



Timber Contract Fundamentals

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Family forest owners control over 57 percent of South Carolina's forest land. Many of these owners harvest timber at some point. The experience can vary from pleasant to catastrophic, and often the difference is due to a well-written timber sale or timber deed contract. A list of timber buyers in each county is available from the South Carolina Forestry Commission (along with assistance for victims of timber theft or fraud). A sample timber sale contract can be found online at <http://www.state.sc.us/forest/forestsaleagreement.pdf> or through your local South Carolina Forestry Commission office.

A clearly-written, legally-binding contract should be the basis of all timber transactions. A document that can be recorded at the courthouse is best. Ideally, the owner will seek the advice of three professionals: an accountant, a lawyer, and a forester. A timber sale is often a large financial transaction for family forest owners and should be treated as such. Four basic issues need to be resolved by the contract: the exact timber being sold, the terms and prices involved, restrictions on logging operations, and property protection measures. Below are specific considerations for any timber sale contract.

- **Who are the buyer and seller?** Who actually owns the timber? Will the buyer and seller have agents or deal directly with each other? If the seller is an absentee landowner, who will represent him? Can the buyer assign rights?
- **What is the length of the contract?** What if the timber sale is incomplete at the termination date? Are extensions allowed and is there a cost? An extension would certainly be a cost to the seller due to delayed regeneration. Can the logging job be shut down during bad weather? Will the owner be notified when the operation begins, is temporarily shut down, and ends?
- **What is the legal description of the location of the sale and exactly what is being sold?** Clearly define exactly what is being sold. It can be just as important to define what is not being sold. Besides a formal legal description, include a tract location map, with property lines and sale boundaries. If there is a problem precisely defining the sale boundary, insist that a well-defined boundary be established.

Exact, precise definitions of the trees being sold are an absolute necessity. What tree species are included and excluded? What tree sizes are to be cut and how will they be measured? If tree size is defined at diameter breast height (dbh) there will be no precise

way to tell if a cut tree actually met the requirements; maybe measurement should occur on the stump portion of the tree.

Will the cut trees be marked? Never allow flagging to be used for marking; it is temporary. Be certain if paint is used that stumps are also marked and that there is no way additional trees can be marked later.

Remember that trees grow. If cut trees are defined by dbh or merchantability, which date is used to establish whether or not they are included in the sale? It is important to establish whether the date of the contact or the date of harvest determines which trees are included.

What units of measure will be used? Sales involving sawtimber present a special problem. Sawtimber is commonly measured in board feet (BF), or thousand board feet (MBF). A log's diameter is measured at the small end and, based on its length, a log rule will specify the BF expected from the log. There are over 100 log rules in the United States and each one is based on a different set of assumptions. Timber sellers need to be aware that certain log rules can be used to favor the buyer (or vice versa).

- **What is the timber price and payment schedule?** The timber price per unit can be tricky, and that is why you want a forester involved. Lump sum or per-unit sales will mean different types of payment schedules. A lump sum sale involves a negotiated price for an entire timber tract or sales area. The seller will receive the total payment before the timber is cut. In a per-unit sale the seller and



buyer negotiate a price per unit of timber harvested. This type of sale results in the seller receiving payment as the timber is cut. Is there a down payment required? There are advantages and disadvantages to each of these methods of selling timber that the seller should be aware of.

- **Will there be a performance bond or security payment?** This can ensure contract provisions are satisfied and can be used to ensure soil, water, and other resources are protected. All owners would want to require adequate insurance is in place and should be certain the contract places liability for the logging operation on the buyer. This is crucial as harvesting operations are dangerous.
- **Are Best Management Practices to be followed, and what if they are not?** A harvest map should be part of any timber harvest plan and needs to include tract and sale boundaries, location of landings, stream crossings, logging roads, and any environmentally sensitive areas like wetlands or special wildlife habitats. What conditions do you expect the landings, stream crossings, and logging roads to be left in? Where will the buyer have access to the property and will it be limited in any way (gates)? Some owners are sensitive about logging slash and debris; contract specifications can address this issue. Keep in mind each restriction increases logging cost.
- **What if unmarked trees are cut or cutting occurs across a boundary?** Penalties need to be clearly specified in the contract.
- **What if timber is improperly merchandized (sawtimber included in a load of pulpwood on a per unit sale)?** On a per unit sale, utilization or merchantability standards are important. Both maximum stump height and top diameter need to be specified so that no usable wood is left in the woods. These standards prevent a logger from removing only the high value timber and leaving the poor quality timber behind (they specify all timber above a certain size must be harvested and transported to the mill). They are especially important when a sale has multiple timber products (like sawlogs, pulpwood, and plywood logs). These specifications require products be sold for their proper value (e.g., no sawlog size material in a load of pulpwood).
- **Fire** is sometimes an issue. The buyer should be required to follow all fire laws. What if the seller suffers injury due to a fire caused by the logging operation? What if the timber is destroyed mid-harvest by fire or hurricane? Who will suffer the loss?
- **Arbitration** is often specified in the contract to handle disagreements. This process involves a neutral third party to settle the dispute after both sides have had an opportunity to be heard.

Timber sales represent an opportunity to have improvements made to the property. Keep in mind the tract conditions at the end of a harvesting operation are the tract conditions at the beginning of the site preparation and regeneration operations. The contract can include provisions to ensure the tract is left in shape to minimize the cost of regeneration. Gates could be added and roads lengthened. Maybe

precommercial thinning could be accomplished on an adjacent stand while the equipment is nearby. Obviously this would increase overall harvesting cost, but it might be the most cost-effective way to achieve these improvements.

Timber sale contracts are formal legal documents. They are intended to protect both the buyer and seller. In most cases the timber seller will be at a disadvantage in negotiating a timber sale contract. The buyer likely does this for a living, while a family forest owner may negotiate one every decade or so. The issues presented here are the main contract components that will protect the seller. An unclear timber sale contract is something many forest owners come to regret. A contract in which the terms are not explicit will favor the buyer and logger. Many family forest owners will want to employ a professional forester to negotiate a timber sale contract and to supervise its execution.

Additional Resources

- A Landowner's Guide to Forestry:
<http://www.state.sc.us/forest/sflg.pdf>
- Your Timber is Valuable
<http://www.state.sc.us/forest/timberval.htm>
- Before You Sell Timber
<http://www.state.sc.us/forest/sell.htm>
- Current SC Timber Price Reports
<http://www.state.sc.us/forest/mprice.htm>
- Extension Forestry Agents
http://www.clemson.edu/extension/natural_resources/people/index.html