

§7552. Injury to land, forest products or agricultural products

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agricultural product" means crops produced and livestock raised as a result of cultivating the soil and harvesting. Agricultural products include, but are not limited to, vegetables, fruit, forages, grain, nuts, berries, flowers, ornamental plants, nursery crops, milk, dairy products, eggs, domestic livestock and other products in varying degrees of preparation. Agricultural products also include the soil amendments and by-products that are used in cultivation. [PL 1995, c. 450, §2 (NEW).]

B. "Christmas tree" and "evergreen boughs" have the same meanings as provided in Title 12, section 8841. [PL 1995, c. 450, §2 (NEW).]

C. "Forest products" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, evergreen boughs or cones or other seed products. [PL 1995, c. 450, §2 (NEW).]

D. When there is damage to public property, the term "owner" may include a suitable official authorized to act on behalf of the public entity.

For damage to a monument or mark under subsection 2, paragraph C, "owner" may include the entity for whose benefit the monument or mark is maintained. [PL 1995, c. 450, §2 (NEW).]

E. "Professional services" may include:

(1) The damage estimate of a licensed professional forester;

(2) A boundary survey;

(3) A title opinion; and

(4) Attorney's fees for preparing the claim and bringing a court action. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 450, §2 (NEW).]

2. Prohibitions. Without permission of the owner a person may not:

A. Cut down, destroy, damage or carry away any forest product, ornamental or fruit tree, agricultural product, stones, gravel, ore, goods or property of any kind from land not that person's own; or [PL 1995, c. 585, §3 (AMD).]

B. [PL 1995, c. 585, §3 (RP).]

C. Disturb, remove or destroy any lawfully established transit point, reference point, stake, plug, hub, guardstake, bench mark, pipe, iron, concrete post, stone post or other monument of any railroad, highway, public utility or other engineering location or survey or any such monument marking the bounds of public or private property. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 585, §3 (AMD).]

3. Measure of damages. This subsection governs the measurement of damages resulting from a violation of subsection 2.

A. When agricultural or forest products have been destroyed or carried away, the owner may recover as damages either the value of the lost products themselves or the diminution in value of the real estate as a whole resulting from the violation, whichever is greater. [PL 1997, c. 214, §1 (AMD).]

B. For lost trees the owner may choose to claim:

(1) The market value of the lost trees;

- (2) The diminution in value of the real estate as a whole resulting from the violation;
- (3) The forfeiture amounts determined in Title 17, section 2510, subsections 2 and 3;
- (4) If the lost trees are ornamental or fruit trees, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting; or
- (5) If the lost trees are located within 400 feet of a dwelling, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting.

In addition, the owner's damages for lost trees that are not ornamental or fruit trees or trees located within 400 feet of a dwelling may include the costs for regeneration of the stand in accordance with Title 12, section 8869.

The court may reduce the damages awarded for good cause shown when the cutting of trees was done negligently or without fault.

Public utilities, as defined in Title 35-A, section 102, and contractors performing work for public utilities are not liable for damages under this paragraph for lost trees the trimming or removal of which is necessary to provide safe and reliable service to the customers of the public utilities. [PL 2019, c. 195, §1 (AMD).]

B-1. [PL 2019, c. 195, §2 (RP).]

C. When a monument or marker has been disturbed, removed or destroyed as prohibited in subsection 2, paragraph C, the owner's damages may include the cost of engineering and surveyor services necessary to reestablish a monument or marker and its proper location. [PL 1997, c. 214, §1 (AMD).]

[PL 2019, c. 195, §§1, 2 (AMD).]

4. Damages recoverable. Damages are recoverable as follows.

A. A person who negligently or without fault violates subsection 2 is liable to the owner for 2 times the owner's damages as measured under subsection 3 or \$250, whichever is greater. [PL 1995, c. 585, §3 (AMD).]

B. A person who intentionally or knowingly violates subsection 2 is liable to the owner for 3 times the owner's damages as measured under subsection 3 or \$500, whichever is greater. [PL 1995, c. 585, §3 (AMD).]

C. In addition to the damages recoverable under paragraphs A and B, a person who violates subsection 2 is also liable to the owner for the costs the owner may incur if the violation results in a violation of any federal, state or local law or ordinance and, as a result, the owner becomes the subject of an enforcement proceeding. These costs include attorney's fees, costs and the value of the owner's time spent on involvement in the enforcement proceeding. [PL 1995, c. 585, §3 (NEW).]

D. A person who with malice violates subsection 2 is subject to punitive damages in addition to the damages under paragraphs A, B and C. [PL 2015, c. 241, §3 (NEW).]

[PL 2015, c. 241, §3 (AMD).]

5. Costs and fees. In addition to damages, interest and costs, the owner may also recover from the person who violates subsection 2 the reasonable costs of professional services necessary for determining damages and proving the claim as long as the person first has written notice or actual knowledge that a claim is being asserted.

[PL 2015, c. 241, §4 (AMD).]

6. Offer of settlement. At any time after the violation but more than 10 days before trial begins, the person who violated subsection 2 may make a written offer to settle the owner's claim.

A. For such an offer to be valid, it must by its terms remain open for at least 10 days and the owner must first be provided with liability and damage information that is:

- (1) Available to the person and not reasonably available to the owner; and
- (2) Necessary or pertinent to an evaluation of the owner's claim. [PL 1995, c. 450, §2 (NEW).]

B. Notwithstanding the Maine Rules of Civil Procedure, Rule 68, any offer not paid within 10 days of its acceptance is void for purposes of this subsection but may be specifically enforced by the owner, if the owner so elects. [PL 1995, c. 450, §2 (NEW).]

C. If the owner does not accept the offer, the owner may not recover any interest, costs or professional fees incurred following the date of the offer unless the owner later proves that the value of the claim, at the time the offer was made, exceeded the amount of the offer. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 450, §2 (NEW).]

7. Issues of fact. The court sitting without a jury shall resolve issues of fact arising under subsections 5 and 6.

[PL 1995, c. 450, §2 (NEW).]

8. Other actions barred. A recovery from a defendant under this section bars an action to recover damages under section 7551-B from that defendant for the same specific damage.

[PL 1995, c. 585, §4 (NEW).]

SECTION HISTORY

PL 1977, c. 313, §1 (AMD). PL 1983, c. 362, §2 (AMD). PL 1983, c. 507, §7 (AMD). PL 1983, c. 816, §A5 (RPR). PL 1989, c. 555, §13 (AMD). PL 1995, c. 450, §2 (RPR). PL 1995, c. 585, §§2-4 (AMD). PL 1997, c. 214, §1 (AMD). PL 1999, c. 339, §1 (AMD). PL 2015, c. 241, §§1-4 (AMD). PL 2019, c. 195, §§1, 2 (AMD).

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