University of Tennessee, Knoxville
Trace: Tennessee Research and Creative Exchange

Forestry, Trees, and Timber | UT Extension Publications

12-1-2005

PB1607 Landowner's Guide to Timber Sale Contracts

The University of Tennessee Agricultural Extension Service

Follow this and additional works at: http://trace.tennessee.edu/utk_agexfores

Part of the Forest Management Commons

Recommended Citation
"PB1607 Landowner's Guide to Timber Sale Contracts," The University of Tennessee Agricultural Extension Service, PB1607-2.5M-12/05(Rev) E12-4915-00-006-06, http://trace.tennessee.edu/utk_agexfores/32

The publications in this collection represent the historical publishing record of the UT Agricultural Experiment Station and do not necessarily reflect current scientific knowledge or recommendations. Current information about UT Ag Research can be found at the UT Ag Research website.
This Timber & Wood Products is brought to you for free and open access by the UT Extension Publications at Trace: Tennessee Research and Creative Exchange. It has been accepted for inclusion in Forestry, Trees, and Timber by an authorized administrator of Trace: Tennessee Research and Creative Exchange. For more information, please contact trace@utk.edu.

UT Extension
PB1607

Landowner's Guide to Timber Sale Contracts

THE UNIVERSITY of TENNESSEE

Landowner's Guide to Timber Sale Contracts

Wayne K. Clatterbuck, Associate Professor
Larry Tankersley, Extension Specialist
Forestry, Wildlife & Fisheries

A written timber sale agreement or contract is generally the preferable and safest method of selling timber. A written contract is a legally binding document that protects both the buyer and the seller (the landowner) from misunderstandings that may develop in the absence of such an agreement. A contract will verify the seller's ownership of the timber to be sold and the absence of liens or other liabilities. There is little legal recourse with verbal agreements. By negotiating a contract, both parties are likely to work out difficulties before they occur and be more pleased with the transaction.

No two timber sale contracts are alike. The amount of definition and elaboration depends on the needs of both the buyer and the seller. The agreement does not have to be of great detail or length, but should express the expectations, wishes and responsibilities of each party. Many timber buyers have their preferred form and this contract is usually written to protect the buyer. It mayor may not protect the seller. Consequently, buyers and sellers should negotiate specific contract terms.

A typical timber sale contract usually contains the following: a description of the timber to be sold (estimated volume, number of trees and species), which timber will and will not be cut, the selling price (either lump sum or unit price), terms of payment, the location and boundaries of the sale, and time allowed to complete the logging operation. Other contract provisions may explain agreements between seller and buyer, such as property damage, penalties, liabilities, insurance, subcontracting, procedures for settling disputes, and extensions or suspensions. Contracts usually explain the adherence to Best Management Practices (BMPs) which may include conditions when logging will not be permitted (generally wet weather); location of roads, skid trails and log landings; protection of remaining timber and property; and erosion control measures such as revegetation of disturbed areas (skid trails and landings) and construction of water bars. Most contracts include provisions for performance bonds supplied by the buyer to ensure that if any of the conditions of the contract are not fulfilled, the value of such violations or damage is deducted from the bond.

The seller should include anything of importance pertaining to the timber sale and the protection of property in the contract. However, any seller-oriented contract stipulation will usually add costs to the buyer and reduce the selling price of the timber. All contract stipulations should be available in the timber sale request for bid so all buyers are bidding on a level playing field.

Competitive bids should be invited from a number of potential timber buyers where several mills or dealers are competing for wood. In competitive markets, studies have shown that the actual bid amount increases according to the number of bidders.

Handshake agreements and buying timber on shares jeopardize the landowner's control of the timber sale, trees and property. Gentlemen's agreements do not have legal status. Do not allow a second party to dictate the terms of your assets. Your trees and property are your responsibility, and you as the seller should be the one to dictate the terms. The items listed in the following sample timber sale contract should be considered by the seller in negotiating the terms of the contract. The first group of **Essential Items** should be included in all timber sale contracts.

The second group labeled **Other Important Considerations** may be essential depending on individual circumstances. The items in the **Special Provisions** section may be applicable to certain specific conditions. **Statutes in Tennessee** with relevance to timber sale contracts are discussed at the end of the contract.

Sample Timber Sale Contract

Disclaimer - The information presented below is not a legal document and should not be used as such by any prospective parties to a timber sale agreement. Each such agreement is unique and depends on the actual situation of the parties involved. The sample contract presented here is intended only to provide educational information on the general nature of the language that may be included in some timber sale contracts. In every case, anyone desiring to enter into a timber sale contract should consult an attorney in order to obtain an originally drafted contract that is written to accomplish the specific purposes intended in a particular situation. Interested parties should not use the sample contract for their own purposes. The University of Tennessee does not present the sample contract as legal advice. Nor does it represent that this sample contract is in conformity with the law governing timber sale agreements.

A. Essential Items.

While the exact wording may differ, the following items should be covered in all timber sale contracts.

(1) Agreement entered into this _____ day of_____, 19 ____, between_____

of_____ hereinafter called the seller, and _____

of _____ hereinafter called the buyer.

Explanation: *This specifies the names, addresses and telephone numbers of parties to the contract.*

(2) This agreement shall be governed by the laws of the State of Tennessee.
Explanation: *This spells out the state laws which will apply, thus avoiding confusion for absentee landowners and/or out-of-state purchasers:*

(3) The seller, having the right to sell, agrees to sell to the buyer, who agrees to buy upon the conditions

hereinafter stated, all timber that has been designated as follows: _____

and owned by the seller on the following described tract of land:

_____

_____

_____

Explanation: *This describes the timber being sold (estimated volume, number of trees and species), the method of sale, location of tract and boundary lines, number of acres and manner in which trees to be cut are marked. Trees may be marked in several ways. For example, all trees marked with red paint on both trunk and stump; all trees of a given species; all trees within a marked boundary; are to be cut. Consult a professional forester to determine the best method for your sale. If paint is used in marking, be sure to specify the color and also that a paint mark be made below the level of the stump. This provides some insurance against the cutting of unmarked trees. The description of the land called for should be a full legal description, and not simply a commonly used address. A plat book or warranty deed can be used to determine the legal description of property lines. Property lines should be clearly marked as both the buyer and the seller are liable for trespass. A map of the property is highly desirable.*

(4) Seller is the legal owner of said timber and warrants the title to the timber hereby conveyed against the lawful claims of all third parties.
Explanation: *This protects the buyer from unknown third party claims. Selling mortgage timber without a release from the mortgage is unlawful.*

(5) The purchaser agrees to pay the seller (use a or b):
a. the total sum of _____ dollars ($_____) for said timber.
Explanation: *This is the usual method for a lump-sum sale. Under a lump-sum sale, the seller is paid a fixed amount (lump-sum) for the designated timber. This fixed amount may be determined through direct negotiation with one buyer or through competitive bidding by several prospective buyers. While buyers base their bids on an estimate of the volume to be harvested, the total dollar amount received by the seller is independent of the amount actually removed. Competitive bidding is recommended to landowners using the lump-sum method.*

or b. The following price for each unit of timber stumpage removed:_____

per _____for_____.
Explanation: *Under this sale-by-unit, sale-by-scale or sale-by-piece or pay-as-cut method, the designated trees are felled and measured (scaled) to determine volume. The seller is then paid so many dollars per 1,000 board feet, per cord, per ton or per post, etc. Since the unit rate will usually vary among species, size and product classes, an item-by-item listing is indicated. Where weight is used as a basis to determine board feet, cords, etc., (volume), the buyer should provide the seller with a conversion factor to determine the price calculated in dollars per unit weight (tons). This sales method is more difficult to administer than the lump-sum sale, however; it has definite federal income tax advantages to landowners making frequent sales (i.e. less than five years between sales).*

(6) A downpayment of shall be made to the seller upon execution of this contract.
Explanation: *A downpayment of 10-20 percent is common.*

(7) Method and time of payment shall be as follows:

_____

_____

_____

Explanation: *On lump-sum sales, the balance should be paid in full before harvesting operations begin. For small sale-by-unit sales, 75-80 percent of the total estimated value should be paid in advance of harvesting. The final payment should be due upon measurement of the final log. On large sale-by-unit sales, establishing a payment schedule may be necessary, wherein the buyer makes periodic payments (i.e., weekly or biweekly) as the timber is harvested and scaled. Pay-as-cut sales are often by a timber contract, while most lump-sum sales are transferred by timber deed.*

(8) All timber marked or products included in this contract, until paid for in full, shall remain as the property of the seller.
Explanation: *This protects the seller from buyer's failure to pay.*

(9) This agreement will be in effect from_____, 19_____to_____, 19_____, after which time the contract is null and void, unless written extension is granted by the seller. If no extension is granted, all rights to remaining timber return to the seller.
Explanation: *The buyer must be given a reasonable period of time to harvest the timber. However, if no termination date is established, the contract can continue indefinitely. Extensions may be necessary due to wet weather and poor logging conditions. Depending upon the circumstances of the extension, additional compensation to the seller may be in order. Six months, one year and two years are common contract lengths depending on the size of the timber sale and logging chance.*

(10) Harvesting operations shall be conducted according to Best Management Practices (BMPs) as recommended by the Tennessee Department of Agriculture, Division of Forestry.
Explanation: *Places responsibility for soil and water protection on the buyer. BMP guidelines should be attached in the solicitation for bid.*

(11) The seller is free from responsibility for any injury, death or property damage caused by the buyer's logging operation in the sale area during the tenure of the agreement.
Explanation: *This protects the seller from liability for buyer's operation.*

(12) Both parties understand that the buyer is an independent contractor and not an employee of the seller.
Explanation: *This protects the seller from liability for worker's compensation, unemployment insurance, etc.*

(13) Buyer agrees to furnish current certificates for worker's compensation and public liability insurance.
Explanation: *Once again this protects seller from liability.*

(14) Seller may suspend operations, including removal of cut timber, if conditions of the contract are violated. Violations of conditions of the contract are sufficient grounds for termination.
Explanation: *This protects the seller from buyer's failure to follow agreed-upon terms and conditions. Seller should monitor the course of the sale frequently.*

(15) Any modifications or amendments to this contract must be mutually agreed upon, written, dated, signed by both parties and witnessed.
Explanation: *This is to ensure that both-parties are in agreement concerning any changes in the contract.*

(16) Prior to commencing harvesting operations, the buyer shall post a performance bond with_____

in the amount _____of dollars ($_____).
Explanation: *A performance bond (over and above the sale price) of $500 minimum and up to 10 percent of sale value on large sales provides evidence and assurance to the seller that the buyer will not cause unusual damage or cut trees not in the sale. The bond holder should be a mutually agreed upon third party. The bond can work as a Joint deposit by the buyer and seller in a local bank in which a withdrawal can be made after certain conditions have been met. The bond can also be a surety bond purchased through the buyer's insurance agent. In either case, the bond is returned to the buyer upon satisfactory completion of the sale.*

(17) This agreement shall be binding on the heirs, administrators, executors, successors or assigns of both parties.
Explanation: *This is to ensure that the agreement is continued, if necessary, beyond the original parties.*

(18) In witness whereof, the parties hereto have executed this Agreement this _____, day of

_____, 19_____.

Witness:	Seller(s):
_____ date	_____ date
_____ date	_____ date
Notary Public	Buyer(s):
_____ date	_____ date
Commission Expires:	
_____ date	_____ date

Explanation: *The buyer and seller should sign and date the contract and have it witnessed by at least two impartial observers. The contract should be notarized. Both parties should be provided a copy of the signed agreement.*

B. Other Important Considerations.

The items in this section should be considered for inclusion in any timber sale contract. Depending on the circumstances, some items may be as essential as those listed in Section A. Others may not be needed and should not be included simply as a matter of course. **A note of caution**: Too many restrictions may render the contract unacceptable to the buyer.

(1) No unmarked trees shall be cut without prior written approval of the seller. For any unmarked trees cut with the seller's permission, the buyer agrees to pay_____ dollars ($ _____) per_____.

For unmarked trees greater than_____(12)_____inches in diameter at_____(6)_____

inches above ground level that are cut **without** permission, the buyer agrees to pay _____dollars

($_____) per_____. For unmarked trees greater than _____(6)inches

_____ and less than_____(12)_____inches _____at_____(6)_____inches

above ground level that are cut **without** permission, the buyer agrees to pay_____ dollars ($_____)

per_____. Upon payment of appropriate compensation to the seller, the severed tree becomes the property of the buyer.
Explanation: *Some unmarked trees may need to be cut to construct logging roads, etc. The seller should be compensated*

for the additional timber. The usual penalty for cutting unmarked trees without permission is double or triple the stumpage rate. Such penalties will vary by species, size and quality of the timber and serve to protect the seller from buyer carelessness. Penalties for nonperformance such as cutting nondesignated timber; not cutting designated timber; damage to residual stand or damage to improvements should be specified.

(2) The buyer may not subcontract any part of this contract, without prior written approval of the seller.
Explanation: *This protects the seller from unknown third party interests.*

(3) In the event of dispute over the terms of this contract, final decision shall rest with a reputable person to be mutually agreed upon by the parties to this contract; and in case of further disagreement, with an arbitration board of three persons, one to be selected by each party to this contract and a third to be selected by the first two members of the board. Costs of arbitration shall be shared equally by the buyer and seller.
Explanation: *This establishes procedures for settling potential disputes.*

(4) The buyer must remain within the sale boundaries designated by the seller.
Explanation: *Make sure the boundaries are adequately marked.*

(5) The buyer has the right of access onto the seller's land for harvesting purposes. If the buyer has to cross a third party's property to enter the seller's land, the buyer must clear the right of access with the third party.
Explanation: *This provides conditions of ingress and egress. The buyer generally knows what is needed in the way of access. In case of problems with the third party, it is better (from the seller's standpoint) for the third party to be annoyed at the buyer and not at the seller.*

(6) The location of all roads, landings, and decking areas must be agreed upon by buyer and seller before operations begin.
Explanation: *The parties to the contract should discuss and agree upon which areas and how much area will be used.*

(7) Seller shall be informed of the commencement of harvesting operations
Explanation: *This is usually a week to 10 days. This provision keeps the seller better informed about what is happening on the property.*

(8) All sawtimber is to be scaled by the _____ rule. Measurements shall be made at the small end of the log along the average diameter inside bark to the nearest inch.
Explanation: *This provision is necessary only when selling sawtimber by the unit. The Doyle log rule is commonly used in Tennessee.*

(9) The seller has the right to inspect the sale area at any time.
Explanation: *This allows the seller to check the adequacy of the logging job being performed on his or her land.*

(10) If requested by seller, buyer agrees to furnish documentation of employee training such as Tennessee's "Master Logger Program" or the equivalent.
Explanation: *This provides assurance that employees have received training.*

(11) The buyer and all employees shall exercise care at all times against the starting and spreading of fires in the sale and surrounding areas.
Explanation: *This protects seller from needless loss due to fire.*

(12) Neither buyer nor seller are liable for payments or performances due to uncontrollable events such as fires and floods.
Explanation: *"Uncontrollable" is the key word here. If events occur due to buyer's action or negligence, then the buyer is usually liable. Conversely, if the buyer is not at fault, then a contract extension may be in order.*

C. Special Provisions

This section provides landowners with some specific provisions for their own situation. However, this list of special provisions may be longer than necessary. Remember that too many provisions may cost the buyer money, which could mean less money to you for your timber.

(1) Stump heights may not exceed _____ inches.
Explanation: *Stumps should be low to the ground to facilitate access by equipment and to promote stump sprouts for regeneration of the new forest. Usually stump height should be no greater than the diameter of the tree.*

(2) Trees may not be left hanging on other trees.
Explanation: *This is for safety.*

(3) Roads and trails must be opened and/or built before the skidding operation begins.
Explanation: *This provides an incentive to the buyer to become familiar with the terrain and plan the harvesting operation accordingly.*

(4) Roads shall be left free of tree tops and limbs and in good passable condition.
Explanation: *This is for access.*

(5) Logging can only be done when the ground is dry.
Explanation: *This is to avoid rutting. A statement such as "Logging must not be done when ruts become eight inches or deeper" will provide greater specificity for contract enforcement.*

(6) Logging can only be done _____ (**date**) to _____ (**date**).
Explanation: *This is to avoid special seasons such as hunting, growing, fire seasons or harvesting of field crops.*

(7) Delimbing gates shall not be used in the logging operation.
Explanation: *In a partial cutting, this avoids heavy buildup of logging slash at the delimbing gate and reduces the potential for damage to residual trees.*

(8) Damaged fencing shall be repaired with fencing of the like kind of existing fence.
Explanation: *8 through 15 are self-explanatory.*

(9) No use of surrounding fields during the growing season shall be permitted unless written approval is given by the seller.

(10) Any damage to buildings will be paid for based on a written estimate obtained by the seller from a local contractor for repairing to previous condition and quality.

(11) All litter resulting from the logging operation must be removed from the woods.

(12) Crop damage shall be paid for by buyer.

(13) Loggers are prohibited from carrying firearms and/or hunting on the property.

(14) Buyer agrees to push logging debris to the sides of loading areas to facilitate the replanting of these areas when the logging operation is completed.

(15) Tree tops shall be removed from streams.

Contract Tips

1. Consult an attorney for advice and counsel.
2. Put all agreements in writing.
3. Oral agreements are superseded by written ones.
4. Signing under duress or fraud voids a contract.
5. Consideration (promise, money, property, services) must be given by both parties to have an enforceable contract.
6. Try to make all parts of the contract easily understood, or courts (if necessary) will interpret them for you.
7. Contracts entered into for illegal purposes are void.
8. The buyer is usually liable for not performing under contract, when it is due to his/her own carelessness. When performance is beyond buyer's control, the contract may not be enforceable unless the buyer accepts responsible
9. Make sure that each party has a copy of the contract.
10. A contract which gives the seller all the advantages and/or with too many provisions will probably not be accepted by the buyer. .
11. If a **buyer-written contract** is used, be concerned about what is included. **Do not sign the contract just to get the sale completed**.
12. Buyer should know of any special conditions before negotiating a contract, since this may affect prices.

Statutes in Tennessee with relevance to Timber Sale Contracts.

Those selling timber should be familiar with these statutes as codified in the Tennessee Code Annotated (TCA).

TCA Sections 47-9-203 and 47-9-402 are related to financing statements and security agreements. These sections require that in a situation in which the seller desires to keep a security interest, with timber as collateral, then the seller must provide a legal description of the land involved and file a financing statement in the county office of real estate records.

TCA Sections 43-28-301 to -312 concern branded timber. If a buyer puts his/her brand on the identified timber with the permission of the seller, then title to the timber immediately vests in the buyer.

TCA Section 48-28-312 pertains to damages for both negligent and willful cutting of timber owned by another without such party's permission. If a buyer negligently cuts down trees that are not identified in the contract, the buyer would be liable to the seller in an amount equal to twice the value of the timber cut.

TCA Section 39-14-410 requires sawmill owners or operators or "other person(s) purchasing timber in the form of logs, dye wood, cord wood, hickory blocks, stave blocks, hoop poles, (or) cross ties" to obtain from the seller a bill of sale and keep the bill of sale for one year, making it available for inspection. Violation of this provision is a misdemeanor.

Sample timber contract adapted for Tennessee from:

Gunter, John E. And John Szydzik. 1985. Timber Sale Contract. University of Georgia College of Agriculture, Cooperative Extension Service, Athens, GA.

PB1607-2.5M-12/05(Rev) E12-4915-00-006-06

Programs in agriculture and natural resources, 4-H youth development, family and consumer sciences, and resource development.
University of Tennessee Institute of Agriculture, U.S. Department of Agriculture and county governments cooperating.
UT Extension provides equal opportunities in programs and employment.