

Insuring Timber

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Timber

“Land” by policy definition includes timber
SO:
If you are insuring land where timber has
been sold or reserved (especially if it’s
not yet cut...) should you

- ❖ Except it from the legal description?
- OR
- ❖ Show Schedule B exception?


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Timber

If you picked the legal description –

DO WE ACTUALLY Except it from the
legal description?

If not – why not?



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Insuring Timber

- ❖ Can do - unlike minerals (that's a separate topic...)
- ❖ But, what is (are?) timber?



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Insuring Timber

- ❖ Is timber real or personal property?
- ❖ Is it a crop?
- ❖ Is it a fixture?
- ❖ Can it be insured?

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Insuring Timber

Don't insure "timber rights" (whatever that might be...)

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What is timber?

“...forest trees standing *or down* of a *commercial species*, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods”

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What is timber?

“...forest trees standing *or down*” on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short rotation hardwoods”

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What is timber?

Not a crop.
What if your transaction is a Christmas tree “farm”?
What are “short rotation hardwoods”?

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What is timber?

Short-rotation hardwoods...[such as] hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than 15 years”

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What is timber?

BOTTOM LINE:

If you have a timber deal, find out what is really the subject of the transaction.

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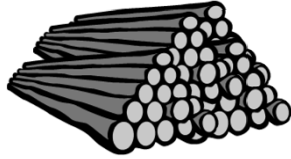
What is timber?

2nd BOTTOM LINE:

Refer any timber transaction to counsel or underwriting. Get as much information as possible – including the purchase and sale agreement.

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What is insurable timber?



Must be standing

Too late!

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What is insurable timber?

- ❖ Still connected to the land say
- ❖ *only "standing or growing"*
- ❖ Not cut or downed
- ❖ After it's cut – not insured
- ❖ Not cutting "rights"
- ❖ Not perpetual
- ❖ Not "merchantable"



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Consideration

- ❖ Full consideration paid at closing
- OR
- ❖ Contract sales with approval
 - ❖ Mortgage OK - but caution
 - ❖ "Cutting rights" not insurable (usually involves future payments)

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Consideration
Policy amount should
be considered by
counsel or
underwriting

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Constructive Severance

- ❖ Conveyance deed in chain of title
- ❖ Prior reservation
- ❖ Not multiple conveyances

Not this kind of severance!



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Resales

- ❖ Insure only sale by timber owner - not another timber sale by land owner
- ❖ Don't insure trees grown after an earlier timber sale
- ❖ Confirm no restrictions on such transfers
- ❖ Only if less than 20 years old

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Legal Description

Description of underlying land should be “good and sufficient” as in any insured description



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Legal Description

Use consistent description
no matter what the deed says

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Legal Description

❖ Do not insure:

- ❖ the nature of the timber
- ❖ size or diameter of the trees
- ❖ the species of the trees
- ❖ timber seeded, planted, sown or grown after date of deed

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Access

Must have direct access or insurable easement for access to and from an open public right of way



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Access

If no access, show an exception:
“Notwithstanding Paragraph 4 of the insuring clauses of the policy, the policy does not insure against loss arising by reason of any lack of a right of access to and from the land.”

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Access

EASEMENT APPURTENANT

Even if insurable, need exception:

“Any question as to whether the easement described in Schedule A as Parcel ___ is sufficient to provide access to said premises.”

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Access

EASEMENT APPURTENANT

Did servient tenement
owner know logging trucks
were going to use the
road??

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Mortgage

Apply general timber guidelines for
borrower's title

Approval needed if the
mortgage is the
"severance" document

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Access

EASEMENT APPURTENANT

Even if insurable, we need
exception because of the
nature of the use of the
road

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Mortgage

Apply general timber guidelines for
borrower's title

Approval needed if the
mortgage is from the buyer
back to the seller

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Mortgage

Deed of trust probably not
appropriate

But could be insured

Local practice whether to show
an exception for using DT

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Mortgage

Deed of trust must
include the “non-
agricultural” clause

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Uniform Commercial
Code

Cautions!!

Offer no “advice” as to
whether a financing
statement is required

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Uniform Commercial
Code

- ❖ Don't look for financing statements at the state level
- ❖ Show any *county* recorded financing statements as an exception

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Uniform Commercial
Code

But refer to counsel or
underwriting to see if UCC
financing statement is required
(separately or in the mortgage)

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Exceptions

- ❖ “Terms, conditions and provisions” of the timber deed.
- ❖ Refer to both original and resale instrument, if resale

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Exceptions

- ❖ Also take exception to *logging agreement*, if any
- ❖ BUT: May make transaction uninsurable

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Exceptions

- ❖ Take exception to all matters affecting title to underlying land
- ❖ For resales, include matters affecting land after the original deed

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Exceptions

- ❖ Exception for whether interest insured is real or personal property
- ❖ UCC/financing statement exception

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Exceptions


Unmarketability of title to the timber or the estate or interest described in Schedule A

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Exceptions

No insurance of/for:

- ❖ fallen or downed trees



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Exceptions

No insurance of:

- ❖ trees of certain species or size



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Exceptions

No insurance of:

- ❖ trees sown, planted, seeded or germinated after date of conveyance (not date of policy!)



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Taxes

All taxes must be shown as exceptions, whether affecting only the underlying land, the trees, or anything unrelated to either

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Taxes

Show the exception relating to agricultural or similar classification, if applicable



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Requirements

Commitment

We must advise the customer of:

- ❖ our understanding of the transaction, and
- ❖ how the policy will look

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Requirements

Commitment

No UCC advice



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Policies

Don't insure a
financing statement
in Schedule A

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Policies

Show exceptions in
Schedule B that were
disclosed in the
commitment

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Policies

“Estate or Interest”
Should be “fee”
BUT

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Policies
BUT: vest
as to the timber, not
the underlying land

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Policies
Do not vest in the
owner of the
underlying land

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Policies
No need to write
so-called *purchaser's* type
of
policy, even if
insuring a contract

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Policies

If insuring a contract, show it in Schedule A and describe the estate or interest as “equitable interest” or “contract interest” created by the contract

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Policies

If insuring a contract, show an exception in Schedule B for the “terms and provisions” of the contract

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Policies

- ❖ Only “regular” ALTA policies
- ❖ No extended coverage
- ❖ Show all general exceptions
- ❖ Do not delete the creditor’s rights exclusion

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Policies

Always use special “timber”
endorsement

It related to how a claim is
handled with the insured

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Policies

Continue to show exception for
“Indian tribal codes or
regulations, Indian treaty or
aboriginal rights, including
easements or equitable
servitudes”

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