

Timber Sale Conveyance Methods

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There are three primary methods for conveying timber at time of sale. Their respective use is dually based on the timber sale method and ensuring capital gains tax treatment for the seller. The three conveying documents are referred to as:

- 1) **Timber Deed.**
- 2) **Pay-As-Cut Contract.**
- 3) **Lump Sum Advance Contract.**

A brief description of each is as follows:

1) **Timber Deed:**

- a) Seller conveys all liability in timber.
- b) Seller receives a lump sum payment in exchange for the deed. The gain or loss in the timber cut-out and utilization belongs solely to the buyer.
- c) One to two year harvest term (deed length). Timber uncut after that period reverts back to seller, unless seller voluntarily grants or sales an extension to buyer.
- d) Buyer assumes all risk in timber upon deed execution and payment.
- e) Capital gains tax does not apply for certain sellers who use “Timber Deeds” based on their frequency of past timber sales. If a landowner has conducted more than 2 – 3 sales inside a five year period and rely on same timber proceeds to maintain their income, then they possibly would not stand an IRS audit, and consequently loose capital gains tax treatment if they used a “Timber Deed,” and a Lump Sum Advance Contract would be preferred. The exact line between qualifications is vague and therefore interpretation is left to varying precedence established by past rulings.

2) **Pay-As-Cut Contract:**

- a) Seller does not convey liability in the timber, but rather enters a contract where liability in timber transfers upon the actual harvesting of the timber (severance at the stump by the buyer or their agent).
- b) Seller receives incremental payments as the timber is cut (partial advances are sometimes awarded and settled upon cut-out completion). The gain or loss in the cut-out and utilization belongs solely to the seller.
- c) One month to two year contract length. Any timber uncut after that period belongs to the seller, unless buyer and seller negotiate an extension.
- d) Seller retains all risk in the timber until it is harvested.
- e) Capital gains tax treatment applies to all users of the Pay-As-Cut contract.

3) **Lump Sum Advance Contract:**

- a) The lump sum advance captures all attributes of the Pay-As-Cut while still receiving a lump sum advance payment as in a Timber Deed (combines the strengths of both methods).
- b) It is considered a lump sum advance payment and not full payment because the seller retains all liability in the timber sale as experienced in a Pay-As-Cut. Thereby qualifying for both capital gains treatment and a lump sum timber sale payment.
- c) Should accidental timber destruction occur prior to tree severance (harvesting), then like the Pay-As-Cut, the seller has liability and a corresponding portion of the monies already received is due back to the buyer.
- d) The Lump Sum Advance contract is utilized in place of the deed for active timberland owners who want to ensure lump sum sales while receiving capital gains treatment.

Be sure to verify your personal tax liabilities with a qualified accountant, forester and attorney before utilizing a timber contract or deed.