

FACT SHEET

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Timber & Timber Harvesting in West Virginia

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Timber Sales Agreements or Contracts

Written contracts are for the benefit of both the buyer and the seller. They prevent future dispute by providing that all aspects of the sale be considered before the contract is signed. Be cautious in using a generalized form with blanks to be filled as important requirements needed for a particular sale may be left out.

In selling timber, it is also important that the buyer has his own forester evaluate the timber to be sold. The relationship begins with a written contract between the landowner and the forester specifying the work to be done by the forester, the amount he is to be paid, and the method he is to be paid. For example, will he be working on a percentage commission (these vary from 4 to 10%), will he be paid by the hour or day or will he be paid a lump sum? It is also important that the exact duties be specified. Will he mark the timber to be cut? Will he flag the boundaries? Will he supervise the logging to insure that environmental rules and regulations are not violated? The West Virginia Forestry Association can direct questions to knowledgeable persons, but if the sale involves several acres of timber you should involve your lawyer from the beginning.

Timber contracts or sales agreements include several considerations. Some of these are a description of the timber to be sold, a description of the acreage and boundaries, a plat prepared by a surveyor or a sketch on a topographic map, deed book and page number under which the deed is recorded in the courthouse, landowner's warranty of title, the size timber to be cut and how it will be marked, the acceptable stump height, the volume (usually not guaranteed) and kind of timber being sold and the rule used in determining the volume, the purchase price and how it will be paid (a lump sum before the timber is harvested is safest for the landowner), the time period the purchaser has to harvest the timber, who bears the responsibility for damage associated with removing the timber, a specification that the purchaser be insured and the necessary amounts and proof of same, responsibility for rights of way, responsibility for taxes during the term of agreement, specification that the purchaser and any subcontracting logging operator be legally licensed according to local laws, haul road and skid road standards and layout, liability for damage from fires caused by purchaser's negligence, penalty clauses, right of inspection, successors and assigns and indemnification of the landowner.

The contract should also contain a method for arbitrating disputes. For example, the final decision can rest with an arbitration committee, one of whom is selected by the landowner, one by the purchaser and if there is still argument a third selected by the other two. Each party pays his arbitrator and splits the cost of the third one if such is needed. Some contracts agree as to the rapidity of appointment and the rendering of the decision.

Some rights necessarily incidental to harvesting, whether specified in the contract or not, are usually implied. For example, in building roads, it may be necessary to destroy a few trees smaller than contract size. Forestry literature says that numerous court cases have held that it is obvious that such is a necessity.

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