



MEUMANN WHITE

A T T O R N E Y S

**OPTION TO PURCHASE RIGHT OF
PRE-EMPTION (FIRST REFUSAL)**

What is an Option to Purchase and what is a Right of Pre-Emption and how does it impact on the Seller and Purchaser in dealing with immovable property.

An option is a written offer to sell linked with an undertaking to keep the offer open for a period of time.

It is possible that a purchaser could give a seller an option to purchase a property for a specified time but this is not the norm. Normally options are given by owners of property (Sellers) to potential purchasers who are interested in buying the property but do not want to commit until they have made certain investigations or until they are in a certain position. Therefore there are two important aspects to a typical option:-

- 1) The usual offer to purchase but this time signed initially by the Seller. This will contain all the necessary and usual terms of an offer.
- 2) Coupled with this the Seller agrees in writing to leave the offer open for a period of time.

If during the time allotted the Purchaser decides to exercise the option then all the Purchaser does is to indicate in writing that he is exercising the option. This is normally done by initialling each page of the option and then at the end of the option signing in the appropriate place which will read something like:

"I, Joe Bloggs, hereby exercise the option granted to me herein and accept the offer to sell."

You will have heard of option money. This is an amount of money which the Seller requires be paid by the potential Purchaser in order to be granted the option. Usually if the option is exercised this amount is regarded as part of the purchase price. If the option is not exercised then the money is not refundable but is kept by the Seller.

From the above it can be appreciated that an option mostly favours the potential Purchaser. The Seller in giving the option is effectively taking the property out of the market as it is not available for purchase by any third parties. An option is not something seen often in the sale of residential property unless the Purchaser wishes to investigate the possibility of developing or rezoning the property. However if it is only in respect of a possible purchase, then the use of an option could in many ways work against the Seller particularly where the market is fairly buoyant.

Right of First Refusal

A right of pre-emption is also called a right of first refusal. Here the owner of immovable property grants to a person a right of preference to purchase the property should the owner wish to sell it. The owner does not have to sell the property but when the owner wishes to sell then they have to grant the holder of the right the first opportunity to purchase the property.

This situation often arises out of a lease where the tenant in a property asked for a right of first refusal if the landlord should wish to sell at any time in the future.

The right of first refusal must be in writing and signed by both parties. It can be registered against the title deeds relevant to the property.

Again here the owner of the property is limiting his ability to sell the property on the open market.

The owner is not governed by a price as is the case in an option but he cannot accept an offer to purchase from a third party but must pass on to the holder of the right the opportunity to buy for the price offered.

In conclusion I think that owners of immovable property should only grant these rights in very limited circumstances as by granting them they are in many situations prejudicing their position.