

FAQ

What is an Option Agreement?

An Option Agreement is like a Purchase Agreement because it is between a buyer and a seller and typically gives a buyer the exclusive right to purchase a piece of property later if the option is exercised. In contrast, a Purchase Agreement is an agreement to purchase the property on the terms contained in the agreement.

Option Agreements and Development Projects

An Option Agreement is beneficial to a buyer that is still trying to decide whether to purchase a piece of property. This may be particularly important if the buyer is considering development of the property.

How Does an Option Agreement Typically Work?

An Option Agreement gives time to the buyer to obtain funding to develop the property (and not just purchase it), obtain site control over the property, and conduct any due diligence. The buyer is not obligated to purchase the property until the option is exercised by the buyer. Further, once an Option Agreement is executed, the seller cannot sell the property to anyone else until the option period has expired or is terminated by the parties.

How does the Land Bank typically utilize Option Agreements?

During the option period, the Land Bank will allow the buyer to conduct due diligence. For example, review a title commitment, obtain a survey, or conduct an environmental review of the property. It is not uncommon to encounter a setback or two while conducting due diligence and the buyer's team (surveyor, environmental services consultant, legal, etc.) can advise them when this happens. If the buyer does not want to purchase the property because the setback is significant – it simply does not exercise the option. In that case, the option would expire, and the parties would not proceed to closing.

What does the Land Bank require to exercise the Option and proceed to close?

Because the Land Bank is supporting the redevelopment of the property and does not support property speculation, typically certain conditions will need to be met to exercise the option and proceed to close. These conditions will be detailed in the option agreement. They often include proof of financing and written documentation the project is consistent with current zoning. Site plan approval and/or building permits might be required depending on the project. All this work helps to set your project up for success or inform you if this is not the best site for your project.

What is the responsibility of the Buyer?

Buyers are responsible for assessing their purchase and understanding their desired project and identifying what due diligence is required of them. The Land Bank may have conditions to exercise the option that assist the buyer in being ready for purchase but ultimately, it is the buyer's responsibility to secure legal counsel, and other professional services to complete all due diligence and to advise buyers of any issues that arise. Your project team should advise you on the steps you will need to take for your project. With this information, buyers can then decide if they wish to proceed with the purchase. The option period gives the buyer time to complete this process

Does an Option Agreement have a fee? How does it work?

Option Agreements require a fee upon execution. The Land Bank will let you know the required fee for your option which will be related to the size of the project and value of the parcel. The Land Bank generally allows for these fees to be applied towards the purchase price of the property if the buyer proceeds to sale. In certain circumstances the Land Bank may assess other fees to recoup legal or holding costs. You will be informed if this is the case, and it will be documented in the option. All option fees for the Land Bank are non-refundable if the prospective buyer elects not to proceed with the option because of findings or challenges discovered in their due diligence. This fee helps the Land Bank offset holding and maintenance costs associated with having the property off the market.

It can be disappointing to invest in option fees and other due diligence and find an issue that causes you not to close but in the long run this process can help you ensure the site is right for you and help you avoid potentially larger challenges.

Can I begin work on the property when it is under Option?

Although buyers may engage in due diligence including investigation during their option period and will be granted access to do so, the buyer must exercise the option and a closing must occur before the buyer begins demolition, construction, new construction, or renovation work at the site.

Buyers will want to ensure they and their contractors have appropriate insurance prior to commencement of this work. The terms of the purchase are typically spelled out in the Option Agreement or in a separate Purchase Agreement attached to the Option Agreement. For example, this would discuss the purchase price, the division of closing costs, and other important matters.