



Timber Theft – Criminal or Civil?

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better decision as you decide how, and to whom, you sell your timber. Ben Franklin said, “An ounce of prevention is worth a pound of cure.” It is much easier to prevent a theft than to fix one.

During Fiscal Year 2011, over \$300,000 worth of timber was reported as stolen in our state. A person made a comment to me several years ago that I couldn’t believe. He stated that with all the millions of dollars worth of timber sold each year in Alabama, if only a few hundred thousand dollars worth is stolen – we didn’t have a timber theft problem. This statement really took me by surprise. I responded that it may not sound like much to him, but if it were *his timber*, we would have a big timber theft problem. Surely no one suggests that a certain amount of theft should be expected, or tolerated. Where is the moral compass of someone who can justify in their minds that it’s okay if we only take a few loads of wood; if we take from the wealthy; or if we work a scheme to take from a large corporation because they can afford to lose a few dollars. Stealing is stealing.

Many of the thefts we have investigated are sad because the victims are disadvantaged. They are poor, elderly, many times uneducated, and will only sell timber once in their lifetime. They depend on this money to carry them through retirement, put children through college, or for any number of reasons, but the bottom line and regardless of the amount – *it’s their money*.

Timber theft complaints can be separated into one of three categories: trespass, failure to pay, or theft. The following guidelines are used for classifying these situations:

- Timber trespass (encroachment) – an individual *unintentionally* cuts and/or destroys timber without permission of the owner.
- Failure to pay – the buyer does not promptly pay the seller for the timber after the harvest.
- Timber theft – an individual knowingly takes timber without permission, or deceives the seller in one of several ways and does not pay or fully pay for what was harvested.

Timber trespass or encroachment occurs when a person harvesting timber cuts across a property line, and without permission, cuts timber owned by an adjoining landowner. This happens due to one or both of the following reasons: the person harvesting the timber fails to ascertain the property boundary lines before cutting, and/or the property boundary lines are not properly marked or maintained by a landowner. When the victim discovers the trees cut, they usually call the AFC or another law enforcement agency wanting to prosecute this person. However, §9-13-60, *Code of Alabama*, requires that before a criminal

What if someone cuts timber on your property without your permission, or the buyer of your timber fails to pay you? Are these situations criminal or civil?

These are not new questions but have been debated for years. Most of the discussions stem from a belief by some attorneys, district attorneys, judges, and others in the legal and forestry communities that *all* transactions involving the sale of timber are civil in nature and have no place in criminal courts. They point out that selling timber is a business deal. I have been told, “It’s just a business deal gone bad,” and “We don’t arrest people in this country for bad business deals or failing to pay a debt.” They argue that a remedy is already available to fix bad business deals – lawsuits.

I don’t believe all timber transactions are civil issues, especially if it involves a landowner not getting paid. Granted, many things pertaining to timber sales are civil in nature because of failure to perform as specified in a contract. For example: the buyer of your timber agreed to repair your roads after the harvest, or agreed to replant the harvested area, etc. The real issue – and what I believe defines whether a timber transaction is criminal or civil – is money. Why does anyone buy, sell, or harvest timber? MONEY. Timber theft is about money – not trees. The trees provide an avenue to get to the money.

Those that view all timber transactions as purely civil are not hypocrites, because they would also say that if the buyer of your timber gets money from *your* timber but refuses to pay you – it’s a civil issue! This mindset has allowed the “bad actors” of the forest community to use our court systems as a playground for years and they know how to work the system. Thankfully, through educational efforts of the Alabama Forestry Commission (AFC) and other forestry and landowner groups, the way timber transactions are viewed and handled in our court systems is changing. Finally, we can look beyond the trees and see what’s really happening – the theft of money.

I want to tell you about the most frequent ways money and timber are stolen, and help you avoid becoming a victim. Hopefully some of this information will assist you in making a

charge of cutting timber without authorization can be made, it must be proved that the person cutting the timber “willfully *and* knowingly” cut it without the authorization of the owner.

For a successful prosecution we must prove that the person cutting the timber knew or should have known that they were on the lands of another, and then having this knowledge cut the timber anyway. Without this evidence, the case must go to civil court. Of course the question asked by the victim landowner is, “Doesn’t the person that cut my timber have a legal responsibility to know where the land lines are located before they cut?” The answer is yes, they have an ethical responsibility, but it is a civil liability and not criminal if they fail to do so. Many trespass situations could be avoided or a criminal case made if the victim landowner would adequately mark and maintain their property lines. Pictures in court of highly-visible marked lines such as fences, trees with POSTED signs, paint on trees, etc. near the point of encroachment can turn this incident into a criminal matter.

There are times when an honest mistake is made:

- The buyer of the timber is erroneously told where the property line is located by the landowner; or
- A property land line dispute exists between adjoining landowners.

Both of these two situations are civil in nature. However, §9-13-62, *Code of Alabama*, requires that when the timber of another is cut without permission, the victim is to be paid double the fair market value for the timber. The value of the timber would be determined by a registered forester. Needless to say, the victim would have to pay for this service. If the person that cut the timber does not have insurance, refuses to pay, or disputes the dollar value of the cut timber, then the matter would go to civil court.

Timber trespass situations have been and will continue to be a problem until some things change. Persons cutting timber must determine land line locations before cutting, and landowners must mark and maintain their property lines. Some states have addressed timber trespass issues by legislation requiring certain actions prior to cutting timber. For example: §15-32-101, *Code of Arkansas*, requires the following actions *before* cutting timber: 1) Cause the land to be surveyed, and the metes and bounds of the land marked and plainly established; 2) Rely in good faith on an existing marked line or established corners; or 3) Acquire a document signed by the landowner selling the timber and signed by the adjoining landowners, indicating that the landowners agree on the location of the boundary. Persons that cut timber in violation of this law face fines up to \$300.

Before coming to the Forestry Commission, I worked over 21 years as a conservation officer and was shocked to find that hunters in Alabama have a greater legal responsibility to know whose property they are on than people cutting timber! A hunter is required by law to know whose property they are on and have the landowner’s permission before hunting. A person found hunting without permission faces a mandatory fine of \$1,000 and loss of hunting privileges. A hunter goes to great lengths to determine land line locations before hunting.

Failure to pay the seller of timber in a timely manner generates a lot of calls for the AFC investigative unit. Of course, a person failing to pay a debt is usually not considered a criminal offense unless a pattern of not paying sellers can be documented.



Under current law, most failure-to-pay situations are civil, and the victim must sue the buyer in court to recover his/her money. This is why you should take your time deciding to whom you will sell your timber *and* get the help of a professional consultant. The money paid to a registered forester to oversee a timber sale is worth every penny. The forester will get the best price for your timber because most are paid on a percentage basis. The more money your timber makes, the more money the forester makes. A consultant should be familiar with the people that work in the forest community, and with this knowledge, would not deal with timber brokers, dealers, or harvesters that do not have good reputations. This translates into you getting your money at the end of the job!

To understand **timber theft**, you first must know how timber is sold. Most timber is sold one of two ways: lump sum or pay per unit.

- Lump sum - Timber is advertised for sale and bids taken for a specific time period. At the end of the bid period, the timber is sold to the highest bidder. The seller gets the money for the timber up front and normally gives a timber deed to the buyer. The buyer has a specified period of time to harvest the timber. Buyer is at risk due to changing market prices.
- Pay per unit - Timber is sold by volume and type of timber product harvested from the property. An agreement is reached as to how much per ton or cord the buyer will pay the seller for each type harvested (pine pulp, hardwood pulp, poles, etc). The seller is at risk if dealing with a dishonest buyer.

There are still a few wood yards in Alabama that will purchase timber from an individual right off the truck. However, you and I would not be allowed to haul timber into one of the larger timber or paper mills. Only individuals or businesses that have contracts with the mills can haul and sell to them. Usually the people that have contracts with the mills are larger operations that can consistently supply sizeable amounts of timber and are financially able to meet other mill requirements. If the timber buyer doesn’t have a contract with the mill but is hauling timber to them, he/she is selling through a broker or dealer who does have a contract.

As the timber is delivered to the mill, the driver hauling the timber usually scans a card (provided by the broker/dealer) which identifies the broker and credits the load on his account. The mill remits payment to the broker for the timber. The broker
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then pays the timber buyer, minus a fee for using the contract and other administrative costs. The smaller timber buyer then pays the landowner and workers that actually harvested the timber. The person that buys the timber is required by §9-13-63, *Code of Alabama*, to keep records of all timber purchases for three years and allow investigators to examine these records. Each buyer of timber in this chain is required to keep these records. This is basically how timber is sold, but there can be many variations of this scenario. (Note: The timber/paper mills are under no legal requirement to disclose to a landowner the amount the timber buyer was paid or copies of the scale tickets. This information is confidential between the mill and the person with whom they have the contract.)

Historically the problem with timber theft has been that it does not neatly fit into the general definition of “theft.” Why? Because the person that bought the timber has permission to take and sell the timber. However, we do have many textbook cases of timber theft each year that do neatly fit that definition. Someone enters the property of another and takes timber without permission; usually this happens to landowners who do not live on the property.

Much of what we investigate is theft by deception, which most often occurs during pay-per-unit purchases. As defined in §13-8-1, *Code of Alabama*, deception has many faces. Theft by deception occurs when the buyer fails to fully disclose the total amount or types of timber harvested; the buyer fails to pay the seller; someone sells timber they do not own; or an employee steals from his company. The following are examples of deceptions we have investigated:

Example 1: Buyer finishes a job and pays the seller, telling the landowner he harvested 20 loads of pine pulpwood. In reality, the buyer failed to disclose to the seller that he harvested 30 loads and also cut higher-valued trees such as saw timber or poles. The dishonest buyer pockets the money.

Example 2: Buyer signs a contract with a landowner to purchase timber on a pay-per-unit sale. Buyer completes the harvest but never pays the landowner. Upon investigation we find that this particular buyer has repeated this same process with several other people. The buyer gets his money but never pays the landowner.

Example 3: Buyer cuts timber and pays the seller. Buyer learns that the seller did not own the timber. Buyer never checked or verified ownership.

Example 4: Employee works as a driver, hauling timber. The employee stays late or comes in early, taking a load of timber to an unauthorized location, selling the timber, and pocketing the money.

Example 5: Timber buyer hires a company to cut a tract of timber. This company was to transport the timber to a specific location to be sold. Instead, the dishonest company diverts several loads of timber to another location, sells the timber, and pockets the money.

In reality there are two victims in timber-related thefts – the landowner and the forest community. One dishonest person causes a negative ripple effect on the whole industry. The following are a few suggestions that will help you get the most for your timber and avoid being a victim:

- Always use a registered forester as a consultant to sell your timber and oversee the harvest.
- Never sell or let anyone start cutting your timber without a written contract.
- Require that a harvest record be maintained on any pay-per-unit sell, and get copies of the record. Examples of harvest records can be found on the AFC website.
- Require in your contract that the person harvesting your timber be certified as a Professional Logging Manager. PLM-certified loggers can be found or verified on the Alabama Forestry Association’s website www.alaforestry.org/.
- Don’t be in a hurry to sell – talk with several buyers and check references.
- Don’t allow a prospective buyer to pressure you into selling your timber.
- If a prospective buyer will not agree to your terms – don’t sell.

Please remember that the majority of people in the timber business are honest, but it only takes a few “bad actors” to cause a lot of problems. There are many members of the forest community who are assisting us in identifying the dishonest people. We have individuals involved in every aspect of the timber business – including timber buyers, truck drivers, equipment operators, and those working at the mills – that are dedicated and active in helping us rid the timber industry of these thieves.

The Alabama Forestry Commission is committed to reducing the number of forestry-related crimes that occur each year across the state. These crimes generate annual losses of hundreds of thousands of dollars to landowners and the timber industry. Overcoming timber theft requires two things: *education and enforcement*. Working together we can conquer this problem. We appreciate the Alabama Forestry Association, Alabama Loggers Council, Alabama Forest Owners Association, Alabama TREASURE Forest Association, and other organizations that have been very helpful in educating landowners and forestry workers about timber thefts and the dangers associated with selling timber.

The AFC provides a Wildland Arson/Forest Crimes Hotline so that citizens can call and report theft of timber, theft or vandalism of harvesting equipment, and wildland arson. The toll-free number is 1(800) 222-2927. The information provided is confidential and the caller remains anonymous.☎

