



Horticulture

George A. Mills, III
Attorney and Wayne County Master Gardener

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Gardening and the Law

This is a general summary of gardening and the law in West Virginia. Facts and circumstances may vary in each case; gardeners should consult legal counsel for more detailed advice.

I. Question: Dogs and cats are running through my land and ruining my flowers and vegetable garden and digging up my lawn. What are my rights?

The legislature of West Virginia has enacted legislation generally dealing with dogs and cats. (W.Va. Code Ch. 19, Art. 20 § 1-23). The legislation deals more with dogs than cats.

Dogs are declared to be personal property and when above six months old must be taxed. Any person who owns, keeps or harbors a dog, or who owns or operates a kennel, must register the dog and the dog must wear the registration tag. Registration and tag are issued by the county assessor. Cats are not mentioned in the registration law. Dogs not wearing registration tags are determined to be not registered and may be impounded, sold, or destroyed by proper officials and in the manner designated by the state statute.

Any owner or keeper of any dog who permits such dog to run at large shall be liable for any damages inflicted on another's person or property by such dog while so running at large, that is, not properly secured. Full responsibility for damage done by dogs is upon the owners of such dogs by law and it is not necessary to show that the owner was negligent. Cats are not included. One would assume, however, that if a cat does damage, one would have to prove that the owner of the cat was negligent in allowing the cat to run at large and should know that the cat was capable of damaging another's property or person before the cat owner could be held liable.

If the ownership of the dog cannot be determined from county assessor tags or registration records, residents should report the dog running at large to the county animal control authority or ask the county commission for the proper local office to notify. To protect against possible rabies transmission, never attempt to catch or impound the dog in the yard or garden. A tag on the dog may be clearly visible, but caution still is advised.

Proof of damage to the garden by the dog running at large is also required; so get out the video camera or film camera as a picture is worth a thousand words. Seek legal counsel to assist you in choosing the proper court and in presenting your case.

II. Question: If a dog kills or assists in killing, wounding, or worrying livestock or poultry, what can you do?

In West Virginia, if any dog out of the enclosure of the owner has killed or assisted in killing, wounding, or worrying any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry, the owner or keeper of the dog shall be liable in the amount of damages sustained to be recovered in an action in any court or magistrate having proper jurisdiction. Knowledge by the owner that he knew the dog was accustomed to worrying, killing, or wounding is not required to be proved in order to bring the legal action.

If the owner or keeper of the dog cannot be found nor is financially responsible, then an alternative procedure is to file a claim with the county commission of the county where the loss was sustained. Both remedies are not available to the owner of livestock, but if an action is maintained and the total amount cannot be recovered, then the difference may be sought from the county commission. Legal assistance is advised before choosing which remedy to use to recover the loss sustained.

If you see a dog chasing, worrying, wounding, or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry, outside the enclosure of the owner of the dog, you may kill the dog unless the owner of the dog is directing the dog to chase or worry the livestock. Harboring, secreting, or helping to secrete a dog that you know or have reason to know has worried, chased, or killed livestock, not belonging to the owner of the dog is a misdemeanor or criminal act, and every day constitutes a separate offense. (W.Va. Code Ch. 19, Art. 20 § 14-15-16-17).

III. Question: Is it a crime in West Virginia to take or injure the garden or field crops of another?

If a person enters the orchard, field, garden, or market garden of another person, without the consent of the owner or occupier, and does damage to the fruit, vegetables, grain, or grass growing or being thereon, or takes, carries away, injures or destroys any of the grain, fruit, grass, or vegetables growing or being thereon, the person is guilty of a misdemeanor, and upon conviction, shall be fined not more than \$500.00, or confined in jail not exceeding six months, or both.

If a person commits the acts enumerated above and if charged or indicted and proved that the property injured or destroyed, or taken and carried away is of a greater value than \$1,000.00, the person is guilty of a felony and upon conviction imprisoned in the penitentiary not less than one year nor more than ten years or in the discretion of the court, confined in jail not more than one year and fined not less than \$50.00 nor more than \$2,500.00. It does not appear that damaging flowers is a crime included in this statute, but recovery may be had under the law of trespass for civil damages if they are destroyed. (W.Va. Code Ch. 61, Art. 3 § 34).

IV. Question: What do I need to know before buying or selling plants?

The West Virginia legislature adopted a Plant Pest Act in 1967. The act and its enforcement is the duty of the commissioner of agriculture of West Virginia.

The act makes it unlawful for a nurseryman, dealer, or agent to expose or offer for sale, sell, deliver, or give away any plants or pots of plants commonly known as nursery stock unless such person shall first secure a certificate of registration from the commissioner of agriculture. The fees vary depending upon whether the person is a nurseryman, dealer, or agent of a nurseryman or dealer.

A "nurseryman" is defined as any person who owns, leases, manages or is in charge of a nursery.

A "nursery" is defined as any grounds or premises on or in which nursery stock is being propagated or grown for sale or distribution, including any grounds or premises on or in which nursery stock is being fumigated, treated, packed, stored, or otherwise prepared or offered for sale or movement to other localities.

A "dealer" means any person who buys, receives consignment, or otherwise acquires and has in his or her possession nursery stock which that person has not grown from propagative material, such as tissue culture plants, cuttings, liners, seeds, or transplanted nursery stock for the purpose of offering or exposing for sale, reselling, reshipping, or distributing. Each separate location shall constitute a dealership.

"Nursery stock" is defined as all trees, shrubs, and woody vines, including ornamentals, bush fruits, grapevines, fruit trees, and nut trees, whether cultivated, native, or wild, and all buds, grafts, scions, fruit pits, and cuttings from such plants. It also means sod, including sod plugs and sod-producing plants, and such herbaceous plants including strawberry plants, narcissus plants, and bulbs as declared by the commissioner necessary to control movement because of destructive plant pests. Florists or greenhouse plants for inside culture or use, unless declared otherwise by the commissioner, shall not be considered nursery stock, except that all woody plants, whether greenhouse or field grown, if for outside planting are defined also as nursery stock.

An "agent" is a person soliciting orders for nursery stock under partial or full control of a nurseryman or dealer.

"Plant pest" means any living stage of: insects, mites, nematodes, slugs, snails, protozoa, or other infiltrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to the above or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or plant parts, or any processed, manufactured, or other products of plants.

The agriculture commissioner may during reasonable working hours enter upon any public or private premises, except private residences, to examine and sample all plants, trees, soil, articles, and substances suspected of being infected with dangerous plant pests or insects or noxious weeds.

In addition, all stock in custody of any dealer shall be subject to inspection. Nurseries shall be inspected annually.



Stock brought into the state also must contain a certificate of inspection by the proper official from where it was shipped or brought or sent. The certificate must show that such nursery stock, including soil, was found to be free from plant pests at the time of inspection.

Any person growing or possessing any plants or plant products or any other substance, material, or thing may request a special inspection for the purpose of determining the presence of plant pests or noxious weeds that might prevent the movement or use of the plants or plant product, but the costs shall be paid by the person requesting the inspection and certificate stating the results of the inspection.

The prosecuting attorney of each county in West Virginia shall represent the commissioner of agriculture to enforce violations of the Plant Pest Act. (W.Va. Code Ch. 19, Art. 12 § 1-17).

V. Question: There are trees and hedges growing between my property and my neighbor's along the property line that need trimming. What do I do to lawfully trim them or cut them down?

This area is always touchy and depends largely on whether you and the neighbor can agree on what needs to be done and perhaps share in the costs.

In West Virginia, if the problem is a hedge fence along a public road or a division hedge fence between farms or land on premises, it must be trimmed so that the branches shall not extend into the public road, or upon the land of an adjoining owner, more than eighteen inches over the dividing line. Upon notice, criminal charges may be brought against the one failing to keep the hedge trimmed. (W.Va. Code Ch. 19, Art. 17 § 3).

Cutting or removing trees, shrubbery, flowers, or any flora from another person's lands, without written permission is a misdemeanor. Upon conviction, the offender may be fined or jailed and in addition may be liable to the owner for three times the value of the trees, timber, or plants.

Department of highways, county, or municipal employees performing roadside maintenance also should obtain permission before cutting but not necessarily in writing.

Utility company employees should also obtain permission, but sudden emergency is always an exception if it endangers persons or property.

In conclusion, it is always best to work with your adjoining neighbor in these matters regarding property line trees, plants, shrubs or hedges. If the "neighbor" is the state highway, county, city, or town, always check with the appropriate officials before acting. Caution is also advised if a utility has wires in the general vicinity, and contact with utility officials is also advised. An attorney will advise you specifically after understanding your specific problem.

VI. Question: What is the landowner's responsibility for pesticide that drifts onto adjoining lands or washes into lakes or streams?

This is a difficult issue especially today when we are all concerned about the safety of our environment and the quality of food and meats.

In 1990, the West Virginia Legislature adopted the Pesticide Control Act, which is designed to regulate and control pesticides in the public interest by registration, use, and application. The commissioner of agriculture is responsible for carrying out the provisions of the act. These include issuing permits to anyone who is engaged in the business of applying pesticides or authorizing individuals to apply "restricted use pesticides," which are not available for general use by private individuals on their own land.

The basic premise in law is that one must use his or her land in such a manner so as not to injure the land of another. Therefore, if in using pesticides on your own property, it drifts onto the land of another and causes damage or through misapplication or negligence you cause damage to the vegetation or land of your neighbor or contaminate streams or lakes that are in the public domain, liability likely will be the result.

For more information on pesticide regulation, consult the West Virginia Department of Agriculture. In the meantime, be sure to read the label of all pesticides purchased and use them as directed. Follow the proper precautions while applying the product and disposing of the empty container.

