

TIMBER TRESPASS



I. DAMAGES

- a. Landowners are entitled to treble damages unless mitigating circumstances are proven by the trespasser.
- b. Types of trees:
 - i. Landscape/ornamental (noncommercial) trees on residential or recreational property;
 1. Landowner can recover restoration and replacement costs
 2. Variety of valuation methods
 - ii. Productive tree (i.e., fruit trees);
 1. Production value
 - iii. Christmas trees (intended to be sold);
 1. Lost profits
 - iv. Timber
 1. Stumpage value and other damages that are the normal consequence of a logging operation
- c. Cannot recover under the waste statute (4.24 RCW) for timber trespass. Porter v. Kirkendoll, 194 Wn.2d 194 (2019).
- d. Difference in value of the land before and after cutting.
- e. Damages may exceed the underlying value of the property if there is a reason personal to the owner for restoring the property to its original condition.

- f. Timber trespass damages are not limited to the fair market value of the underlying property; however, the damages must be reasonable in relation to the property value.
- g. Emotional distress damages are recoverable. Birchler v. Castello Land Co., 133 Wn.2d 106, 117 (1997). And, those damages may be trebled. Pendergrast, 186 Wn.2d at 568. The emotional distress damages are not limited by the value of the land.

II. INTENT

- a. Timber trespass is a *strict liability* tort because the statute provides for liability *without culpability or a mental state*.
- b. The trespass is considered intentional unless the trespasser proves that:
 - i. the trespass was casual or involuntary;
 - ii. it had probable cause to believe that the land on which the trespass was committed was its own or that of the person who the work was for or who directed the work; or
 - iii. the tree was taken from unenclosed woodlands for the purpose of repairing a public highway or bridge adjoining it. RCW 64.12.040.
- c. If the trespasser establishes any of these mitigating circumstances then the judgment shall only be for single damages, not treble.
- d. A subjective belief is not enough. The trespasser's belief must be objectively reasonable.
- e. The trespasser bears the burden of proving the existence of mitigating circumstances.

III. WHAT IS IT?

- a. Cutting down, or otherwise injuring, and carrying off the tree (or shrub) of another without legal authority. RCW 64.12.030

IV. WHAT IS THE PURPOSE OF THE STATUTE?

- a. punish a voluntary offender,
- b. provide treble damages, and
- c. discourage persons from carelessly or intentionally removing another's merchantable shrubs or trees on the gamble that the enterprise will be profitable if actual damages only are incurred. Pendergrast v. Matichuk, 186 Wn.2d 556, 567 (2016).

V. HOW IS IT DISTINGUISHED FROM WASTE?

- a. The timber trespass statute imposes liability on any person who removes *to a distance* any timber on the land of another person whereas the waste statute imposes liability on any person who removes timber from the land of another.
- b. The waste statute provides that if the timber trespass statute applies, the waste statute does not apply.
- c. The carrying off of timber is the key distinction and determinative factor.

VI. PROPER PARTIES

- a. Person directing timber trespass;
- b. Logging company and/or party who actually trespassed;
- c. If licensed contractor, surety company;
- d. Ensure language of complaint includes both allegations of intentional acts and negligence to ensure potential for insurance coverage of trespasser(s).

VII. TYPES OF EXPERTS

- a. Arborist – to determine the type of trees lost.
- b. Real estate appraiser – to determine the value of the underlying land.
- c. Doctor or mental health professional – to determine the extent of emotional distress.

VIII. ISSUES OF NOTE

- a. Boundary trees
 - i. If a tree is on a property boundary it is owned by both adjoining property owners as co-tenants. One co-tenant cannot interfere with the rights of the owner of the other co-tenant, including knowingly trimming the boundary tree in a manner that will kill the tree.
 - ii. If financially feasible, a survey should be conducted to determine the true ownership of a boundary tree at issue.
- b. Neighboring trees/shrubs
 - i. Neighboring property owners have the right to trim any portion of trees or shrubs that cross over the boundary line onto their property. They are not permitted, however, to take the entire tree or shrub, nor are they entitled to cross the property line when trimming the tree or shrubs. They do not otherwise have a duty of care to prevent harm to the shrubs when performing pruning.
 - ii. Neighboring landowners may have an action for abatement of a nuisance for damages arising from overhanging branches and/or encroaching roots.