

Maple Lease Set-Up Checklist

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Expanding maple production across the United States is expected to create new opportunities for forest landowners 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 good lease must also be properly validated to become a legally binding agreement.

This educational resource includes the basic requirements to finalize a valid lease and the steps to take if the lease is intended to be binding on subsequent owners, heirs and assigns. This document also includes a number of 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 FBFS031-1/20 “Sugarbush Lease 2020”.

A Valid Lease ...

- Accurately identifies the parties and includes an adequate description of the property to be leased.
- Is signed by parties with the authority to bind an entity or trust under the terms of an operating agreement or trust instrument.
- Is properly executed. In New York, New Hampshire and Maine, a lease must be signed before a notary. In Vermont the signature must also be witnessed.
- Is in writing. In Vermont, New York, New Hampshire and Maine any unwritten contract regarding a 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 the agreement must be in writing and must be signed by “the party to be charged” – or whomever is to be held accountable by a court of law. A court will not enforce an unwritten lease even if both parties agree there was an oral agreement. The Statute of Frauds also applies to any amendments to the lease.

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To be Binding on a Landowner's Heirs and Assigns the Lease Must:

- Include an “heirs and assigns clause” in the agreement. For example, “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”. If the LESSOR passes away or sells the property, the heirs or the purchaser will be bound by the lease terms.
- File a Memorandum of Lease. In Vermont, New York, New Hampshire and Maine a notice of the lease or a Memorandum of Lease is required to bind a third-party purchaser. The Memorandum of Lease is filed in the land records, just like a deed. This puts the public on notice that the land is subject to a lease. The Memorandum also provides information on the lease term, any renewal rights and any rights with respect to the LESSEE purchasing the property. A Memorandum of Lease is included in FBFS031-1/20: Sugarbush Lease 2020

Maple Lease Checklist

The following list includes important questions that forest landowners and maple producers should discuss to develop an accurate lease agreement.

- 1. Who are the parties?** Is there evidence of ownership and authority to act if the landowner is an entity such as a Partnership, LLC or Corporation rather than an individual? Is the tenant an individual or an entity? Will the lease also bind the heirs or future purchasers of the property?
- 2. What is the lease term?** Will it terminate on a specific date or will it end at the will of one or either party? If terminable “at will,” how much notice will be given to the other party?
- 3. Is the lease renewable?** Is renewal automatic? Do both parties have the option to renew or not renew? What is the procedure for renewing the lease?
- 4. Does the lease include an adequate description of the property** – forest land, structures, residence, equipment, or improvements – that is to be leased?
- 5. How much and what type of rent** will be paid and how and when must it be paid?

Maple Lease Checklist (continued)

6. If the agreement includes a **residence**, is there a separate residential lease?
7. What are the **allowable and prohibited uses** of the property under the lease?
8. How will the landowner and the land user allocate responsibility for **repairs and maintenance** of the property?
9. How will the landowner and tenant allocate responsibility for **capital improvements**? If the land user invests in capital improvements, how will he or she be compensated at the end of the lease? Or, does the rent reflect those capital investments?
10. Who will be responsible for obtaining and maintaining **insurance** – liability and casualty?
11. What actions by either party will constitute a **default** under the lease? Will the non-defaulting party have the right to terminate the lease or withhold rent until the default is cured? Will the lease include an alternative dispute resolution procedure such as mediation or arbitration?

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