

Contracts and Independent Logging Contractors

- ◆ Contracts
- ◆ WV Timber Sale Contract
- ◆ Employee vs. Contractor Status

Contracts

- ◆ Are legal instruments
- ◆ Should be drafted and negotiated only with the advice of legal counsel
- ◆ Do not ‘borrow’ someone else’s contract and copy it

Contract

- ◆ A contract, to be a real one, must give something of value to both parties.
- ◆ A contract without a consideration (price) or volume term may not be a contract.

Contract

- ◆ If the contract covers an agreement between independent parties,
 - it should, in all terms, reflect the relationship.
- ◆ A written contract is likely to be considered worthless by an agency of government or a court
 - if the facts of a relationship differ substantially from the terms of this contract.

Types of Contracts

- ◆ Purchase Contracts
- ◆ Service Contracts

Purchase Contract

- ◆ For purchase of a product
- ◆ Title to the product changes hands
- ◆ Common names:
 - wood purchase agreement,
 - timber sale contract,
 - wood supply, etc.

Service Contract

- ◆ For purchase of services
- ◆ Title to the product remains with one party
- ◆ Common names:
 - cut and haul contract,
 - cutting agreement,
 - harvesting service agreement, etc.

General Contract Clauses

- ◆ Identification of the parties
- ◆ Time period or Term of contract
- ◆ Consideration
- ◆ Schedule for delivery
- ◆ Product specifications
- ◆ Product measurement and inspection
- ◆ Independent contractor status
- ◆ Compliance with laws and regulations
- ◆ Assignment, subcontracting, and succession
- ◆ Termination
- ◆ ...

General Contract Clauses

- ◆ Identification of the parties –
 - is usually the first clause found in all contracts
 - presents names of the two parties, and
 - sometimes gives details about their business activities

General Contract Clauses

- ◆ Time period or Term of contract –
 - the **beginning time** is generally the date a contract is signed (but not always) and
 - the **termination date** should be specified
 - means of granting extensions may be mentioned here

General Contract Clauses

- ◆ Consideration (usually price) –
 - this is the most important clause
 - without it, there may not be a contract

General Contract Clauses

- ◆ Schedule for delivery –
 - the purchaser may wish to receive products in certain amounts dependent upon:
 - consumption rate, and
 - inventory capacity

General Contract Clauses

- ◆ Product specifications –
 - most contractors do not spell these out
 - but rather refer to published specifications from the company
 - thereby allow them to change with market conditions

General Contract Clauses

- ◆ Product measurement and inspection –
 - established methods agreeable to both parties.
- ◆ Delivery points –
 - may be specific or more general such as the product specification clause.

General Contract Clauses

- ◆ Independent contractor status –
 - Clearly spells out that:
 - the parties are independent businesses engaging in a contract,
 - not employer and employee.
 - Facts of relationship must support this to be valid.

General Contract Clauses

- ◆ Compliance with laws and regulations –
 - use to stipulate compliance with various state and federal laws and regulations.
- ◆ Indemnification –
 - is designed to protect one party from lawsuits caused by the other party's action.

General Contract Clauses

- ◆ Contractor solvency –
 - is sometimes included
 - provides the purchaser with remedy if the contractor becomes insolvent
- ◆ Insurance coverage –
 - requires the contractor to have insurance and may require proof

General Contract Clauses

- ◆ Performance bonds and security deposits –
 - some contracts contain this clause that sets up a procedure for withholding certain sums from payments
 - it is used as an incentive for satisfactory completion of the terms of the contract

General Contract Clauses

- ◆ Situations beyond control –
 - is a common clause in forest products contracts
 - allows for suspension of a contract for a reasonable time due to:
 - any delay by either party
 - causes beyond the control of either party

General Contract Clauses

- ◆ Assignment, subcontracting, and succession
 - **Assignment** is passing the rights and obligations completely over to a third party.
 - **Subcontracting** does not relieve the contractor of the contract obligations.
 - **Succession** refers to situations:
 - the owner sells the business or dies and
 - the contract rights and obligations fall to another third party.

General Contract Clauses

- ◆ Termination –
 - sets forth the rights of two parties to terminate the contract
- ◆ Notice –
 - some contracts specify a formal means to notify each other (U.S. mail, registered or certified, etc.)

General Contract Clauses

- ◆ Whole agreement –
 - states that the contract is the entire agreement between the two parties.
- ◆ The bottom line –
 - both parties must sign and date the contract.
 - some require witness and/or a notary while others do not.

Service Contract Clauses

- ◆ Workmanship warranty –
 - it is customary to give specifications for the cutting and hauling
- ◆ Location –
 - service contracts should clearly
 - specify the location of the tract to be harvested, and
 - identify the timber to be cut
- ◆ Title –
 - some contracts specify who retains title to the wood

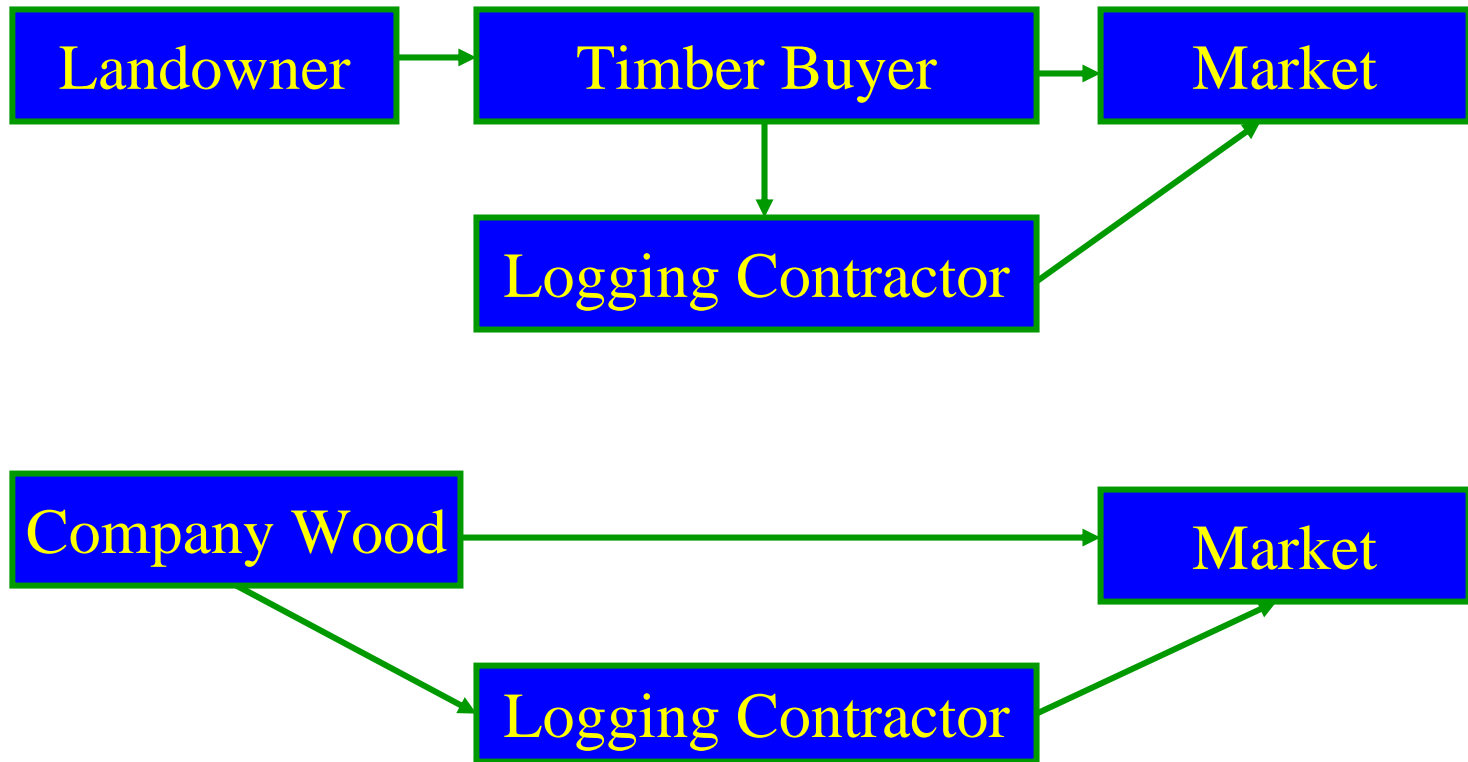
Service Contract Clauses

- ◆ Right to view operations –
 - gives the purchaser the right to view the operations of the contractor
- ◆ Access (Ingress and Egress) –
 - gives the contractor the right to travel back and forth from the harvest area

Service Contract Clauses

- ◆ Liquidated Damages –
 - prescribe damages for breaches of the contract such as:
 - cutting trees not designed for harvest,
 - leaving high stumps,
 - damaging roads or fences, etc.

Timber Sales



Timber Sales

- ◆ The methods of purchasing vary widely.
Timber can be purchased on:
 - a lump sum basis,
 - a per unit basis, or
 - some combination.

Timber Sales

- ◆ Timber purchase may be:
 - negotiated by the procurement forester, or
 - bought at auction or
 - bought on a sealed bid basis

Independent Logging Contractors

- ◆ Is a brief guideline to a variety of federal and state laws.
- ◆ Applies to employers in the forest industry and problems that can arise under these laws.
- ◆ Is a condensed version of APA publication (82-A-14):
 - How to Stay at Peace with Your Government

Objectives of Legal Issues on Independent Logging Contractors

- ◆ To ensure that:
 - every worker deserves all of the rights and benefits afforded by federal and state laws, and
 - each worker must have these rights and benefits
- ◆ To indicate that:
 - the worker's employer has the responsibility to be certain that the worker is accorded them.

Legal Issues on Independent Logging Contractors

- ◆ Employment laws and regulations
- ◆ Federal employment taxes
- ◆ IRS independent contractor status
- ◆ Federal fair labor standards act
- ◆ State worker's compensation laws
- ◆ State unemployment compensation laws
- ◆ “Common Law” status

Compliance with Laws

Reasons for compliance with laws:

- ◆ Reduce the possibility of financial loss due to government assessments and penalties
- ◆ Improve timber harvesting contractors' business abilities

Compliance with Laws

Reasons for compliance with laws:

- ◆ Uphold moral principles
 - all workers should receive their legal benefits
 - taxes must be paid
- ◆ Curb unfair cost advantages resulting from nonpayment of legal benefits and taxes
- ◆ Avoid unfavorable publicity
- ◆ Attract qualified workers

Who is an Employee?

- ◆ Under the Fair Labor Standards Act, **an employee:**
 - follows the usual path of an employer
 - is dependent on the business which he or she serves
 - is not engaged in a business of his or her own

Who is an Independent Logging Contractor?

- ◆ Common law generally states that **an independent logging contractor**:
 - is exercising independent employment,
 - contracts to do a piece of work according to his or her own methods, and
 - is not subject to the control of his or her employer except as a result of work.

Employer/Employee Relationship

Independent Logging Contractors

- ◆ Conversely, an employer/employee relationship is found:
 - “when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the results to be accomplished but also as to the details and means by which the result is accomplished....”