

FORESTRY FACTS

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Understanding the Timber Sale Contract

Wisconsin Department of Natural Resources, Wisconsin Woodland Owners Association and University of Wisconsin-Extension

A timber sale contract is the most important document involved in conducting a timber sale. A well-prepared contract ensures the understanding of all parties. This *Forestry Fact* describes and clarifies the attached Sample Timber Sale Contract which suggests key elements for inclusion in your agreement.

The Sample Timber Sale Contract

The Sample Timber Sale Contract contains a number of options; therefore you will need to select the provisions and language that are appropriate for your harvest. The list of contract provisions is not meant to be exhaustive or necessarily applicable to every situation. You may choose to add or delete (by striking out) provisions. Work with your attorney and professional forester in drafting your contract.

Timber sale contracts usually include provisions that outline who, what, where, when, and how a timber sale will occur. Contracts will also spell out remedies in the event of a dispute. More stringent contracts may result in fewer bidders and, potentially, lower bids. Less restrictive contracts provide for less control.

The section titles and provision numbers in the following explanations correspond to the section titles and paragraph numbers in the Sample Timber Sale Contract. Some sections are self-explanatory and not included.

1-4. Contract performance, period, extensions, and termination

Beginning and ending dates of the contract are established. The phrase "FOR TIME IS OF THE ESSENCE" demands reasonable diligence and completion within the period of the contract. Delays should only be authorized for reasons beyond the control of the Purchaser. This is essential to achieve your management objectives.

Some provisions give you the flexibility to protect the land should unanticipated events or conditions occur. The Purchaser's authority to go on your land and conduct operations is through the contract.

5-8. Down payment, bond, remedies and damages

Sellers and Purchasers use down payments as earnest money. Down payments are not performance bonds. Performance bonds assure that costs incurred due to breach can be recovered from the bond, rather than going to court or otherwise recovering costs from the Purchaser. Be aware that many Purchasers may not agree to provide a performance bond unless it is to be held by a consulting forester or an objective third party such as an escrow agent. The Seller's remedies in the event of a breach are not just limited to routine contract damages. Other penalties or remedies may be pursued if the Seller so chooses.

Contract breach: A very serious decision

Deciding that the Purchaser has breached a timber sale contract should not be made lightly or over trivial matters. Contract breach is a very serious step that can have ramifications for you and the Purchaser well beyond this one event. Reputation is critical to a timber harvester's livelihood and to your ability to sell or resell your timber.

You may also be sued: It is that important. Breach should truly be the final straw. Intermediate steps might include visiting with the Purchaser to hash out differences, having a third party intervene, or shutting the sale down temporarily.

9-11. Products to be removed

Specifications for how trees are marked or designated for harvesting are explained (for example, "trees marked with orange paint," or "all trees within a red marked boundary"). Be certain that your property boundaries are well defined and understood by the Purchaser. If the boundary has not been formally surveyed, you should meet with the adjoining landowners to agree on the location of the property boundary.

The Seller retains sole control over the timber until payment is made. Timber cannot be removed from the property until paid for or payment has been arranged.

12-13. Sale type, scaling, hauling, and payments

There are many ways to sell timber. Each affects at what point ownership of cut products moves from the Seller to the Purchaser and who reaps the benefit of product sort and grade. This section defines under what conditions cut products may be removed from the property, how and by whom the cut products are to be measured, and when the Seller receives payment.

Scaling procedures include on site scale and mill scale. The Seller should be aware that while some mills are willing to send mill slips to the Seller, others are not.

Prior to signing the contract, seek the advice of a tax specialist to determine whether income may be treated as a capital gain or regular income. Spreading the payment over two years may minimize your tax liability in any single year.

What is *reasonable*?

Throughout the Sample Timber Sale Contract there are references to actions being "reasonable." In legal terms, reasonable means fair, proper, just, moderate, and suitable under the circumstances. The basic question to ask is: Would an outside observer familiar with harvest practices feel the action was adequate and satisfactory?

If you've never harvested timber before or visited a logging site, it is important that you learn about and understand normal logging practices and their impact. Either visit logging sites or hire a consultant forester to help you determine if your expectations of post-harvest conditions are "reasonable."

14-17. Timber products table

The table summarizes the type and volume of timber expected from the harvest and the price the Purchaser agrees to pay by unit. This information is important in all sales, even lump sum sales where the price per unit information can be used for damages or contract adjustments, if necessary.

In some cases, the term, *mixed hardwoods*, is used to describe products to be removed. Mixed hardwoods are small quantities of hardwood tree species of low relative value or not in sufficient quantity to be marketed in separate species categories. High-value species or products should be identified separately, even if the volume is small. In general, the use of mixed hardwoods should be restricted to pulp.

18-28. Utilization and operations

Detail any timber and site protection measures here. Be specific about erosion control, weather, disease and insect prevention, timing, equipment use (such as width or size limitations, use of a forwarder rather than a skidder, horses, etc.), operations during hunting seasons or other constraints you or your foresters consider necessary.

Wisconsin's Forestry Best Management Practices (BMPs) for Water Quality guidelines are designed to protect water resources. If there are critical BMP needs on your property, you should itemize them. Check and document that the Purchaser and the timber operators have completed Wisconsin BMPs training.

Include consideration for archeological sites or endangered and threatened species where appropriate or required by law. Be aware that some requirements may affect the price that the Purchaser can afford to offer for the timber.

29-31. Notice of intent to cut and compliance with laws

Specify the party responsible for filing cutting notices and reports with the county clerk and the DNR. Notices must be filed at least thirty days before cutting begins. County cutting notices must be renewed on January 1 of each year. If the land is enrolled in a DNR forest tax law program, the landowner will be responsible for paying a 5% (Managed Forest Law–MFL) or 10% (Forest Crop Law–FCL) severance tax on the timber cut. Regardless of contract provisions, state statutes hold landowners liable for penalties related to non-compliance with MFL and FCL cutting notice and report laws.

32-33. Title, boundary lines, and access

These clauses outline three important duties of you as the Seller. First, you assure that you have the authority to sell the timber and will defend that right in court if necessary. A mortgage or land contract may require that the seller seek

permission of creditors before selling. Where there are multiple owners, all should consent. Tax program participants should ensure that the harvest is consistent with the approved forest management plan and that all required notices are submitted. Second, you will mark the boundary of the timber sale prior to harvest. Third, you will acquire written permission to cross a neighbor's land, if necessary.

34-36. Liability and insurance

These provisions protect the Seller from liability arising from the Purchaser's harvesting operation. The Purchaser is required to show proof of workers' compensation and public liability insurance. Be aware that a logger's liability insurance does not normally include damages caused by fire or timber trespass unless purchased as an option.

43. Contact information

This exchange of information between the Purchaser and Seller will ensure that both parties can contact each other easily. If you are using a Seller's agent, you'll want to provide his or her contact information, too.

Forestry Facts are available from the Department of Forest Ecology and Management, University of Wisconsin-Madison, 1630 Linden Drive, Madison, WI 53706; phone: 608-262-9975 or over the Internet at <http://forest.wisc.edu/extension/>. Contact the Department of Natural Resources by calling 608-267-7494 or over the internet at <http://www.dnr.state.wi.us/> or Wisconsin Woodland Owners Association at 715-346-4798 or <http://www.wisconsinwoodlands.org> for publications they offer or check the Internet.

This *Forestry Fact* is on-line at: <http://forest.wisc.edu/extension/publications/94.pdf>

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