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Timber Theft in Ohio

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When someone enters another person's property and knowingly cuts and removes a tree or trees without the permission of the landowner it is known as timber theft. Since many cases of timber theft go unreported or are settled out of court, it is difficult to obtain reliable statistics. However, many in Ohio's forest community believe that there has been an increase in the incidence of timber theft since timber prices have been rebounding since the recent Great Recession. Several high profile timber theft incidents have received extensive media coverage and have brought much needed attention to an issue that is all too common for Ohio's woodland owners. Additionally, it is an unfortunate "black eye" for the responsible and reputable businesses that make up the state's forest industry.

Why is timber theft a problem?

The answer is really quite simple. Timber has value! The monetary value of timber in Ohio can be highly variable, but it can be as high as a few thousand dollars per tree or tens of thousands of dollars per acre. In many cases, it is relatively simple to steal timber with only a slight risk of getting caught. In addition, getting caught often does not result in arrest, conviction or even payment of minimal restitution to the offended landowner for their loss.

The solutions, however, are not so simple! Logs are commonly trucked on Ohio roads and stolen logs are not discernible from those obtained legally. There is no legal requirement to verify ownership when logs change hands. Many woodlands in rural Ohio are owned by absentee owners or elderly residents who do not regularly inspect their property. To make matters worse, neighbors are not as well acquainted as they once were, and are less likely to contact adjoining property owners when suspicious activities are taking place. Finally, many local law enforcement officers and prosecutors may not be well prepared to deal with the crime of timber theft. Commonly, the small percentage of cases pursued center around the presence (or absence) of a clearly marked property boundary. A small amount of compensation for the timber harvested is the usual settlement. This leaves those intent on illegally obtaining timber free to take from another unsuspecting landowner.

Timber theft can be categorized as that which occurs (1) as part of an ongoing timber sale and (2) when a person intentionally enters a property with the exclusive purpose of stealing timber. The latter is often referred to in practice as "timber poaching." However, this is not a legally defined term.

Theft as Part of a Timber Sale

In the case of timber disputes that arise from ongoing timber harvests, it is often the word of the property owner against that of the logger or operator. Without a well-written contract that makes it absolutely clear which trees are to be harvested and the amount and method of compensation for the landowner, it is often impossible to prove that a “theft” has occurred.

To be **absolutely** clear about which trees are to be harvested, sale and property boundaries should be clearly and accurately delineated on a map and in the woodland with paint. In hardwood sawtimber stands, individual trees to be harvested should be marked with paint near the ground line and at eye level. This makes it obvious beyond any reasonable doubt which trees are to be included in the sale. In addition to marking the trees to be harvested, a record should be kept by species and size to further verify which trees are to be harvested. If any of the key elements are missing (well-written contract, delineated



Figure 1. A properly marked boundary helps minimize confusion over the location of a property line. Notice the boundary is still marked, even though a fence is present.

boundaries, individually marked trees and a tally) it is nearly impossible to make a case for timber theft as part of an ongoing timber sale. It is common, though not recommended, for woodland owners and loggers to verbally agree upon a timber sale without taking the steps outlined above. By not following the precautions outlined above, both the property owner and the operator are placing themselves at risk. In addition, neighboring property owners are often in jeopardy of losing timber when a harvest occurs on adjoining property. Without clearly marked property boundaries, timber sales can, and often do, encroach on a neighboring property. Whether this is intentional or unintentional (on the part of the logger or neighbor), the result is the same.

Contracts should clearly spell out the amount, method and timing of payments from the sale of timber. To avoid confusion and disappointment on the part of the landowner, it is usually advisable to have a “lump-sum,” “sealed-bid” timber sale. Lump-sum refers to the method of payment (i.e., the entire amount paid in full prior to the start of harvesting operations). Sealed-bid refers to the method recommended for landowners or their agents to conduct the actual bidding process. Pay as you cut or percentage sales are normally not recommended on hardwood sawtimber sales, because it is difficult to verify how much timber was removed and the price paid at the mill. Again, without contract specifics it is difficult to prove theft occurred on a property.

A timber sale is a complicated transaction that most landowners are involved in once or twice in a lifetime, while timber buyers and loggers deal in timber on a daily basis. Ohio’s Call Before You Cut campaign (<http://callB4Ucut.com> or 1-877-424-8288) is a valuable resource for woodland owners contemplating a timber harvest. It is usually in the best interest of the woodland owner to obtain the services of a qualified consulting forester (<http://www.osafdirectory.com>) to represent their interests throughout the process.

Timber Theft (a.k.a. “Poaching”)

When no legitimate timber harvest is in progress, it is much easier to define theft. In its simplest form a perpetrator enters the property of an unknowing landowner, harvests trees and removes them from the property. All that is needed to steal a high-valued tree or two is a chainsaw, a truck and

a method for loading logs on the truck. Higher volume timber thefts require more sophisticated logging equipment.

In some instances the theft is much more elaborate. For instance, in eastern Ohio a timber thief posed as an absentee landowner who was wintering in a southern state. The thief visited the local courthouse to locate his victim. He then purchased a cell phone with a number from the area code where the legitimate property owner lived to contact a logger. This unsuspecting and overly trusting logger paid a fair price to the imposter and harvested the timber. In another instance, after several attempts to purchase timber directly from the legitimate landowner, a logger purchased a small amount of timber from a lessee, who did not legally own the timber, on an adjoining property. The logger, with the help of the lessee, promptly harvested the trees on the leased property, as well as the timber from several additional acres of the adjacent landowner's property.

What do you do in the event of timber theft?

Immediately contact your county sheriff's office or the Ohio State Highway Patrol if a timber theft has taken place. Insist that they investigate and file a report. If you do not get immediate response from law enforcement, document with photographs and notes. If logging is still in process, try to identify the violator (vehicle and equipment make and models, license plate numbers etc.). It is best **not** to attempt a confrontation.

If a significant amount of timber was stolen it is usually advisable to contact a consulting forester (<http://www.osafdirectory.com>) to assist with the process. Consulting foresters can estimate the value of the timber lost based on the evidence left on the site. Estimates of the value of timber lost can be used in court and in out-of-court settlements. They are also important for tax purposes since stolen timber is deductible from your taxes as a casualty loss (<http://www.timbertax.org>).

Ohio Laws Pertaining to Timber Theft

A law specific to farm situations is the law on "destruction of crops and timber." The law (Ohio Revised Code 901.51) states that "a person who, without permission, recklessly cuts, destroys, or

injures crops, trees, vines, bushes, shrubs, or saplings growing on the land of another is guilty of a fourth-degree misdemeanor." "Recklessly" means that the offender realized the risk of harm that would be caused by his or her actions and acted with complete disregard of the harmful consequences. A person who violates this law is subject to a maximum imprisonment of 30 days and a maximum fine of \$250. The crop and timber destruction law requires payment of damages to the property owner. In this case, the damages are severe—triple the amount of total loss to the property. These are referred to as **treble damages**. However, to successfully achieve a conviction and treble damages, the burden of proof is on the victim to show "reckless" cutting occurred for a civil action.

If damages are estimated to be less than \$3,000, another option for victims who can successfully identify the violator is to utilize small claims court, which allows the landowner to pursue the action without an attorney. However, it is highly recommended that you do not base the settlement amount on the estimate provided by the violator as this may greatly undervalue your lost timber.

Conclusion

Timber theft is an unfortunate, but real, occurrence in Ohio and appears to be on the rise once again. Victims of this crime not only lose the monetary value of the trees lost, which can often be in the tens to hundreds of thousands of dollars, but also lose other values that cannot be easily quantified (i.e., sentimental, environmental and aesthetic). Although it is impossible to completely protect woodlands from the potential of timber theft and trespass, there are steps that you can take to significantly lower your risk. And, even though it is difficult to prove intent, there are civil and criminal recourses for landowners who choose to pursue it.

Summary of How to Prevent Timber Theft

- Locate and clearly mark property boundaries.
- Inspect property regularly. If you do not live on the property, hire a forester or ask a neighbor or relative to periodically walk the property.
- Leave contact information with neighbors and let them know that you do not plan to harvest timber in the near future.

- Conduct a timber inventory and estimate the value of your timber.
 - Report all incidents of trespass and/or theft to the authorities.
- When conducting a timber sale:**
- Do your homework prior to the sale. Ohio's Call Before You Cut campaign is a great place to start: 1-877-424-8288 or visit <http://callb4ucut.com>.
 - Clearly mark sale and property boundaries.
 - Notify neighbors of the impending sale and verify that boundaries are correct.
 - Paint each hardwood sawtimber tree to be harvested.
 - Keep a record of the number of trees to be harvested. Categorize by species and size.
 - Sell timber using the “sealed bid” process.
 - Secure a “lump-sum” payment prior to the start of harvesting activities.
 - Develop a detailed contract with the help of an experienced forester and lawyer.
 - Get help from a qualified forester to assist with all aspects of the sale from marking trees, to contract development, to inspection during and at completion of the contract: <http://www.osafdirectory.com>.

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