

# Landowner's Guide to Timber Sale Contracts

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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 may or 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 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, 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 that 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 and addresses 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 and species), the method of sale, location of tract and boundary lines, 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, etc., 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 who use 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 the 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

## 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 \_\_\_\_\_ days in advance.

**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 \_\_\_\_ log 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 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.*

**TCA Sections 43-28-301 to -312** concerns branded timber. If a buyer puts his 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.

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(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 may 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 six 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) Delimiting gates shall not be used in the logging operation.

Explanation: In a partial cutting, this avoids heavy buildups of logging slash at the delimiting 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 the 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 responsibility.
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 is 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.