

Timber Theft and Trespass

Jeff Stringer, Department of Forestry

Unfortunately, timber theft and trespass—the unauthorized harvesting of trees—is not an uncommon occurrence. Woodland owners, loggers, and all those involved in timber procurement should understand the circumstances that contribute to this problem and how Kentucky law addresses this issue. Unauthorized harvests can be purposeful (theft), or the cutting can be unintentional. In Kentucky there are both civil and criminal laws that apply, depending upon the specifics of the case. This publication provides information to landowners who have properties that might be at risk for timber trespass, landowners who are selling timber, loggers, and timber buyers. Individuals who own woodlands, especially those who do not live in the community, need to be especially aware that trespass and theft are a possibility.

Risk Factors

The following situations increase the likelihood for timber theft and trespass.

- Owners who do not live on the property, especially those who do not live in the community (absentee owners). Approximately 19 percent of Kentucky woodland owners are absentee owners.¹
- Owners who live on their land but for health or other reasons are unable to 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.
- Woodlands where an adjacent timber harvest is under way or proposed.
- Woodlands that contain large high-quality timber of valuable species.²



Figure 1. High-value trees are particularly at risk for theft. Photo by Billy Thomas.

Owners with one or more of these situations should be especially sensitive to the potential for timber theft and timber trespass.

This publication defines timber theft and trespass and outlines how this unauthorized cutting occurs, how to reduce the risk of having timber stolen or mistakenly cut, and how to recover timber value and other losses.

Trespass and Theft Law

It is important to understand how Kentucky law defines theft and trespass in woodlands. The two are separate issues that require explanation. Trespass can occur intentionally with the intent to steal timber and result in timber theft, a criminal offense. Trespass and the unauthorized cutting of trees can also be unintentional without the intent of theft and governed by civil laws. Kentucky law provides information on how to determine the difference. Regardless of whether the harvest was timber theft (a criminal offense of trespass and theft) or unintentional (a civil offense), the rightful owner of the trees has lost the value of the timber, and one or more laws were broken. When timber theft—the purposeful stealing of timber—occurs, there is also a good chance that the land has been damaged due to careless and hurried logging. Unfortunately, both timber theft and timber trespass are all too common, but there are steps that can be taken to avoid unintentional trespass and minimize risk.

1. Data from University of Kentucky's Forestry Extension database.

2. The most common valuable species in Kentucky are black cherry, black walnut, white and northern red oak, and hard maple. "High quality" means that these trees are relatively large (greater than 20 inches in diameter), have tall straight stems that are free of branches, and have bark that is free from limbs, defects, and knots.

Defining Trespass

Trespass refers to going onto another's property without permission. Kentucky law provides a means to determine whether a trespass was criminal and describes the penalties for criminal trespass. Knowingly moving onto another person's property is a trespass. "Knowingly" means that it can be proved that someone knew where the boundary was and crossed it. However, under Kentucky law, the most severe criminal trespass provisions apply only to buildings and not to trespass in the woods.

In the woods or open spaces, if the trespass knowingly occurs through a fence, the trespass could be a 2nd degree trespass, classified as a Class B misdemeanor, which carries a maximum fine of \$250 and 90 days in county jail (see appendix). If no fence was encountered and a person knowingly entered or unlawfully stayed on a piece of property, the punishment is a \$100 fine. The latter requires proof that the person knowingly crossed the boundary.

It is incumbent upon loggers and landowners who are having their timber harvested to know where boundaries are located, but it is possible to have overlapping deeds, unmarked boundaries, and insufficient boundary information that contribute to trespass. In these cases, the trespass may not meet the requirements for a criminal offense, and civil law may need to be used to obtain compensation for timber cut (see below).

A trespass can include the cutting and removal of trees as well as the use or construction of a logging road without permission for the purpose of moving timber from an adjoining property. Also, damage to the land resulting from construction and use of haul roads and skid trails, damage to surrounding trees, piles of debris, and other damage can be classified as damage to real property.

Defining Timber Theft

Timber theft is defined as the purposeful cutting and stealing of timber and is therefore subject to both criminal and civil law. This activity involves knowingly crossing a boundary (criminal trespass) and purposefully cutting and removing trees (theft). Timber theft can range from the stealing of one or a few high-valued trees to stealing all the timber in a woodland. Regardless, theft results in the loss of timber value, and the careless logging that often is associated with timber theft can result in damage to the soil and remaining trees.

Timber theft is clearly against the law, and individuals stealing timber are subject to prosecution. Criminal trespass and the cutting and removal of over \$300 worth of timber it is considered a Class D felony theft. Typically this type of theft is punishable by 1 to 5 years in prison. The violator could also be made to pay restitution to the rightful owner for the stolen timber. Usually all cases of timber theft involve the removal of more than \$300 worth of timber and result in a felony.

To summarize, the criminal law associated with timber theft: If an individual is charged with criminal trespass and felony theft, they are subject to fines and potentially jail time. The woodland owner may be entitled to compensation for the stumpage value of the timber cut and damages.

How Theft Occurs

Timber theft usually occurs in one of three ways. The most common types of theft in Kentucky occur when an unscrupulous individual

- Has been legally harvesting a stand of timber and purposefully harvests beyond a known boundary onto the property of an adjacent landowner(s)
- Sets up a logging operation specifically to steal timber, often but not always from absentee landowners
- Steals one or a few high-value trees

Absentee ownerships can be found by searching public records. Once the absentee ownership is located, logging equipment is moved to the site expressly

for the purpose of stealing the timber. In this case it is not unusual for the illegal harvesting to spread to adjacent ownerships. In the first two cases, either a logging firm or a timber buyer could be the culprit. In the second case, the timber buyer could contract the harvesting of timber to a logging firm, and these firms could operate without knowledge of the trespass or theft. The third situation often occurs discreetly without the use of a full-scale harvesting operation. In any of these situations, it is common for the thief to come onto the land through a boundary distant from houses or traffic, and/or to take out the stolen logs that way. Thieves go far enough inside the boundaries of a tract so that their activity cannot be seen from the road.

Regardless of what type of theft occurs, once the trees are cut and the logs removed, they are hard to track. This is particularly so if the logs are of a common species, size, and quality. Logs can be transported long distances and carry no obvious identifying feature such as a serial number. This practice makes notifying potential buyers of stolen logs very difficult and both of these circumstances decrease the chance of finding stolen timber, thus hindering prosecution. Finding stolen timber requires definitively linking logs that have been delivered to a mill or wood yard to the property in question. There must be proof of the transport of the logs or the logs must be matched to the cut stumps. Mills generally measure incoming logs at the small end, so stump measurements can't be matched to records held by the mill. Further, one tree usually produces more than one log, complicating identification. In some cases, it is possible to use the analysis of wood and growth rings of stumps to track stolen timber. The growth rings of trees are similar to fingerprints and can be used to associate stolen logs to stumps in the woods. Also DNA analysis is now widespread and economical enough to allow this technology to be used to track stolen timber. Although these techniques, particularly DNA analysis, are not commonly used in many timber theft cases, they are becoming more popular and certainly would be warranted and prac-

tical when high-value timber is involved and the rightful owner has indication that appropriate compensation is probable.

Unfortunately, timber theft can be hard to detect, especially if the property is remote and the owners do not live on the property or in the community. Stolen timber can also be hard to track, and local law enforcement often does not have the expertise to properly investigate timber theft. The difficulty of detecting and investigating theft has at times allowed individuals stealing timber to go unchallenged. At worst, timber thieves wind up paying for the timber, as would be the case if they had legally logged the woods. Unfortunately, this penalty does little to dissuade timber theft. Because of these factors, timber theft remains a problem for woodland owners.

Determining Stumpage Values and Damages

Regardless of whether the unauthorized harvesting was a theft or was unintentional, the rightful owner of the timber is entitled to compensation for the stumpage value of the timber cut or destroyed and any damage that occurred to real property such as the land or remaining trees.

“Stumpage” is a term used to describe the present value of a tree that contains merchantable wood. The stumpage value is less than the value of the logs after they have been cut from the tree, skidded from the woods, and transported to a sawmill. The difference between stumpage value and log value is the cost of cutting the tree down, skidding the logs from the woods, and truck transport. Be aware that stumpage values are approximately one-fourth to one-half of the value of the logs delivered to a sawmill. Stumpage values vary significantly depending on the species, stem quality, current market value, accessibility and terrain, and the distance between the woodlands and the mill. Generally timber theft occurs only to high-value timber; however, unintentional trespass can involve the cutting of a wide range of timber values.



Figure 2. Consulting foresters measure stumps to estimate volume and value of trees cut. Photo by Daniel Bowker.

There are a number of ways to determine stumpage value. If all the mills that the timber went to could be determined, it might be possible to discover the value of the delivered logs. An estimated harvesting cost is then subtracted from the delivered log price to determine the stumpage value. It is also possible to hire a consulting forester (see appendix). The consulting forester will estimate the stumpage value of the timber by measuring the diameter of the stumps, determining the species, measuring or estimating the length of the logs taken from the trees, and estimating the grade (quality) of the logs removed. Although properly conducted logging jobs can remove timber with minimal disturbance and good loggers are very careful about damaging property, often timber theft is conducted in a careless manner and can result in a host of damages including:

- Unwanted skid trails and roads that must be properly reworked
- Destruction or wear and tear to existing woods roads and trails, often used by woodland owners for management and recreation

- Reduction of property values where aesthetics are important
- Destruction of fences, gates, and other property
- Potential water quality problems associated with improper stream crossings and improper road and skid trail construction that can result in erosion and sediments entering a water body
- Destruction or unwanted changes in wildlife habitats
- Destruction of special places such as historic or prehistoric sites, and unusual or rare plants
- Huge piles of debris that are not only unsightly but also are a considerable fire danger as they dry out
- The cost of consulting foresters, lawyers, and surveyors to assist in determining value loss

Depending on the situation, the determination of damages from the building or use of roads, skid trails, and landings could entail what it would cost to smooth the surfaces, construct water control structures, and seed with grass. Or, it could involve the determination of what it would take to return the land to its original contour—basically removing the roads, skid trails, and landings. Other damages to real property, such as fence and gate repair and removal of debris, can also be estimated by the consulting forester. Other losses may require other experts.

As is the case with other types of theft, emotional stress may be a factor. This reaction is particularly likely in situations where the woodland owner has an emotional tie to the land through historic ownership and/or through the owner's appreciation of the woods and all that they contain, or where landowners had plans for the land which the timbering made impossible or difficult to carry out.



Figure 3. Damage to the land often occurs during timber theft. Photos by Tim Queary.

Civil Law—Suing for Compensation

To obtain compensation above what was obtained from direct compensation as stipulated in trespass and felony theft laws or in a case where no criminal charges were brought, a woodland owner who has had his timber cut would have to pursue civil action. This action would entail use of Kentucky's timber trespass law (Kentucky Revised Statute 364.130—see appendix). This law provides for civil compensation when unauthorized cutting (theft or unintentional trespass and cutting) occurs. The law provides for two levels of compensation. The law awards triple compensation of the value of the stumpage cut and triple the value of damages unless the following conditions are met:

- The logger or timber buyer was cutting on an adjacent property and had written permission or had a contract to cut timber on that property
- The persons owning land adjacent to the proposed harvest were notified in writing by certified letter delivered at least seven days in advance of the beginning of the logging job, and the adjacent landowner did not object to the logging in writing within seven days of the notification

If these conditions are met, the adjacent landowner who had timber cut may only be owed the actual stumpage value and the cost of the actual damages rather than triple stumpage and damages. The conditions set forth by this law are designed to help minimize the chance of unintentional trespass.

It is important to note that the notification and written permission sections of the law are not mandatory, meaning a person cannot be charged with a crime if they do not notify. However, a logger or landowner not providing notification opens the door for the possibility of paying triple damages if a boundary is crossed.

Information for Loggers and Landowners Selling Timber

To avoid the three times payment as described above, the law advises that adjacent landowners be notified of the impending harvest. This notification can be accomplished in one of two ways. The first is to have a written agreement signed by the adjacent landowner stating that none of the timber that is proposed to be cut is theirs. The second and more common way to notify (as specified in the timber trespass law) is to send written notice, using certified mail, of the impending harvest. The adjacent landowner should receive the notice at least seven days in advance of the harvest.

It is important to note that the law does not stipulate who is responsible for notifying adjoining owners. The lack of specificity helps to ensure that both the landowner and the logger and/or timber buyer understand that they can be liable for a trespass resulting from the timber harvest and to help ensure notification. To avoid confusion over notification it is prudent that a notification clause be contained in a timber sale contract or written timber sale agreement. This clause would state who is responsible for notification and possibly how and when it would be accomplished. Regardless, prior notification is required to avoid paying three times the stumpage and damages if a trespass occurs.



Figure 4. All timber sold should be marked and boundaries clearly defined to avoid problems. Photo by Jeff Stringer.

The law also does not indicate what is supposed to be included in the notification. The intent of the notification is to make the adjacent landowner aware of the impending harvest. This notification allows time for the adjacent landowner to look over the situation and determine if anything needs to be done to ensure that his timber is not harvested by accident. Based on this intent, it is prudent to inform the adjacent landowner of specific timber sale boundary information, proposed start and finish dates for the logging, and contact information. This information will help the adjacent landowner respond quickly to the notification, which in the long run could be beneficial to everyone involved.

The adjacent owner has seven days to respond in writing. If the adjacent owner does not respond within seven days or responds that he approves or if he does not have a problem with the boundaries and a trespass subsequently occurs, the adjacent owner only receives the stumpage value and the cost of damages, not three times the value of the loss. If the adjacent landowners' response indicates a problem and he objects to the harvest, he could be awarded three times the stumpage value and damages if the harvest is started and a trespass occurs. The logger and/or landowner could also be charged with felony theft. If you are positive of your sale boundaries, you can start the logging operation at any time, regardless of the objections of the adjacent landowner. If the adjacent landowner objects or indicates a problem with the boundary, it is prudent to get the situation resolved prior to harvest, which could involve a boundary survey. Boundary surveys can be expensive. However, remember that if an objection is made and a trespass does occur, you could be held responsible for triple stumpage values and damages, and charged with a felony.

Loggers and/or timber buyers and landowners who own timber that is being cut should:

- Obtain a survey if uncertain of their boundaries.
- Clearly mark or identify timber sale boundaries.
- Buy or sell timber with a contract that clearly states the boundaries and make sure that everyone involved in the harvest knows the boundaries.
- Notify landowners who have property adjacent to the timber sale boundary in writing of the impending harvest (per KRS 364.130) at least seven days prior to the harvest.
- Provide the adjacent landowner(s) with boundary information, preferably a survey, that they can compare to their own information.
- Indicate how other border trees are to be handled in the timber sale contract, and let the adjoining landowner know of this agreement. The timber trespass law does not indicate how to handle border trees, but the criminal law is very specific. It is a Class D felony to remove any boundary marker or boundary tree identified in a deed. Local customs such as cutting every other tree along a boundary or cutting trees where the fence is tacked to the opposite side are just that—customs, and not law.

Information for Woodland Owners Not Selling Timber

If you are an adjacent landowner who has received a written notice of an impending logging job on an adjacent property, you must act quickly. In order to be eligible for the three times compensation you have seven days to respond, starting the day you receive notification. The timber trespass law requires that you respond in writing. Although not specified by the law, it is prudent to respond via certified mail or provide for delivery in a manner that includes a written record of delivery to show proof that you have done so within the seven-day period.

What you do at this time depends upon the situation you are facing. As an adjacent landowner, make sure that you know where your boundary is, the timber sale boundary, who is doing the logging, and that the boundary information provided is consistent with your boundary information. If no boundary information was provided in the notification you will have to contact the person that notified you to get this information. If there are problems or if you are unclear of the situation it would be prudent to object to the logging (if inadequate boundary information was provided) or indicate that at this time you do approve the boundary. It would also be prudent to notify law

enforcement that an issue has arisen that may result in a criminal offense. Even if you are initially satisfied with the boundary situation it is appropriate to follow the harvest as it proceeds to make sure that boundaries are respected, although the inability to do that will not lessen your legal rights.

Although the notification requirement was developed to help avoid unintentional trespass, there are situations when it can still occur. Sometimes an adjacent landowner thinks the boundary is in the right location but has the boundary surveyed after harvest on an adjacent property has started and the new survey shows the boundary was not in the place where everyone understood it to be. Sometimes a new survey is completed as part of the selling of the land by the adjacent landowner. If these surveys show that there was trespass but no objection was made at the time of the original notification, you will receive only the stumpage value and the damages, not triple values. However, this only applies if the notification was provided. If not, triple stumpage values and triple damages can be sought under the timber trespass law.

Recovering Stumpage Value and Damages

Regardless of whether the harvest is unintentional or a theft, it is necessary to determine the value of the timber removed, the cost of repairing damage to the land, and possibly the cost of the damage done to the remaining trees. As previously indicated, professional assistance can be obtained to determine the stumpage value of the timber lost, damages to real property, and other damages associated with the harvest. The cost of determining these estimates can be added to the damages. The landowner who has incurred the trespass or theft often has the burden of paying the fees associated with the determination of the stumpage values and damages, including survey costs, consulting forester fees, and other expenses, when seeking civil action. Consulting foresters, if involved, generally will work on a per day or hourly rate for these services. The majority of consulting foresters are not licensed sur-

veyors, and a surveyor must be hired to determine boundaries. Where other values are associated with the woodlands, appropriate professionals can be used to determine these losses. The amount of money paid to these professionals, just like the consulting forester fee, can be considered damage and you can seek compensation for them under the timber trespass act.

It is important for landowners to know how much time they have to bring a civil suit if they lose timber. There are several statutes of limitations that could potentially apply depending on the specifics of the case and predisposition of the courts. As of 2008 there has not been a precedence set in Kentucky courts on this issue. The statute of limitations that applies most commonly to general trespass is five years. However, there are circumstances where a one year statute of limitation could apply to KRS 364.130, the timber trespass law (see appendix). Because of this uncertainty it would be prudent to act as quickly as possible to establish a court action. Generally the statute of limitations starts after the theft has been discovered. Correctly documenting this time is important. For example, you might become aware that a logging operation has possibly cut timber on your property. However, you are unclear regarding the exact boundary location and you have a survey completed. After the survey it was clear that a timber trespass occurred. This point in time could be considered the time of discovery instead of when you first heard about the logging but did not know if there was a trespass. All of these details are important when establishing a statute of limitations on a given case. However, it is important to note that there is no statute of limitations in Kentucky on felony theft, so timber theft victims have no time limit for pressing criminal charges.

The key to a successful criminal prosecution and to recovering losses is to discover the trespass while it is occurring. In the case of timber theft, notify local law enforcement. You may also want to contact a consulting forester. Although most consulting foresters will not begin a loss assessment until the boundaries are marked, preferably via a licensed survey, they can be helpful in the initial phases of a theft as they understand logging and timber and can quickly assess the gravity of the situation. They can provide critical and timely advice that might be valuable in determining and minimizing losses. Consulting foresters can provide information on the severity of the theft that is useful for law enforcement and can in some instances provide information on how to track the stolen timber. If the logs are still present, or can be found, the consulting forester can, if granted access by the possessor, measure each log that has been cut. If the theft has already occurred, it is still advisable to contact local law enforcement as soon as possible and perhaps a consulting forester. The forester can collect information from the stumps and the harvested area. This information and current market values are used to determine the value of the timber that was cut. The more information local law enforcement has, the easier it is to pursue as a criminal issue. Without good information, it is difficult for law enforcement to pursue a criminal case or for the victim to pursue a civil case. It is not uncommon for an individual who is caught stealing timber to offer compensation for the stolen timber and possibly negotiate or promise to fix any damages. A consulting forester, among others, can provide advice on these issues.

Although there is no method to guarantee the total protection of timber from trespass, there are a number of precautions that landowners can take to help prevent trespass.

Woodland owners who are not planning to harvest their timber should:

- Make a copy of the deed and keep it available.
- Have boundaries clearly marked so that they can be readily seen from adjacent properties.
- 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.
- 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 your property or if they are planning a harvest.
- Have a Forest Stewardship Plan developed by the Kentucky Division of Forestry for your property. This is free-of-charge and the forester can advise you if you have any valuable timber and if it is at risk from theft.
- If you have just obtained the property, have a consulting forester conduct a cruise 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.

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 both timber theft and timber trespass are possibilities, and take measures to help minimize your risk.

Summary

Basic Facts about Timber Trespass and Theft

1. In all cases of timber trespass and theft, the rightful owner of the timber and the land that is trespassed on is subject to compensation for the value of the timber taken (usually the stumpage value) and for any damages incurred to the land, other real property, and standing trees.
2. Criminal trespass offenses occur when it can be proven that an individual has knowingly crossed a boundary; the penalty is more severe when a fence is crossed.
3. Criminal theft occurs when a criminal trespass is proven and timber has been removed. It is considered a felony when \$300 or more dollars of timber is removed.
4. Timber trespass law stipulates that the rightful owner of timber is subject to compensation for timber lost and damages that occur. It specifies two levels of compensation, depending upon whether specified procedures in the law were followed.
5. The rightful owner is subject to three times the stumpage value of the timber cut, and damages and expenses if:
 - The cutting was not associated with a harvest on an adjacent property.
 - The cutting was associated with a harvest on an adjacent property but no written notification was received seven days in advance of the adjacent harvest.
 - Notification was provided and the rightful owner objected in writing.
6. The rightful owner is subject to one time the stumpage value of the timber cut, damages and expenses if:
 - The cutting was done in conjunction with an adjacent timber harvest.
 - Written notification was provided within seven days of commencement of the harvest on adjacent lands.
 - No written objection was provided to the adjacent landowner or logger within seven days of receipt of the notification.

All Woodland Owners

1. Recognize the potential for timber theft or trespass if a timber harvest is being conducted on an adjacent property.
2. Realize that absentee landowners or those unable to view their property are more at risk for timber theft.
3. Mark your boundaries, if possible, and notify neighbors of woodlands from which you are not interested in selling your timber. Ask neighbors to watch for logging on your property. Learning of a violation while it is happening may be critical to receiving adequate compensation.
4. If you receive a notification of an impending harvest on an adjacent property, respond in writing within seven days of receipt.
5. If you have had or are having trees cut without authorization, contact local law enforcement and indicate that a crime has or is being committed.
6. Contact a consulting forester for assistance when necessary.

Loggers and Landowners Selling Timber

1. Know the boundaries and mark the timber sale boundary.
2. Have a written timber sale agreement or contract.
3. Include a notification clause in the contract or agreement.
4. Notify adjacent landowners to the area that is being cut in writing at least seven days prior to starting the harvest.
5. If the adjacent landowner objects in writing, make sure that property and sale boundaries are correct before initiating the harvest.
6. Timber theft and trespass are subject to criminal and civil actions.

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

Appendix

Changes in Timber Theft and Trespass

It is important to note that while there are specific actions that can be taken to help protect against the unauthorized cutting of timber, the criminal and civil laws and how they are applied can change. This requires that everyone who owns, sells, or harvests timber must stay abreast of these changes. For example, as of 2008 there has not been a precedence set in Kentucky for the statute of limitations for a civil action that could range from one year to potentially five years or more. Further, the legislature could change both civil and criminal laws involving theft and trespass associated with the unauthorized cutting and removal of timber. The best sources of information on these changes are consulting foresters that deal with timber trespass, County Cooperative Extension Agents, and the Kentucky Division of Forestry. Also changes in this publication and other information related to timber ownership and timber trespass can be obtained at www.ukforestry.org.

Consulting Foresters

Consulting foresters work in the private sector and are hired by woodland owners to sell timber, plan and complete woodland management, and determine timber value for timber trespass and other tax and estate purposes. In Kentucky most full-time consulting foresters belong to the Kentucky Chapter of the Association of Consulting Foresters. Go to www.kyacf.org on the Internet to locate and obtain contact information. The Kentucky Division of Forestry and Cooperative Extension Office can also provide this information.

Kentucky Division of Forestry

The Kentucky Division of Forestry has nine district offices across Kentucky and has a service forester covering every county in the state. The service foresters provide assistance to woodland owners with forest management issues, including the development of a Forest Stewardship

Plan free of charge, and for a nominal fee they will mark timber for sale. Go to www.forestry.ky.gov on the internet for information on the Kentucky Division of Forestry.

County Cooperative Extension Service Offices

If you are unsure of how to obtain technical assistance with forestry issues, contact your county's Cooperative Extension Office and ask to talk to the Agriculture and Natural Resources Agent. They can help you obtain information on local foresters to assist you as well as provide other information on woodland ownership. Using the Web site www.ca.uky.edu/county you can select the appropriate county and get staff and contact information.

Appalachian Roundtable

Appalachian Roundtable is a not-for-profit organization (22) dedicated to the betterment of Appalachia. They are a citizens' advocates group providing a variety of resources/services to victims including but not limited to legal guidance, funding, communications, and other resources and services for the socioeconomic benefit of Appalachian individuals and communities. They have been in the forefront of timber theft issues in Appalachia. Information can be found online at www.appalachian-roundtable.com.

Kentucky Woodlands Magazine

Kentucky Woodlands Magazine provides information of value to Kentucky woodland owners. It can be viewed online at www.ukforestry.org.

Timber Trespass Law

364.130—Liability of person entering upon and cutting timber growing upon land of another—Measure of damages. Effective: July 15, 1994.

(1) Except as provided in subsection (2) of this section, any person who cuts or saws down, or causes to be cut or sawed down with intent to convert to his own use timber growing upon the land of another without legal right or without color of title in himself to the timber or to the land upon which the timber was growing shall pay to the rightful owner of the timber three (3) times the stumpage value of the timber and shall pay to the rightful owner of the property three (3) times the cost of any damages to the property as well as any legal costs incurred by the owner of the timber.

(2) (a) If a defendant can certify that prior to cutting:

1. A signed statement was obtained from the person whom the defendant believed to be the owner of all trees scheduled to be cut that:
 - a. All of the trees to be cut were on his property and that none were on the property of another; and
 - b. He has given his permission, in writing, for the trees on his property to be cut; and
2. Either:
 - a. A written agreement was made with owners of the land adjacent to the cut that the trees to be cut were not on their property; or
 - b. Owners of the land adjacent to the cut were notified in writing, delivered by certified mail, restricted delivery, and return receipt requested, of the pending cut and they raised

no objection, the court may render a judgment for no more than the reasonable value of the timber, actual damages caused to the property, and any legal costs incurred by the owner of the timber.

(b) With respect to subsection (2)(a)2.b. of this section, if no written objection was received from the persons notified within seven (7) days from the date of signed receipt of mail, it shall be presumed, for the purposes of setting penalties only, that the notified owner had no objection to the proposed cut.

(3) This section shall not be construed as repealing any of the provisions of KRS 514.030 of the Kentucky Revised Statutes and any penalties provided by this chapter shall be considered as additional thereto.

Theft Law

514.030—Theft by unlawful taking or disposition—Penalties. Effective: July 14, 2000.

(1) Except as otherwise provided in KRS 217.181 or 218A.1418, a person is guilty of theft by unlawful taking or disposition when he unlawfully:

- (a) Takes or exercises control over movable property of another with intent to deprive him thereof; or
- (b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.

(2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, in which case it is a Class D felony; or unless:

(a) The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony; or

(b) The property is anhydrous ammonia (regardless of the value of the ammonia),

in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.

514.010—Definitions.

The following definitions apply in this chapter unless the context otherwise requires:

(1) “Deprive” means:

(a) To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value or with intent to restore only upon payment of reward or other compensation; or

(b) To dispose of the property so as to make it unlikely that the owner will recover it.

(2) “Financial institution” means a bank, insurance company, credit union, building and loan association, savings and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(3) “Movable property” means property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location. “Immovable property” is all other property.

(4) “Obtain” means:

(a) In relation to property, to bring about a transfer or purported transfer from another person of a legal interest in the property, whether to the obtainer or another; or

(b) In relation to labor or service, to secure performance thereof.

(5) “Propelled vehicle” means any vehicle, including but not limited to motor vehicles, aircraft, boats, or construction machinery, which is propelled otherwise than by muscle power or which is readily capable of being towed otherwise than by muscle power.

(6) “Property” means anything of value, including real estate, tangible and intangible personal property, contract rights, documents, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink.

(7) “Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security arrangement.

(8) “Receiving” means acquiring possession, control or title or lending on the security of the property.

(9) “Services” includes labor, professional service, transportation, telephone, electricity, gas, water or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property.

(10) “Tax liability” for purposes of this chapter means the amount of money by which a person understates the total amount of taxes due or collected and not remitted to the Commonwealth, or the amount he fails to pay to the state, or both. Any person whose income is subject to the withholding of income tax and from whose income taxes are withheld shall be considered, for purposes of this chapter, to have paid to the Commonwealth the sum of money withheld,

whether or not such sum withheld is paid to the Commonwealth.

(11) “Tax return” means any return, declaration, report or form issued or prescribed by the Department of Revenue and required to be filed with the Department of Revenue as prescribed by law.

Criminal Trespass Law

511.070—Criminal trespass in the second degree.

(1) A person is guilty of criminal trespass in the second degree when he knowingly enters or remains unlawfully in a building or upon premises as to which notice against trespass is given by fencing or other enclosure.

(2) Criminal trespass in the second degree is a Class B misdemeanor.

511.080—Criminal trespass in the third degree.

(1) A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in or upon premises.

(2) Criminal trespass in the third degree is a violation.

511.090—General provisions.

(1) A person “enters or remains unlawfully” in or upon premises when he is not privileged or licensed to do so.

(2) A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license or privilege unless he defies a lawful order not to enter or remain personally communicated to him by the owner of such premises or other authorized person.

(3) A license or privilege to enter or remain in or upon premises which are only partly open to the public is not a license or privilege to enter or remain in or upon a part of the premises which is not open to the public.

(4) A person who enters or remains upon

unimproved and apparently unused land which is neither fenced nor otherwise enclosed does not commit criminal trespass unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person or unless notice is given by posting in a conspicuous manner.

(5) Private land adjoining a railtrail that is neither fenced nor otherwise enclosed shall be presumed to be land where notice against trespassing has been given by the owner of the land, and a person utilizing the railtrail shall be presumed to lack privilege or license to enter upon that land unless the person has permission from an adjoining landowner to do so.

Legal Definitions

501.020—Definition of mental states.

The following definitions apply in the Kentucky Penal Code:

(1) “Intentionally”—A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause that result or to engage in that conduct.

(2) “Knowingly”—A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.

(3) “Wantonly”—A person acts wantonly with respect to a result or to a circum-

stance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts wantonly with respect thereto.

(4) “Recklessly”—A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Statute of Limitations

413.140—Actions to be brought before one year.

(i) An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession;

(j) An action for the recovery of damages or the value of stolen property, against the thief or any accessory;

413.120—Actions to be brought before five years.

(2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.

(4) An action for trespass on real or personal property.

Acknowledgment

The author thanks numerous reviewers including the Appalachian Roundtable; personnel with the Kentucky Division of Forestry; Pat Cleary, member of the Kentucky Association of Consulting Foresters; attorney Mr. Edison Banks; Kentucky Energy and Environment Cabinet, Office of Legal Services..