

SOUTHEASTERN SOCIETY



May 17, 2012

UPL Advisory Opinions
State Bar of Georgia
Standing Committee of the
Unlicensed Practice of Law
104 Marietta Street, NW, Suite 100
Atlanta, GA 30303

RE: State Bar Hearing on the Unlicensed Practice of Law concerning Registered Foresters
and contract preparation for Timber Sales

Dear Committee Members:

This letter is being written on behalf of the members of the Georgia Division of the Society of American Foresters. The Society of American Foresters is a national organization of practicing foresters whose mission is to advance the science, education, technology, and practice of forestry; to enhance the competency of its members; to establish professional excellence; and, to use the knowledge, skills, and conservation ethic of the profession to ensure the continued health and use of forest ecosystems and the present and future availability of forest resources to benefit society. The Georgia Division membership is deeply concerned with the potential negative impact an unfavorable outcome of the hearing could have on the day to day activities of the forestry community across the state.

We have received copies of responses prepared by other forestry groups in the state in preparation for the subject hearing and agree that foresters are not engaging in the practice of law when completing form contracts for clients in the sale of timber. As stated by many of these groups, the fees associated with selling timber for clients are typically derived from a commission of the proceeds of the sale of the timber. This commission is payment for professional knowledge and experience in dealing with sale area delineation, timber volume estimation, market knowledge and participation, harvest inspection for industry and governmental regulation adherence and payment verification/reconciliation. As registered foresters, facilitating the use of a standard form contract to clearly define the relationship and agreement between landowners and timber purchasers, foresters are protecting the interest of the forester, landowner, and timber purchaser in the transaction.

Provided the legal content of the contract is sufficient, correct, and in most cases prepared by an attorney licensed by the State Bar, or provided at the express request of the client, under the direction of the client, and done without specific charge; foresters provide specific industry accepted requirements and terms within the contract to protect the interest of all parties involved and to complete the sale of timber specifically stating the timber to be harvested and the terms within which the harvest is to occur.

As such, landowners are advised to seek legal counsel if they are unfamiliar with the terms of the contract or do not understand the legal terminology stated in the contract. As seen by the forestry

community and practiced on a daily basis, it is the buyers' responsibility to verify the purchase and harvest of timber is free from liens or other impending restrictions or covenants. Timber purchasers regularly engage legal counsel to conduct title searches and verify the timber to be purchased has clear title and is free from liens.

There are numerous other professions that use standardized form contracts to connect buyers and sellers in transactions. Some examples include real estate termite treatment, car sales, rental agreements, telephone service, and cable service. The form agreement or contract is prepared by an attorney and the company/agency employee or customer fills in the pertinent information.

As stated in the letter from the Georgia State Board of Registration for Foresters, one facet of a licensed registered forester's duties includes preparing and managing the sale of timber on behalf of clients as being within the scope of practice under O.C.G.A. §§ 12-6-41 through 12-6-62 and Title 43 of the O.C.G.A. Under this section of the Georgia Code, no persons are legally allowed to practice forestry unless licensed by the Georgia State Board of Registration for Foresters.

In responses from both the Georgia State Board of Registration for Foresters and the Georgia Forestry Association, these groups reference O.C.G.A Section 15-19-52, which clearly states that legal instruments may be prepared on behalf of others as long as a fee is not charged and done at the direction of the parties involved..... as stated in the code "nor shall any person, firm, or corporation be prohibited from drawing any legal instrument for another person, firm or corporation, provided it is done without fee and solely at the solicitation and the request and under the direction of the person, firm or corporation desiring to execute the instrument". As previously stated above, a sale commission is typically paid to the forester for their forestry knowledge, expertise, and activity in the market place, not for producing a contract. The contract is used to protect the parties involved and based on the terms agreed upon by all parties. We support their affirmation that foresters completing form contracts for the sale of timber on their client's behalf is clearly within the requirements of O.C.G.A Section 15-19-52. Form contracts for the sale of timber are available from various sources and, in some cases, are provided free of charge. Any intent to require consumers to seek legal counsel would create undue expense and effort on the landowners' behalf.

Based on the historical use of form contracts for the sale of timber along with the lack of evidence to show the current process is an endangerment to the public, the Georgia Division of the Society of American Foresters requests that the Standing Committee rule in favor of licensed foresters' continued use of form contracts and that in fact is NOT engaging in the unlicensed practice of law within the definition of O.C.G.A. Section 15-19-50.

The Georgia Division of the Society of American Foresters would like to thank the State Bar and Standing Committee for considering our comments on this important issue.

Sincerely,



Lawrence C. Hancock, III RF
2012 Georgia Division Chair