

TIMBER SALES FOR LANDOWNERS

INTRODUCTION

Approximately 80 percent of West Virginia is forested, and much of this forest land is privately owned. A concern of many landowners is whether he/she is receiving a fair price for the quantity and quality of timber on the land. The purpose of this publication is to guide the landowner through the steps to ensure receiving a fair price, encountering no legal difficulties, avoiding damage to the environment or to the future stand, and conducting the timber sale as smoothly as possible.

An important factor is the landowner understanding what he/she needs and/or where to obtain assistance. A written contract is important in ensuring that the seller and the buyer both perform all expected tasks.

OWNERSHIP AND BOUNDARIES

The first item to determine is whether the land ownership is held by one party or by several parties. If more than one party is involved, all parties must agree on the sale arrangements. Otherwise, court action may be required in order to reach a consensus among the owners.

However, before beginning a timber sale, be certain that all parties are aware of the property boundaries. The forester and logger must know exactly where the boundaries are with neighbors.

Without proper markings and knowledge of the boundaries, both the landowner and the logger could encounter legal problems if trees are harvested from adjoining property. It is suggested that the landowner, the forester, and adjoining landowners walk unmarked areas and agree upon the boundaries. If an understanding cannot be reached, the boundary may need to be surveyed by a licensed surveyor.

If boundary lines are in question and a survey is not feasible, a buffer area can be left unharvested as a protection against trees being harvested from a neighbor's property. However, less timber is harvested, with the result being a lower price for the entire boundary of timber.

PROFESSIONAL ASSISTANCE

In many respects, landowners benefit greatly from having a professional forester assist with a sale of timber. Those benefits typically include a well-planned and therefore environmentally friendly harvesting operation, utilization of better forest management practices, and realization of a higher sale price. In fact, a study conducted by the U.S. Forest Service showed that landowners who have secured professional assistance and used the competitive bid process have received 47 percent more money than initially offered, with only about one-half the amount of timber being harvested.

CONTRACT

Once the boundaries are determined, the landowner can begin woodland management and plan a timber sale. It is recommended that a written contract be used for the sale of timber and that the contract be entered into with the advice or assistance of an attorney.

The purpose of a contract is to detail the responsibilities of each party involved in the timber harvest, thus protecting both the landowner and the timber buyer. These details should include:

- Payment schedule, amount, method, and performance bond.
- Description of the timber being sold and how it is designated (marked, diameter, etc.)
- Anticipated harvest starting date and completion date, if appropriate.

- The time period covered by the contract.
- Penalties to the buyer if undesignated trees are cut.
- Provisions prohibiting excessive damage to undesignated trees and improved property.
- Assignment of liability for losses due to fire if caused by the buyer or his agents.
- Provisions for protection of soil, water, and recreational values.
- Assignment of the sale agreement to another party only with the written consent of the seller.

Other very important contract considerations that further protect the landowner include:

- Right to inspect the sale area at any time.
- Right to suspend the logging operation if the contract is violated.
- Right of ingress and egress.
- Locations of roads and landings, agreed upon before the harvest begins.
- Compliance with state guidelines for Best Management Practices (BMPs).
- Designation of the seller's agent.
- Severance tax liability.
- Protection from workers' compensation claims, liability suits, and property damage claims.
- Consideration of threatened or endangered wildlife and historically / biologically significant sites.

Also in the contract, both parties should consider such postharvest factors as:

- Stabilization and repair of logging roads, upon completion, to a specified condition.
- Removal of trash resulting from the logging operation.
- Prohibition of trees left hanging in other trees.
- Handling of logging debris in relation to roads, landings, and streams.
- Performance of a postharvest inspection to ensure compliance with the contract.
- Release of the buyer, through a written letter, from further obligations.

Once the contract is written, it should be reviewed by the landowner, the forester, and an attorney, and should not be signed by any party until all provisions are considered to be satisfactory.

TAX CONSIDERATIONS

Tax provisions are important and care should be taken, in most cases, to ensure that the proceeds of the sale are treated as a capital gain for tax purposes. West Virginia severance tax is also a consideration. A tax specialist knowledgeable of timber sale taxes should be consulted.

CONCLUSION

Terms concerning protection of the land, residual timber, reproduction, or improvements generally should be decided with advice of a forester familiar with the property as well as with local practices and customs. The objective is reasonable terms for both parties. Excessively strict terms may scare bidders and reduce the offered price. Justifiably, buyers may be hesitant of inexperienced sellers with unreasonable expectations. A consulting forester is foremost a representative of the landowner, but also helps protect the buyer from unreasonable demands of a seller.