

What Should I Know About Selling My Timber?

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Private non-industrial forest landowners own approximately 58 percent of all forest land in Arkansas. These landowners manage their forests for many reasons, including timber income. Even if timber management is not a landowner's most important objective, harvesting timber can help meet and be consistent with other ownership objectives. Landowners more interested in managing for wildlife habitat still need to manage their forest through periodic thinning and harvests. Trees can also be harvested to improve current and future growing conditions for higher quality and higher value species. Thinning your stand may also give you an early return on your investment.

While selling timber can be a very rewarding and profitable experience, it can also be discouraging and confusing. This is especially true for absentee owners and landowners unfamiliar with timber harvesting. Too often landowners make hasty or uninformed decisions regarding the sale of their timber. For example, some landowners will accept offers from buyers they have never met or an offer through a letter on forest land that they have not seen in many years.

The fact of the matter is that selling timber is actually easy: getting the best deal for yourself and your property, however, takes planning. Although selling your timber to the first buyer may be appropriate given your individual

needs and constraints, you will generally be better off **marketing** your timber competitively. When you market timber, you are selling in a competitive market for the best possible price. Selling timber in a haphazard manner (such as selling to the first prospective buyer) can actually result in losing several decades of management efforts and negatively influencing next generation's forest.

What Should You Know Before You Sell Your Timber?

Landowners need to understand the composition of their forest, the current market prices for different timber products, state water protection guidelines and, most importantly, how the sale might meet their ownership objectives. However, understanding two simple guidelines will help landowners (especially those unfamiliar with forest management and timber sales) protect their forest investment: (1) Always sell timber with a written contract and (2) seek professional forestry help in preparing for a timber sale.

(1) Always sell timber with a written contract.

Timber has characteristics more similar to real property than to other crop types in terms of tax treatment and sales strategy. For this reason, a timber sale should be conducted using a written contract just as you would

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do with other transactions involving real property and large sums of money. A timber sale contract protects the interests of both buyer and seller. While the contract does not need to be complicated, the terms of the sale should be written in detail. Common terms include which trees are designated for harvest, how the timber will be marked, the time frame for the sale, and protecting water quality.

Many timber buyers have standard contracts. A landowner can use a standard contract as a starting point but needs to make sure that his/her landowner objectives are being met, not those of the buyer. Whereas no contract will be perfect in all situations, certain provisions should be included in any contract. Make sure you have enough provisions in the contract to protect you and your property, but understand that overly restrictive contracts may “scare off” prospective buyers. A sample timber sale contract can be found at the end of this publication. As with any legal matter, consult an attorney to review your timber sale contract and for legal advice before signing.

Another sales approach to avoid is selling your timber “on shares.” In parts of Arkansas, selling on shares is a common practice. What this means is that the logger or buyer receives some percentage of the sale proceeds and the landowner receives the rest. While some forest landowners may have enough knowledge about their forest stands and the timber

market, many do not know the quantity or quality of the standing timber being sold. Selling on shares requires landowners to have some knowledge of their timber and to trust the logger to market each log for its highest price. Share contracts are also often sealed with a simple handshake, creating room for misunderstandings and conflicts. The potential problem is that landowners might not receive the full value of their timber unless they have enough knowledge to negotiate the best deal for themselves.

In most cases, timber should be sold in one of two methods: (1) lump-sum sale or (2) pay-as-cut sale. In a lump-sum contract, the buyer agrees to purchase the standing timber prior to harvest. Under a lump-sum agreement, the buyer may supply the seller with either a full payment for the standing timber or a partial initial payment to be followed by a specified final payment at some future point.

Under a pay-as-cut contract, the buyer agrees to purchase the timber based on a standing timber price (stumpage price) per unit for each product sold (such as sawtimber or pulpwood). The buyer will receive a delivered price (the price the mill pays the buyer) for the harvested trees and pay the seller the stumpage price agreed upon in the pay-as-cut contract. In most cases, a timber buyer will make weekly payments based on trees cut and delivered during that period.

No matter which sale method is used, every contract should cover certain aspects of a sale including:

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| <ul style="list-style-type: none">■ Parties involved<ul style="list-style-type: none"><input type="checkbox"/> Seller<input type="checkbox"/> Buyer<input type="checkbox"/> Other■ Description of area to be sold<ul style="list-style-type: none"><input type="checkbox"/> Legal description<input type="checkbox"/> Marked boundaries■ Conditions of sale<ul style="list-style-type: none"><input type="checkbox"/> Lump-sum or pay-as-cut<input type="checkbox"/> Terms of payment■ Type of harvest<ul style="list-style-type: none"><input type="checkbox"/> Thinning<input type="checkbox"/> Clearcut<input type="checkbox"/> Other■ Damage clause(s)<ul style="list-style-type: none"><input type="checkbox"/> Land damage<ul style="list-style-type: none"><input type="checkbox"/> Fences, roads, etc.<input type="checkbox"/> Residual tree damage | <ul style="list-style-type: none">■ Seller's agreements<ul style="list-style-type: none"><input type="checkbox"/> Provide right of access<input type="checkbox"/> Guarantee title■ Seller's and buyer's agreements<ul style="list-style-type: none"><input type="checkbox"/> Contract period<input type="checkbox"/> When title to trees passes to buyer<input type="checkbox"/> Conditions for breach of contract<ul style="list-style-type: none"><input type="checkbox"/> Cease harvesting<input type="checkbox"/> Liability clause<ul style="list-style-type: none"><input type="checkbox"/> Both parties indemnify and free the other from liability concerns associated with harvest<input type="checkbox"/> Dispute resolution clause■ Signatures<ul style="list-style-type: none"><input type="checkbox"/> Seller, buyer and witnesses |
|--|---|

(2) Seek professional forestry help in preparing for a timber sale.

The most important advice that a forest landowner can follow is to hire a professional consulting forester. Many landowners view the services of a consulting forester as an unnecessary expense. However, research demonstrates that landowners who use a forestry consultant to manage their timber sale can make up to 20 percent to 50 percent more money than those landowners who did not use a consultant. There are several important steps in making a successful and satisfying timber sale. A consulting forester can help you create a timber sale plan that fulfills your ownership objectives and protects your forest for the future. He or she understands the local markets, companies and timber supply and will supervise the entire timber sale from start to finish. Essentially, the consultant works for you and will represent your best interests in a sale.

Where do you find a consulting forester? Call your local county Extension office and ask for the consulting forester list. This list contains the names, addresses and contact information for consulting foresters across the state. Remember, you are hiring someone to manage your valuable timber and might consider checking references. Most consulting foresters are willing to provide references and landowner referrals, and many are happy to do so.

Monitor the Harvest Operation

If possible, stay involved in the timber sale throughout its duration. If you cannot monitor the harvest yourself, solicit the cooperation of others in watching over your trees. A good consultant forester will represent your best interests throughout the sale but staying involved will also assure you that the harvest is proceeding according to your understanding and the terms of the contract. Absentee landowners are particularly vulnerable during timber sales. Maintaining a connection with the county service forester, county agent and other neighbors will help absentee landowners' peace of mind.

The fact of the matter is that selling timber is easy: just accept the first price offered to you. Understand, however, that accepting the first offer price might not suit your landowner objectives. Marketing is the key to getting the most for your timber and to protecting yourself and your family resources. Although many forest landowners are pleased with their harvest experiences, others are disappointed. Landowners who understand how to market their timber effectively are usually satisfied with the result. So educate yourself about marketing and managing your timber, and always seek professional help.

This sample contract should serve as a guide only. Work with your forester or attorney to develop a contract that works best for you and your situation.

Sample Timber Sale Agreement

_____, of _____
(Name of Purchaser) (Post Office Address)

hereinafter called the purchaser, agrees to purchase from

_____, of _____
(Name of Purchaser) (Post Office Address)

hereinafter called the seller, the designated trees from the area described below.

- I. Description of Sales Area:
(Describe by Section/Township, Range, County, State if possible, or approximate location if not.)

- II. Trees Designated for Cutting:
No trees shall be cut except those that have been marked or designated by the seller, or his agent, as follows:

- III. Conditions of Sale:

- A. The purchaser/buyer agrees to the following:

1. (Lump sum sale) To pay the seller the sum of \$_____ for the above described trees.
Full payment is due at the time this agreement is signed by both purchaser and seller.

_____ OR
(Pay-as-cut sale) To pay the seller at the end of each week for the timber removed during that week according to the following schedule.

_____	\$ _____	per _____	for pinesaw timber
(unit)			
_____	\$ _____	per _____	for pinesaw timber
(unit)			
_____	\$ _____	per _____	for pinesaw timber
(unit)			
_____	\$ _____	per _____	for pinesaw timber
(unit)			
_____	\$ _____	per _____	for pinesaw timber
(unit)			

2. To do all in his power to prevent and suppress forest fires on or threatening the Sale Area.
3. To protect from unnecessary injury young growth and other trees not designated for cutting.
4. To pay the seller for undesignated trees cut or injured through carelessness at the rate
OF
\$ _____ each for trees measuring 6 to 13.9 inches in diameter at stump height
AND
\$ _____ each for trees 14 inches or over in diameter
5. To repair, at his own expense, damage caused by logging to ditches, fences, bridges, roads, trails or other improvements damaged beyond ordinary wear and tear.
6. Not to assign this contract in whole or in part without the written consent of the seller.

7. To observe and follow Arkansas' Best Management Practices guidelines as appropriate.
8. To supply the seller with legible copies of all weights or scale tickets for all forest products removed from the sale area.

B. The seller agrees to the following:

1. To guarantee title to the forest products covered by this agreement and to defend it against all claims at his expense.
2. To grant the freedom of entry and right-of-way to the purchaser and his employees on and across the area covered by the agreement.

C. The purchaser and seller mutually agree to the following:

1. The contract period shall be _____ months starting from the date of this agreement. Any merchantable tree, or any cut forest product, within the sale area not removed before the end of the contract period becomes the property of the seller. A _____ month extension may be granted, at the discretion of the seller, with a _____ percent increase in the sale price.
2. Title to and responsibility for the trees shall pass to the purchaser as they are severed from the stump, but the seller retains, and the purchaser grants, a vendor's lien on all forest products cut or removed from the property until paid in full.
3. The purchaser grants, and the seller retains, the right to check cutting and hauling operations at any time to determine whether or not the provisions of this agreement are being carried out.
4. The purchaser grants, and the seller retains, the right to suspend cutting and hauling operations during wet periods which result in rutting greater than 6 inches in depth.
5. The seller agrees to indemnify and hold harmless the purchaser from any and all liability arising out of this agreement for personal injury, death or property damage to lands of the seller or of others, resulting solely from the negligence of the seller or his agents; and the purchaser agrees to indemnify and hold harmless the seller from any and all liability arising out of this agreement for personal injury, death or property damage to lands of the seller or of others, resulting solely from the negligence of the purchaser, his agents or employees.
6. In case of dispute over the terms of this agreement, both purchaser and seller agree to accept the decision of an arbitration board of three selected persons as final. The purchaser will select one person, the seller will select one person, and the two persons selected will select a third person to form this board.

In witness whereof the parties hereto have executed this contract in duplicate

this _____ day of _____, _____.

(Witness)

(Purchaser)

(Witness)

(Purchaser)

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