

Timber Theft . . . No Laughing Matter

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Introduction

Question: How does a thief steal a tree?

Answer: With a chain saw, of course!

Okay, that's not much of a joke, but neither is timber theft. Each year, Arkansas landowners collectively lose hundreds of thousands of dollars to timber theft, and those losses are just from the reported cases. The losses for any individual landowner can be a few hundred dollars or much more. In one case in Fulton County, an absentee landowner lost more than \$30,000 to timber thieves. A logger on an adjoining property crossed a fenced boundary line and harvested about 30 acres of her timber. The theft wasn't discovered until five or six years later when the landowner hired a forester to sell her timber. By the time the theft was detected, it was far too late to prosecute the thief. Your timber is a financial investment and should be protected like any other investment.

Before we go any further on this topic, I want to state clearly that the vast majority of timber buyers and loggers are honest businessmen who are just trying to earn a living. They are not out to steal anyone's timber. Most timber thieves are not professional loggers. Unfortunately, these few bad apples have given the logging industry a black eye. We all suffer because of the actions of a very few dishonest people.

What Is Timber Theft?

Simply stated, timber theft is harvesting timber without the owner's permission or failing to pay for timber which was harvested with the owner's permission.



Figure 1. Here yesterday, gone today. But who took it?

So back to the original question – How does a thief steal a tree? There are as many ways to steal a tree as there are timber thieves, but most thefts fall into one of four basic categories: 1) trespass, 2) underpayment, 3) overharvesting and 4) fraud. There are also several less common schemes for stealing timber.

Trespass

Trespass occurs when someone enters a property without permission and removes trees. In most cases, an honest logger accidentally strays across a poorly-marked boundary line.

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In rare cases, a dishonest logger intentionally strays across a poorly-marked boundary line and then claims ignorance. Sometimes the timber thief blatantly sets up a harvesting operation on the victim's property, harvests timber and leaves before being caught.

Underpayment

Underpayment occurs when a timber buyer intentionally or unintentionally underreports the volume of timber harvested and delivered to mills. Upon delivery of a load of timber to a mill, the truck driver receives a scale ticket showing the weight of the load delivered. Pay-as-cut and pay-by-the-load arrangements make underpayment a potential problem because payment to the landowner is based on scale tickets presented to the landowner. Most landowners have no idea how many loads of timber actually were cut. It is possible to accidentally lose a scale ticket or two. We all lose things. Did the landowner count the truck loads of timber leaving his property? Probably not. The landowner will not know about or ever be paid for loads recorded on the lost scale tickets.

Overharvesting

Overharvesting occurs when a logger cuts more trees than the agreement with the landowner authorizes. Most timber sale agreements, either verbal or written, include some agreement about how much timber will be cut. The agreement may be as simple as the buyer's word that a certain number of board feet of timber will be cut. On the other hand, the agreement may be as well planned as a written sale contract which states that only trees marked with a certain color



Figure 2. Overharvesting is less likely when timber is marked.

paint will be cut. Timber sale agreements can present problems for loggers and landowners alike. Because of inexperience with timber sales, many landowners do not understand how much timber will be removed. This inexperience can prevent landowners from recognizing overharvesting or can lead to claims of overharvesting when, in fact, overharvesting has not occurred.

Fraud

Absentee landowners are easy targets for fraud. Occasionally dishonest buyers call absentee landowners to report timber pest or disease problems that may be real or may be exaggerated. The caller might offer to buy and cut the trees while they still have some value. Sometimes the buyer's offer for the trees is below fair market price. The landowner might actually have a dead tree or two, but is the entire stand at risk? Probably not. An absentee landowner from California called a forester in Arkansas with just such a story a few years ago. There was one dead tree and no problem. Potential disease and pest problems should be examined by a professional forester who is trained to identify and evaluate disease and pest problems.

Unfair Pricing

Unfair pricing is not truly timber theft. It is the practice of taking advantage of a landowner's inexperience with local timber markets to buy timber at prices well below the fair market price. Unfortunately, this practice is legal, though certainly not ethical. A buyer is not legally obligated to offer landowners a fair price for timber, just as landowners are not obligated to accept the price a buyer offers. Many landowners are vulnerable to unfair pricing because they lack experience with timber marketing and are not aware of the true value of timber.

Unfair pricing can be difficult for a landowner to recognize because so many factors affect stumpage prices. In some cases very low stumpage prices are reasonable; for example, when the tract is small or when the timber quality is poor. It is possible for the value of timber to be so low that the landowner cannot even give it away. This is one of the reasons it is important for a landowner to work with a consulting forester. A consulting forester has the experience to distinguish between justifiably and unjustifiably low stumpage prices.

Stealing timber is a serious crime. Report it.

What Does Arkansas Law Say?

Arkansas has a number of laws dealing directly or indirectly with timber theft. Landowners must seek help and report timber theft in a timely manner to take advantage of this protection. Arkansas Code §20-22-301 authorizes the Arkansas Forestry Commission (AFC) to enforce laws regarding timber theft. Codes prohibiting theft of property, theft by deception, and theft by receiving, forgery and criminal mischief also may apply to some cases of timber theft. Arkansas Code §15-32-101 requires those who sell timber or buy timber to ascertain boundary lines before harvesting the timber. Under Arkansas law, timber theft may be treated as a felony or as a misdemeanor, depending upon the circumstances of the theft and the value of the timber stolen.

Arkansas Code §15-32-301 specifies that a timber thief or vandal is “liable to the owner in double the value” of trees stolen or destroyed. However, for a landowner to be compensated at this rate, it must be proven that the accused “knowingly” cut down, destroyed or carried away the timber.

Arkansas Code §15-32-603 requires that a timber buyer fully pay a landowner for timber harvested before using that money for any other purpose. After collecting money for timber, the buyer is given 45 days to pay the landowner for the timber. If the buyer fails to pay the landowner, the landowner should contact a local Arkansas Forestry Commission office. The landowner will be given a letter to send to the buyer. The letter informs the buyer that payment must be made within 15 days to avoid prosecution for timber theft.

How Does One Protect Oneself From Timber Theft?

Landowners can take any of the actions described below to reduce the risk of timber theft. Some of these actions are cheap and simple while others will cost money and require some planning. In the long run, almost any action taken to protect timber will pay for itself.

Be vigilant. Properties which are rarely visited are ripe for timber theft. Stealing timber from properties which are frequently visited is risky, so timber thieves are more likely to look elsewhere for timber to steal. Visit your property and walk the boundaries often. This poses a problem for absentee landowners who may have to travel a thousand miles or more to visit a property. Sometimes timber thieves conduct

deed research at the county courthouse to find absentee landowners and their land. Absentee landowners should enlist the aid of adjoining landowners in watching for timber theft. Set up an informal “neighborhood watch” program by asking your neighbors to contact you if they see suspicious activity on your land. Also, consider hiring a consulting forester or land manager to keep an eye on your forestland.

Clearly mark the boundaries of your property and maintain the markings. Timber trespass frequently occurs when loggers stray across a poorly-marked boundary line. Well-marked boundaries show honest loggers where the boundary is so that they can



Figure 3. Loggers and foresters appreciate well-marked boundaries.

avoid accidental trespass. A well-marked boundary also prevents timber thieves from pleading ignorance of the boundary location. If your timber is stolen in spite of well-marked boundaries, the ability to document that boundaries were clearly marked will greatly aid criminal and civil prosecution.

Restrict access to your property. Fences, gates and signs send a strong message that you intend to protect your property from trespass.



Figure 4. What message does this gate send to you?

Stay in touch with neighboring landowners. The risk of timber trespass is greatest when timber is being harvested from adjoining lands. Tell your neighbors when you are going to have timber harvested, and ask your neighbors to do the same

for you. When your neighbor has timber harvested, visit your property often and be seen.

Maintain a current inventory of your timber.

A current inventory itself will not prevent timber theft, but it will allow you to document and prove the extent of your losses if timber theft occurs. A current inventory also helps you prove in court, and to the IRS, that the timber existed.

Hire a consulting forester to handle your timber sales. In addition to marketing your timber, one of the forester's responsibilities is to monitor the harvest operation to protect your interests. An experienced forester knows what a harvest operation should look like and knows how to detect timber theft.

Deal only with reputable timber buyers. If you decide to sell timber yourself, check the local reputations of potential buyers. Call a local consulting forester and ask about the reputation of each of the potential buyers. Consulting foresters deal with and hear about timber buyers regularly. They know a timber buyer's reputation.

Do not hastily accept any offer for your timber. Stumpage prices fluctuate frequently, but your timber isn't going to lose its value in the next week or two unless you are the victim of some natural disaster. Take the time to get several offers on your timber from other buyers or, even better, talk to a consulting forester about the offer you have received and ask whether it is a fair offer. In many cases, a consulting forester can get a better price for your timber than you have been offered. For additional information, see UACES fact sheet FSA5019, *Consulting Foresters for Private Landowners*.

Use well-written timber sales contracts when you sell timber. A well-written contract tells the timber buyer exactly what timber is being sold. It will leave little or no room for the buyer to decide which trees to cut. Using a well-written contract reduces the opportunity for misunderstandings between the buyer and seller. If timber theft does occur, a well-written contract documents what the logger was authorized to cut and removes the "I didn't know" and the "You said something different yesterday" defenses. Written contracts can also specify compensation rates for excessive site damage and mistakenly-harvested trees.

A sample contract can be obtained from UACES fact sheet FSA5014, entitled *What Should I Know About Selling My Timber?* Another sample timber sale contract is available from the Arkansas

Forestry Commission. Visit their web site at forestry.arkansas.gov. On the menu bar just below the web site banner, click the "Resources" link. Under "Resources," select the "Forest Management Guide for Arkansas's Forest Landowners." This guide contains good forest management information and a sample contract.

Clearly mark sale area boundaries. Clearly marking sale area boundaries is important whether part or all of your land is being logged. Clearly-marked boundaries help the logger stay within the harvest area and out of other parts of your property or your neighbors' property. Well-marked boundaries will help you maintain good relationships with the loggers and your neighbors.

What Should One Do If Timber Theft Occurs?

Call the Arkansas Forestry Commission immediately if you suspect timber theft. The AFC is authorized to investigate timber theft in Arkansas. The Commission has investigators statewide who will determine whether timber theft has occurred. If timber theft has occurred, the investigators will attempt to find out who committed the crime. The longer you wait to call the AFC, the more difficult it will be to find the criminal. Delay may also allow a statute of limitations to expire.

If you find unauthorized loggers on your property, two steps should be taken immediately. First, call the Arkansas Forestry Commission or county sheriff (you should keep their phone numbers in your vehicle). If you have a cell phone, call from the site and stay until law enforcement officers arrive. Second, record the license numbers of any unauthorized vehicles on your property and any company names on the vehicles. Photographs document these things quite well. Confronting the trespasser may seem like a good idea, but criminals can be dangerous. Be patient and wait until law enforcement officers arrive. **Do not** attempt to detain the logging crew.

Do not accept payment for the stolen timber until the theft has been investigated by law enforcement officers. Accepting payment for the stolen timber suggests that compensation for the trespass has been provided, which may limit your legal recourse and allow a habitual thief to escape punishment.

Talk to your accountant or tax return preparer. Under some circumstances, losses resulting from timber theft may be treated as a deduction on your

federal income tax return. As with any deductions on income tax returns, the IRS will require that you back up the claim with documentation of the loss. Recent timber cruise results and after-the-fact estimates of the volume of timber stolen will be necessary to document your deduction claim. After-the-fact estimates of timber volume removed can be made by a professional forester based on remaining tops and stumps.

Conclusion

Timber theft is a problem in Arkansas and throughout the Southeast, but there are several ways by which landowners can reduce the risk of timber theft. Most of those actions can be summed up in one word – **vigilance**. Watch your woodlands, and establish a visible presence there. In light of the value of timber, protecting your timber investment is well worth the effort.

I'll also repeat what I said at the beginning of this fact sheet. I want to state clearly that the vast majority of timber buyers and loggers are honest businessmen who are just trying to earn a living. They are not out to steal anyone's timber. Most timber thieves are not professional loggers. Unfortunately, these few bad apples have given the logging industry a black eye. We all suffer because of the actions of a very few dishonest people.

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