

Purchase Options



Gaining the Right Without the Obligation to Acquire Property Interests

A purchase option is a right to purchase or lease land or other property interests without any obligation to do so.

Overview	1
A Right Without a Duty to Purchase	1
Application of Purchase Options.....	1
Maximal Control with Minimal Risk	2
Comparison to Purchase and Sale Agreement.....	2
Model Grant of Purchase Option	3
Matters to Address in the Document	3
Essential Items	3
Terms of Sale	3
Purchase Price for the Property.....	4
Should the Option Holder Pay for the Option?	4
Option Period	5
Condition of Property	5
A Tool to Preserve Opportunity.....	5
Challenge: High Priority but Uncertainty Abounds	5
Challenge: Owner Not Willing to Sell Until Death	6
A Tool to Assemble Parcels for a Project.....	6
Challenge: Larger Project Depends on Smaller Tract	6
Challenge: Assembling Parcels for a New Preserve	7
A Tool to Handle Messy Ownership Situations	7
Challenge: Feuding Owners	7
Additional Challenge: A Trust and Scarce Funding	8
Other Uses in Multiple Owner Situations	8
A Tool to Incentivize Action	9
Challenge: Spurring Community to Act	9
A Tool to Control Outcomes	10
Challenge: Wanting Land Back If Used Improperly.....	10
Implementation	10
Enforceability	10
Recording the Option.....	10
Proper Exercise	11

Overview

A Right Without a Duty to Purchase

In legal terms, an option is simply a right without any corresponding duty. In real estate, a purchase option assures the option holder of the right to purchase property¹ at a certain price within a certain time period but without an obligation to do so. It ensures that the land won't be sold or developed during the option period.²

Purchase options are widely used in business transactions; likewise, they are utilized for conservation projects, including land, conservation easement, and trail easement acquisitions.

Application of Purchase Options

The purchase option is a flexible tool that can be applied to a variety of purposes:

- *Buying time.* Land trusts³ often need months or years to raise funds for a conservation project. A purchase option gives the land trust time to obtain funding without fear that the property will be sold or developed in the meantime. It also assures the land trust that the raised funds will go to their intended purpose since the purchase option legally obligates the owners to close the transaction at the stipulated price and time.
- *Reducing risk.* A land trust may tentatively identify a property as too important to lose but cannot risk purchase before a thorough investigation determines that it is a sound conservation investment; for example, the purchase price is appropriate and regulatory problems are absent or manageable.

- *Assembling parcels.* A project may depend on the acquisition of multiple parcels of land or easements to accomplish the desired conservation objectives. A land trust may use purchase options to gain control over the properties parcel by parcel without being obliged to purchase any of the property interests, doing so only when it is ready, willing, and able to purchase all the critical interests.
- *Handling messy ownership situations.* If the owners are not of one mind regarding the future of their commonly owned property or are not communicating with one another, the purchase option may be used to acquire separately from each the right to purchase their percentage interest in the land. The land trust is not obliged to purchase any of the percentage interests, doing so only when it is ready, willing, and able to purchase the property in its entirety.
- *Incentivizing action.* The time-limited character of a purchase option may be used to create a sense of opportunity and urgency that motivates a community and donors to act before the opportunity passes.
- *Compensating for lost opportunity.* An owner may need cash to compensate for holding their property off the market for the benefit of the land trust. To this end, the purchase option may be structured to provide cash payments, either upfront or in installments, to the owner.
- *Controlling outcomes.* Options can be used to assure that promises are kept and expectations realized. For example, a land trust that transfers property to a local government may want an option to reacquire the property for a nominal or below-market value if the government's promises to use the land only for conservation and outdoor public recreation are not kept.

Maximal Control with Minimal Risk

The purchase option allows the land trust flexibility as to whether or not to move forward with an acquisition project. If the land trust exercises the option, it will close on the property. If not, the purchase option will lapse. The

land trust's financial risk is limited to its upfront investment in negotiating and documenting the purchase option and, if applicable, compensating the owners for granting the option.

Comparison to Purchase and Sale Agreement

Short Versus Long; No Obligation or Obligation

A grant of purchase option may be drafted so as to take on the characteristics of a typical [purchase and sale agreement](#) and vice versa. But, as a general rule, a grant of purchase option is shorter and simpler than a purchase and sale agreement. The two documents are commonly but not always distinguished as described in the next two paragraphs.

In addition to providing the land trust with a right to purchase a property, a purchase and sale agreement—also called a sales agreement or purchase agreement—places obligations on the land trust. The agreement contains mutual promises: the seller promises to transfer ownership of certain property and the buyer promises to pay the purchase price within a certain time after the contract date. (Since the buyer is promising to purchase the property, it will want the contract to include representations and disclosures by the seller about the physical condition of the property and title to the property. It will also probably want to set conditions—sometimes called contingencies—that must be met before it is obligated to close the transaction.)

In contrast, a purchase option does not contain mutual promises. Much like a purchase and sale agreement, the seller promises to deliver the transfer documents to a [closing](#) but, unlike the agreement, there is no mutuality—the buyer may elect whether to proceed to closing or not. The buyer has the *option* to act by notifying seller of its election to purchase.

Expedience

As compared with a purchase and sale agreement, a short and simple purchase option may be expedient:

- Some owners prefer brevity and simplicity over most other considerations. The owner who might balk at negotiating or signing a lengthy purchase and sale agreement may be willing to sign a short and simple purchase option.
- If the land trust is acquiring an easement, it may not require as many assurances from the owners as it would need for a land purchase.
- The land trust may prefer a purchase option to save the time and expense of negotiating a formal agreement of sale if there is a fair chance the project will not come to fruition.
- The land trust may believe that the risk of leaving some matters unsettled at the outset of the transaction is outweighed by the benefit of low cost and quick action. Issues that arise later may be addressed and resolved by mutual agreement before the option exercise date.

Assurances

A short and simple purchase option may forgo assurances provided by a purchase and sale agreement, such as seller representations as to the condition of the property. If this is the case, the purchasing land trust must use the time granted by the purchase option to investigate the property thoroughly and assure itself that it is satisfied before exercising the option.

Model Grant of Purchase Option

WeConservePA publishes the [Model Grant of Purchase Option with Commentary](#) to help organizations working on land acquisition, conservation easement, trail, and other access easement projects. This and other resources regarding conservation transactions are available at the WeConservePA.org library.

Whether or not using the model, a grant of purchase option should be prepared with the guidance of legal counsel to assure that the intended result is achieved.

Matters to Address in the Document

Essential Items

A simple, inexpensive, but effective purchase option requires only that the property owner and potential purchaser agree on a few basic terms:

- Description of the property subject to the option;
- Property purchase price—either fixed or a method to determine it;
- Option exercise date—the deadline for the potential purchaser to choose whether or not to move ahead with the purchase; and
- Closing date—the date for closing on the purchase if the option is exercised.

Other matters, as described below and in the [Model Grant of Purchase Option](#), may be addressed in the purchase option if desired by the parties or left open for negotiation before the option exercise date.

Terms of Sale

Other terms of the potential sale may be included in the option document or addressed later as discussed below.

Incorporate Agreement

The option document may identify the form of [purchase and sale agreement](#) that will govern the transaction if the purchase option is exercised. For example, the [Model Grant of Purchase Option](#) specifies that the transaction is to be governed by the terms of the then-current form of purchase and sale agreement published by the Pennsylvania Association of Realtors.

Forego Agreement

Sometimes the purchase option document, with appropriate attachments, is sufficient to evidence the terms of the transaction. For example, if an easement is to be acquired, the *Model Grant of Purchase Option* specifies the document to be delivered at closing (the [Model Grant of Conservation Easement and Declaration of Covenants](#) or

one of the WeConservePA trail easement documents) and incorporates the agreed-upon easement plan. For many easement purchases, this may be sufficient detail.

Negotiate Agreement Later

A third approach is to negotiate the purchase and sale agreement after the purchase option is granted but before the option exercise date occurs. This enables the parties to address specific issues disclosed by the purchaser's due diligence investigation as they negotiate the agreement.

Purchase Price for the Property

The purchase price for the property may be (1) determined by a specified method if and when the option is exercised or (2) fixed at a set price.

Price to be Determined

Single Appraisal

The purchase option may provide for a mutually acceptable procedure to determine the purchase price. The default approach used by the *Model Grant of Purchase Option* is to establish it with an appraisal to be obtained by the land trust and furnished to owners. The appraisal must conform with Uniform Standards of Professional Appraisal Practice.

Multiple Appraisals

Sometimes one or more of the parties is not satisfied with the single appraisal approach. In that case, each party obtains its own appraisal. If the values differ, a procedure is needed to determine the purchase price somewhere in between. A commonly used procedure to establish the value is to set the price at the midpoint between the two and, to protect against delivery of an appraisal widely off the mark, limit the averaging approach to values falling within a specified range (a difference of perhaps 5%-10%). If the first two values fall outside the agreed-upon range, then the first two appraisers select a third appraiser who will set a price that is within the range of the first two appraisals. The parties usually each pay for their own appraisal and share the cost of the third appraiser.

Fixed or Floor Purchase Price

Because it creates certainty, one or both parties may prefer to set the purchase price in the grant of purchase option. A fixed price option benefits the land trust if property values rise substantially during the option period. Owners may want a fixed price (or a floor on a variable price) because they need a certain amount of compensation to make the transaction work for them.

Should the Option Holder Pay for the Option?

Developer Approach

When developers seek a purchase option, they usually make a point of explaining to the owners the magnitude of their prospective investment in feasibility studies, due diligence inspections, obtaining land development approvals, and securing financing for a proposed project. The owners, recognizing the developer's planned investment of time and resources, typically require little or no cash of the developer in exchange for the purchase option. And, even if the developer makes a payment, it is almost always fully refundable if financing or regulatory approvals are not obtained. A two-year period to obtain approvals is fairly common and that period may be extended if benchmarks are met or payments tendered. Thus, in substance, developers often obtain a purchase option for two years or more at no cost other than their investment in the items noted above.

Land Trust Approach

Land trusts need to educate owners about the magnitude of the investment they will make in bringing about the purchase if the owners grant the purchase option. The default provision in the [*Model Grant of Purchase Option*](#)—the land trust pays one dollar—reflects an understanding that the land trust's willingness to make that investment is sufficient compensation to the owners to take the property off the market and allow the land trust the opportunity to proceed.

Option Period

The land trust and owner must agree on a time period in which the land trust may exercise the option. If the land trust does not exercise by the option exercise date, the option lapses.

Ideally the owner will agree to an option period of sufficient length that the land trust is certain that it has the time needed to complete the project. If this ideal cannot be achieved, the option may be structured to provide for extensions of the option period. The commentary to the [Model Grant of Purchase Option](#) offers alternatives for providing extensions.⁴

Condition of Property

Unlike many commercial real estate transactions, for a conservation project it is usually important that the scenic, wooded, or other natural conditions of the property be left undisturbed through the closing of the purchase or the lapsing of the option. The [Model Grant of Purchase Option](#) contains a specific provision to accomplish this.

A Tool to Preserve Opportunity

A land trust may identify a property as a high priority for protection and the owners may be willing to sell the land or an easement. However, the land trust still may need a lot of time to raise money and for a thorough investigation to ensure that the purchase would be a sound conservation investment. A purchase option gives the land trust time to raise funds and investigate without fear that the owners will change their minds about selling to the land trust or that the property will be sold or developed in the meantime.

Challenge: High Priority but Uncertainty Abounds

A land trust identifies a large parcel in a rapidly developing area as important to conserve because of its natural significance and value for public recreation. The land trust approaches the owner, a family business, to express

interest in the land. The managing family member has conservation sympathies and is willing to make a deal but is also determined to show a meaningful return on the family's investment. The family member offers to sell the land to the land trust for what appears to be a fair price based on the land trust's preliminary market research; however, the land trust faces uncertainties. It is unclear whether municipal regulations preclude development of portions of the property. Plans for public road improvements that would substantially improve access to the parcel are in flux. Further complicating matters, the land trust's executive director and chief fundraiser will be leaving the organization and the region shortly.

Strategy

The land trust and the owner agree to the following arrangement:

- The owner grants the land trust an option to purchase the parcel at the fixed price, exercisable within nine months. The land trust pays \$1,500 for the option.
- The land trust, if it elects, may pay the owner an additional \$2,500 at the end of the nine months to extend the option for another fifteen months.

Analysis

The arrangement works for both parties because:

- The owner receives sufficient funding to pay taxes and other carrying costs for the property during the option period and possible extension.
- The land trust gets the time it needs during the initial option period to: (1) develop a clear understanding of potential development constraints on the property; (2) commission an appraisal that is fully informed by that understanding; and (3) determine whether it can obtain the necessary commitments from funders.
- If the land trust determines during the initial option period that the transaction is feasible, the land trust for a modest payment gets the additional time it needs to complete the financing for the project.

- The land trust risks the loss of only \$1,500 or \$4,000 if the purchase doesn't materialize, a reasonable risk considering the high conservation value of the project.

Challenge: Owner Not Willing to Sell Until Death

An elderly owner of a parcel critical to the mission of a land trust is deeply attached to their land, unwilling to sell during their lifetime and generally distrustful of complicated arrangements, even if the arrangements would be to their benefit. They would like to have the property conserved but not at a significant loss to their heirs.

Strategy

The land trust proposes that the owner grant it an option to purchase the parcel at a fixed price based upon current market value. The option is to be exercised, if at all, within three years of the owner's death.

Analysis

The arrangement works for both parties because:

- The land trust has a specific funding target to achieve as well as sufficient time to implement a fundraising campaign. (The campaign will not be announced publicly until after the owner's death; however, during the interim, the land trust will quietly seek pledges from major donors and funding sources.)
- The relative simplicity of the option document makes it acceptable to the owner.
- The option has broken the ice, creating the possibility that the owner might eventually consider other ways conservation can work with their estate planning objectives.

A Tool to Assemble Parcels for a Project

Conservation success may depend on the acquisition of more than one parcel of land or multiple easements. A land trust may use options to gain rights to purchase property interests parcel by parcel without being obliged

to purchase any of the interests unless it is ready, willing, and able to purchase all the critical interests.

Challenge: Larger Project Depends on Smaller Tract

A land trust identifies as a high priority the purchase of a large tract for a new preserve. The tract is near, but does not abut, a state park. A smaller tract must be acquired to provide the contiguity that will be critical to obtain funding from governmental sources. Preliminary discussions with the owner of the large tract are promising but the land trust fears that, if it commits to purchase the large tract (which may become public knowledge), the owner of the intervening tract will realize that their land is the missing link and hold out for a purchase price far above market value.

Large Tract First Strategy

The land trust negotiates—on a confidential basis—a purchase option for the larger tract, which affords the land trust sufficient time to negotiate with the owner of the smaller tract. Once control of the larger tract is secured, the land trust begins negotiations with the owner of the smaller tract.

Small Tract First Strategy

The land trust may be concerned that, in spite of confidentiality measures, news of the intended project will leak if it first pursues the larger tract. In that case, the land trust may opt to temporarily discontinue discussions with the owner of the large tract and engage an agent, not identified with the land trust, to offer the owner of the smaller tract \$5,000 for the grant of a purchase option, exercisable within one year at a fixed price reflecting current value. The land trust is not identified as the beneficiary, but the option is freely assignable. Once the purchase option is granted, the land trust re-opens discussions with the large tract owner.

Analysis

The first strategy assures the land trust that it can purchase the larger tract at an acceptable price. The purchase

option also affords the land trust the time needed to negotiate for the acquisition of the smaller tract that links the preserve to the park at a fair, but not inflated, price.

The second strategy, using a relatively small investment of \$5,000, assures the land trust the availability of the smaller tract for a fair price and time to finalize a mutually agreeable transaction with the owner of the large tract. If for whatever reason the acquisition of the large tract fails to occur, the land trust's out-of-pocket loss is capped at \$5,000.

The strategy best suited for the project depends on the details of the situation. The important point is that, in either case, a purchase option can be used to achieve the goal.

Challenge: Assembling Parcels for a New Preserve

A land trust wants to purchase land for a new preserve. The project area contains multiple parcels owned by different owners. Several of the parcels are critical to satisfying a set of conservation and public recreation objectives for the prospective preserve. The organization does not want to purchase any parcel unless it can purchase all the parcels necessary to meet the objectives. Funders have set aside money for the project but only for a limited time. As a result, the decision to move forward with the project, or not, must be made on an all or nothing basis and on or before the funding deadline.

Strategy

The land trust may employ the stealthy approach described in the previous challenge. Or it may take a direct route: It could publicize the conservation project and reach out to all of the targeted owners at once or it could reach out directly to the owners in order of their importance to the project. Regardless, the land trust will seek a long option period to ensure enough time to discuss and negotiate terms with each owner.

Analysis

Although direct outreach may put the land trust at a negotiating disadvantage, the stealthy strategy may not always be possible or desirable; for example, the land trust may believe that the owners will be more inclined to sell and demand less if they know it is for a good cause.

Nevertheless, the opposite may hold true. Each owner will know that they could potentially receive a higher purchase price if they hold out longer than the other owners.

This problem can be offset in part by the land trust making it clear that no options will be exercised unless each key owner agrees to a reasonable price. An approaching deadline for the land trust to exercise its options may ultimately motivate a stubborn owner to reach agreement.

(Setting a uniform exercise date for the options may ease the land trust's administrative burden. Management of due diligence is simplified because there is no need to keep track of varying terms and conditions under multiple agreements and there is no risk that a deposit will become non-refundable because a deadline for termination was missed.)

A Tool to Handle Messy Ownership Situations

Owners of percentage interests in land in common with others do not have to act for the benefit of all. Absent a binding partnership arrangement, they can decline to sell their interest for any reason or no reason at all.

If the owners are not of one mind regarding the future of their common property or acceptable terms of purchase or if they are not communicating with one another, the purchase option may be used to acquire from each separately the right to purchase their interest in the land.

Challenge: Feuding Owners

A tract of land containing 500 acres has been owned by the same family for over a hundred years. Family members

own the land in common, each owning a percentage interest. The local land trust wants to acquire a conservation easement on the property and has the means to pay 50% of the easement value. All but one of the owners are willing to sell the easement for less than its full value. They own, in the aggregate, 90% of the property. The other 10% is owned by a cousin who is feuding with the rest of the family and refuses to speak with any of them. The land trust sees that the likelihood of all the owners joining in a single bargain-sale agreement is nil.

One Approach—Partition

When owners of percentage interests in land cannot get along, the remedy provided by the law is to petition a court of competent jurisdiction to partition the property. A partition action would entitle the feuding cousin to sole ownership of 50 acres (10% of the 500-acre whole) as determined by the court, leaving the others free to grant the conservation easement on the remaining 450 acres.

The disadvantage of a partition in this case is that the land trust strongly prefers to protect the entire property, if reasonably feasible. And why get involved with a potentially rancorous court proceeding of uncertain duration?

Another Approach—Separate Purchase Option

A separate purchase option for the cousin would enable the land trust to reach a deal without the need for contact between the cousin and the rest of the family. The land trust may reach out to the cousin directly to solicit the separate purchase option which, if exercised by the land trust, would require the cousin to deliver executed and acknowledged counterpart signature pages to the conservation easement. Independent of the cousin, the other family members may agree to join in a single agreement of sale (or grant of purchase option) binding upon all of them.

The cousin may not be willing to accept only 50% of the easement value like other family members. The separate purchase option enables the land trust to negotiate a different compensation arrangement for the cousin.

Additional Challenge: A Trust and Scarce Funding

Assume now that 10% is owned by a trust for the benefit of a child. The trust has no objection to the conservation easement but is not legally permitted to donate the child's interest in whole or in part. The trust (as fiduciary for the minor child) must receive 100% (not 50%) of the value of its interest.

Assume also that the land trust simply does not have the means to pay in total more than 50% of the fair market value of the easement.

Purchase Option Buys Time

Before moving forward to negotiate with the others, the land trust will want to obtain a purchase option from the trust. The easement purchase price is set at full value but that will not be paid unless others agree to accept less than 50% value. The critical term for the land trust is the length of the option exercise period because it will take time to explore ways to bridge the funding gap.

Locking In

The land trust then seeks purchase options from the other owners for not more than 50% of easement value and preferably less. As options are granted, the granting owner is locked into a maximum purchase price; however, the option holder continues to be free to negotiate price concessions right up to the deadline for exercise of the option. If, at the deadline, the aggregate purchase price under the options exceeds the available funding, the option will lapse without exercise. On the other hand, the urgency of an approaching deadline is a powerful incentive that may induce concessions from individual family members as the end of the option period becomes imminent.

Other Uses in Multiple Owner Situations

Sometimes an investment of time and resources is needed to track down missing owners, commence a quiet title action, or take other steps to clear title so that an acquisition may proceed. Before making this investment, the land

trust will want to be sure that all the owners (or at least those who aren't missing) are committed to the sale. Collecting purchase options is a good choice to achieve that end.

A Tool to Incentivize Action

The deadline for exercise of an option creates a sense of opportunity and urgency, which may incentivize action.

Challenge: Spurring Community to Act

An owner wants to protect their land, inherited from their parents many years ago, but without adversely affecting the beneficiaries under their will. Their tax advisor has cautioned that, because of the tax repercussions, they should avoid selling their land during their lifetime. Their remaining life expectancy is 5-10 years. The land is highly desirable for use as a public park and nature preserve but is worth millions of dollars for development purposes. Funding an acquisition of this magnitude will require a wide-ranging collaborative effort among a variety of public and private organizations.

Strategy

The owner grants the local land trust a purchase option to acquire the land at the appraised value used for their estate tax return. The option must be exercised, if at all, within six months after the date of the owner's death. If the option is exercised, closing must occur within two years after the date of death. The land trust may elect to acquire all of the land or select certain parcels for purchase.

Benefits

Aside from minimal attorney and recording fees, neither party has out-of-pocket expenses to establish the purchase option. Neither the owner nor the land trust is disadvantaged by it but the benefits to both the owner and the land trust are significant.

The owner has incentivized the land trust to invest its time and resources into a formidable project—raising the

funds needed to acquire the land. In addition to furthering the owner's conservation objective:

- The administrators of the estate will know within a relatively short time of his death whether the option will be exercised or not. If the option is not exercised, they can proceed to sell exactly the same as if the purchase option had not been granted. If the option is exercised, the estate benefits by the certainty that proceeds of a sale at fair value will be available for distribution to the beneficiaries of the estate not later than two years from the date of death.
- Sale to the land trust pursuant to the purchase option may reduce, or eliminate, a number of transactional costs including broker's fees and realty transfer taxes. Costs of zoning, subdivision, and land development approvals also may be avoided.
- The owner avoids tax on the substantial appreciation in value of the land since they inherited it decades ago. By deferring a sale until after death, the land receives a stepped-up basis for federal tax purposes as of the date of death. The result is that the millions of dollars of gain over their lifetime will never be subject to tax.

The grant of purchase option gives the land trust:

- The opportunity to purchase without competing in the marketplace with developers;
- Credibility—obtaining an option signals to potential funders that the land trust is serious and the project is not just wishful thinking; and
- Time to plan and implement a fundraising campaign and obtain commitments from foundations and governmental sources.

Not Dependent on Will

The timing of the purchase option is linked to the owner's death but is granted independently of their will. This assures the land trust of the permanence of its right to purchase. The opportunity cannot be withdrawn by a change in the will. Once the grant is recorded in the public

records, the purchase option is effective even if the land has been transferred in the interim.

A Tool to Control Outcomes

Options can be used to assure that promises are kept and expectations realized. When land is transferred, the future use of it may be constrained by recording a conservation easement, restrictive covenant, or other servitude; however, a purchase option may be a good addition to ensure that expectations are met.

Challenge: Wanting Land Back If Used Improperly

A nonprofit is willing to donate land to a school district for use as a nature preserve to be improved with an environmental study center but wants the land back if the school district fails to maintain it as a nature preserve.

Strategies

Several paths are available to protect the nonprofit's interest:

- **Restrictive Covenant.** A restrictive covenant limiting the land's use to a nature preserve and environmental studies may be included in the deed to the school district. This will give the nonprofit the right to petition the court to enjoin any other use, but it will not achieve the nonprofit's other goal: getting the land back.
- **Reversionary Right.** The deed to the school district may be written to convey title to the school district only for so long as the land continues to be used for the permitted uses and no other purpose. When the condition is broken, title to the land and any improvements (including the environmental study center) will automatically revert to the nonprofit. This may be fine for the nonprofit but does not protect the school district's investment in the environmental study center. (For a discussion of reversionary rights, see the guide [Reversionary Interest](#).)

- **Purchase Option.** A grant of purchase option, rather than an automatic reversion, will give the nonprofit the ability to unwind the transaction if circumstances change while protecting the investment of the school district. The option exercise date will be set at a certain period of time after the condition (maintaining the property as a nature preserve) is breached. The purchase price payable on exercise of the option may be based on appraisal of the then-current value of the environmental study center improvement or calculated to compensate the school district for its initial investment, discounted to reflect the age and utility of the improvement.

Implementation

Enforceability

An option to purchase, lease, or otherwise transfer real estate interests is enforceable under Pennsylvania law so long as the grant is in writing; is supported by consideration, or a legally sufficient substitute for consideration; is exercised strictly in accordance with its terms; and the material terms of the purchase or lease are sufficiently described for a court to enforce a mutually binding agreement of sale or lease upon exercise.

Recording the Option

To assure the option holder that the purchase option can be exercised, whether or not the granting owners continue to own the property, the grant of purchase option should be prepared in a recordable form and recorded in the real estate records of the county in which the property is located.

Privacy Concerns

If all or some of the terms of the grant of purchase option are intended to remain private, the commentary to the [Model Grant of Purchase Option](#) provides a number of options: recording a redacted version that omits sensitive information; recording a Memorandum of Purchase Option to give notice of the existence of the off-record

document (but not disclosing its terms); or not recording any notice of the document and requiring the existence and terms of the purchase option to be kept confidential.

Concerns Regarding Clearing the Record

The owners may not want the grant recorded without assurance that it will be cleared from the public records if the purchase option is not exercised during the option period. The owners want to avoid the need to assure title insurers (each time the property is transferred or mortgaged in the future) of the fact that the option was not exercised. Section 10 of the *Model Grant of Purchase Option* provides methods to avoid this problem.

Proper Exercise

The holder of the option must exercise the option, if at all, strictly in accordance with its terms. Unlike many other types of contracts, this is an area of the law in which a good faith effort or substantial compliance is not enough.

¹ This guide generally uses the word “property” to mean any interest in real estate, whether full land ownership or a conservation easement, access easement, lease, or other real property interest.

² While it has been said that a purchase option prevents sale of a property, it may be more generally accurate to say that an option is still valid even if the property transfers. With an option (that has been properly recorded in the public records) surviving any property transfer, it is highly unlikely that someone would go to the trouble of



Patricia L. Pregmon, attorney at law, and Andrew M. Loza are the authors.

WeConservePA offers this guide thanks to support from the William Penn Foundation and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

Nothing contained in this document is intended to be relied upon as legal advice or to create an attorney-client relationship. The material presented is generally provided in the context of Pennsylvania law and, depending on the subject, may have more or less applicability elsewhere. There is no guarantee that it is up to date or error free.

© 2022, 2013, 2009 WeConservePA

Text may be excerpted and reproduced with acknowledgement of WeConservePA.

v. 2022.08.25

acquiring a property subject to the purchase option and risk losing the property in short order.

³ The term “land trust” as used in this guide serves as a shorthand for any private or public entity—including trail groups—that seeks to acquire property interests for a conservation purpose.

⁴ The term of a purchase option for Pennsylvania property may be any number of years. Since 2007, there is no longer any need to limit the option period to one or more lives in being plus twenty-one years so as not to run afoul of the Rule Against Perpetuities.