

The Timber Sale Contract

Why A Written Contract Is Necessary

Selling timber is a complicated matter that involves knowing about markets, tree values, future tree potential, laws, safety, liability, ground conditions, and a host of environmental factors. It may be a “once in a lifetime” event with long term consequences for yourself and your land.

(Note: for the purposes of this fact sheet, the term “timber sale” includes the sale of other products such as firewood and biomass chips).

A written contract is necessary for a timber sale so both buyer and seller have a clear understanding of the conditions under which the sale is made. The purpose of a written contract is to establish a “meeting of the minds”. It is a legally binding document protecting you and the buyer by listing the responsibilities of each. It should summarize any verbal agreements. It provides a road map for what you are trying to accomplish.

A written contract protects both the buyer and seller and allows each to see in writing what is expected of them. Since 2007, **written contracts are required by law in New Hampshire.**

You should know what you want from the transaction; understand the effect it will have on your land and your finances; and be knowledgeable about the terms of the contract. Buyer-prepared contracts may not protect your interests or rights as a landowner.

Well-written timber sale contracts clearly define conditions of the timber sale, the responsibilities for performance, and expenses. Any designation or condition in a timber sale agreement which doesn't express whose responsibility and at whose expense the burden lies can lead to unnecessary disputes. In other words, put in writing who is responsible for what and who pays for it!

The Role of Foresters in Timber Sales

You have many options how to go about selling your timber. One option is to hire a forester to act as your agent in the sale; another is to sell directly to a buyer, either an independent logger or a forester or some other representative of a mill. A forester who acts as your agent provides you with a work order or some other agreement specifying the type and cost of services to be performed. These foresters may be paid by the hour or as a percentage of the income from the sale. Foresters who buy standing timber aren't acting as your agent. They work for and represent someone else. There isn't a work order specifying cost and types of service, though there should be a timber sale contract between you and whoever is purchasing the timber. State law, RSA 310-A:98-117, requires that all foresters offering services for compensation to private landowners be licensed.

What the law, RSA 227-J:15, says about timber sale contracts

A person is guilty of a misdemeanor if, in the course of buying or selling a forest product as defined in RSA 227-G:4, VII, he or she recklessly fails to provide a written contract to the owner, prior to the cutting from the owner's property any forest products which are subject to a notice of intent to cut as defined in RSA 79:10. The contract shall be signed by both parties, specify the remuneration for the forest products to be cut, and the time in which remuneration shall be made.

What the law, per RSA 227-G:4, VII, says about buying forest products

“Buying a forest product” means exchanging money or services to purchase a forest product, or bartering for the exchange of a forest product.

Foresters prepare and monitor timber sales in a number of ways. The steps taken will depend on your management goals, the forest products harvested and their relative value. Landowners should expect a forester will, as a minimum, designate the harvest area, enter them into a legally binding contract with a buyer and provide some level of supervision of the harvest. More intensely prepared and supervised timber sales involve:

- pre-harvest marking, measurement and volume estimation of trees to be harvested
- preparation of harvest contracts including details of utilization specifications, down payments, performance bonds and payment schedules
- compliance and assistance with timber tax and other permitting requirements
- layout of skid trails, landing sites, wetland crossings and permitting
- showing and sealed bid procedures for awarding contracts
- a higher level of timber harvest supervision
- assistance with income tax reporting

How Timber is Sold

Each method of sale has different implications concerning landowner liability, worker's compensation insurance, federal income taxes, and other considerations. It's important to understand them before proceeding. The sample timber sale contract that follows is suited for the stumpage sale method.

Stumpage Sale

Most timber marketed in New Hampshire is sold by way of stumpage sales in which the value of the trees is given as they exist in the woods or "on the stump." Stumpage value is the value associated with standing timber. Stumpage values offered for a specific timber sale at a given time depend upon market conditions, the total timber sale volume, the species and quality of the stumpage being sold, accessibility, and the seller's knowledge. Payment for stumpage is usually made in one of two methods. Each has advantages and disadvantages.

The timber may be paid for by unit of volume (per thousand board feet, per cord or per ton) as it is removed and the scale (measurement of the product) delivered to the mill is accepted as the standard for payment. Records of delivery are kept on mill scale slips. Scale slips are the only concrete evidence of the actual volume of timber removed.

Timber may also be sold by what is referred to as a "lump sum" sale. Payment in this method is based on an agreed upon estimate of the total stumpage value. This timber sale method is best used when an accurate pre-harvest volume estimate is made. Lump sum payments may be made prior to the start of a harvest or by installment payments made at agreed upon intervals during the course of the harvest. Since the total amount of money is fixed in a lump sum sale, it's important landowners know the value of their standing timber before entering into a lump sum sale agreement.

What the law, RSA 227-J:15, says about scale slips

The buyer must furnish the owner, upon written request, with all scale slips to verify the amount of the forest products removed from the owner's property.

A "scale slip" means a written or printed form or combination of forms which provide an accurate, readily understandable record containing the species of wood product, board footage of each individual log when the standard unit of measurement is per thousand board feet, or tonnage or cordage when not sold per thousand board feet, gross scale, defect, net scale, date wood was measured, and the name of the party scaling the wood.

Roadside Sale

Roadside sale is a term used when a landowner either harvests the timber or contracts to have the logging done and sells the timber at a location accessible to a truck. Payment and measurement is most often made on the basis of mill scale though it can also be done where the timber is picked up. The sample timber sale contract that follows doesn't cover all the aspects of this type of sale.

Delivered

Landowners are paid a delivered price when, at their expense, they are responsible for the harvesting and transportation to the mill. Mill scale is the basis for payment. This is commonly termed "contract logging". If you are selling high value timber, this method of sale often yields more income. The sample timber sale contract that follows doesn't cover all the aspects of this type of sale.

Overview of a well-written contract

A well-written timber sale contract should clearly:

- identify buyer and seller
- provide the location of the parcel being harvested
- specify the party responsible for designating property line locations
- specify price to be paid, basis of measurement, method and schedule of payment
- specify amount and type of performance bond or security deposit
- specify time limits for the timber sale including seasonal limitations if applicable
- provide for seller granting access to the tract of land for purposes of harvesting
- specify compliance with all federal, state and local regulations
- provide for protection of the residual stand with penalty provisions for unnecessary damage
- provide for restoration of skid trails, haul roads, driveways, and landings
- describe utilization expectations of all trees harvested
- include a disclaimer by the seller for any liability for accident or injury to the buyer, his/her employees or equipment
- require written proof of adequate worker's compensation and liability insurance
- provide for prohibiting assignment of harvesting rights to another without written consent of the landowner
- provide for resolution of disputes, perhaps a third party agreeable to buyer and seller
- assign liability for property damage (buildings, fences, walls, power lines, etc.)
- assign liability for damages and suppression expenses if a forest fire occurs as a result of the harvesting operation or because of carelessness of those involved in the harvesting
- provide for immediate termination of the sales agreement if any of the provisions of the agreement are not adhered to
- specify when the title for timber harvested transfers (usually when the wood is paid for rather than when it is cut)

Except in limited situations, the responsibility for timber tax payment rests with the landowner.

Each timber sale is unique, so provisions of each contract may vary. Licensed foresters are experienced in writing sound timber sale contracts to meet specific client and property requirements. It may be advisable to obtain legal counsel when preparing a contract. Before proceeding with a timber sale, take time to become familiar with the process in order to make informed decisions. Seek the services of a qualified licensed forester to assist you.

A sample contract follows. It is no substitute for advice from your forester and/or lawyer.

Sample Clauses for a Timber Sale Contract

(1) This agreement is entered into on the _____ day in the month of _____, 20__ between _____, seller, /seller's address/ and _____, buyer, /buyer's address/

(2) *Article I* – The seller(s) agree(s) to sell to the buyer(s) and the buyer(s) agree(s) to buy from the seller(s) according to the terms and conditions stated in this agreement all the timber marked with paint marks or designated by the seller(s) or the seller's authorized agent, estimated to be /in thousand board feet/ more or less, on a tract of land located _____ in the town of _____, County of _____, State of New Hampshire.

(3) *Article II* – The seller stipulates that the seller is the sole owner of the tract of land named above and has the full right and power to dispose of the timber specified in this agreement

(4) *Article III* – The seller agrees to permit the buyer to enter onto the land described above for the purpose of cutting and removing the timber which is the subject of this agreement.

The buyer will post a bond, certified letter of credit, or place a deposit of \$ _____ with the seller or seller's agent to be returned after the terms of this agreement are fully met. The seller reserves the right to retain a portion of this deposit to cover damages for breach of this agreement.

(5a) *Article IV* – The buyer agrees to pay the seller the sum of \$ _____ more or less, determined by the actual scale at: \$ _____ per thousand board feet.

Or

(5b) *Article IV* – The buyer agrees to pay the seller at the rate of:

\$ _____ MBF (thousand board feet) _____ (wood type)

\$ _____ MBF _____ (wood type)

\$ _____ MBF _____ (wood type)

(etc.)

Explanation of Sample Clauses

(1) State the names of the buyer (or buyers) and the seller(s) and give an address for each party and indicate the date the (signed) agreement is to be entered into.

This clause explains the basic intentions of the parties to the contract. It should tell exactly where the land is located. A map can be attached.

The estimation of the amount of timber in the sale is made by the forester who marks the woodlot. This is not the agreed-upon figure for the sale; the scale slips of the cut timber will tell the actual board footage in the sale. If the final figure and the estimate vary by more than 10 percent, you should make inquiries to the mill and to your forester.

The best method of preparing for a timber sale is to have the trees to be cut marked by a forester with paint.

(3) Make certain that the timber you sell is, in fact, yours to sell. If you have any questions about title, liens or other encumbrances, see your lawyer.

(4) This clause gives the buyer "license," or permission to enter the land for cutting the timber.

It is common to require a security deposit from the buyer anywhere in the range of 5-20% of the value of sale. This provides some "insurance" that all provisions of the contract will be met.

(5) There are different pricing mechanisms for the sale of timber. If the woodlot is composed of mostly one type of timber, clause (5a) is adequate. Woodlots often are a mix tree species and a rate breakdown for each type should be included with wording as in (5b).

Scale is the measurement made at the mill. There are several methods of measuring scale. Your forester or logger (not your lawyer) can explain these methods.

Per RSA 227-J:15, II, scale slips include: species of wood product, board footage of each individual log when the standard unit of measurement is per thousand board feet, or tonnage or cordage when not sold per thousand board feet, gross scale, defect, net scale, date wood was measured, and the name of the party scaling the wood.

(6) *Article V* – Payment shall be made in the following manner:

1. On a /weekly basis.
2. Scale slips for each /week/ of the operation shall be furnished by the buyer to the seller or seller’s agent on a /weekly/ basis.

(7) *Article VI* – The entire agreement between the parties is contained within this document, notwithstanding any prior negotiations.

Any revision to this agreement must be in writing and must be signed by both parties

(8) *Article VII* – The buyer agrees to cut and remove the timber, subject of this agreement, in strict accordance with the following conditions:

(9) 1. Failure on the part of the buyer to comply with the conditions of this agreement shall be, at the option of the seller, deemed a breach of the agreement and subject to arbitration.

(10) 2. No timber shall be cut except that marked or designated by the seller or seller’s agent.

(11) 3. Unless an extension of time is granted, all timber which is the subject of this agreement shall be cut and removed on or before _____

(12) 4. Timber shall be scaled by the _____
rule and measured at _____/location/

(6) State when you expect payment. The general practice is to pay at the end of a week for the timber hauled to the mill that week. Specify you want the mill scale slips delivered to you or your agent on the same time basis.

(7) This is called the “merger clause.” It states that the contract document contains the whole agreement. This prevents any party from coming forward and disputing the contract by saying that additional verbal agreements were made.

(8) The clauses of this article are designed to instruct the buyer on how this particular logging operation is to be carried out and what special restrictions you wish the buyer to follow. This is the section of the contract which is most often tailored to your particular management plan. Many of these clauses are self-explanatory.

(9) This clause defines what constitutes a breach or a breaking of the agreement. Often during the course of a timber sale there will be minor variations in the procedure agreed upon. Common sense will usually dictate when these variations are reasonable and when they cross over the threshold of the agreement. If you are in doubt about any of your buyer’s practices, consult your forester. Your forester understands logging and loggers. Foresters are very good at communicating your desires to the logger. The forester will also advise you if your requests seem unreasonable.

(10) Only marked timber should be cut. However, it will usually be necessary to cut an occasional tree which is unmarked. Some of the situations when this may be necessary are: for building roads, building skid trails and freeing one tree that is lodged in another. Your forester can tell when it is wise to cut an unmarked tree. No one goes to court over a few trees but hard feelings and some money loss can result. Have your forester act as your agent in keeping an eye on this process.

(11) If you do not specify a termination date in the contract, the agreement could continue indefinitely. Your logger may need a short extension if unforeseen weather or other conditions have delayed work. Be reasonable but don’t extend the operation longer than really necessary.

(12) Specify the scale method. (See note 5) You could be defrauded if timber is taken to a mill not specified in the contract.

(13) 5. All trees shall be utilized in their tops to the smallest possible diameter for commercially-saleable materials. All trees having 50 percent sound scale shall be cut and paid for. Stumps shall be cut so as to cause the least possible waste. –or– Stumps shall be cut no higher than the top of the root swell, so as to leave the paint marks clearly visible. –or– Maximum stump height will be 12 inches.

(14) 6. Young trees shall be protected against unnecessary injury. All unmerchantable trees that are leaning or bent as a result of tree felling shall be laid on the ground and cut off at the stump. Buyer will pay seller for undesignated trees cut or injured through carelessness at the rate of _____ times the contract stumpage rate.

(15) 7. Buyer shall comply with all federal and state laws pertaining to the operation and be liable for any action resulting from this operation.

(16) 8. Buyer agrees to lop all tops and slash to within four feet of the ground.

(17) 9. The buyer agrees to be responsible for damage caused by logging to fences, roads, trails, bridges, ditches, culverts, stone walls, fields or other improvements damaged beyond ordinary wear and tear.

The buyer shall leave access road, landing and skid trails in reasonable and operable condition. The buyer shall construct, install, or return to original condition, waterbars or other erosion control devices on the haul road, landing, and main skid trails. The landing shall be cleared of logging debris and other waste.

(18) Buyer may not assign this agreement in whole or in part without the written consent of the seller.

(19) The buyer shall obtain and maintain in force and shall require any subcontractor to obtain and maintain in force, the following insurance:
a. General Personal Injury, and Automobile Liability (including bodily injury, personal injury and property damage):

1.) Combined single limit of \$1,000,000 each

(13) Complete utilization of as much of the tree as possible is the goal. You want the logger to get as much lumber as is commercially feasible from the whole tree, not just the larger portions of the tree. Minimizing the height of the stumps increases the amount of volume cut and also makes it easier to monitor that only marked trees are cut by requiring that the paint be visible on the stump. If cut trees aren't "stump marked" in this manner, it is appropriate to indicate a maximum stump height.

(14) Felling and skidding trees usually results in some unavoidable damage to other trees. In fact, certain trees along the skid trail must be used at "bumpers" for keeping the logs on the trail. Skid trails should be set to use marked trees as bumpers. This clause instructs the logger to keep this damage to a minimum and specifies the logger will be responsible for unreasonable damage. Your forester can judge this.

(15) Refer to *Guide to NH Timber Harvesting Laws* by UNH Cooperative Extension, for the special laws that relate to forestry and logging including who is responsible for obtaining necessary permits.

(16) Slash is the branches and other parts of the trees left on the ground after the cutting operation.

(17) The heavy equipment used for logging can be rough on the land. Provisions should be made to minimize damage and to restore the land to a reasonable semblance of pre-harvest conditions. You may include a stipulation the landing also be graded, fertilized, and seeded with a conservation seed mix.

(18) Assignment is the transfer of contract rights from the original party to the contract to another person. To prevent your buyer from assigning the cutting rights of your timber to another person you will need to place this restriction in the contract.

(19) The buyer agrees to secure and maintain any and all insurance required by the State of New Hampshire, including but not limited to worker's compensation insurance or liability insurances for all activities under this contract.

The amounts shown are those required by the State of NH for sales conducted on state lands.

occurrence.

2.) Any aggregate will not be less than \$2,000,000.

3.) If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, the buyer shall obtain additional insurance to restore the full aggregate limit and furnish a certificate showing compliance with this provision.

b. Standard Worker's Compensation and Employer Liability as required by State statute, RSA 281-A.

Before the start up of the job, the buyer will furnish a certificate of insurance listing the landowner as a certificate holder.

(20) The buyer will indemnify and save harmless the seller and the seller's agents from any and all claims and actions covering loss, costs and damages of every kind and description which may be brought or made against seller or seller's agents on account of or in any manner arising out of the work being done under this agreement, sustained by any person, firm, or the buyer's agents, employees, contractors or subcontractors.

Article VIII – It is mutually understood and agreed by and between the parties of this agreement as follows:

(21) 1. All timber included in this agreement shall remain the property of the seller until paid for in full.

(22) 2. All rights granted under this agreement revert to the seller on the date of the termination of this agreement, whether such termination results from the full performance of this agreement, or is so declared by the seller on account of breach of contract on the part of the buyer.

(23) 3. In case of disputes over the terms of this agreement, final decision shall rest with a reputable person mutually agreed upon by parties concerned 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 other two arbiters.

Consult your forester and/or insurer for recommendations for your situation.

(20) This is called the indemnity clause and it is a catch-all which places liability on the buyer for any accident or damage which results from the logging operation.

(21) This clause maintains the ownership of the timber with the seller until the contract is fully performed. This clause will protect the woodlot owner if the buyer should breach the agreement. It gives the owner control over the lumber and the actions of the buyer.

(22) Reversion to the seller of the rights contained in the agreement prevents certain misunderstandings between you and the buyer. After the agreement is terminated, you will not want the logger to cut more trees unless a new agreement is reached, nor will you want the logger using your land for any other purpose.

(23) Since a written contract isn't a guarantee of success, the contract defines what constitutes a breach and how it may be resolved. A common practice for avoiding court is arbitration, a process of resolution by third parties. By including this clause, you agree to abide by the decision of the arbitration group. The purpose of the group is to solve disputes without the expense of the court. It not only saves money but the members of the group generally have a better knowledge of logging practices than a judge does.

(24) For the purposes of this agreement it is mutually understood that the authorized agent for the seller is: list the name, address, and phone number of your forester

(25) In witness whereof the parties have signed this agreement on the date stated above.

Witnessed: _____

By Seller(s) _____ date __ __
_____ date __ __

By Buyer(s) _____ date _____

Possible additional clauses:

(26) The seller shall not be liable for fire losses or accidents which may occur in connection with the work by the buyer or buyer's employees.

(27) Permission to haul logs and equipment across any land not belonging to the seller shall be obtained by the seller.

(28) Buyer shall cease logging operations when ground conditions dictate that continued hauling will do considerable damage to the roads.

(29) Seller guarantees that all boundaries are marked correctly and assumes the responsibility for any damage which is the result of incorrectly-marked boundaries

(30) The seller will give the buyer the option to bid on the next cut of timber, with the right to purchase if the bid equals the high bid and is willing to meet the other stipulations of the contract.

(31) All by-products, including fuel wood, shall remain the property of the seller.

(24) Use this clause if you have a consultant representing you in the sale. You should have a separate agreement with your forester specifying this relationship.

(25) Signing and dating the agreement is required by law to make the agreement legally binding. You should have one or more third parties witness and sign the agreement to help insure that the document will withstand the test of authenticity.

(26) You may stipulate the logger will be responsible for any fires which start as the result of the logging, even though you already have an indemnity clause (See clause 20.)

(27) If the buyer needs to travel across someone else's property in order to get onto your land, make sure the owner of the land gives permission. You should guarantee that the buyer is allowed a right-of-way and its location should be clearly specified.

(28) Logging is messy. Several considerations relate to keeping the property in good shape. You may tell the logger to halt operations when the ground conditions due to the weather make logging especially rough on the roads and skid trails. Large equipment may be restricted if you are concerned about damage to roads and young trees.

(29) You may wish to guarantee the buyer that you have properly outlined the property boundaries. This may place the responsibility for cutting a neighbor's trees on you.

(30) You can give the buyer the option of highest priority at bidding any future timber sale, should all things be equal. This provides the buyer with more incentive to do a satisfactory job.

(31) Fuel wood and several other by-products are a result of logging. If you wish to keep or sell them. Make arrangements with your buyer to carry out any such plan. Make this part of the contract.

This fact sheet was adapted from information prepared by Chris W. Clark, Environmental Law Clinic, Franklin Pierce Law Center by Karen P. Bennett, Extension Professor and Specialist, Forest Resources. Law may be change by the legislature or by court decision and is subject to interpretation in each individual situation. When in doubt, consult your forester or attorney. August 2008

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