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## TIMBER SALE CONSIDERATIONS

These are the outlines of the presentations given at the Association's seminar on November 9, 2010. The purpose is to provide some basic information on timber sales and to encourage you to seek professional assistance from a forester, lawyer and accountant when planning a timber sale.

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### Preparing for a timber sale      Brian Chandler & Mike Thomas

Selling your timber is a major financial venture. What you do affects the future management and profitability of your forest. You should spend time making sure you are handling a sale in the correct manner.

**Why** – You should have reasons to sell, not because someone offered you some money.

Landowners should have some objectives and goals, and written management plan. The plan should have recommendations for when to sell timber.

**Reasons for selling**

1. Monetary – Need money for something,  
Timber prices are way up  
May be some tax advantages for selling
2. Biological – Trees are a like other crops and need to be thinned or harvested to maintain growth and health, or have reached maturity (monetarily or biologically)  
Good forest management dictates periodic harvests  
Written management plan is based on your objectives and goals and gives you an idea of when to sell.
3. Accomplish other goals – create or improve wildlife habitat, salvage after an event

**When** – It depend on a # of factors

Stand factors - site productivity, age, tree height, crown, health, previous harvests, growth rates, tree size, and goals,

Other factors – timber prices

Management plan should provide some guidelines about when to harvest

Generally first thinnings are done between age 12 and 15

Subsequent harvests are done at 7 to 10 year intervals

## How – Harvesting Methods

Depends on whether stand is natural or plantation

Types - Thinnings, intermediate harvests or clearcuts

Thinning – 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup>,  
row or corridor, operator select  
3<sup>rd</sup>, 4<sup>th</sup> or 5<sup>th</sup> row

Intermediate – 3<sup>rd</sup> thinning or natural stand  
marked or unmarked called diameter limit (BAD)

Clearcut (regeneration harvest)

How – yourself or consultant – Most landowners will only make a timber sale once or twice in their life, and there is a lot to learn about it and timber buyers.

Yourself – Pros – Save some commission money

Cons – Can cost much more in the long run, outcome may not be as good

Consultant –Pros– Usually make you more money (examples), better job in long run, better residual stand, better contract and less legal headaches, knows what a logging job should look like, knows markets and timing of them. Like using other professionals (Dr., lawyer)

Cons – You pay a commission

## Payment methods

Pay as cut – by unit (cords, thousand bd ft, tons); negotiated or bid, scale tickets(need copies of them).

Most timber bought by tons, some exceptions. If bidding, it can get complicated – how much of what product, blended price, etc. Be consistent. Can negotiate to get specific logger, may take less money for higher quality job.

Lump sum – bid – Easiest to compare among buyers, get money up front, must have area and timber well marked. Don't need to worry about scale tickets.

Factors affecting price – Volume of timber, acreage to cut, distance from mill, weather and site conditions.

## What – Items needed

Survey - Maps – Aerial photos – Google Earth?

Boundaries marked – Painted line, flagging, new\old fence – Both property and stand boundary needs to be marked.

Access – State or parish road – adjoining landowner – do you like each other?

LA one call – New law

Permits - Varies by parish

Insurance – Do you have it, does logger have it.

Meet with the logger – Get to know him – Make sure he knows what you expect, know what he needs\expects, be realistic about difference between normal clean-up and free work.

## **Legal Issues**

Attorney Rob Ligon

### **I. INITIAL CONSIDERATIONS:**

- A. WHO WILL PROVIDE THE DEED? (BUYER OFTEN PROVIDES);
- B. SHOULD BE FAMILIAR WITH THE TERMS REGARDLESS OF WHO PREPARES;
- C. BEFORE SELL CONTACT YOUR LENDER IF MORTGAGED
  - 1. VIOLATION OF TERMS OF MORTGAGE TO SELL W/OUT RELEASE
  - 2. A LETTER STATING NO PROCEEDS PROBABLY SUFFICIENT
- C. REQUIREMENTS FOR A VALID SALE:
  - 1. DESCRIPTION OF THE THING SOLD
  - 2. PRICE
  - 3. CONSENT OF THE PARTIES

### **II. DESCRIPTION OF THE TIMBER**

- A. NEEDS TO BE SUFFICIENT TO PUT 3<sup>RD</sup> PARTY ON NOTICE
  - 1. DESCRIBE THE TIMBER SOLD AS EITHER ALL MERCHANTABLE TIMBER OR BY SPECIES / SIZE / PULPWOOD LOGS ETC.
  - 2. DESCRIBE THE PROPERTY UPON WHICH THE TIMBER LOCATED
    - a) legal description is preferred (can find in deed / mortgage / estate docs)
    - b) sale area if less than all. (still better to include the legal of the entire tract and then limit it to sale area)
    - c) describe sale area as marked timber/aerial photo / marked boundary;
    - d) aerial photo is acceptable to further describe sale area;

- COVER THESE IN YOUR SALE AND THE TIMBER IS SUFFICIENTLY DESCRIBED

### **III. PRICE**

- A. \$10.00 OVC (other valuable consideration / MS language)
  - 1) ACCEPTABLE ON TIMBER / MANY BUYERS DON'T WANT THEIR PRICE IN THE PUBLIC RECORD;
  - 2) PREP A SEPARATE STATEMENT OF TRUE CONSIDERATION
  - 3) IF NOBODY OBJECTS BETTER TO JUST PUT THE PRICE IN THE DOC
  - 4) SPELL OUT PRICE PER UNIT AND SPECIES IF PAY AS CUT
  - 5) TOTAL LUMP SUM

### **IV. CONSENT (AGREEMENT OF THE PARTIES)**

- A. PUT IT IN WRITING (accurately recite agreement between the parties)
  - 1) SALE OF IMMOVEABLE MUST BE IN WRITING;
  - 2) PUT ALL AGREEMENTS IN WRITING ;
  - 3) CAN PUT ANYTHING IN THE AGREEMENT THAT IS NOT AGAINST PUBLIC POLICY (JUST ABOUT ANYTHING OF CONCERN);

4) SOME STANDARD PROVISIONS MAY CONSIDER:

- a. need to include a term (12 - 24 months common range)
- b. term can be limited ( not during hunting season state the months )
- c. wet weather (ability to cease operations if to wet / extend day for day)
- d. extent of cleanup and repairs ( roads, fields, fences ,specifics best mgmt
- e. attorney's fees in the event of default (can't get unless in contract)
- f. notice prior to commencing harvest
- g. endangered species clause
- h. warranty of title or boundary lines

5) BEST TO SIGN IN PRESENCE OF NOTARY AND TWO WITNESSES

- a. written and signed is valid between the parties
- b. recording is for buyer's benefit. Protects buyer from 3rd party, give ex.

B. THE PARTIES

- 1) ALL SELLERS SIGN (EXCEPTION IS 80% rule explain)
- 2) LLC's or CORPORATION be prepared to provide the buyer with a resolution or certificate of authority stating who can sign.

**Tax Considerations**      CPA Mack Herrod

Business vs. Investment

A. Investment treatment

1. Deductions

a. various expenses related to property, including costs of land maintenance (eg maintenance of roads, fences, auto mileage, supplies) – schedule A misc. itemized deductions for investment expenses; reforestation expenses, including site prep & planting (max immediate deduction of \$10,000, amount over 10,000 amortized. for 7 years) “above the line” deduction

b. capital costs – roads, drainage systems, legal costs – added to basis.  
Equipment-can capitalize & depreciate

2. Income – capital gain income, long term if held for more than one year (inherited or gifted property, holding period exception) Preferential long term capital gain rates (pre 2011, 2011 and onward rates)

B. Business Treatment

1. Deductions

a. similar to investment in timber, but reported on schedule F. Deductible “above the line” Equipment (tractors, tools) capitalized & depreciated over 5 – 7 years, etc.  
Reforestation expenses treated the same as for invest.

Active vs. passive participation in the business – time spent on management, education, etc. is important

- b. depletion – Form T “Forest Activities Schedule”, used to accumulate & track timber basis – extensive recordkeeping required, ask your tax advisor for rules & guidelines; may or may not benefit from use
- 2. Income – can elect to treat timber sales as capital gains, similar to timber held for investment (if held for one year or more)

Basis discussion – economic basis in timber to compute gain or loss on sales

- A. Gifts & inheritance-including allocations of basis to land & timber
  - 1. gift basis – must use basis in hands of donor
  - 2. inherited basis – step up in basis to FMV (depends on potential changes to inheritance taxes)
  - 3. allocation of total value to land and timber-either in legal document or by forester
- B. Purchased basis-including allocations of value to land & timber
  - i. cost of property acquired
  - ii. allocation by forester

IRS Forms 1099

A. Pay as cut contracts-royalties

IRS Announcement 90-129 specifies that timber sales be reported on form 1099-S, rather than 1099-MISC.

If not, problems with reporting on tax returns (Sch. E Royalties vs. Sch. D Capital gains)

B. Lump sum sales

Previously, no 1099 was required, but now is (effective May 28, 2009) IRS regulations Sec.1.6045-4(b)(2)(i) classifies timber as part of the definition of “real estate”.

Watch out for incorrect 1099 form – 1099MISC, as with lump sum sales