



Common Elements of a Timber Sale Contract

It is **ALWAYS** advisable to have a written contract when selling stumpage or standing timber. Since the goals of landowners, foresters, and loggers may vary, it is difficult to offer an example of one single contract that may be applicable in all circumstances. Nevertheless, there are common elements of a contract that are always advisable, and may be fine-tuned to fit certain circumstances. Be sure that the contract represents your goals and interests. Below are the common elements of a timber sale contract:

Statement of Buyer and Seller

Identify both who is **selling the timber**, who is **buying it**, and, if applicable, if there is any **agent acting on behalf of the seller**. This would be a place to clarify who might be administering the sale. This is especially important if the seller is not going to be present, or lives out-of-state.

Dates of Operation

This section of the contract should identify the total duration of the contractual agreement, as well as the consequences in the event that the work is not completed (e.g., the contract expires but not all of the timber has been cut or removed from the property).

This is also a good place in the contract to mention the possibility of temporarily shutting the job down due to weather or ground conditions.

It is always necessary, of course, to record the date that the contract is signed by both parties.

It is not uncommon to have a contract run for as long as two years. This actually allows for the possibility of needing to shut down due to weather. Short contracts can create problems, when people need to rush ahead to finish on time, regardless of the weather or ground conditions.

Units of Measure

Which units are used to estimate the volume of timber? Cubic feet? Board feet? Tons? Cords? Cubic meters? And if board feet, which log rule? International Quarter inch? Scribner? Doyle? There are well over 100 log rules in use in the United States today. **In Massachusetts, the common rule is International 1/4 inch.**

Price and Payment Schedule

This is the place in the contract where the price is specified, as well as the timing of payments. Also, how will the payments be made? For example, on a **lump sum basis** (e.g., \$10,000 for all timber marked with blue paint? \$47,415 for all timber within the area designated on the map as "lot A"?) or on a **mill tally basis** (e.g., \$317 per Mbf (thousand board feet) of red oak, as estimated by the mill that receives the logs; \$41/Mbf of red maple, \$118/Mbf of white pine).

See the [article](#) from the Massachusetts Forestry Association's *Woodland Steward* on how bids for lump sum timber can vary significantly.

Performance Bond

It is not uncommon for sellers of standing timber to require a security deposit from the buyer. It could be in the range of 5 - 20% of the full value of the sale. By holding the security deposit, the landowner selling the timber has some "insurance" that all provisions of the contract will be met (e.g., smoothing the roads, seeding the landing, controlling erosion, lopping slash). Of course this part of the contract should **also** specify the conditions for full return of the security deposit.

Insurance

This is very important. If there are problems on a timber sale (e.g., a logger is injured, a curious neighboring child wanders onto the sale and is injured, falling timber causes damage or worse), it is at least *possible* that the landowner could be somehow seen as potentially liable. For this reason, it is an excellent idea to require in the contract that the buyer of the timber hold insurance for property damage, bodily injury, and worker's compensation.

Simply stating in the contract that the owner is not liable may not be sufficient in the eyes of the court. It is advisable, however, to include such a "save harmless" clause in the contract, for example:

The Buyer agrees to indemnify and save harmless the Seller, of, from, and against any and all claims (including worker's compensation claims, or any other personal liability or medical claims), demands, suits, actions, other legal proceedings, and damage, which may be brought or asserted against or suffered or sustained by the Seller and which may arise out of or may be connected in any way with any action done or suffered by the Buyer in connection with this agreement or the work of the Buyer contemplated hereby.

Harvest Tree Designation

How will trees to be sold be designated in the woods? Will the timber be marked? What color paint will be used? Will the area be designated in the woods with ribbons or paint?

Harvest Map

It is advisable to include reference in the contract to a map of the harvest area, which indicates locations of landings, stream crossings, boundary lines, and critical areas to avoid (e.g., wetlands, sensitive habitat). Likewise, the map can designate the area on the property in which the harvest will take place.

Landing

A landing is the location on a logging operation where wood is transferred to trucks to be taken to a mill. Landings are usually located very near public roads. They commonly have skid tails leading out from them into the woods over which logging equipment such as skidders or forwarders travel, to bring the timber from the stump to the collection point for transport.

Condition of Road and Landings

It is important to state what the conditions are prior to the start of the sale, to avoid misunderstanding about how they will be left after the sale. Whose responsibility is it for repair? What about trash or debris being left on the landing?

Stream Crossing and Other Regulatory Limitations or Responsibilities

In Massachusetts, timber sales of greater than 25 Mbf are regulated under the [Forest Cutting Practices Act \(Ch 132\)](#). It is the ultimate obligation of forest owners to ensure that harvest operations are in compliance with the Chapter 132 regulations. Penalties may be levied for noncompliance. It is thus important that landowners make sure through their contract that the operation will comply with regulations of Chapter 132.

Chapter 132 pays particular attention to water quality protection and the prevention of non-point source pollution in the form of sediment from disturbed soil entering streams or other water bodies. If logging machinery crosses streams, it can result in mud or silt entering the stream. There are erosion control measures [also known as Best Management Practices, or BMPs] required by Chapter 132 to minimize the potential effect of erosion on water quality.

Make sure through the contract that use of BMPs and care in stream crossing placement will be taken to ensure operation in compliance with the [Forest Cutting Practices Act \(Ch. 132\)](#).

Slash height and location

Slash is the debris that is left after harvesting that was not removed for commercial use. It is the branches, limbs, and other pieces of trees left in the woods. Many owners believe it is very unsightly, and are concerned about the apparent "mess" that slash makes during and after the timber sale. It is possible to specify in the contract that slash be left no higher than a certain distance from the ground, or not left at all within an agreed upon distance from trails, roads, boundaries, homes, or other features.

Slash is expensive and dangerous for harvesters to deal with. Since it has no commercial value, they can not sell it. As a result, cutting it up further to reduce its height, or moving it off site or elsewhere on the timber sale to be out of view is an expensive proposition that is not cost effective. Thus, if a landowner places in the contract particular slash restrictions, the buyer of the timber may reduce the amount of money they would pay. If the Seller wants to place certain slash restrictions in the contract, expect to have the value of the standing timber reduced to compensate for the extra work required of the Buyer.

Slash in Massachusetts is also regulated by the [Slash Law](#), which stipulates how high and where it can be left with respect to roads, boundary lines, railways, and water bodies.

Penalty for cutting unmarked timber

Mention in the contract that there will be a specific penalty for timber that is cut which was not designated for harvest. Commonly, timber that is marked for harvest is painted both at eye level, as well as at ground level. Thus, paint is evident on the stump, to indicate that a designated tree had been removed. Stumps without paint imply that the timber was not designated and agreed upon in advance.

Improvements to the woodlot

A timber sale is an excellent opportunity to have additional work done on the property. For example, an extension of an existing road could be built with the equipment used by the logger. Gates could be constructed, bridges built, access otherwise improved, or other timber improvement practices could be implemented (e.g., precommercial thinning, pruning). Timber harvesters are often in an excellent position to make improvements like this, since they have heavy equipment and experience. These kinds of improvements **must be included in the contract**, however, so that all parties understand the expectations, and the timber is priced accordingly. As in contending with slash, these additional improvements cost the buyer time and additional expense. Sellers should expect the price of timber to be smaller if additional improvements are added in the contract.