

## An Option too Good to Refuse!

JENNIFER HILE



The terms 'Option to Purchase' and 'Right of First Refusal' in a lease both relate to the ability of a tenant to become the owner of a property.

A *right of first refusal* in a lease is a provision that binds the landlord, if it wants to sell the property during the lease term, to first offer to sell it to the tenant. Thus, the tenant has the first 'right' to 'refuse'

that offer, and then the landlord can go to the open market and sell the property. This on the condition that, if the tenant refuses the offer, the landlord must make the offer on the open market the same as that which was offered to the tenant. If the terms of the offer change, the landlord must again offer the tenant the property on those amended terms.

By law, the right of first refusal is not binding on a transferee if the landlord transfers ownership of the property to another party, however the provisions of the lease may require the landlord to obtain a specific covenant from any incoming purchaser that they will be bound by the provision.

An *option to purchase* is a provision that gives the tenant the option of purchasing the property on the terms stated in the lease. Those terms will generally include how the purchase price will be calculated, the timeframes and what to do if the parties can't agree. An option to purchase can relate to the tenant purchasing the freehold, but also can apply to the landlord, for example by giving them an option to purchase the assets of the

tenants business at the end of the lease, such as stock or equipment.

With an option, the tenant has a pre-determined right to buy the property under certain terms, generally within a particular window of time, if it so desires, and the landlord must then sell the property. It is an offer which is open for acceptance through the entire term of the lease. Once accepted, a binding contract of sale exists.

On the other hand, with the right of first refusal, the tenant may never have an opportunity to buy the premises, as the landlord may never offer it for sale, or the parties may not agree on the sale terms.

These two terms are often misunderstood and they do present dramatically different opportunities. If you have an opportunity to receive an "option" on terms that you are happy with, particularly if you are a tenant, this is more valuable to you than a "right of first refusal".

From a landlord's perspective, the right of first refusal definitely means that the landlord maintains more control of the asset, because the discretion regarding disposal remains with the landlord.

With an option, the tenant has a pre-determined right to buy the property under certain terms, generally within a particular window of time



# Changes To Consultation Requirements For **COMMUNITY IMPACT STATEMENTS**

ROSE LOCKE



**A** Community Impact Statement (CIS) is a submission lodged with certain applications involving liquor and gaming licences. The CIS helps the Queensland Liquor and Gaming Commission (**the Commission**) assess the social and economic implications of the grant of a gaming machine licence. A CIS is required as supporting information where the following gaming machine applications are made:

- New application
- Application for an additional premises (club)
- Application for a significant increase of machines – currently regulated at 10 or more for hotels and 20 or more for clubs
- Other applications identified by the Chief Executive. This currently includes but is not limited to applications for increases of 100% or more of existing machine numbers.

The Commission has reviewed the community consultation requirement of the CIS due to ongoing concerns regarding the reliability of the data submitted. Formerly, the consultation required a formal survey of residents, businesses and community groups. There have been changes to the requirements of the CIS which have resulted in a more general consultation process with a number of organisations within the community.



It is expected that the researcher will, at a minimum, contact representatives of the following:

- The nearest “gambling help” service provider
- Local community help groups, welfare and emergency relief providers
- Financial assistance counselling services
- Health care providers
- Business and industry associations
- Community leaders
- Cultural groups
- Local community groups
- Local residential groups

All respondents must be made aware why the data is being collected and how it is to be used. If a representative is not consulted, the researcher must provide details as to why this consultation did not occur. The Commission no longer provides standard questionnaires, nor do they mandate the use of a “survey”. There is no longer a preferred method of consultation. The onus is now on the researchers to use what ever form of

consultation is considered appropriate depending on the type of application and the location of the area.

The new requirements under the Community Impact Statement will continue to be supplemented by comments received in responses made to the standard public advertisement for all applications of significant community impact. The Office of Liquor and Gaming Regulation has updated its guideline ‘Community Impact Statement’ which outlines the new requirements for a CIS, in particular, Part 8 Consultation.



**CURT SCHATZ**  
EDITORIAL

**I**n this newsletter we look at the difference between a “right of first refusal” and “option”.

Whether you are the owner of a property, or the tenant, you may from time to time come across these terms either in a contract or in a lease.

One of the more recent lawyers to join our group, Jennifer Hile has written this article. Jennifer has a lot of experience in property law, having previously worked for Government departments, and exclusively in areas requiring property law knowledge.

The second article is written by Rose Locke who is also a new lawyer in my property/hospitality group.

Rose is a first year solicitor, but also a terrific surfer being ranked highly in Australia for the longboard.

There have been some changes to the legislation relating to Community Impact Statements, which are generally used for new premises for Liquor and Gaming Applications, but also for increases in machine numbers and the like.

This change to the process is reflective of the general policy of the new State Government to cut red tape and bureaucracy in relation to liquor and gaming applications generally.

As you may have read, the State Government has formed a committee to look at the priorities that should be considered in terms of cutting red tape for certain applications.

I am very proud of our Property/Hospitality Group. It continues to grow, and has a dynamic presence in the business community.

Regards  
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