

## **Sample Contract - Before you harvest, protect your interests.**

To view or order a copy of *The Kentucky Forest Landowner's Handbook*, visit [www.maced.org](http://www.maced.org) or call 859- 986-2373.

### **1. Seek the advice of a trusted attorney.**

It is important to seek the advice of the forestry professionals, either at state agencies or a private consulting firm who can help you plan for a harvest.

It is equally important for you to seek the advice of an attorney who can prepare for you a timber sale contract. Timber sale contracts are not complicated or lengthy and no fine print is necessary. A trusted local attorney can use the sample provided on the following page to draft a contract that meets your specific needs. Take the Landowner's Handbook with you to show the attorney exactly which management practices are to be referenced in your contract.

### **2. Don't be talked out of using a contract.**

Too many Kentucky landowners' have made the mistake of entering into a logging agreement on a verbal understanding and a firm handshake. The logger and the landowner are both well advised to have a clear written understanding of the terms of the logging project, including the timber harvest management practice standards to be used by the logger.

The prudent landowner will have no problem addressing both his financial and ecological concerns with the logger if a proper timber sale contract is prepared. Don't be persuaded to enter into a verbal logging agreement. Any ethical logger understands that you have a legal right to a signed written contract to avoid misunderstandings.

***If a logger is attempting to talk you out of using the timber sale contract, that is the first red flag letting you know that you may be talking with the wrong logger.***

### **3. Who should pay for the contract?**

First, the timber sale contract is not an expensive legal document. By reviewing the sample on the next page, you will notice that the contract is not lengthy or complicated. Read this sample contract thoroughly before visiting your attorney. Your advance preparation will likely limit his or her time to a couple of hours. This will be a minor cost of the overall timber-harvesting project. By accepting the responsibility of paying for the binding timber sale contract, you get the comfort of knowing your interests are protected. The old saying, "an ounce of prevention is worth a pound of cure" is applicable here. The cost of a simple contract is only a fraction of the cost of property damage or a dispute over timber sales proceeds.

### **4. Can I just use the contract in the sample contract?**

The sample contract is only an example. You are encouraged to use the sample contract as a basis for discussion and consultation with an attorney of your choosing. The drafting of a binding contract should be done by an attorney whom you trust. The sample is not intended to be used without first consulting with your attorney.

***The contract on the following pages is a sample and is to be used as a guideline only. Consult your local attorney to add or amend this sample to meet your specific needs.***

***Content that is underlined or where options are listed (E.G.: a. or b.) requires consideration for your specific circumstances. Many thanks to Michael Campbell (Campbell, Rogers and Blair, Attorneys at Law) for drafting this sample contract.***

## **SAMPLE TIMBER SALE CONTRACT**

THIS TIMBER SALE CONTRACT is made and entered into this 4th day of July, 2005 by and between Joe and Edna Maple, husband and wife, hereafter referred to as "Landowners", and Johnny Timberlake, hereafter referred to as "Logger."

Landowners are owners of certain real property located on Troublesome Creek Rd. in Noe County, Kentucky, more particularly described by the attached copy of Landowner's deed and hereafter referred to as the "property". Landowners agree to sell, and Logger agrees to purchase, a certain boundary of timber marked and designated on the property under the terms and conditions set forth below:

**1. Price.** Logger and Landowners shall share equally, fifty percent to Logger and fifty percent to Landowners, the gross price received for each load of timber cut and sold hereunder. Logger shall provide to Landowner a true and accurate copy of any and all logging tickets/receipts, and shall immediately pay to the Landowners their share of the sale proceeds activities as set forth above.

**2. Operation Control.** Logger shall be responsible for the activities of their employees, agents, subcontractors and their employees and agents, acting in the course of their employment in operations under this contract. Logger represents that a Master Logger, as defined by Kentucky law, shall be present at the site to oversee the operations under this contract. Logger further represents that all vehicles and equipment used in the operation are in good safe working condition and are insured pursuant to Kentucky law, as applicable.

**3. Liability for Injury.** This is a sales contract and not a joint venture between Landowner and Logger. Logger assumes all liability for injury to employees, agents, subcontractors and their employees and agents, and represents to Landowner that Logger is in compliance with the worker's compensation laws in the Commonwealth of Kentucky during the course of the activities under this contract. Furthermore, Logger shall indemnify and hold harmless Landowners from and against all claims and demands arising out of or in connection with work performed under this contract.

**4. Time.** Logger agrees to perform the task of cutting and removing all designated timber for sale on or before July 4th, 2006.

### **5. Performance Bond.**

**a.** Logger shall obtain, at Logger's sole cost, and maintain in effect during the term of this contract, including any extensions thereof, a general liability insurance bond with limits of not less than \$500,000.00 for personal injury and \$250,000.00 for property damage and shall produce to Landowners certificates evidencing the existence of such insurance bond.

**OR**

**b.** Logger shall remit directly to Landowner \$\_\_\_\_\_ in cash to be held as a performance bond in effect during the term of this contract, including any extensions thereof. Such bond shall be in effect to reimburse Landowner for any expenses or losses arising from the harvest activities conducted by the Logger, his employees, agents, subcontractors and their employees and agents.

**6. Assignment and Modification.** Neither party shall, without prior written consent of the other, assign or otherwise transfer any interest in this contract. Nor shall any amendment or modification of this contract be effective unless reduced to writing and signed by both parties. Landowner's delay or failure to cancel or terminate this agreement upon the occurrence of any default shall not be deemed a waiver or release by Landowner of rights, claims or causes of action arising from this contract or by common or statutory law.

**7. Timber Harvest Management Practices.** Logger and Landowner specifically covenant, acknowledge and agree that The Kentucky Forest Landowner's Handbook, 2004 edition, hereafter "Handbook", shall control timber harvest management activities under this contract and are, therefore, of the essence of this contract.

Logger agrees to conduct the activities under this contract in a manner so as to take all reasonable precautions to prevent pollution of soil, water and air and to prevent fires and fire hazards. Upon Logger's failure to conduct timber harvest activities in accordance with the above-referenced Handbook or upon Logger's failure to keep or perform any of the covenants or agreements contained in this contract, the Logger shall be in default and the Landowners may, at their election, cancel this agreement and terminate all rights and privileges of the Logger hereunder. Upon such termination, Logger's right to enter any part of the property or to cut or remove logs shall immediately cease and terminate.

**A. Sinkholes.** Avoid harvesting near sinkholes according to pages A-2 and A-3 of the Handbook. Use the Forest Conservation Act (FCA)/Agriculture Water Quality Act (AWQA) and all legal requirements.

**B. Stream Management Zones.** Vegetation and soil should remain undisturbed in the stream management zone to protect stream and aquatic life from silt, sediment and disturbance from harvest activities. Use the Forest Conservation Act (FCA)/Agriculture Water Quality Act (AWQA), all legal requirements and pages A-6 through A-9 of the Handbook.

**C. Wetlands.** Avoid harvesting near wetlands. Wetlands will be flagged and identified by Landowners and shall be off limits to all forestry operations. Use the Forest Conservation Act (FCA)/Agriculture Water Quality Act (AWQA), all legal requirements and pages A-6 through A-9 of the Handbook, pages A-10 and A-12 of the Handbook.

**D. Forest Access Roads.** All access roads, whether permanent or temporary, shall be constructed to minimize erosion and maximize safety. Reference pages A-13 through A-18 of the Handbook for design and construction of all access roads, plus adhere to all state and federal laws that apply.

**E. Stream Crossings.** Avoid crossing streams if possible. Reference pages A-19 and A-20 of the Handbook if stream crossing is necessary to conduct forestry operations. Also adhere to all state and federal laws that apply.

**F. Skid Trails.** Skid trail pattern shall be designed to minimize environmental impact to the property. Reference pages A-21 of the Handbook for the construction, maintenance and removal of skid trails, plus adhere to all state and federal laws that apply.

**G. Log Decks and Landings.** Any log deck or landing shall be constructed according to requirements of FCA/AWQA and all other regulatory requirements noted on page A-22 of the Handbook.

**H. Temporary Stabilization Measures.** Use temporary stabilization measures as noted and recommended on page A-24 of the Handbook.

**I. Harvest Operation Measures.** Follow all harvest operation measures recommended for stream management zones, access roads, stream crossings, skid trails, and log landings set forth in the Handbook as noted on pages A-24 through A-29, plus adhere to all state and federal laws that apply.

**J. PostHarvest Inspection.** The closeout phase shall be conducted according to the recommendations in the Handbook as noted on pages A-31 through A-37, plus adhere to all state and federal laws that apply. Logger agrees that no logging equipment shall be removed from the property until the Landowner conducts an inspection of the entire harvest area. Landowner reserves the right to conduct the PostHarvest inspection with the aid and consultation of a professional forester and/or members of appropriate state and federal regulatory agencies.

**K. Re-vegetation and Pesticides.** No pesticides shall be used by the logger in the forestry operations under this contract. Re-vegetation shall conform to the recommendations in the handbook as noted on page A-38, plus adhere to all state and federal laws that apply.

**8. Timber Boundary.** Landowner has designated the timber boundary within which the timber harvest shall take place. No trees other than those marked within the designated timber boundary shall be cut or removed, with the exception of those trees which must be removed to construct skid trails and access roads. The timber boundary is marked and designated by three bright orange stripes painted on the boundary trees. Trees designated for cutting, removal, and sale are marked with three blue stripes painted at approximately eye level. Logger shall compensate landowner three times the market rate for any trees cut or removed that are not marked as stated above.

Attached hereto is a copy of Landowner's deed with a description of the property upon which the timber boundary is located.

Each party hereto acknowledges that they possess or have access to a copy of The Kentucky Forest Landowner's Handbook.

Witness our hand this 4th day of July, 2005.

Landowners:

Logger:

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