

Avoiding Contract Fraud

By Aaron Gilland, dendro Resource Management

Most landowners are aware of the benefits of utilizing contractors but can be unaware of some of the pitfalls. If you want more of the benefits and less of the pitfalls, the relationship starts with a solid, well-written contract. A contract written before any activity starts can avoid misunderstandings, disputes, or legal proceedings. A well-structured contract ensures effective communication and understanding of expectations up front. No surprises.



Yet there are still some landowners who see contracts as unnecessary. To them, an agreement should be based on a handshake, a word, and integrity. I am a fan of the sentiment; however, I can tell you after 24 years of working in theft and fraud prevention, I would not contract with anyone on a handshake!

All contracts are not equal. There are three major purposes for a contract:

- Provide a binding agreement between two or more persons and/or organizations where a failure to comply with the terms results in some financial, material, or even legal recourse for the contracting party.
- Establish a business arrangement for the supply of goods or services at a fixed price or hourly rate that details the quality, quantity, and performance standards of the work performed or the product supplied.
- Detail what happens when standards are not met.

By definition, it is assumed that all parties understand the specifics of the arrangement, so the words used and the details that are outlined in the contract are critical. Otherwise, once signed, it is very difficult to dispute a written contract and claim a misunderstanding. If the dispute becomes a legal issue, outsiders who were not party to the discussions will only weigh the words on the page.

The use of certain terms can make all the difference. Terms such as cords, tons, and board feet can create a large discrepancy between what was understood at the time the contract

was signed and the actual cash a landowner receives. For example, \$5 a cord is a much lower value than \$5 a ton.

Today, over 100 log rules for determining the volume of wood in a standing tree have been developed, using a variety of methods. Some are based upon the lumber tallies of individual mills, others are developed by diagramming the cross-section of boards in the ends of logs, and still others are developed using mathematical formulas. It pays to agree on which of those rules will be used to measure the volume of wood included in the contract.

For instance, the Doyle, Scribner, and International log rules are the most widely used and a contract should specify which rule is to be used. Under the Doyle Log Rule, if the logs are smaller in diameter, the actual volume of wood will be underestimated. Under the Scribner Log Rule, logs will be underestimated if they are particularly long. The International ¼-inch log rule allows for a fixed allowance of ½ inch per 4 feet of log length and allows for board shrinkage and slab thickness that provides the most consistent result across all logs.

You can specify which rule is being used in the contract and you should understand the local markets. Not doing so can lead to results that may be different than expected. Just keep in mind, the local mills have traditionally set the log rule they will use, and if you designate a different rule, then you introduce conversions between log rules. And that is a challenging issue even for mill owners and foresters!

And if forestry terms are not your bread and butter, consider hiring a credentialed consulting forester who has been trained in forest management. A well-trained, experienced, and vetted forester adds value to any forestry operation. Start your search by looking for foresters who are members of the ACF (www.acf-foresters.org), SAF (<https://www.eforester.org/>), or VFA (<https://www.vaforestry.org/>), check their references, and talk with more than one. A good forester will help you achieve your land ownership goals.

Case Study of a Dissatisfied Landowner

Clearly, having no contract leaves a landowner subject to all types of abuses and scandals with little, if any, recourse in disputes or court. However, having a poorly written contract can be a problem as well. This can especially be a problem if the contract doesn't cover all parts of what was agreed upon in the prior discussions.



In one case, a landowner signed a contract to have the timber harvested from his property. He agreed to a per unit price for two products - pine and hardwood timber. The signed contract clearly stated the tract was to be clearcut. Outside of the contract, the logger verbally estimated the entire tract would net the landowner \$50,000, but the amount was not specifically stated in the contract. The landowner was given \$10,000 up front as a deposit prior to harvesting. The agreement was that he would be paid the rest at the agreed-upon per unit prices, once the logger had harvested enough to cover the deposited amount.

The harvesting crew hauled 25-30 loads of timber per week for the next five weeks. After two weeks, the buyer supplied the landowner a settlement statement depleting the \$10,000 and returning a balance of \$1,250. At the end of the five weeks harvesting, the crew moved off the property and the landowner received a settlement check for \$4,567, marked as "Final Statement."

When the landowner called the buyer and said he was promised \$50,000, the buyer said that was a visual estimate of the tract and claimed he was mistaken when he made that estimate and insisted the landowner was paid for the tons harvested. This was clearly wrong. If the first two weeks netted him \$11,250 then three more weeks of harvesting should have totaled at least \$28,125 - not what he was promised but substantially more than the \$15,817 he received.

Although the landowner called for help from law enforcement, a local forestry consultant, and the state forestry commission, with a signed and legal contract, there was little to be done. The contract could only be considered on what was included, not what was verbally promised since that could not be proven.

Although this contract was unethical, it was legal and technically described the way the transaction was to be implemented, and the contractor fulfilled the letter of the agreement.

There are many considerations here that could have made this story come out much better for the landowner. This contract was very general in its terms and made no reference to any guaranteed amounts to be received. The products agreed to in the contract were very

general, when most harvests would include at least four product separations. Furthermore, there was no specified method for verifying the amount of timber harvested except the word of the contractor, nor were there agreements about how and when the landowner was being paid and the conditions for getting paid. Finally, the contract should have included the method to be used for resolving disputes.

Other Types of Contract Fraud

Unfortunately, contracts that are too general and leave out the verbal agreements are not the only ways landowners can be cheated. In some cases, the contract is clear but the buyer simply does not follow through on the agreement, hoping the landowner won't take action to demand compliance. Other examples of contract fraud include:

- A contract that clearly spells out all the activity and products to be harvested, but the buyer only harvests some of the trees.
- A contract designates pine pulpwood in the thinning agreement, but the buyer hauls pine chip-n-saw and only pays the landowner for pine pulpwood.
- A contract specifies how the tract is to be cared for (implementation of best management practices and/or streamside management zones, road creation/close out) but the buyer ignores these terms.
- A contract includes acreage variances for tree planting and chemical applications and the contractor goes beyond what was agreed upon and charges for the extra work.
- A contract specifies harvesting all the timber, but pulpwood markets become tight, so the harvester picks out only sawlogs and leaves the rest standing.

Control Measures for Landowners - Some Questions to Ask

Determine ways to be as clear and specific as possible using numbers instead of general terms. Here are some questions you should ask yourself and include in the agreement for a variety of contracting issues:

- What is the type of work to be done and the nature of the agreement?
- What happens if the contract is not followed as agreed upon?
- What methods will be used to verify the type and amount of wood harvested? What documentation must be provided? How will the landowner monitor the process?
- How many trees will be planted per acre? Will genetically improved trees be used? Who gets any extra trees?
- How will boundary lines be marked? What happens if the boundary lines are not followed?
- What equipment or material is to be used?

- What is the time frame for the project?
- What are the payment terms? Make sure any contracted work is completed to your standards before paying the contractor.
- What types and amounts of insurance should the contractor have to work on your property?
- Include an indemnity clause that is clear who is responsible for "issues that may occur."

It is difficult to ensure you are considering all the possible areas to control the contractual relationship. The best practice is to make sure you have a qualified contractor in the first place. Take the time and effort to find one who works with integrity, experience, and the right qualifications for the job. Obtain and check references to verify your observations and assessments during the discussion process. Evaluate the work the contractor has done in the past. Work with a consulting forester.

Remember that having a written contract is essential. Within the contract be careful to address the quality of the work to be performed. Do that in the most specific ways possible. Clearly state the specific work to be done. Keep away from generalizations that give the contractor a lot of leeway to do whatever they please so your contract is of no real value. All of this planning and contract detailing up front are designed to help you safeguard your resources so they can be valuable sources of cash today and tomorrow.

***Aaron Gilland is Founder and President, 803-413-2732,
agilland@dendroresourcempmt.com.***