



10 THINGS LANDOWNERS SHOULD DO **BEFORE THEY SELL THEIR TIMBER**

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“See how the farmer waits for the land to yield its valuable crop” James 5:7b NIV. Just as a farmer patiently waits to harvest his or her valuable crop, so does the landowner who wishes to harvest their timber. All the steps involved in establishing, maintaining, and protecting timber have led to the final harvest. That is why it is imperative that timber owners be prepared prior to selling this valuable commodity.

Both the Alabama Forestry Commission and the

Alabama Cooperative Extension Service recommend that forest landowners use a professional forester to coordinate all timber harvests. The benefits of using a consulting forester include increased prices received for standing timber, protection of the landowner’s interests in the form of a professional contract, and the peace of mind of knowing a competent resource professional is handling the details. In addition, the consulting forester will work as the landown-

er's agent and will have certain legal obligations such as obedience to the landowner's directives, loyalty to the landowner and not the timber buyer, disclosure of any potential conflict of interest, confidentiality of discussions and correspondence with the landowner, accounting for any of the landowner's money that they retain, and reasonable skill and care.

The best forestry consultants are those Registered Foresters who practice consulting full-time, specialize in selling timber for landowners, do not have a conflict of interest with anyone who buys standing timber, has years of experience selling timber, and who has the landowner's best interest in mind. Below are a few sites with lists of consulting foresters that practice in Alabama:

Alabama Chapter of the Association of Consulting Foresters:

<https://alabamaacf.com/find-a-forester/>

Alabama Forest Owners Association:

<https://www.foa.org/consultant/forestersearch.htm>

Alabama Forestry Commission:

https://forestry.alabama.gov/Pages/Informational/Service_Providers.aspx

Once a consulting forester has been identified, the landowner should consider the following steps prior to the initiation of a timber harvest:

1). Understand the timber sale process.

The process of selling timber by using a Consulting Forester usually includes the following:

a. Initial Consultation – The prospective Consulting Forester performs a visual inspection of the area to be harvested to determine the points of access, topography and the quality/quantity of timber to be removed. The information gathered will then be used to determine if the Consultant will consent to serve as the landowner's agent during the harvesting process.

b. Consultation Agreement – A written Consultation Agreement usually follows should the landowner and the Consulting Forester come to agreement on the terms. This written agreement may be referred to by another name, but it usually describes the period of service, defines the location of the timber sale area, guarantees

the landowner has the authority to authorize the Consultant to serve as his agent, lists the services provided by the Consultant, and describes the fees charged by the Consultant.

c. Negotiation with Timber Buyers – After the signing of the Consultation Agreement, the consultant forester will market the timber to qualified timber buyers (Buyer) in the area and negotiate the terms of harvesting. Once an offer has been accepted by the landowner (Seller), the selected Buyer often conducts a title search to ensure that no challenges will be made to their purchase of the timber. If there is a mortgage on the property, the Buyer may request a "Letter of Release" from the mortgage holder. If there is a lien on the timber/property, the Buyer's title company will typically provide a list of items that the Seller must provide for them to complete the transaction.

d. Timber Sale Contract Closing – Once the title is clear, the Buyer, Consultant, and Seller normally meet at a location where a Notary Public is available to witness the signatures of the Timber Sale Contract. A good contract will be either prepared or reviewed by a qualified attorney and should protect the Seller's interests. On lump-sum sales the Seller is paid in full for his timber at this time. On Pay-as-Cut contracts the Seller is paid (usually weekly) for the timber as it is harvested. The Consultant usually receives a performance bond from the buyer at closing. This bond is typically deposited in the Consultant's escrow account until the successful completion of the harvesting. Some Buyers may request a 1099 from the Seller to report the amount of the purchase to the IRS at closing.

e. Timber Harvesting – The Consultant typically inspects the harvesting operation on a regular basis to verify that the Buyer is abiding by the timber sale contract. The performance bond retained by the Consultant will be returned to the Buyer upon the completion of harvesting if the provisions in the timber sale contract were met.

2) Do the homework.

As a minimum, landowners should conduct the following prior to selling timber. Define the objectives for the harvest, make sure there is a consensus among all of the owners to sell the timber, notify



Be sure that you do your homework before deciding to sell timber. Here, Bruce Lanier of McKinley and Lanier Forest Resources, Inc. of Northport (center right) encourages landowners to define their objectives for the timber harvest before selling.

the selected Consultant Forester of any liens on the timber/property, discuss the harvest with their accountant or estate planner to determine the potential impact on estate/tax planning, clearly define any no-cut or partial cut areas, as well as any improvements (buildings, fences, roads, fire-lanes, etc.) that need to be protected, work with the selected Consultant Forester to estimate reforestation costs and set aside the appropriate amount from the timber sale revenue for this important practice.

3) Understand the tax implications of a sale.

Timber sale revenue qualifies for Capital Gains treatment. The federal government will tax any “gain” the landowner has realized while owning the timber.



The value of the timber pictured above has risen from \$980/acre in 2017 to more than \$2,600/acre in 2022. Landowners should determine their tax basis to mitigate the capital gains taxes on the sale of timber.

A gain is determined by subtracting the value of the timber at acquisition from the amount received for the timber at the time of the sale. The value of the timber at the time of acquisition is known as the Tax Basis. The Consultant Forester should be able to help establish this basis. In addition, the Seller may qualify for a reforestation tax credit and the amortization of reforestation expenses should the harvested area be reforested. However, the Seller should talk with a qualified accountant about these complicated implications of a timber sale prior to the decision to sell.

4) Get a survey.

All property lines should be surveyed and marked by a licensed surveyor prior to marketing timber. Well-marked boundaries may help deter adverse possession from an adjoining landowner who may attempt to claim a portion of the Seller’s property. They also help to prevent trespassing by those using adjoining properties and serve as a clear stopping point for timber harvesters. Well-marked property lines may also result in higher prices paid for standing timber as Buyers have less risk involved in their harvesting. Boundaries marked by those other than a licensed surveyor are often more expensive in the long run.



Surveyed and marked lines help to prevent timber trespass and avoid claims of adverse possession.

5) Establish access.

This is only a concern if all or a portion of the Seller’s timber is not accessible from a public road. The Consultant may require the Buyer to secure his own access to the property. However, many Sellers have obtained higher prices by arranging for access with an adjoining property owner prior to selling their timber. Any agreement entered by the Seller

with an adjoining landowner should be in writing. The Seller should also obtain a separate agreement with the Buyer which requires him to match those commitments.

6) Know the roles.

It is important to know the roles of those involved in the timber sale process to improve communication. The Consultant will serve as the Seller's agent for the timber sale while the Buyer will normally work with contractors for the logging and cleanup work. To avoid confusion, all the Seller's communication should be with the Consultant. The Consultant will relay the Seller's thoughts or concerns to the Buyer who will in turn communicate with their employees or contractors. While most Buyers and their contractors are reputable, the Seller should avoid sharing confidential information with anyone who is not their agent.

7) Understand the hazards of a logging visit.

Due to the insurance requirements of the Buyer and the potential hazard to visitors, it is recommended that the Seller not visit the site while the timber is being harvested. The Seller should be aware that there may be tripping hazards, falling trees/limbs, and poisonous snakes if he/she decides to visit the site while the equipment is idle.

8) Be mentally prepared for the change in landscape.

The visual impact of a commercial harvest will be dramatic. This is especially true in places where



Landowners should be prepared for the visual impact of a commercial timber harvest. Most clear-cuts aren't as neat as this whole-tree chipping harvest.



Landowners should manage their expectations for existing roads following commercial timber harvests. While the road pictured in this photograph may not look the same as it did prior to the initiation of harvesting, it functions the same.

the Seller has become accustomed to the presence of mature trees such as near a home, an old house place, vistas/overlooks, and recreational areas. The Consultant will require the timber buyer to pick up their garbage, stabilize skid trails where needed, and smooth existing roads. However, there will still be mounds of dirt, logging debris, and other unsightly impacts caused by the harvesting. Fortunately, with time, the beauty of the forest should return.

9) Manage expectations for existing roads.

Most Timber Sale Contracts state that the Buyer must return the existing roads to a condition that is at least as good as before the initiation of timber harvesting. However, both parties must be reasonable in their expectations for this to be accomplished. Roads that are used by logging equipment will appear visually different upon the completion of harvesting even though they have been restored to the same level of operability. Most Timber Sale Contracts do not address the restoration of ATV trails upon completion of harvesting as the cost to do so would be considered excessive by most Buyers.

10) Understand the difference between mitigation and elimination of problems.

By preparing a Timber Sale Contract that is written from the Seller's perspective, securing a performance bond, and by monitoring harvesting activities, the Consultant will greatly increase the likelihood that the timber sale process will be a success. However, there are some variables such as weather, mill quotas, logger labor shortages, etc., that are beyond the control of anyone. Some disruptions and inconveniences should be expected when selling the timber. ●