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Timber Harvesting Law Fact Sheet

Deceptive Forestry Business Practices – Contract Requirements (RSA 227-J:15, III)

Buying and selling forest products can be confusing. It is important that all parties involved have a clear agreement on forest product prices and how payment will be made prior to commencing the operation. RSA 227-J:15,III (www.gencourt.state.nh.us/rsa/html/XIX-A/227-J/227-J-15.htm) states that a person is guilty of a misdemeanor if, in the course of buying or selling a forest product as defined in RSA 227-G:4,VII (www.gencourt.state.nh.us/rsa/html/XIX-A/227-G/227-G-4.htm):

1. He or she fails to provide a written contract to the owner, prior to the cutting from the owner's property any forest products which are subject to a notice of intent to cut as defined in RSA 79:10 (www.gencourt.state.nh.us/rsa/html/V/79/79-10.htm).
2. The contract shall be signed by both parties, specify the remuneration for the forest products to be cut, and the time in which remuneration shall be made

Definitions (Res 5301.01 (www.gencourt.state.nh.us/rules/state_agencies/res5200-5900.html)):

- **“Buying a forest product”** means exchanging **money or service** to purchase a forest product, or **bartering** for the exchange of a forest product
- **“Forest product”** means any portion of a tree which will be utilized in its primary form or will be utilized after further processing.
- **“Written contract”** means a written contract between the landowner or person owning the timber rights and the buyer of the standing timber that defines the terms of the contract, the remuneration for the forest products to be cut, the time period in which remuneration is to made, and the use of the same units of measurement as the scale slip.

When is a contract required? A contract is required for every operation in the state which is required to file a Notice of Intent to Cut as defined in RSA 79:10 and must be signed by both parties prior to the start of any cutting.

Who must sign the contract? The contract must be signed by both parties filing the Notice of Intent to Cut. The parties include The **owner** and the **person identified on the Intent to Cut**:

The owner, which may include any one of the following:

1. The owner of land and stumpage; or
2. Previous owner retaining deeded timber rights; or
3. Owner/Purchaser of stumpage and timber rights on public lands (State, municipal, etc.) or Utility easements

The Logger, Forester or person responsible for the cutting as identified on the Notice of Intent to Cut

1. This can be the Forester overseeing the harvest, the logger conducting the harvest or any other person identified on the Intent to Cut as being responsible for the harvest; or

2. If a sub-contractor relationship exists, one of the following options should occur:

Option 1. The Logger/Forester (as the subcontractor) who signs the Intent to Cut, should have a signed, written contract with the Primary Contractor stating that the Primary Contractor is required under 227-J:15, III to have a written contract with the landowner; or

Option 2. The sub-contractor should have a signed, written contract with the Primary Contractor that states the Primary Contractor is required under 227-J:15, III to have a written contract with the landowner AND that the Primary Contractor must sign the Intent to Cut Form, as the “person responsible for the cut.”

The contract MUST include the following:

1. Language that the Primary Contractor is aware of RSA 227-J:15, III; and
2. The complete paragraph of RSA 227-J:15, III; and
3. Language that confirms the Primary Contractor has a contract with the landowner that complies with the requirements of RSA 227-J:15, III.

What must the contract specify? The contract must specify:

1. **Remuneration for the forest product to be cut.** This can be accomplished through:
 - a. **Exchanging Money**, in which case the price must be expressed in the contract as a
 - i. Dollar amount for each specific forest product per a common timber harvesting unit of measurement such as per thousand board feet, per ton or per cord; or
 - ii. Percent of delivered mill price for each specific forest product per a common timber harvesting unit of measurement such as per thousand board feet (based on the mill net scale), per ton or per cord; or
 - iii. For Cut and Haul harvests where the landowner is paid the mill delivered price minus deductions (see Contract Price Deductions below), the price must be expressed as a dollar amount or percentage; or
 - iv. Lump sum harvests must identify the dollar amount being paid for the estimated acreage being harvested and define what timber is included and approved for harvesting, such as species, diameter limit, all trees, etc.
 - b. **Exchanging Services or bartering**, such as stumping, can be identified for remuneration if, in the contract
 - i. When the service provided or item bartered is being deducted from payment for a harvest as described above, the service or bartered item is given a dollar value; or
 - ii. When the bartered item or service being provided is a 1:1 exchange for the timber being harvested, the contract must specify the bartered item or service being provided and the timber being used as payment needs to be clearly described for harvesting, such as by species, diameter limit, all trees, etc.
2. **Contract Price Deductions**
 - a. Deductions to the price to be paid must be clearly identified in the contract as a specific dollar amount, percentage of mill delivered price, or in the case of road material and associated construction costs - a reasonable estimate
 - i. Examples may be (but not limited to) cost of trucking, timber cutting, timber hauling or forest management fees
3. **Time Frame**
 - a. The time in which remuneration (meaning payment, service provided or bartered item exchanged) shall be made must be expressed in
 - i. A specific calendar date; or
 - ii. A specific timeframe linked to the harvest
 1. Examples of this are XX weeks after delivery to the mill/yard or every XX weeks starting from the date of the first load delivered to the mill/yard