

FACT SHEET

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Timber & Timber Harvesting in West Virginia

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Logging And Trespass In West Virginia

The West Virginia State Code contains several laws written to impede the inadvertent and the deliberate stealing of timber. These laws mostly refer to the illegal removal of “timber” and “trees,” but they also include “flora,” which applies to all living plants.

The timber rustling law was seriously weakened in 1999 when timber theft was changed from a felony to a misdemeanor. This was accepted by some as a license to steal. When the Legislature was told in 2001 that timber rustling was greatly expanding and that veneer logs being stolen were selling for thousands of dollars per thousand board feet, it again changed the law (Chapter 61-Article 3-Section 52). The current statute makes the conviction of any first offense in which the timber is worth \$1,000 or more a felony punishable by a jail term of from one to two years in addition to a fine.

Another part (61-3-48) of State law is designed to deal with inadvertent thievery, that is removal carried out without evil intent. This covers instances, among others, when a logger unknowingly cuts across an unflagged property boundary and removes or damages trees on an adjacent tract. Since the law states “...to break, cut, take or carry away or in any manner to damage...any trees or timber on the land,” it most likely also applies to a logger cutting a tree across a property line and damaging a tree belonging to an adjacent landowner.

This same article provides that it is unlawful for anyone to transport on any public road in the State any items “protected by this section” without “permission in writing to do so from the owner or tenant of the land from which they have been taken.” It also specifies that “at the request of a law enforcement officer”... any person so doing “shall display the written permission to such officer.”

Loggers may also be guilty of criminal action along tract boundaries if they remove boundary trees or destroy other types of markers. The law (61-3-30) states it is a misdemeanor to “break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries...or any tree marked for that purpose”...etc.

Treble damages are instituted (61-3-48a) for all wrongfully removed plants or plant parts. This law provides that “Any person who enters upon the land or premises of another without written permission...in order to cut, damage or carry away or cause to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plant or product of any growing plant, shall be liable to the owner in the amount of three times the value of the timber, trees, growing plants or products thereof, which shall be in addition to and notwithstanding any other penalties by law provided.” It should be remembered that this provision in addition to timber, effectively covers the removal of wild ginseng, yellow root, other medical plants, moss, etc. under the “growing plant or products thereof” phraseology. The digging of cultivated ginseng or prospecting for such sang on the unposted lands of another without written permission is specifically unlawful (61-3-35).

A logger might be liable for damages if he cuts a tree into a stream and it gets away from him. Under the law (61-3-47), no person may “fell any timber and permit the same to remain in any navigable or floatable stream of this state” if such would obstruct the passage of boats, rafts, ties, timber of any kind, etc. The minimum size of the boat is not mentioned, but it probably initially referred to steam boats.

State law also contains an antique provision (31-3-5) through which loggers and others could legally form “Boom” companies to float logs downstream to mills or other collection points. The law provides for the recovery of lost logs that lodge on the lands of another as long as it is done within 60 days. The landowner cannot convert the logs to his use during that period and the logger or log owner is liable for any damages sustained by the land on which the logs lodge. However, unless a logger forms a boom company and drives logs on a stream there is nothing to fear.

Finally, it is worthwhile to remember that general trespass is defined (61-3B-3) as “any person who knowingly and without being authorized, licensed or invited enters or remains on any property other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation.” This is changed slightly in the hunting and fishing laws which say (20-2-7) it is unlawful to “hunt, fish or trap on fenced, enclosed or posted” grounds or lands of another without written permission.

As with all things legal, please consult your lawyer if you have problems allied to any of the above.

(Prepared by William H. Gillespie)

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