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OPTION TO BUY AND RIGHT OF FIRST REFUSAL OPTION

- There can be an option to buy/purchase property **or** an option to sell property
- Generally speaking we deal more frequently with options to purchase.
- Option is described as an offer to purchase (or sell) property coupled with an undertaking not to revoke the offer for a period of time
- Therefore two distinctive parts:
 - o An *ordinary offer* to purchase (or sell) property (which must comply with all the requirements for offers in general)
 - o An Undertaking by the option grantor to *hold the offer open for acceptance by the grantee*. The time limit is usually stated but this is not a requirement.
- The Option comes into existence once the grantee accepts the grantor's undertaking to keep the offer open, ie accepts the second part of the option.
- Therefore where a buyer is interested in a particular property and would like an option to buy it, the option can be effected only if the seller makes an;
 - o offer to sell the property to the buyer and
 - o undertakes not to revoke the offer before a certain date
- A buyer receiving such an offer has an option to buy the property, which he may exercise by accepting the offer within the time limit stipulated.
- Sometimes the grantor is paid for granting an option. Keep in mind that this amount must be added to the consideration paid for the land when calculating transfer duty. Normally however parties agree that the money paid for the option should go towards payment of the purchase price if the option is exercised.
- In terms of the Alienation of Land Act 1981 a sale of land must be in writing and signed by the parties or their agents acting on their written authority. The Act makes no mention of options.
- Keeping in mind that an Option consists of two distinctive parts as set out above, it follows that the first part (the offer to buy/sell) must be in writing and signed by the offeror or his agent acting on his written authority, but the second part (the undertaking not to revoke the offer for a certain period) need not be in writing because it is not an alienation of land but an undertaking to keep the first offer open for a period of time.
- The offer to sell/purchaser must contain all the essential elements and terms of a sale namely the proper description of;

- the parties
- the property
- the price
- all other material terms

and be signed by the option grantor (or his agent acting on his written authority). The grantee need not sign the Option agreement but he must sign his acceptance of the Offer when exercising the option.

- An option is exercised by unconditional / unambiguous acceptance of the offer made by the option grantor. If the Option concerns buying/selling of immovable property, acceptance must be in writing and signed by the party accepting or by his agent acting on his written authority (sign the offer).
- Acceptance may be effected by an endorsement at the foot of the Option or it may be recorded in a separate document and in the event that it is recorded in a separate document (for example a letter) it must refer to the offer concerned.
- The option grantor must be notified within the option period that his offer has been accepted, or one can contract outside of the rule that acceptance is only effective when the offeror receives notice, by for example stating in the offer that the option will be deemed to be exercised upon signature by the grantee.

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