

# Timber Sale And Harvesting Contracts

A timber sale can be a source of great satisfaction to a landowner, or it may be a source of surprise, frustration, and stress. Unfortunately, the latter is often true for landowners who make timber sales infrequently.

A timber sale is, ideally, a smoothly executed business transaction that meets the expectations of both the landowner and the timber buyer, without surprises to either party. The typical timber buyer has considerable experience and is probably very knowledgeable on all aspects of the proposed transaction. The landowner, on the other hand, may be entering into an unfamiliar transaction or may not possess the most current information on timber sales.

A prudent landowner will view a timber sale as a serious matter that requires careful preparation. The results of many years of past timber growth are at stake, and the condition of the forest after the sale profoundly affects its productivity for many years to come.



## The Contract

In a business sense, a timber sale results from an agreement between the seller and the buyer. While an oral agreement may prove to be satisfactory, the best practice by far is to put the agreement into a written contract and to seek knowledgeable legal advice in doing so. A written contract reduces the possibility of misunderstandings between buyer and seller and also protects their respective interests regarding any third parties that may be involved. Invariably, if the buyer is paying cash in advance of cutting, the buyer will require a written contract.

From the landowner's point of view, a written contract provides, in addition to legal protection, a format in which the terms of the timber sale can be described. Preparing a contract encourages forethought and planning, which will minimize difficulties and will ensure that the transaction will meet the landowner's expectations.

A written contract is not a substitute for good faith and fair dealing between parties. It does provide, however, a framework in which good faith and fair dealing can operate in an orderly and effective manner.

A written timber sale contract does not have to be long to be legally effective. A simple contract would include:

1. Identification of the seller and the buyer.
2. The location and a description of the timber being sold.
3. The consideration or value being exchanged for the timber and how it is to be paid.
4. The term or duration of the contract.

If a timber sale contract omits this last provision or states that the timber is to be cut and removed within a "reasonable" time, the Alabama Statutes give the buyer 10 years in which to do so.

Many timber buyers have a prepared, "standard" contract form. The landowner should have a knowledgeable attorney review and explain the effects of

the buyer's form before agreeing to the sale. It may be that the buyer's form is quite satisfactory from the landowner's standpoint; however, the decision to use the buyer's form should be an informed decision, made only with sound legal advice. If the buyer and seller so agree, these forms can be modified to better reflect the intent of both parties. Again, the landowner should do so only after consulting his or her attorney.

If the landowner's property is financed, the timber is probably covered by the mortgage and is a part of the lender's collateral. If this is the case, the landowner should work out an arrangement with the lender before the sale. Depending on the situation, the lender may or may not require that part or all of the sales proceeds be applied to the loan. This arrangement should be in writing, too, to prevent later misunderstandings. The written agreement may range from a formal release to a rather informal "cutting letter." Although lending institutions may be immortal, their human representatives are not; documentation of the cutting arrangement can prevent all sorts of future problems.

The timber sale's implications for the landowner's income taxes are also important. Competent tax advice should be sought well before the sale for clarification of the tax laws. These laws were radically changed in 1986 and are subject to further changes at any time.

A simple timber sale contract may meet basic legal requirements, but prudent landowners will usually include additional requirements to suit their own specific needs. A well-written contract will contain clauses intended to reduce the potential for future disagreements and to protect the interests of both buyer and seller. Such a contract will carefully describe the timber and how payment is to be made, identify any specific requirements of the logging job and associated insurance requirements, and penalties for non-conformance. Harvesting provisions for timber contracts are discussed below.

## **Timber Description**

An accurate legal description of the timber sale area is very important to a timber sale and harvest contract. If corners and boundaries of the timber sale are to be located and marked, specify which party will bear the expense for locating the boundary line and which party will be liable to neighboring areas for trespass cutting. The specific timber to be harvested should be described: for example, "all pine pulpwood marked with blue paint." If the tract will be clear cut, the timber being sold is usually described as "all merchantable timber." The species to be harvested should also be clearly stated.

**Measurement.** If you choose to sell your timber by

the unit, specify the units of measurement to be used, and who is to do the measurements and where. Depending on local customs, measurement may be made by one of several different log scales, by weight, by cords, or by some combination of these. A unit sale should specify that all timber harvested is to be measured and paid for according to its most valuable product use.

**Marking Timber.** If an intermediate harvest is being made, specify the type of harvest that you desire and how the timber is marked. For example, if you are making a seed tree cut, you may specify that all trees banded with blue paint at diameter breast high (DBH) are seed trees and will not be cut or damaged. If you are thinning the stand or doing selective harvesting, you may want to designate the trees to be cut with one paint spot above DBH and another paint spot below stump height.

## **Payments, Damage Clauses, And Penalties**

It is best to clearly state in your contract the agreed-upon purchase price and the method of payment. If you desire payment in full at the time of contract execution, specify this requirement in the contract. Be sure to clearly state the time period that you will allow for cutting your timber.

**Cutting Time.** Normal time periods for cutting timber in the South are 12 to 24 months, with an allowance for a cutting time extension on the contract, if requested by the buyer and granted in writing by the seller. Contract extensions should be fairly evaluated based on the circumstances that caused the buyer's failure to completely harvest the tract. Clarify whether you will receive specific payment as additional consideration for the extension and for any timber growth occurring during the contract period.

**Damage.** During the actual harvesting operation, the logging equipment may cause damage to your land or the remaining timber stand. A certain degree of damage should be expected, as it is virtually impossible to maneuver heavy equipment in the woods and cause no damage. The amount that you should expect depends upon the type of harvesting equipment or logging system used, the steepness of the terrain, the stand density, and the caution exercised by the logger, among other factors.

If you are concerned about what your timber stand may look like after logging, visit a comparable site that has been recently harvested by the logger who will harvest your tract. A site visit will often provide insight into the quality of work performed by the logger. Damage can be minimized by careful and prudent logging.

You may want to state your damage requirements, such as no more than a maximum number of trees per acre having visible skidding damage, or skidding ruts no more than a certain number of inches deep. But be aware that more stringent damage restrictions will usually result in more expensive harvesting costs, which may reduce the price that you receive for your timber.

If you are making a partial cutting, you should include a penalty for cutting non-designated trees. If you specify in the contract a dollar value per merchantable tree volume for the cutting of non-designated trees, later problems will be more easily resolved. The usual penalty for such damage is double or triple the stumpage rate. If you intend to remove a canopy or overstory to allow the future stand room to grow, you should likewise specify a penalty for failure to cut designated trees.

**Non-performance.** If you wish to emphasize that the harvesting contract be precisely executed, you should include some type of penalty for failure to perform by the buyer. Although contract performance can be forced by the court system, a court action may take an unacceptable amount of your time and money.

A performance bond or cash bond escrow is often posted by the buyer until completion of the contract. The amount of this performance bond is frequently 5 percent. If penalties are incurred due to excess damage or failure to comply with the contract, that portion of the bond is forfeited to the seller. Once again, the greater the bond amount required, the less attractive your timber may be to a prospective buyer.

**Arbitration.** Sometimes you and the buyer may not be able to agree on whether or not the contract has been fulfilled. This dilemma can usually be resolved by appointing an impartial third party as an arbitrator. The arbitrator can evaluate the contract clause in question and the evidence on the ground and usually offer a settlement agreeable to both parties without resorting to a court action. Arbitration can save both time and money for the buyer and seller.

## Logging Clauses

Logging clauses detail the specific desires of the buyer and seller. These clauses can be of any degree of detail, but once again, the more detailed the logging clauses, the more costly it will be to harvest your timber, and you may receive lower stumpage prices from the buyer.

**Ingress And Egress.** The buyer has the right of ingress and egress for his or her employees and equipment to the timber tract. That is, the buyer has the right to enter and to leave your property with all the

people and equipment necessary to do the job. If you desire that he or she not use a certain entrance to your property, such as through your pasture or beside your house, specify this requirement in the contract.

**Logging Method.** You may specify that a certain method of logging be used, such as a forwarding system instead of tree-length skidding, to minimize damage to your residual stand during a thinning operation. Road maintenance and skid trail layout and use may also be important to you. If you desire that the roads be maintained to a minimum standard, refer to that standard in the contract. A usual practice is to return the roads to as good or better condition than before logging occurred. In addition, to reduce the possibilities for non-point source pollution, you should specify that all logging should be done in accordance with Best Management Practices (BMP) for logging in Alabama.

Stump height and top diameter harvested may be important to you. If you want to easily machine plant your next timber stand, allow a maximum stump height over which the tree planter can easily maneuver. If you do a specify a maximum stump height, you may have higher stumps than your planter can negotiate, especially if the timber is being felled with a chainsaw. Unless you desire a greater than reasonable amount of slash disposal and site cleanup, a top diameter specification is not usually stated if all merchantable timber is being sold. In this case, it is the seller's responsibility to remove as much of the value as he desires. But, if you are selling your timber based on unit volume, be sure to specify the maximum top diameter that you will allow to remain in the woods.

**Acceptable Damage.** If you are selling timber from a selection cutting and want to explicitly protect the remaining trees, you might specify an amount of damage that will be acceptable. For any damages beyond the maximum acceptable limit, specify what those damages will cost the timber buyer. Be specific, such as allowing a maximum of a 6- x 6-inch bark scrape on no more than 10 percent of the residual crop trees. Remember, the more stringent this requirement, the more costly it may be to harvest your stand with high-production logging equipment, and the lower the stumpage price.

**Fire Hazard.** Fire protection is normally not a major problem in logging in the South. However, there may be times when you would want to include a requirement that the logger comply with all fire laws, and that the buyer be responsible for all damages caused from fires resulting from his or her negligence. Fire-suppression responsibilities for the buyer are normally limited to rendering all possible assistance with the logging equipment on the site.

## The Sale And Harvest

A timber sale and harvest contract is a tool that allows a buyer and a seller to legally communicate their desires and requirements for a timber sale and logging operation. The contract should be expressed in clear and concise terms, leaving no room for confusion or ambiguity: A checklist of suggestions to use in preparing timber sale contracts is shown below.

If you are selling your timber to a buyer who will be contracting the harvesting operation to a professional logger, arrange a meeting with the buyer's representative, usually the logging supervisor, to discuss the terms of the contract. Arrange this meeting on the tract to be logged, so that you or your representative can point out any special restrictions that you have imposed. This meeting will help to open a line of communication that can reduce the number of problems in the future. When the harvesting operation actually begins, make sure that you check the logging progress on a regular basis, and inform the logging supervisor if you think that the terms of the contract are not being faithfully followed.

Be reasonable in your expectations and assignment of damage penalties. In some instances, the amount that you receive for your timber may be reduced due to excessive restrictions. These restrictions may be deemed unreasonable and reduced by a court of law if a conflict cannot be resolved by an impartial arbitrator.

Finally, use assistance in preparing your next timber sale. A professional forester can greatly enhance the timber sale preparation and harvest planning. A tax accountant can direct your timber sales income and reforestation expenditures to reduce your tax burden. And a competent attorney experienced in timber sales transactions can ensure that your best interests are represented and your legal exposure is minimized.

A well-written timber sale and harvest contract is the best way to start off your next timber sale, so that everyone knows the rules for logging in your forest.

### Suggested Items To Include In A Timber Sale Contract

1. Name and address of buyer.
2. Date contract is executed.
3. Specific description of timber to be sold and cut.
  - Species included and excluded.
  - Minimum size allowable for cutting.
  - How trees to be cut will be designated, if they are to be marked.
  - Whether timber becoming merchantable during the removal period or only timber which is merchantable on date of sale will be cut.

4. Exact location and legal description of the timber sale area. If corners and boundaries are to be marked, state at whose expense marking will be done.
5. Declarations of the seller's ownership and right to convey. This may include a title abstract and title insurance.
6. Provision for buyer's entrance into and exit from the property. Include what timber can be used for logging purposes, such as bridge building.
7. Care required of buyer towards other property of seller.
8. Method of logging to be employed.
9. Statement that all logging should be done in accordance with Alabama Best Management Practices.
10. Penalty for cutting non-designated timber.
11. Penalty for not cutting designated timber.
12. A provision to require one area to be completely logged before another area is begun.
13. Fire protection clause.
14. Method and place of scaling and measurement.
15. Price basis, to include method and terms of payment.
16. Duration of agreement.
17. Provision for when logging should begin.
18. Provision for or against renewal of contract.
19. Clause for arbitration.
20. Utilization provisions for stump height, top diameter, etc.
21. Ownership of by-products.
22. Provision for payment of severance taxes.
23. Statement of who suffers the loss if timber is destroyed or stolen after execution of contract.
24. Provision for or against assignment of the contract.
25. Signature of both parties.
26. Notarization of the contract.
27. Recording of the contract at the county courthouse.

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