words, that tree worth \$200.00 in timber value, might now cost the logger \$2,000.00. The court has the final determination of the multiplier to be used, and will apply it depending on the circumstances involved. It's one thing if the boundary line takes an unexpected jog, but it's quite another if the logger drives his equipment over a stone wall to take down or remove the trees. The more blatant the encroachment, the more the logger must pay.

If the logger is reckless in cutting the trees, then criminal charges may be filed. On a scale of one to ten, with pure accident being one, total intent being ten, and negligence being five, reckless is about a seven. For example, cutting trees with disregard for any possible boundary lines would qualify for reckless conduct. If the conduct rises to the level of reckless, the cutting may result in criminal charges being filed. The statute provides that any loss of \$1,000.00 or less shall be charged as a misdemeanor, and if the loss is greater, the charge shall be a felony. The severity of the consequences reflects the seriousness with which the State views these offenses.

Now, in your case, you indicate that the timber in question was cut on a 60 acre parcel that you own, and that you are unsure when the cutting was done. It therefore seems that the trees cut down had no landscape value, and their value may be as timber only. In that case, it seems almost certain that the amount of your damages-or your recourse, if you will-is somewhere between three and 10 times the market value of the timber removed, plus the cost to restore your property to the condition it was in prior to the cutting.

In order to establish the amount of your damages you will need to enlist the services of a professional registered forester. The forester will be able to identify the species of tree removed and calculate the value of the timber.

You can report the timber trespass either to your local police department or to the New Hampshire Division of Forest and Lands. Your local police department will usually refer the case to the

Division of Forest and Lands, which is more experienced in these cases and will usually lead the investigation and criminal prosecution.

Finally, be aware that if you engage a logger to cut trees on your land, you can ultimately be held liable if that logger strays from your borders and cuts down some of your neighbors' trees. To avoid that possibility, and to ensure that you achieve the greatest return on your timber, enlist the services of a professional forester. The value of that professional supervision and expertise will far exceed the cost.

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