

Dealing with Timber Theft

Shawn Baker, former Extension Associate, Department of Forestry, Virginia Tech

Michael Mortimer, Assistant Professor, Department of Forestry, Virginia Tech

Jennifer Gagnon, Extension Associate, Department of Forestry, Virginia Tech

Forestland can provide countless hours of recreational benefits as well as an important source of income. Many landowners take careful steps to ensure that their property is managed to maximize the benefits they receive. However, all of this work can be easily eradicated by one of Virginia's most dreaded forest pests: timber thieves.

Thanks to high timber prices, timber theft is an attractive crime. It is not only highly profitable for thieves, but it is also difficult to catch and convict them. Because efforts to stop thieves have been so unsuccessful, there has been very little publicity about the crime itself. As a result, many private landowners do not realize that

timber theft is a severe problem which could affect their landholdings.

The Nature of the Crime

Virginia timber types range from the mixed hardwood stands of the Appalachian Mountains to the pure pine stands of the Coastal Plain, with a tremendous amount of diversity in-between. As a result, the type of theft may differ depending on what timber is targeted. High-value hardwoods can sell for \$1,000 or more for a single log. If savvy thieves see a tree which can bring this much profit standing alone beside a rural woods road, there is little to deter them from felling the tree and loading a log or two onto a truck. A quick trip to the local sawmill can instantly provide ample income with minimal risk. In pine stands and lower-value hardwood stands, significant profit requires a little more time and effort. Here, multiple acres of timber may need to be harvested before the thieves have enough money in their pockets to justify the risk.

Either of these thefts, though, can easily ruin the value of a timber stand and quickly undermine any management plans which may have been prepared.

Legal Recourse

There are two legal approaches to dealing with timber theft: criminal and civil. Thanks to recent legislation in Virginia, pursuing these legal remedies has become somewhat easier for landowners.

Criminal Remedies

While the act of stealing another's property typically constitutes larceny, in timber theft cases, where it is likely that the value of the stolen property is greater than \$200, the crime represents the felony of grand lar-



peny. A thief convicted of this crime faces a fine of up to \$2,500, one to 20 years in prison, paying restitution for the value of the stolen timber, or any combination of these three penalties.

This is by far the stiffest penalty that can be pursued in a timber theft case. Recent changes in timber theft law have increased the likelihood of a grand larceny conviction. The landowner only needs to prove that trespass occurred, and then the burden of proving the timber removal was inadvertent or under some claim of legal right falls to the defendant.

Experienced timber estimators working for both the landowner and the defendant determine the damages of the timber theft. A third-party estimator can be brought in if an agreement cannot be reached as to the value of the lost timber. Restitution for the lost timber includes three times the timber stumpage value, reforestation costs (not exceeding \$450 per acre), and payment of legal fees and estimator costs.

Civil Remedies

Many victims turn to civil court when they seek remedy for their loss because the burden of proof is lower than in criminal court. In a successful civil case, the landowner may be legally entitled to restitution similar to what can be ordered by a criminal court after a conviction. The actual results depend heavily on the facts of the trespass. There is, of course, no guarantee that a landowner will win a civil lawsuit. In that case, the landowner recovers nothing.

Even if the landowner wins the civil case and is awarded money from the trespasser, it is the landowner's responsibility to try and collect that money. This can be a formidable task, because the individuals perpetrating these crimes have often spent any money long before they are ordered to pay restitution, making them essentially judgment proof. They may also be accomplished thieves and know all the tricks for sheltering money acquired by nefarious means. Additionally, the legal costs of bringing a civil lawsuit must initially be borne by the landowner. Thus, in Virginia, the landowner can be at a distinct disadvantage in civil cases.

Prevention

By far, the best way to deal with this crime is to prevent it from occurring. However, with timber theft, this can be a fairly tricky endeavor. The best approach is

to make your timber seem less vulnerable to theft by removing as much opportunity as possible.

Theft will occasionally be perpetrated by individuals looking to steal one high-value log. Unless the property is located away from roads, this type of theft is extremely difficult to prevent. Often though, a theft or trespass will occur when adjoining landowners are harvesting timber. The vast majority of timber harvesters are business people trying to make an honest living. Regrettably, as in any industry, there are the exceptions. Therefore, it is critical that landowners take precautions to try and prevent theft from occurring.

- **Identify and mark property lines.** Having a surveyor blaze and paint the boundaries of your property is very important to show that any theft, if it occurred, had to be intentional. To obtain this increased level of legal protection under the current law, property boundaries must be identified by clearly visible vertical paint marks (2 inches wide x 8 inches long) at intervals of not more than 100 feet. These marks should be between three and six feet above the ground (or normal water surface). It is important to maintain these boundary markings so that property lines remain highly visible.
- **Walk the property on a fairly regular basis to ensure that theft has not already occurred.** This will also allow you to detect any harvesting operations occurring on neighboring properties. This is a



particularly crucial issue for absentee landowners. Having someone walk the property at least once every year or so will keep you apprised of any legal issues which may be arising in your absence, such as illegal dumping or squatters. If you are an absentee landowner, ask neighbors to notify you of any logging operations adjacent to your property.

- **Closely monitor neighboring logging operations.** When adjoining landowners are harvesting their property, risk of theft or trespass is at its greatest. If nothing else, contact the adjoining landowners to obtain the name of the contractor harvesting the timber in case an issue arises. This also will ensure that your neighbors are aware of the harvesting operation on their property. The operation could be a theft from your neighbor. Also, let your neighbors know when you have sold timber. Good communication reduces theft and makes for good neighbors.
- **Work with reputable foresters if you intend to harvest your timber.** Having a professional forester assist in the planning and harvesting of timber will be of great assistance. He or she will be responsible for marking the area which you want harvested and should inspect the logging job regularly (preferably weekly) to ensure that contractors stay within harvest boundaries, comply with water-quality laws, and protect physical structures such as roads and fences.
- **Stay informed of changes or proposals to change the current Virginia laws that protect landowners against timber thieves.** The Virginia Department of Forestry, Virginia Tech's Department of Forestry, consulting foresters, and groups such as the Society of American Foresters (SAF) and the Virginia Forestry Association (VFA) are all reputable sources of information on possible changes in the laws. Participate where you can to strengthen landowner legal protections.

Reporting Timber Theft

While prevention is the approach most landowners would like to take, with a crime of this nature, it is essentially impossible to make property theft-proof. Should the worst happen and you discover a theft has occurred, it is critical to report it to the proper authorities. Contact either the state police or the county sheriff. The scene must be examined and the incident recorded if there is to be any only hope of pursuing a criminal prosecution.

It is wise to contact a professional consulting forester as well. Often, these individuals have experience with timber theft cases, and may be able to assist you. If the amount of timber stolen is large, a consulting forester will be needed to provide an estimate of the monetary value of the missing timber. The Virginia Department of Forestry will be able to provide a list of consulting foresters who can do this sort of work.

An additional incentive for you to determine the estimated value of the stolen timber is for tax purposes. Often, taxable land values include the value of the timber on the property. In the case of a timber theft, therefore, the lost value can be deducted from your taxes as a casualty loss (for more information see <http://www.timbertax.org/>). While this is not a remedy, it is an important step to take to ensure that even more money isn't lost to inflated taxes.

Finally, if a thief or trespasser can be identified, trying to negotiate a settlement with them may be a better approach than pursuing legal remedies. If it is possible to persuade them to pay a reasonable sum of money without going through the burden of a court case, this is certainly a preferable alternative to a trial. Legal cases can be long and expensive ordeals, and the outcome can be highly unpredictable.

What Help Is Available?

Recent changes in timber-theft laws have improved the chances of landowners successfully convicting thieves. Also, the Virginia Department of Forestry is taking an increased interest in the issue of timber theft. In the future, there is a possibility that state foresters may be able to directly assist in theft investigations, making it easier to pursue criminal convictions.

Virginia Department of Forestry
(434) 977-6555
<http://www.dof.virginia.gov/>

Virginia Forestry Association
(804) 278-8733
<http://www.veforestry.org/>

Virginia Tech Forest Landowner Education Program
(540) 231-6391
<http://www.cnr.vt.edu/forestupdate/>