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Option Agreements: Resources to help our next generation of farmers

One of the most common **option agreements** is a first right of refusal. This is an option contract between a future seller and a potential buyer that allows the buyer the first chance to purchase property by matching other bids. This type of agreement may be useful when current property owners wish to retain the property, but ensure that it will first be offered for sale to a specific individual or group of individuals.

The agreement will always be triggered by the sellers and not the potential buyer. The potential buyer has no right to force the sellers to give up their property, only the right to be the first in line to buy the property if the sellers decide to put the property on the market. There is no guarantee that the property will ever be put up for sale or even that it will be put up for sale at a time when the option holder is able to cash flow the sale.

A first right of refusal does not shelter sales from any kind of taxes or gift implications if the price is artificially low. It ensures only that the option holder will have the option to purchase the land above anyone else.

Options to buy also may be easily written into a will. This is a slightly different situation than a first right of refusal because the option is triggered at death of the property owner instead of during life when the owner wishes to sell. A specific person may be given the first option to purchase property from the estate of the deceased with the specified heirs receiving the proceeds from the sale. Fair market value, a discounted price, or a specific below market value price may be set as the sale price by the will. Gift tax will not be an issue if the price is set artificially low in a will, but basis issues may arise.

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