

# Understanding and Preventing Timber Trespass

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All foresters at one time or another during the terms of their careers find themselves dealing with timber trespass. Often they are the first to notice that timber trespass occurred. In many instances, they are also charged with the task of preventing such trespass or, if the trespass has already taken place, with estimating the monetary value of the missing timber. This article is intended to provide foresters with some basic information on the timber trespass laws in Oregon and Washington to help them in these tasks.



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## What are timber trespass laws and why do we need them?

Forestland owners and city dwellers alike know that the trees on their properties have great value—sometimes economic value, sometimes aesthetic or emotional value, and sometimes all of the above. The term “timber trespass” generally refers to unpermitted cutting of trees and other vegetation on someone else’s property. Timber trespass laws in effect throughout the United States are geared toward helping property owners protect the value of their trees in two critical ways: first, by establishing stiff penalties (in some cases, as much as triple the amount of actual losses) that strongly discourage loggers or neighbors from cutting trees without the true property owner’s permission; and second, by compensating property owners for damage to or loss of their trees as a result of unpermitted cutting. The same pot of money thus represents both a stick that punishes the wrongdoer, and a carrot to compensate the damaged property owner for his or her loss.

## What is necessary to establish a timber trespass claim?

The plaintiff in a timber trespass case must establish certain facts or circumstances in order to receive the benefit of the law. Like most property laws, timber trespass is a creature of state law. This means that the exact requirements for establishing a timber trespass claim vary from state to state. In order to determine the exact elements for a timber trespass claim in your state, you should consult with a qualified property lawyer licensed in your state. However, there are some general principles and concepts that recur in most states, particularly in the Northwest.

**1. The plaintiff must own the real property.** To recover damages for timber trespass, a plaintiff must establish that he or she is the owner of the land from which the trees were removed, including the true boundary line between the parties. The property owner need not have a present possessory interest in the property in order to bring a successful claim; this means that holders of contingent remainders (for example, what’s left after a life estate) and lenders may be able to collect damages for wrongfully cut trees.

**2. The defendant must have entered onto plaintiff’s real property.** As for any trespass action, the plaintiff must show that the defendant entered onto plaintiff’s property. If the defendant merely hauled logs away from a neutral location, the plaintiff is unlikely to recover damages.

**3. The defendant must have some level of mental culpability.** In some circumstances a defendant will be liable for timber trespass even if the defendant thought he was on property that he was entitled to log. Most states “shift the burden of proof” with regard to this requirement for intent, such that a plaintiff need not show that the defendant intended to cut trees on plaintiff’s property; rather, it is up to the defendant to show that he had some reason to think he was within his right to cut the trees in question.

The law makes a substantial distinction between defendants who

knowingly go onto another’s property to cut trees, and defendants who inadvertently cross the line. In Oregon, for example, anyone who removes a tree knowing (or if he should have known) that it belongs to someone else is liable for treble damages, whereas a trespasser who only casually or mistakenly cuts another’s tree or shrub is liable only for double damages; in Washington, intentional timber trespass renders a defendant liable for triple damages while unintentional timber trespass only generates actual damages liability. Damages are discussed further below.

## Innocent logger defense

Some states, including Oregon, provide partial protection for loggers who have committed timber trespass in good faith. These limitations of liability are intended to shield commercial loggers from being overly penalized for taking a few trees from the wrong side of a property line.

Oregon law sets forth specific requirements that the contract logger must meet in order to claim the exemption: the contract logger must be working under a signed written contract with the person that the contract logger reasonably believes to be the owner of the timber in the operations area. The law even describes exactly what the contract logger must do to take advantage of this defense:

1. Ensure the contract includes a metes and bounds or other legal description;
2. Ensure the owner locates, marks and protects from damage all survey monuments in the operation area;
3. Ensure the owner flags, stakes or otherwise clearly marks the boundaries of the operation area;
4. Obtain from the owner a copy of a deed or other legal indicia or title to the trees to be cut;
5. Compare the deed with the contract legal description; and
6. Retain a copy of the deed for three years.

If all these requirements are met, a commercial logger’s liability is capped at actual damages (that is, no treble or double damages). While

Washington does not have similar statutory provisions, the Oregon requirements are a good road map to Washington landowners and foresters as to what kind of due diligence they should undertake to avoid inadvertent trespass.

### How long does a property owner have to file a claim?

The statute of limitations for a timber trespass article varies from state to state, but is typically two or three years from the time of discovery of the unpermitted cutting. In Washington, for example, a timber trespass plaintiff has three years from the time that he discovered (or could have reasonably discovered) the damage to bring suit. In Oregon, on the other hand, a plaintiff has six years from the date of the damage to file a claim.

### What damages can a timber trespass plaintiff recover?

As foresters are often charged with computing the value of the timber taken as a result of timber trespass, they should be familiar with the rules of calculating such damages.

The core concept underlying timber trespass damages is usually derived from the value of the land before versus after the damage. If a trespasser severs mature, merchantable trees, the practical method of determining damages is by examining the "stumpage" value of the standing timber, which means the market value of the timber before it is cut.

In instances of residential timber trespass or cutting of ornamental plants, including shrubs, other factors may be considered in determining the actual damages. For example, the value of the damaged vegetation in providing shade, privacy, wind screen and beauty may enter into the analysis.

Many states allow timber trespass plaintiffs to recover double or triple the amount of actual damages suffered. As mentioned above, this multiplier concept is intended to create a real disincentive for loggers and other cutters to be sloppy in their determination of what they're allowed to cut.

Foresters must remind their landowner clients that a property owner may be obligated to mitigate his damages following a timber trespass.

For example, if a timber trespasser has logged a portion of the property and left some of the felled timber lying on the property, the landowner may be obligated to try to salvage the value of the cut timber. Additionally, a timber trespass plaintiff may experience a reduction in his damages award to the extent that the timber trespasser improved the plaintiff's property with roads or other improvements.

The mitigation and deduction of improvement value concepts may factor into the multiple damages calculation. As an example: I own 100 acres of timberland, and you knowingly log five acres of my property. The value of the wrongfully cut timber is \$25,000. You leave \$10,000 worth of logs lying conveniently next to a road that you constructed at a cost of \$5,000, and I decide to let those logs rot as they lie rather than having them hauled off. My damages (if this took place in Oregon) would likely be determined to be (\$25,000 minus \$10,000 minus \$5,000) x 3, or \$30,000. If, on the other hand, the facts from the above example were all the same except you did not build a road or leave any logs lying on my land, my damages would be \$25,000 x 3, or \$75,000.

Most states allow a timber trespass plaintiff to recover its attorney fees as well as the reasonable cost of reforesting the property. In some states, including California and Washington, a timber trespass plaintiff may also recover damages for emotional distress suffered by the property owner.

### Prevention

Common sense provides the best approaches toward preventing timber trespass. Good practices include:

- **Recognize easy targets for timber trespass.** Sites with easy access, harvest and transport, out-of-view sites, sites with specialty species or market premium sorts, sites adjacent to current harvest operations and sites with questionable boundary lines are all

attractive targets for timber trespassers and require extra attention.

- **Be familiar with the property.**

Visit the property frequently, or at least periodically, so that you remain aware of what is happening on and around it. If you are unable to visit the property personally, ask contractors, neighbors or other locals for periodic updates about what is going on in the area. Be alert to logging trucks in the area.

- **Pay close attention to logging operations.** Mark the logging area carefully and 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. If a neighbor is logging, find out who the logging contractor is and make sure the contractor knows that you are watching and that you care.

- **Mark your property boundaries.** Even if there is no logging activity planned on the property, paint markings and signage on and between trees can greatly reduce unintentional timber trespasses.

### Conclusion

A monetary award cannot bring back mature trees that have been cut illegally. But the specter of treble damages makes people think twice about what they are cutting, and also provides compensation for property owners whose trees or shrubs have been illegally cut. Common sense behavior, vigilance and legal advice, when necessary, can decrease the likelihood of loss and increase the probability of compensation after a timber trespass has occurred. ♦

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