



# Extension FactSheet

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## Timber Sale Contracts

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Approximately 84 percent of Ohio's forest land is owned by private nonindustrial woodland owners. Each year many of these individuals receive significant income from their woodlands by properly marketing timber. In addition, by following management guidelines in selecting those trees to be harvested and those to leave standing, they improve the health and vigor of their forest as well as its quality for other uses. However, some woodland owners sell their timber for only a fraction of its value because they either fail to recognize its true value or they do not market it properly.

If you are thinking about selling timber or if you are approached with an offer to buy some of your timber, don't "jump too quickly." Taking time to find out what you have to sell, then choosing the appropriate method of marketing will usually result in substantially more income and satisfaction for the seller.

There are eight important steps to effectively marketing timber from private woodlands:

1. Determine the **reasons for selling timber**.
2. Determine and mark the **specific trees to be cut**.
3. Estimate the timber **volume to be cut**.
4. Select the proper **timber sale method**.
5. **Advertise** the timber sale.
6. **Select the buyer**.
7. Enter into a **contract** with the buyer.
8. **Monitor** the harvesting operation.

Steps 1 through 6 and 8 are discussed in Natural Resources Fact Sheet F-37, *Getting the Most Return From Your Timber Sale*, available from county offices of Ohio State University Extension. This fact sheet focuses on Step 7, entering into a contract with the timber buyer.

### Entering Into a Contract With the Buyer

The process of negotiating a contract provides an opportunity for the buyer and the seller to discuss how the harvesting operation will occur and to identify and obtain clarification and agreement on areas of concern. Once developed, the contract should detail what the seller and the buyer have agreed. This will

substantially reduce the possibility of misunderstandings and disagreements and provide both parties with legal protection as agreed to by the terms and agreements of the contract.

Timber sale contracts should always be written. They need not be complicated, but should detail exactly what the seller and the buyer have agreed to with respect to all activities associated with the sale of the timber. Most timber buyers will have their own contract. Many contracts are excellent for certain situations; others are totally unacceptable from the seller's standpoint. When a timber buyer offers you a contract, consider it a starting point. Examine the contract carefully to be sure it reflects your understanding of the agreement and includes all of your concerns. In some instances, the buyer's contract may need only a few additions or modifications to meet your needs. In other instances, the buyer's contract may be totally unacceptable or may need major revision.

If the buyer's contract is unacceptable or if no contract is offered, you must insist on developing a mutually acceptable written contract. Consultation with an attorney is almost always desirable as substantial amounts of money and property values are often involved in timber sales. When possible, seek out an attorney who is familiar with timber-sale transactions.

### Provisions to Include in a Timber-Sale Contract

There are many "sample" timber-sale contracts available. However, because each timber sale is different and each owner is different, it is not possible to design a sample all-purpose timber-sale contract. There are, however, certain provisions that normally should be included in all timber-sale contracts.

**A. Names and addresses of the buyer and the seller.** This item identifies the parties to the contract for legal purposes.

**B. Date of contract execution.** Included for reference.

**C. Legal description of location.** This item identifies the location of the timber being sold in a clear precise manner. The legal description can be obtained from a platbook or warranty deed.



**D. Description of exactly what is being sold.** If all of the trees on an area are being cut, a legal description of the area plus a statement of how boundaries are marked should be sufficient. If individual trees are to be removed from a stand, describe exactly how they are marked. In many instances it will also be desirable to list the species, number, size, and volume of trees being sold.

**E. Declaration of seller's ownership and right to convey.** Timber-sale negotiations can involve considerable time and expense to the buyer. Buyers should be assured that the seller legally owns the timber and that they (the buyers) will be protected from unknown third-party claims.

**F. Value of sale and how and when payment is to be made.** Under a lump-sum sale, in which the seller is paid a fixed amount (lump sum) for the timber designated for sale, the contract should indicate the dollar amount and the payment schedule. Under a sale-by-unit or sale-by-scale, in which the seller is paid a certain dollar value per unit cut (a unit could be a board foot, a cord, a ton, etc.), the contract should indicate the price per unit, payment schedule, method and location of scaling, and person responsible for scaling. When timber is sold on a percentage basis, where the seller receives a percentage of money the buyer receives for the logs delivered to a mill or other utilization point, the contract should indicate the percentage, the payment schedule, the method and location of scaling, and person responsible for scaling.

**G. Duration of contract, contract extension, and cost of extension.** A deadline for the completion of cutting should be specified in the contract, along with whether or not the buyer has an option to renew or extend the contract (e.g., for six months), and the cost of extending the contract (e.g., five percent of the original purchase price).

**H. Provision for or against assignment of all or part of the contract.** A statement indicating whether or not the buyer has the right to resell the timber or part of the timber (e.g., tops) to a third party (assignment), and, if so, whether approval of the original

seller is required. When assignment is permitted, the buyer's responsibilities (if any) to ensure performance should be detailed in the contract.

**I. Provision for arbitration.** Contracts often specify that an arbitration board of three persons will arbitrate in case of disagreements. A contract can specify, for example, that an arbitration board, if needed, consists of three people, one named by each of the parties to the contract, and a third person selected by the first two named. Time limits may be specified for naming the board members (e.g., seven days), for the board to conduct a hearing (e.g., an additional 14 days), and for the board to render a decision (e.g., an additional 14 days).

**J. Utilization standards and ownership of by-products.** If stumpage is sold on a lump-sum basis, the question of utilization standards (waste) is usually not an issue. The buyer has purchased the trees for a lump sum, and the utilization standards will not affect the seller's income.

However, with sale-by-unit or percentage-based sales, maximum stump heights and top diameters should be specified. The ownership of by-products, such as tree tops that could be utilized for firewood, should also be clearly specified.

**K. A statement identifying whether seller or buyer assumes the loss if the timber is destroyed or stolen after contract is executed.** Fire, ice, storms, theft, etc., can damage or destroy trees during the life of a timber sale. Generally, timber sold by lump sum becomes the property and responsibility of the buyer once the contract is signed, while timber sold on unit (scale) or percentage basis remains the property of the seller until it is delivered to the mill. Litigation and the accompanying expense can be avoided by clearly specifying this responsibility in the contract.

**L. A statement of the financial responsibilities of the buyer.** A statement that the buyer has adequate insurance and assumes liability for the safety and the actions of all employees while they are engaged in any activity associated with the timber sale and harvest operation is recommended. To ensure contractual compliance by the buyer, a performance bond is often required and held in escrow until all contractual obligations have been met. The necessity and amount of a performance bond depends on a number of factors, including the buyer's reputation (or lack of reputation in the case of a company new to the area), the size/value of the sale, and the difficulty of the operation (e.g., high-value residual trees to be left undamaged, steep topography with easily eroded soils, etc.). The amount of a performance bond varies, but amounts from \$500 to \$2,500 are not uncommon.

**M. A statement of the legal responsibilities of the buyer.** A statement that the buyer will abide by all state and federal laws and requirements pertaining to employer-employee relationships and the operation of the logging operation, including any practices required to control erosion (termed Best Management Practices), is recommended.

**N. A statement or a number of statements of the buyer's responsibility and liability for the seller's property.** There may be several such statements defining the buyer's responsibility with respect to specific owner/seller concerns about minimizing the impact of the harvest on the property (roads, fences, crops, culverts, etc.). To the extent possible, these statements should be specific, action-oriented statements rather than vague generalities. For example, in a situation where access roads already exist, a statement that "the buyer will leave the roads in good, usable condition" is extremely difficult to evaluate and enforce, while a statement that "the buyer will restore the roads to at least the presale condition as evidenced by a set of photographs signed and dated by the buyer" is far more meaningful and enforceable.

**O. A statement specifying the buyer's financial responsibility for excessive damage to or cutting of trees designated to remain after the cut.** In many timber harvests, not all trees on an area are cut. While a small amount of damage to residual trees will almost always occur when a stand of trees is partially cut, careless logging can excessively damage or destroy the value of the remaining (residual) trees. The decision that excessive damage has been done to the residual trees will generally require the opinion of a professional forester and may involve arbitration (discussed earlier, in section "I"). In addition, trees are occasionally harvested that were not identified to be cut. The timber sale contract should identify the reimbursement rate or a procedure to determine the reimbursement rate for these types of damages.

**P. Provisions with respect to fire.** These might include the requirement to comply with all fire laws, any restriction imposed on the buyer regarding the use of fire, the requirement that the buyer and his/her employees assist with the suppression of any fire in the woodlot if they are physically present, and the financial liability of the buyer for losses of the seller resulting from fire caused by the activities of the buyer or his/her representatives or employees.

**Q. Other restrictions on or requirements of the buyer.** Any other points of agreement between the buyer and the seller that are restrictions on or requirements of the buyer should be detailed in the contract. These might include (but are not limited to):

- Points of entrance to and exit from the property.
- Location/layout and construction standards of roads to be constructed. This might include such things as width, slope, frequency of dips or water bars, need for seeding when harvest complete, etc.
- Location of logging yard or decking area and repair when harvest is complete.
- Cleanup of trash and other debris resulting from logging operation.
- Removal of logging debris from roads, streams, trails, and neighboring property.

**R. Signature, witnessing, notarization, and registration.** It is recommended that the signing of a timber-sale contract be witnessed by two people, notarized, and recorded with the County Recorder.

In closing, it is important to emphasize again that **a written contract is absolutely essential when selling timber**. Make sure that the contract **accurately** and **completely** represents your understanding of the agreement, and that you thoroughly understand everything contained in the contract. In negotiating a contract, don't hesitate to ask questions or to enlist the services of a professional forester. In many instances, particularly on large, high-value, or complex timber sales, you may wish to consult an attorney to prepare the timber-sales contract. If possible, locate one with some experience in timber-sale contracts.

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