

Sugarbush 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 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. “_____ # 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)

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Sugarbush Lease Template

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 maple trees for tapping and production of 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:

Agreement to Lease

LESSOR agrees to lease to LESSEE, and LESSEE agrees to rent from LESSOR, maple trees located 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 bush lies at the directional boundary of the parcel.

Or:

The sugar bush acreage and boundaries are depicted in the attached forest management plan map or current use application map.

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 bush leases although circumstances may vary. The lease should be long enough to allow a maple producer to recoup his investment in tubing and other infrastructure.

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.

LESSEE may terminate the lease by providing written notice to LESSOR at least 60 days prior to termination. If LESSEE terminates the lease, LESSOR is under no obligation to return any payments made by LESSEE.

LESSEE agrees to remove all tubing, piping, and associated supporting cabling and hardware at the termination of the lease. LESSEE accepts personal liability for the costs of removal by LESSOR should LESSEE fail to perform the removal within ___ months of termination.

There are inherent risks in any lease that the terms and conditions will not be complied with or that the producer will be unable to perform. This provision provides the producer with an opportunity to cure any default within 30 days. If the producer decides to terminate the lease, any payments made to the landowner will be forfeited and all sugaring infrastructure must be removed.

Optional:

LESSEE shall post a surety bond in the amount of _____ payable to LESSOR to insure costs of removal should LESSEE fail to perform.

A surety bond is comparable to an insurance policy. The premium is paid by the LESSEE and if the LESSEE fails to perform, payment is made to the LESSOR.

3. Rent

3.1 LESSEE shall pay to LESSOR the sum of _____ per tap, per year.

Or

3.1 LESSEE shall pay a base rent of _____ per tap, per year, together with a variable rate per tap reflecting yield and market price as determined annually.

Or

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

Or

3.1 LESSOR and LESSEE shall share equally in the expense of the maple sugaring infrastructure to include tubing, wiring, taps and other infrastructure directly related to the production and collection of sap. LESSEE's projected and itemized expenses as reviewed and approved by LESSOR and LESSOR's forester for reasonableness shall be the agreed upon expense to be shared by LESSEE and LESSOR. LESSOR'S share of expenses shall be paid to LESSEE by *(Date)* _____.

During the term of the Lease, LESSEE shall pay to LESSOR a per tap rent equal to _____.

3.2 Tap count is agreed to be _____, therefore, the total amount due before adjustment is \$ _____.

Tap count shall be determined annually in consultation with LESSOR's forester, if present. The first half of such payment shall be made on or before _____ each year. The second half of the payment shall be made after the sugaring season but not later than 3 months after the last of sap harvest. _____. The tap count may be adjusted in the case of significant tree loss or other factors significantly affecting tap capacity. Significant loss in capacity shall mean a reduction of at least 5%. The adjustment shall be made with the second payment. It is expected that LESSEE will use his best efforts to install the agreed upon number of taps. Any substantial failure to install the recommended number of taps or excessive taping beyond the recommendations of LESSOR's forester shall be grounds for termination of the lease.

LESSOR may also restrict certain portions of the Premises to tapping in circumstances of prolonged drought, multiple years of defoliation and other indications of stress to the sugar bush.

4. Permitted and Prohibited Uses

- 4.1 LESSOR authorizes LESSEE to install maple tubing, wiring, taps and other infrastructure directly related to the production and collection of maple sap.
- 4.2 LESSEE shall not erect any buildings, structures, or improvements without first securing the written consent of LESSOR.
- 4.3 In the use and constructions of trails, 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.

4.4 Thinning for maple sugarbush improvement may be carried out by LESSEE provided however, that the work to be done aligns with the written forest management plan and the sugarbush has been marked for thinning by a professional forester mutually agreed upon by LESSOR and LESSEE. Thinning which yields no salable timber shall be at the expense of the LESSEE. Thinning which yields salable timber shall be at the expense of the LESSEE who shall receive the proceeds of the sale. Logging for personal use or sale is prohibited without the explicit written consent of LESSOR.

5. Use and Care of the Sugarbush

5.1 Maple trees and the leased premises shall be maintained by the LESSEE in their present condition, or improved and the yield of sap maintained or increased by responsible methods of tapping, installation of tubing, or tree thinning as recommended by LESSOR's forester.

5.2 LESSEE shall use Guidelines for Tapping and Collecting Sap issued by the Vermont Department of Forest, Parks and Recreation Lands as follows:

(a). Only trees _____ inches dbh and larger may be tapped. Trees _____ to _____ inches dbh may receive one tap hole. Trees greater than _____ inches dbh may receive two tap holes.

The standards for minimum number of inches dbh vary among state regulations and trade groups. The North American Maple Producers recommends a 10 to 12" dbh. Vermont's Use Value Appraisal Program (Current Use) and the guidelines issued by the Vermont Department of Forests, Parks and Recreation set a 10" minimum. Vermont Organic Farmers require a minimum of 9" dbh. The Vermont Land Trust has also published tapping guidelines for enrolled forest lands.

(b) Tapping depth shall not exceed 2 inches as measured from the bark surface, using only 5/16-inch spouts. All spouts shall be removed within 30 days of the last tap collection.

(c) Drops shall be a minimum of 30 inches.

(d) Prohibited products for cleaning and sanitizing tubing shall not be used but proper practices to maintain tree health and reduce bacterial growth are encouraged.

(e) The use of nails to support tubing, either main lines or lateral is prohibited. Where wires or cable come into contact with a tree, either blocking or sleeves shall be used to prevent the wire or cable from becoming embedded in the tree.

(f) Sap may only be collected during the _____ months.

Some landowners may want to prohibit sap collection during the fall months or to limit access for certain purposes in certain months.

- 5.3 LESSEE shall keep the ground free of scrap tubing, wire or other trash throughout the lease period and shall set no fires upon the premises.
- 5.4 LESSEE shall not use any prohibited herbicides or pesticides or any other product that would impact the soil or any stream, water supply or ground water and shall promptly report to the LESSOR any evidence of pollution or damage or destruction or any stream, water supply or groundwater upon the premises. Herbicide application treatments for invasive plants may be conducted by a licensed applicator when approved by LESSOR and LESSOR'S forester.
- 5.5 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 continued compliance with 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.

If organic;

- 5.6 LESSEE shall follow the guidelines for organic maple syrup production as required by Vermont Organic Farmers, LLC.

6. Improvements

- 6.1 LESSEE may construct a small, semi-permanent structure such as a shed, portable garage or tent for the protection of required sugaring equipment. Sap storage tanks may be located external to this structure. No structures shall be constructed upon wetlands. Structures such as sugar houses and gift shops are permanent structures and are not allowed. At lease termination, LESSEE shall remove all equipment and semi-permanent structures, leaving the ground seeded and mulched.
- 6.2 LESSEE shall not construct any permanent buildings, structures, or infrastructure upon the premises without the express written consent of LESSOR. Approved improvements 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.

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 sugaring operation of LESSEE shall be the sole responsibility of the LESSEE.

Optional:

- 7.4 LESSOR shall post the property against trespassers and LESSEE may gate or block access to the premises by the public when not in active use during the sugaring season.

8. Land Taxes

LESSOR shall be solely responsible for all taxes and assessments upon the premises.

9. Repairs, Maintenance and Replacement

LESSEE shall be responsible for major rehabilitation, repair or replacement, general maintenance and minor repairs of sap production and collection equipment used upon 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 or meet an(y) offer for the property.

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, if the lease is terminated due to the sale of the property or the death of the LESSOR, LESSOR or his estate shall pay to LESSEE the depreciated value of all tubing, piping, and associated supporting cabling and hardware in place at the time of lease termination.

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. The Lease can also provide that if the lease is terminated due to the death of the LESSOR or the sale of the property, the LESSOR or his estate will pay to the LESSEE the depreciated value of the sugaring equipment using a straight-line depreciation method.

11. Utilities

LESSEE shall have access to electrical hook-ups upon the property and agrees to timely pay LESSOR all utility expenses associated with the LESSEE's use of the property.

12. Right of Entry

LESSOR or its designate shall have the right to enter the premises at any time to inspect the property with respect to tapping, road maintenance, wood cutting or any other activity undertaken by LESSEE under this lease.

13. No Partnership Created

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

13.2 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.

14. 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.

15. 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.

16. Severability

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

17. Merger

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

18. Amendments

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

19. 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: _____