

SUGARBUSH LEASES

Thanks for joining us today.
The presentation will begin shortly.

Everyone will be muted for the first portion of the presentation and you will be able to unmute yourself for the question/answer period.

You can type comments or questions into the CHAT feature at any time.

Live-captioning is available, use the link in the Chat window to connect to live-captions.



Funding Provided by:
USDA Agricultural Marketing
Service: Acer Development
Grant

SUGARBUSH LEASES

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*1.0 Category 1 Continuing Forestry Education
Credit (CFE) available



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Visit the [Upcoming Events](#) page
at [Maplemanager.org](https://www.maplemanager.org) to complete your registration.

| Date | Time | Session Topic |
|---------------------|----------|---|
| Wed. September 16th | 7 pm EST | Sap Yields and Tapping Stained Wood |
| Wed. September 30th | 7 pm EST | Fall Tapping and Tap hole Longevity |
| Wed. October 14th | 7 pm EST | Forestry and Maple Panel Discussion |
| Wed. October 28th | 7 pm EST | Tubing Systems and Forest Management |
| Wed. November 4th | 7 pm EST | Digital Entrepreneurship and Online Sales |
| Wed. November 11th | 7 pm EST | Sap-Only Enterprises |
| Wed. December 9th | 7 pm EST | Appraisal and Valuation of a Sugarbush |



MAPLE EDUCATION RESOURCES

www.maplemanager.org



Business Plan



Ask the Team



Legal Resources and Templates



Forestry



AVAILABLE RESOURCES

- ❑ Maple Lease Set-Up Checklist- covers the essential parts of a lease
- ❑ Sugarbush Lease Guide-Annotated guide for complete lease agreement
- ❑ New! Sugarhouse Lease Guide

Sugarbush Lease 2020: An Annotated Guide

Annette Higby, Attorney at Law
Mark Cannella, UVM Extension Associate Professor
Mark Isselhardt, UVM Extension Maple Specialist



FBFS031-1/20 Acer Series: Maple Forest Business Development
Visit www.maplemanager.org for maple development resources

About This Guide

This educational resource is designed for maple syrup producers, maple sap producers and forest land owners to consider, discuss and formalize lease agreements. This resource is not intended to replace the guidance of a legal professional. The situation for each person and party is different and professional legal assistance is recommended to ensure your business agreements are accurate, appropriate and complete.

This guide includes sample language that can be used directly in a formal lease agreement. Several sections of this document present multiple clauses that need to be selected from in order to formalize the appropriate terms for your agreement. In addition to standard clauses and optional clauses this document also includes reference sections marked by italics. These reference sections further describe considerations or risks related to the selection or omission of specific language in the lease.

This educational document is not a completed lease agreement. The template includes blank sections (e.g., "_____ of taps") that require the addition of specific information for your agreement. Important sections that require additional information include but are not limited to the following sections:

Preamble (date, parties)

- 1.1 (acres, address)
- 2 (dates of lease term, termination dates, surety bond amount)
- 3.1 (tap rental rate)
- 3.2 (tap count, adjustments)
- 5.2 (dbh tapping guidelines, months of tapping)
- 19 (US State, signatures, witness, notary)
- Memorandum of Lease (full form)

Funding for this resource was made possible by the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) Acer Access and Development Grant AM1901000000033. Its contents are solely the responsibility of the authors and do not necessarily reflect the official views of the USDA.



CULTIVATING HEALTHY COMMUNITIES
Maple is a traditional Vermont product and has been a part of the state's identity for centuries. The University of Vermont Extension, in partnership with the Vermont Department of Agriculture, is proud to offer this guide to help maple producers and processors understand the legal aspects of maple production and marketing. This guide is intended to be used as a reference tool and is not a substitute for legal advice. For more information, please contact the Vermont Department of Agriculture or the University of Vermont Extension.

Maple Lease Set-Up Checklist

Annette Higby, Attorney at Law
Mark Cannella, UVM Extension Associate Professor

FBFS032-1/20 Acer Series: Maple Forest Business Development
Visit www.maplemanager.org for maple development resources



Understanding maple production across the United States is expected to create new opportunities for forest owners and maple operators to work together to access maple forests. A good lease agreement between a landowner and tenant will embody each party's wants, needs and risk management imperatives. A lease must also be properly validated to become a legally binding agreement.

This national resource includes the basic requirements to finalize a valid lease and the steps to take if a lease is intended to be binding on subsequent owners, heirs and assigns. This document also includes a key questions the parties must discuss to develop an appropriate lease for their situation. For more information on leases visit www.maplemanager.org and find UVM Extension Publication 3032-1/20 "Sugarbush Lease 2020".

...
This document identifies the parties and includes an adequate description of the property to be leased by parties with the authority to bind an entity or trust under the terms of an operating lease or trust instrument. In New York, New Hampshire and Maine, a lease must be signed before a lease of real estate is void or unenforceable in court under that state's Statute of Frauds. In Vermont, New York, New Hampshire and Maine any unwritten contract relating to the lease of real estate is void or unenforceable in court under that state's Statute of Frauds. While each state's statute varies somewhat in its particulars, generally, to be enforceable, a lease must be in writing and must be signed by "the party to be charged" – or both parties agree there was an oral agreement. The Statute of Frauds also applies to the lease.

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Available at maplemanager.org



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SUGAR BUSH AND SUGAR HOUSE LEASING

Why Put it In Writing?

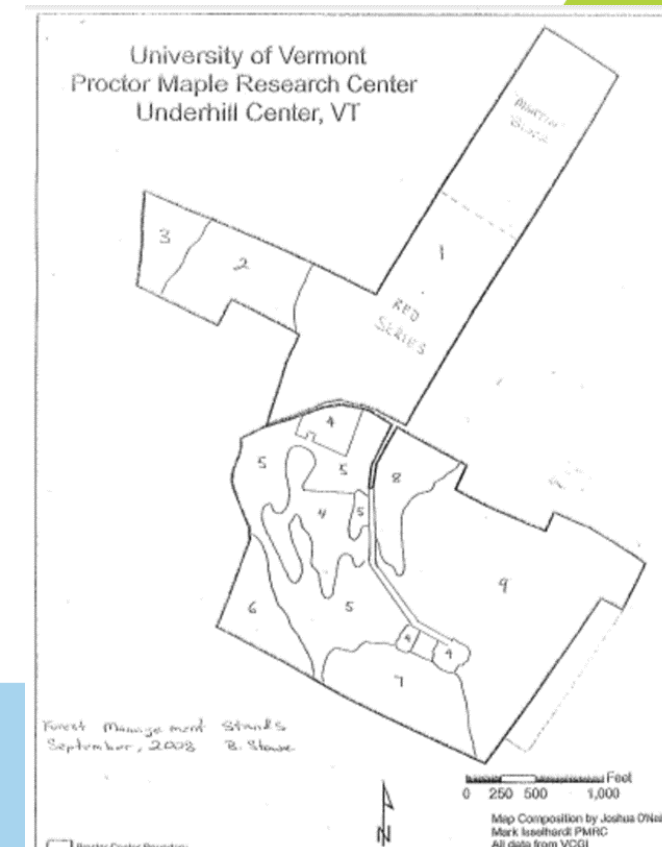
- Oral Leases are Unenforceable
- Misunderstandings
- Security of Tenure
- Templates – How to Use



SUGAR BUSH AND SUGAR HOUSE LEASING

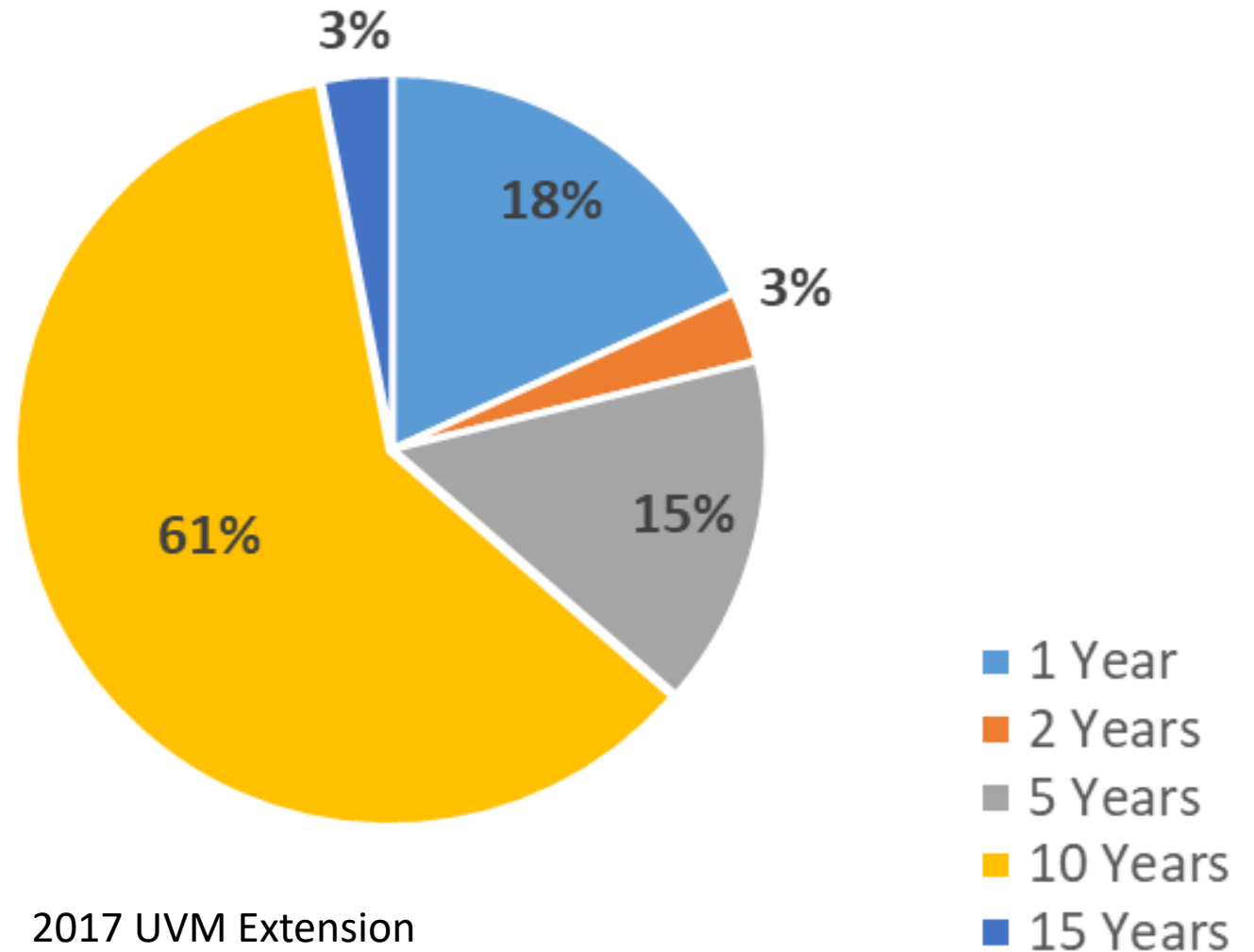
Lease Checklist:

- Parties / Description of Premises
- Improvements *
- Insurance
- Lease term / rent



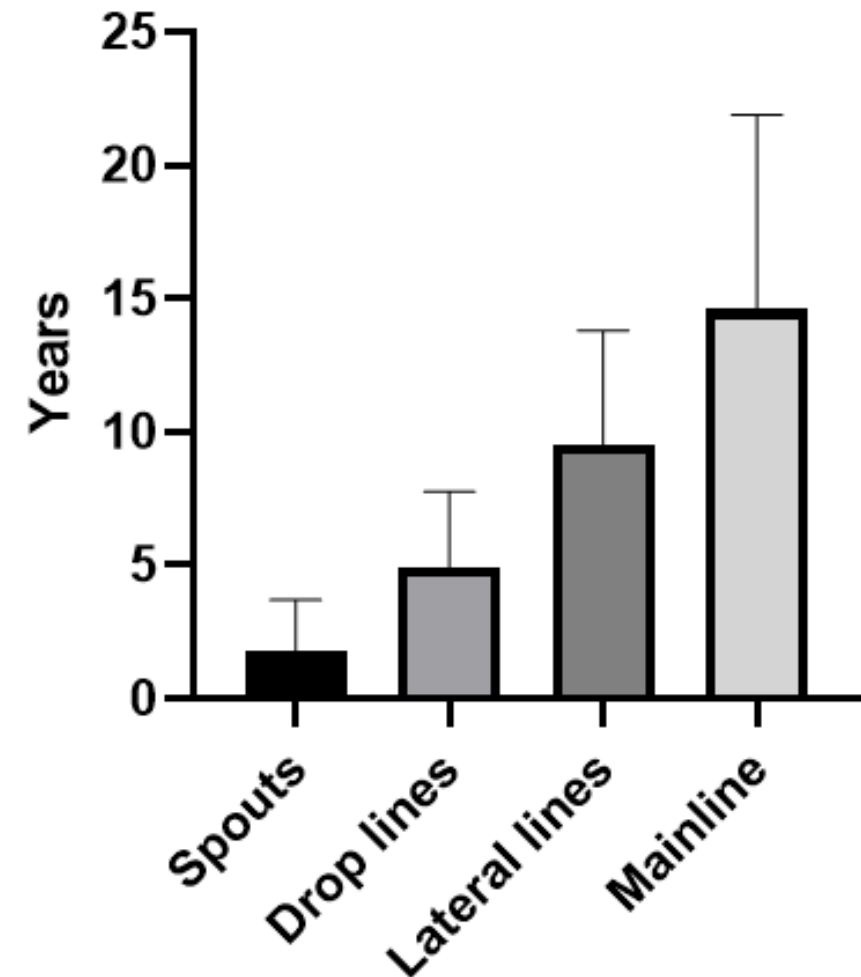
LEASE TERM

- ❑ 10 year leases are most common in Vermont
- ❑ Renewal options
- ❑ Buyback clause



NON-SITE FACTORS...

- ☐ Lease length (\$15-20/tap investment in tubing systems)
- ☐ Ownership stability
- ☐ Forest management restrictions
- ☐ Utility cost?



SUGAR BUSH AND SUGAR HOUSE LEASING

Lease Checklist, Continued:

- Binding on Heirs and Assigns? *
- Use and Care of Sugar Bush
- Default Right to Cure?
- Indemnification / Liability *



SUGAR BUSH AND SUGAR HOUSE LEASING

Improvement and Sugaring Infrastructure

Allowed?

Who pays for?

Removal at Termination - Bond?

Early Termination – Payment of Depreciated Value?



SUGAR BUSH AND SUGAR HOUSE LEASING

Binding on Heirs and Assigns

Yes?

- Survives death of Lessor or sale to a third party
- Requires Memorandum of Lease to be filed in town land records

No?

- Notification of sale and right of first refusal
- Lessor or estate pays depreciated value of infrastructure



SUGAR BUSH AND SUGAR HOUSE LEASING

Indemnification and Liability

- Lessee responsible for any duties owed to guest, invitees or trespassers
- Lessee to indemnify Lessor for any claims associated with Lessee's negligence
- Lessee to indemnify Lessor for any fees or fines imposed for failure of Lessee to comply with Required Agricultural Practices or other environmental regulation



SUGAR BUSH AND SUGAR HOUSE LEASING

Legal Structure

When Lessee and Lessor are each contributing capital, equipment and sharing net income a separate entity should be formed.

- Lease between landowner and entity
- Operating agreement (LLC) or Limited Liability Partnership Agreement (LLP) or Joint Venture Agreement should be in place



DETERMINE IF A SUGARBUSH IS WORTH LEASING

- ❑ Tap density (50-100 taps/acre)
- ❑ Expected rental rate
- ❑ Power
- ❑ Structures allowed (permanent vs. temporary)



What's a Sugarbush Worth?

Rob Guay presentation from
2017 Vermont Maple Conference



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DETERMINE IF A SUGARBUSH IS WORTH LEASING

- ❑ Not all properties have easy access
- ❑ Significant costs can result with pumping sap or road building



Rob Guay presentation from
2017 Vermont Maple Conference



LEASE TERM

- ❑ 5 year “license” with option for two additional 5 year terms
- ❑ After 15-year full term the licensee can reapply



RENTAL TERMS

- ❑ When is payment due? Soon after the season ends is common
- ❑ When do spouts need to be removed? “After the season”, “60 days following the last collected sap”, “ASAP” have all been used



ALLOWABLE AND PROHIBITED PRACTICES

- ❑ Forestry practices
(“maintained by the renter in their present condition or improved.”)
- ❑ Reference sugarbush management standards
(NAMSPM, FPR, NOFA)



ALLOWABLE AND PROHIBITED PRACTICES

❑ Tapping guidelines

GMNF

Maximum Tree DBH

<12"

12-18"

19"

Number of Taps

0

1

2

NOFA VT

| | <i>Standard Spout (3/16" - 5/16")</i> | <i>Large Spout (7/16")</i> |
|-----------|--|---|
| 0 spouts | Less than 9" diameter (less than 28" circumference) | Less than 11" diameter (less than 34" circumference) |
| 1 spout | 9-14.9" diameter (28"-47" circumference) | 11-18.9" diameter (34"-60" circumference) |
| 2 spouts | 15-20.9" diameter (47"-66" circumference) | 19" & over, diameter (60" & over circumference) |
| 3 spouts | 21" & over, diameter (66" & over circumference) | Prohibited |
| 4+ spouts | Prohibited | Prohibited |



ALLOWABLE AND PROHIBITED PRACTICES

- ❑ AMP's for water quality; drainage structures
- ❑ Violations of UVA standards
- ❑ Make clear what level of vegetation management happen without consult



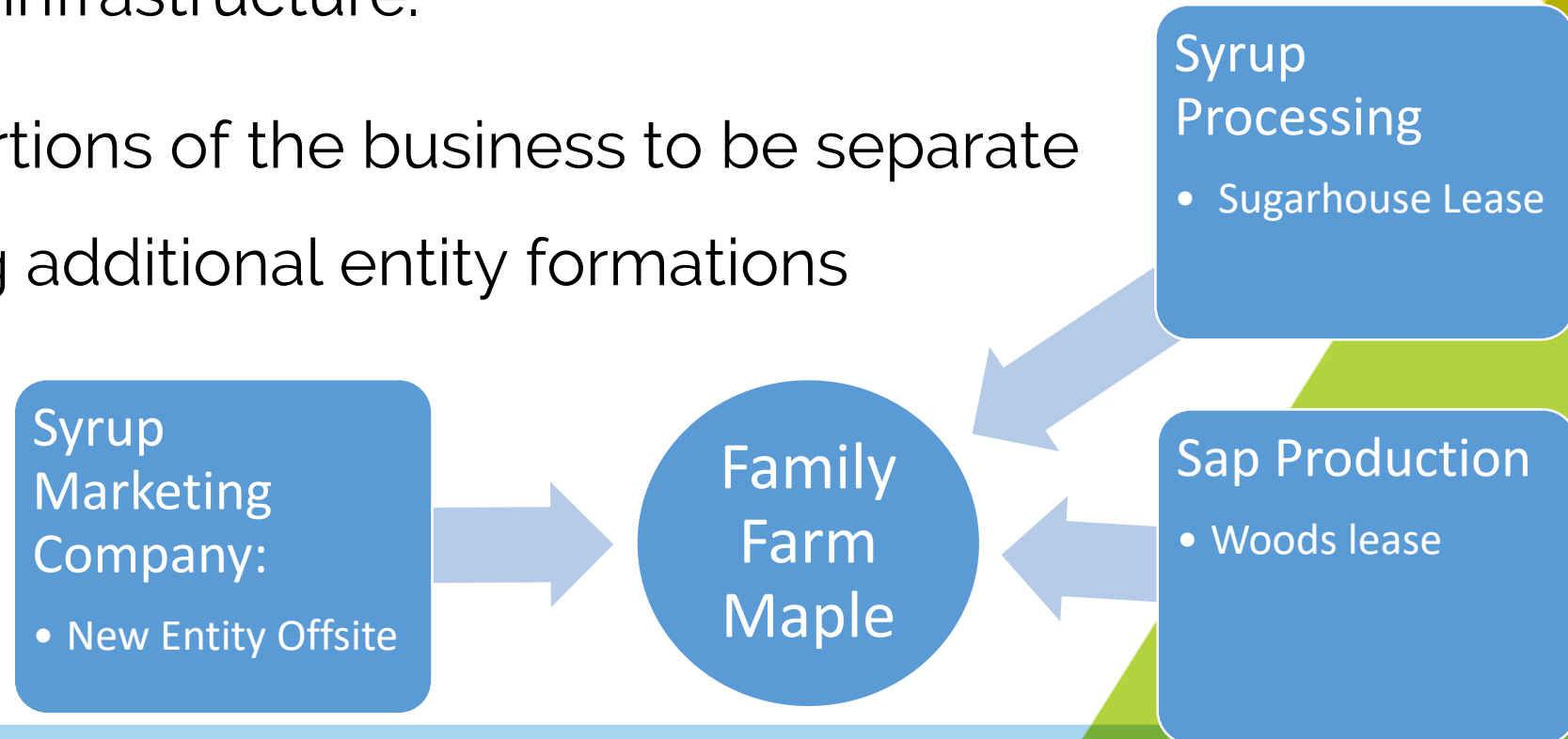
LEASE PERIOD – BUSINESS CONSIDERATION

- ❑ Lender Requirements – capital access
- ❑ Lifespan of Investments and Improvement
- ❑ “Buy Out” clauses and calculations



SUCCESSION AND TRANSFER PLANNING

- ❑ Formalizes relationships and places values on access to forest land or built infrastructure.
- ❑ Leases enable portions of the business to be separate out, often requiring additional entity formations



QUESTIONS ?



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