

Sugarhouse Lease 2020: An Annotated Guide

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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 sugarhouse 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 (ex. “\$ _____ each year”) that require the addition of specific information for your agreement. The primary sections of this lease document are listed in the table below:

1. Agreement to Lease	7. Insurance and Duties Owed	13. Alternative Dispute Resolution
2. Lease Term, Renewal, Termination	8. Taxes	14. Force Majeure
3. Rent	9. Utilities	15. Severability
4. Permitted and Prohibited Uses	10. Successors and Assigns	16. Merger
5. Improvements	11. Rights of Entry	17. Amendments
6. Repairs, Maintenance and placement	Re-	12. No Partnership Created
		18. Governing Law

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COLLEGE OF AGRICULTURE AND LIFE SCIENCES

SUGAR HOUSE LEASE AGREEMENT

Preamble and Statement of Purpose:

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, 20____, between _____, hereinafter referred to as LESSOR and _____, hereinafter referred to as LESSEE to lease a sugar house for the purpose of producing maple syrup.

Parties to the Agreement: The Agreement should identify the Lessor using the name of the land owner as provided on the deed and recorded in the town land records. If title is in doubt, check the town land records. An entity should be described as COMPANY NAME, LLC, a Vermont Limited Liability Company. The person signing for the entity should have the authority to do so under a written operating agreement. If the landowner is a trustee of a trust, the LESSOR should be described as NAME, as Trustee of the _____ Trust. Again, the Trustee should have the authority to lease the premises under the terms of the trust instrument.

NOW THEREFORE for good and valuable consideration stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. AGREEMENT TO LEASE

LESSOR agrees to lease to LESSEE, and LESSEE agrees to rent from LESSOR, a sugar house upon a certain parcel of real estate consisting of _____ acres more or less at address, in _____, Vermont, more particularly described as follows:

Being all and the same lands (or a portion of the same lands) as conveyed by Grantor, by Warranty Deed dated month, day, year, to LESSOR and recorded in Book _____, pages _____ of the town Land Records.

If only a portion of the parcel:

The sugar house lies at the directional boundary of the parcel.

Or:

The sugar house location is depicted in the attached forest management plan map or current use application map.

2. LEASE TERM, RENEWAL, AND TERMINATION

This lease shall run for a term of _____ years commencing on _____, 20____. LESSEE may renew the lease for an additional _____ years by providing written notice to LESSOR at least six months prior to the end of the first lease term.

A 10 to 15-year term is the norm for sugar house leases although circumstances may vary. The lease should be long enough to allow a maple producer to recoup his investment in any improvements made to the structure.

LESSOR may terminate the lease for cause which shall mean any failure by LESSEE to comply with the lease terms and conditions. LESSOR will provide written notice of termination to LESSEE specifically enumerating each basis for termination. If the LESSEE fails to cure the defect(s) within 30 days the lease shall be terminated. LESSOR may extend this period for a defect(s) not curable within 30 days by providing a written notice of extension to LESSEE for a specified number of days. Any extension, however, shall not constitute a waiver.

3. RENT

3.1 LESSEE shall pay to LESSOR the sum of _____ per year payable on _____, _____ each year.

Or

3.1 LESSEE shall pay to LESSOR the sum of \$_____ each year. Payments shall be made in _____ installments, due as follows:

4. PERMITTED AND PROHIBITED USES

- 4.1 LESSORS permit, authorize, and consent to LESSEE's undertaking of all activities incident to the production and sale of maple syrup including but not limited to:
- i) Boiling of sap
 - ii) Maintenance and storage of maple sugaring equipment
 - iii) On-site storage, preparation, processing and sale of maple syrup and maple products produced principally on land owned or controlled by LESSEE
 - iv) Agritourism activities related to the making of maple syrup and other maple products produced principally on land owned or controlled by the LESSEE.

This language is intended to ensure an exemption from Act 250 and local zoning requirements for the sugar house. Any improvements made for conducting "agricultural activities" are exempt from Act 250. "Agriculture" includes the production of maple syrup as well as the on-site storage, preparation and sale of agricultural products produced principally on the farm. Principally produced on the farm means that more than 50% (by volume or weight) of the products are produced from sap harvested on land owned or controlled by the LESSEE.

Educational, recreational, and social events that feature agricultural practices and or products produced principally on land owned or controlled by the LESSEE are also exempt from municipal zoning oversight. Instead these ancillary businesses are regulated by the Vermont Agency of Agriculture, Food and Markets under the Required Agricultural Practices.

- 4.2 In the use of the sugar house, LESSEE shall abide by the Accepted Management Practices for Maintaining Water Quality for Logging Operations as issued or as amended by the Vermont Department of Forests, Parks and Recreation.

4.3 LESSEE shall comply with all federal, state and local laws, regulations and ordinances in connection with the use of the premises and any other activities conducted thereon including but not limited to practices necessary to ensure compliance with Good Agricultural Practices, and Current Good Manufacturing Practices applicable to maple syrup production, the Vermont Use Appraisal Program (Current Use), the Vermont Wetlands Rules as issued by the Vermont Department of Environmental Conservation, Water Quality Standards Applicable to Sugaring Operations as issued or amended by the Vermont Department of Environmental Conservation and the LESSOR's forest management plan.

4.4 LESSEE shall provide workers compensation coverage when required to do so by Vermont Law.

5. IMPROVEMENTS

5.1 LESSEE may make any alterations and/or improvements to the Premises necessary to efficiently produce maple syrup including but not limited to:

- i) Installation of equipment for the production of maple syrup
- ii) Restoration or remodeling of the sugar house structures

5.2 All improvements and alterations shall be undertaken at the sole expense of the LESSEE and all improvements shall become the property of the LESSOR at the termination of the lease.

Or

5.1 All new improvements and alterations to the property and undertaken at the sole expense of the LESSOR shall become the property of the LESSOR at the termination of the lease.

5.2 LESSEE, at his own expense, may make improvements to the Premises, which are capable of severance. Such property shall be the property of the LESSEE at the termination of the lease. Improvements undertaken by LESSEE which are not capable of severance shall be the property of the LESSOR at the termination of the lease.

Or

5.1 All new improvements and alterations to the property must be approved by LESSOR and undertaken at the sole expense of the LESSEE and shall become the property of the LESSOR at the termination of the lease.

5.2 LESSEE, at his own expense, may make improvements to the premises, which are capable of severance. Such property shall be the property of the LESSEE at the termination of the lease. OR: Such property shall be the property of the LESSEE at the termination of the lease. Lessor shall pay to Lessee the depreciated value of the improvements at the termination of the lease.

There is always a risk that if a lessee invests a great deal in improvements the lease could be terminated prior to obtaining the full value of those improvements. One way to deal with this is to provide that a Lessee may take any improvements that are severable at the termination of the lease. Another way to deal with this is for the Lessor to bear most or a portion of the cost of improvements that will be owned by the Lessor at the termination of the lease. In this way, both Lessor and Lessee share the burden of risk that the lease will terminate prior to obtaining the full value of the improvements. Another option is to require a Lessor to pay to the Lessee the depreciated value of the improvements at the termination, especially in the event of the early termination of the lease.

6. REPAIRS, MAINTENANCE AND REPLACEMENT

- 6.1 LESSOR / OR LESSEE shall be responsible for major rehabilitation, repair or replacement of the structural components and operating systems associated with the sugar house operation. LESSOR / OR LESSEE'S responsibilities shall be understood to include, but are not limited to, the following:
- (i) Structural components – Repair/replacement of all structural systems including foundations, floors, walls and roof systems.
 - (ii) Exterior fabric – General replacement of siding, trim porches, steps.
 - (iii) Roofing – General replacement of shingles, flashing, gutters, downspouts.
 - (iv) Replacement or major repair to tubing and pipeline systems, pumps and vacuum systems, storage tanks, wells, cisterns and replacement of non-repairable pumps.
 - (v) Waste treatment – Replacement or major repairs to toilets, holding tanks, leach fields.
 - (vi) Heating, ventilating, and air conditioning – Replacement of major system components.
- 6.2 LESSEE shall be responsible for all general maintenance and minor repairs of the buildings and their operating systems. LESSEE's repair and maintenance responsibilities include, but are not limited to:
- (i) Structural components – Prevention or removal of any and all deteriorating conditions or factors.
 - (ii) Exterior fabric – Minor or localized repairs, such as window glazing, glass replacement, or periodic repainting/staining.
 - (iii) Roofing – Localized minor repairs/replacement of shingles, flashing or gutters.
 - (iv) All servicing and repair of syrup production equipment, pumps and vacuum systems, storage tanks, water lines, fixtures, and the repair of water tanks and water heaters.
 - (v) Waste treatment – Unblocking/repair of toilets or sewage lines, cyclical and emergency septic pumping.
 - (vi) Heating, ventilating, air conditioning – All filters, servicing, adjustments or repair.

7. INSURANCE AND DUTIES OWED

- 7.1 LESSEE shall maintain at its own expense adequate general liability and casualty insurance coverage with a minimum coverage of \$1,000,000 upon the premises naming LESSOR as an additional insured during the period of the lease. LESSEE shall annually provide a Certificate of Insurance to LESSOR.
- 7.2 LESSOR shall not be liable to LESSEE or its agents, servants, customers, invitees, or any other persons for any damage to person or property caused by any act, omission or neglect of LESSEE and LESSEE agrees to indemnify and hold LESSOR harmless from all liability and claims for any such damage.
- 7.3 Any duty owed to invitees or guests incident to or arising out of the sugar house operation of LESSEE shall be the sole responsibility of the LESSEE.

8. TAXES

LESSOR shall pay all taxes and assessments on the Premises.

9. UTILITIES.

LESSEE agrees to timely pay any and all utilities for use of the Premises, including, without limitation, electricity, fuel oil, gas services, water, telephone, trash collection, snow plowing, and any other such services associated with the LESSEE's use of the Premises.

10. SUCCESSORS AND ASSIGNS

- 10.1 This agreement shall be binding on all persons who may succeed to the rights of LESSOR including but not limited to heirs, executors, assigns and purchasers as applicable and in accordance with this Agreement.
- 10.2 LESSEE may not assign this lease agreement.

OR

- 10.1 This agreement shall not be binding on any persons who may succeed to the rights of LESSOR including but not limited to heirs, executors, assigns and purchasers as applicable and in accordance with this Agreement. However, upon listing the property for sale or upon the death of the LESSOR, the LESSOR or his estate shall provide notice of intent to sell the premises to LESSEE and LESSEE shall have 90 days to make

10.2 LESSEE may not assign this lease agreement.

If a lease is not binding on heirs, the lease will terminate upon the death of the LESSOR. If a lease is not binding on assigns, the lease can be terminated by a subsequent purchaser. Binding a subsequent 3rd party purchaser may also require the filing of a memorandum of lease in the land records, just like a deed. A sample Memorandum of Lease is included in this template. See also the Lease Fact Sheet for state laws on this.

Short of binding heirs and assigns, the lease can provide notice of sale and an option for the LESSEE to make an offer upon the property. If this provision is used in the lease, this option should also be included in a properly filed Memorandum of Lease.

11. RIGHT OF ENTRY

LESSOR or its designate shall have the right to enter the premises at any time to inspect the property.

12. NO PARTNERSHIP CREATED

12.1 This lease shall not be deemed to give rise to a partnership relationship between LESSOR and LESSEE.

12.2 Debts of the LESSEE are solely the obligation of LESSEE.

This is a standard lease provision that is quite important. A partnership relationship gives rise to certain duties and obligations between the parties, including personal liability for the debts of the partnership. A partnership can be created by the way the parties behave toward one another and in particular by sharing the net income of the enterprise. This provision clarifies that no partnership is created by the lease.

13. ALTERNATIVE DISPUTE RESOLUTION

The LESSOR and LESSEE agree to negotiate any disputes arising under this lease in good faith. If good faith negotiation fails to settle the dispute, either party may initiate mediation of the dispute. To initiate mediation the initiating party must first give notice to the other requesting mediation. The mediation shall occur within 30 days of the written request. The Mediator shall be acceptable to both the LESSOR and the LESSEE. The parties agree further to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel prior to or at the mediation.

14. FORCE MAJEURE

During the Lease Term, LESSOR or LESSEE shall not be required to perform any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, epidemics, cyclones, floods, drought, or by reason of war, declared or undeclared revolution, civil commotion or strife, acts of public enemies, blockade or embargo, or by reason of any new law, proclamation, regulation, ordinance or demand by any government authority, and any other cause not reasonably within the control of LESSOR or LESSEE and which, by the exercise of due diligence, LESSOR or LESSEE is unable, wholly or in part, to prevent or overcome.

15. SEVERABILITY

If any part of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain effective, absent such provision.

16. MERGER

This Agreement represents the entire agreement between the parties. The parties have made no representations other than what is contained in this Agreement.

17. AMENDMENTS

No change in this Agreement shall be effective unless it is in writing and signed by both Lessee and Lessor.

18. GOVERNING LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of _____ without regard to its conflict of laws principles.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement to be effective as of the date first set forth above.

LESSOR

INDIVIDUAL OR ENTITY NAME

By: *NAME, TITLE*

Witness

LESSEE

INDIVIDUAL OR ENTITY NAME

By: *NAME, TITLE*

Witness

STATE OF _____

COUNTY, SS.

At _____ in said County this ____ day of _____ 20_____, before me personally came _____, known to me to be the individual whose name and signature appears above, and he acknowledged this instrument, by him signed, to be his free act and deed.

Before me, _____ Notary Public

(Name and License Number)

My commission expires: _____

STATE OF _____

COUNTY, SS.

At _____ in said County this ____ day of _____ 20_____, before me personally came _____, known to me to be the individual whose name and signature appears above, and he acknowledged this instrument, by him signed, to be his free act and deed.

Before me, _____ Notary Public

(Name and License Number)

My commission expires: _____

MEMORANDUM OF LEASE

In Vermont, if Lessor's heirs and assigns are to be bound by the lease, a Memorandum of Lease must be filed in the town land records, just like a deed. The Memorandum puts any third-party purchasers on notice that the land is subject to a lease. See fact sheet for requirements in New York, Maine and New Hampshire.

KNOW ALL PERSONS BY THESE PRESENTS that the Landowner and Lessee identified below are parties to a certain lease agreement dated _____, 20____ containing the following terms and conditions:

Lessor: *Name*

Lessee: *Name*

Leased property: *Same description as in lease.*

Date of execution:

Lease term: ____ Years

Commencement date:

Expiration/termination:

Rights to extend or renew: Yes/No - *include renewal term.*

Rights to purchase: Yes/No

Right of first refusal: Yes/No

Assignment and Sublease: Not Permitted

This Memorandum of Lease is not intended to amend or modify the terms and conditions of the lease. To the extent that the terms and conditions of this Memorandum of Lease differ from the terms and conditions of the lease, the terms and conditions of the Lease shall govern and prevail.

LESSOR

INDIVIDUAL OR ENTITY NAME

By: *NAME, TITLE*

Witness

LESSEE

INDIVIDUAL OR ENTITY NAME

By: *NAME, TITLE*

Witness

STATE OF VERMONT

_____ COUNTY, SS.

At _____ in said County this ____ day of _____ 20_____, before me personally came _____, known to me to be the individual whose name and signature appears above, and he acknowledged this instrument, by him signed, to be his free act and deed.

Before me, _____ Notary Public

(Name and License Number)

My commission expires: _____

STATE OF VERMONT

_____ COUNTY, SS.

At _____ in said County this ____ day of _____ 20_____, before me personally came _____, known to me to be the individual whose name and signature appears above, and he acknowledged this instrument, by him signed, to be his free act and deed.

Before me, _____ Notary Public

(Name and License Number)

My commission expires: _____