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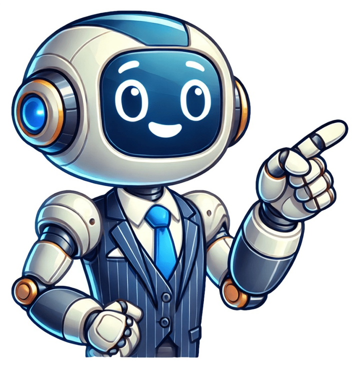

Put and Call Option Agreements are an important tool for any property developer or option seller. Ensuring your Put and Call Option Agreement is properly drafted can make a big impact on just how effective it is at protecting your needs. This is what separates a good property development lawyer from an average property lawyer.You have just found a new development site and you want to get the seller signed up as soon as possible to secure it. The dollar signs are in your eyes and you get a bit caught up in getting the deal done and forget about the minor detail. Does this sound like you? A poorly drafted Put and Call Option Agreement can be the difference between a successful deal and a failure. Dont let the dollar signs blind you from making good business decisions.What is a Put and Call Option Agreement?A put and call option agreement is a contract where one party agrees to sell one or more properties if requested by the buyer (a call option) and the other party agrees to buy the same property if requested by the seller (a put option).It is extremely common for a Put and Call Option Agreement to include a right for the buyer to nominate a third party to be the buyer under the contract. This is the mechanism that allows you to on-sell property using an option agreement without ever having to settle on that property.In practice, the call option runs for an agreed period of time giving the buyer the opportunity to buy the property by giving notice during that call option period. Once the call option period has expired, the seller then has the opportunity to force the buyer to buy the property by giving notice during the agreed put option period.Why use a put and call option agreement?The primary benefits of using a put and call option agreement rather than a normal contract of sale are the potential tax benefits. By using a put and call option agreement, you can:delay the buyers obligation to pay transfer dutynominate another buyer to buy the property without paying transfer duty twicechange the period in which the property is sold for tax purposes which can impact on the tax obligations of the seller (primarily capital gains tax)What if I dont want to be forced to buy the property?If you want the right to buy the property (a call option) but dont want the owner to be able to force you to buy the property (a put option), then a call option agreement is the answer.While it is often harder to get a land owner to agree to enter into a call option agreement, it is often more beneficial for the buyer given they can back out of the transaction before the call option is exercised.Whats the catch? While there is no catch as such, sellers will generally require a higher security deposit for a call option agreement than they would for a put and call option agreement where they can force you to buy the property. It is also common for the security deposit to be non-refundable and released to the seller once due diligence has been satisfied when using a call option agreement.What are the usual time frames under an option agreement?The most common time frames we see for developer style option agreements are as follows:due diligence 30 to 60 daysdevelopment approval 6 to 12 months after due diligencesettlement 30 days after exercise of the optionWhat to look for with your next Put and Call Option AgreementThe devil is in the detail and this is what separates the expert Property Development Lawyers from the average. Here are some tips and traps to look out for when negotiating your next Put and Call Option Deed.Payment of upliftOne of the main reasons people use a Put and Call Option Agreement is to provide the option to on-sell the property without triggering double transfer duty in Queensland.Sometimes the buyer will obtain a development approval and then on-sell the property under the option agreement at a higher price. Other times the buyer will on-sell the property for a profit straight away without obtaining any development approvals. This is often referred to as a Short Option.Regardless of whether you intend to on-sell the property or not, it is often a good strategy to allow yourself the option to do this as another exit strategy. Circumstances change and flexibility always helps you deal with these changes.There are generally four different ways you can structure an on-sale to an ultimate buyer under a Put and Call Option Agreement:Option that contemplates an on-sale This strategy requires the Put and Call Option Deed to be properly drafted to contemplate you being able to on-sell the property under the document and to receive the profit at settlement.Nomination agreement This strategy requires the Put and Call Option Agreement to have an appropriately drafted nomination clause. It is especially important that the clause is drafted so that it does not accidentally trigger transfer duty in Queensland.Assignment of the option This strategy requires the Put and Call Option Agreement to have an appropriately drafted assignment clause. The most flexible drafting for the buyer allows the document to be assigned without the consent of the seller. More commonly, the document is drafted so that the option can be assigned with the sellers consent and that this consent cannot be unreasonably withheld or delayed.Joint Venture Agreement Using a JV Agreement structure to on-sell under a Put and Call Option Agreement allows you to stay in the deal and receive an uplift and/or profit sharing on the completed development. This structure can be a backup where the Option Agreement was not properly drafted to allow for nomination or assignment without triggering double duty or where the parties genuinely want to carry out the project together.Choosing the best structure for your on sale will change on a case by case basis. We recommend speaking with your Property Lawyer to get advice on this before finalising any agreement with your ultimate buyer.Properly drafted nomination clauseWhat is a nomination clause?A nomination clause allows you to nominate another person to be the buyer of the property. The terms of their purchase will generally be determined by the terms outlined in your Put and Call Option Deed. The nomination clause is one of the most common mechanisms used to on-sell the property to a third party without you having to settle on the property or pay stamp duty.What to look for in a nomination clauseThe most important thing to look for in drafting of a nomination clause is to ensure that your ultimate buyer does not obtain any rights under the Put and Call Option Agreement. This means that you will still be the one to exercise the Call Option at the appropriate time and not the ultimate buyer.The ultimate buyer has their rights under the resulting contract once you have exercised the Call Option.This may sound like a subtle difference, however it may be the difference in whether your nomination triggers double transfer duty in Queensland or not.Right to assign the Put and Call Option DeedIncluding a right to assign the Option Agreement allows you to transfer all of your rights to an ultimate buyer. There are usually two different ways this can be structured:Right to assign without the sellers consent this can be harder to negotiate with the land owner as an experienced Property Lawyer will often try and negotiate this clause be amended to require the sellers consent.Right to assign only with the sellers consent this structure is easier to negotiate, however makes it harder if you do decide to sell your rights under the Put and Call Option Agreement. If sellers consent is required, the clause should be drafted so that their consent cannot be unreasonably withheld or delayed.Assigning your rights under an Option Agreement should never be done without consulting an experienced Property Development Lawyer as you may accidentally trigger transfer duty on the assignment. This is an advanced strategy that is used in limited circumstances with proper advice.Further Call Option Period if your third party buyer terminatesWhere you have on-sold the property to a third party and exercised the Call Option, the third party then becomes the buyer under the resulting contract. This means you lose control over this aspect of the deal for the duration of that contract.Depending on the structure of the deal, it is often important that you have a further chance to on-sell the property or settle on it yourself if your third party fails to settle the first time. This allows you to recover the deal as required.A perfect example of this mechanism in action is where you have entered into a marketing style Put and Call Option Agreement for block of vacant land in a new subdivision. You on-sell the land to a third party buyer at a premium, but you also have other buyers that you know would be interested in purchasing the land if the first buyer fails to settle.Imagine your first buyer fails to settle but your Call Option has expired and the developer then exercises the Put Option forcing you to buy the land, even though you had other buyers waiting? You would be surprised how often this happens with inexperienced Property Developments Lawyers in Queensland.Subject to Due DiligenceProperty development is a complex process that involves passing through a number of hurdles before a development even starts. The first step will usually be site identification, the second a high level due diligence, the third a high level feasibility study and then the fourth, your detailed due diligence.Steps 1 to 3 above are usually carried out before you sign the Option Deed with little or not out of pocket expenses incurred. Once you have signed the paperwork and locked in the deal, that is when the detailed due diligence commences and you start spending money on your town planner, property lawyer and other consultants.Not all due diligence clauses are created equally and it is important that your clause provides the level of protection you need. You can read more about the intricacies of due diligence clauses here: Click meSubject to Development ApprovalOnce your deal has progressed through Stages 1 to 4 above and you are happy with the results of your due diligence, Step 5 will usually be the development approval process.Not only is the detail in the drafting of the subject to DA clause important, so is the timing. Far too often we see developers try and negotiate deals with a DA period that is far too short for the development they intend to carry out. Compiling consultants reports and supporting materials for your development application can take months in itself and this is on top of the time required to then respond to any information requests from Council. Your town planner and Property Lawyer can provide guidance on the time frames you should be negotiating for your subject to DA clause.You can read more about intricacies of subject to DA clauses here: Click meAccess to the propertyCarrying out due diligence and compiling the reports required in support of your development application will generally require access to the property for various reasons. It is important that your Put and Call Option Agreement allows you, and your consultants, access for these purposes.Another right of access that can be helpful is where you intend to on-sell the property. This can allow you to bring your potential buyers through the property as required.We have some developers that also negotiate access to carry out early development works. This can become quite messy and is something that should only us done in very specific circumstances.Right to caveatAcquiring a development site under option and then going through the development approval process can be an expensive task. It is common for developers to spend $50,000 to $100,000 or more to get to the stage of having a site under option with a development approval. A consent caveat essentially freezes the title to the property and protects you from the land owner being able to sell the property in breach of your Put and Call Option Agreement.Right to erect signageWhile this might not be the highest requirement on a developers checklist, this is a minor detail that can make life easier. The main signage that we would expect developers to require are:Signage complying with advertising requirements for your development application. In Queensland, this generally relates to impact assessable or notifiable code assessable development applications.Advertising signage for lots in the completed development.How is the deposit you have paid treated on exercise of the Call Option?If you exercise the Call Option in your own name or the land owner exercises the Put Option, the security deposit would usually then form the deposit under the resulting contract as you are buying the property. But what if you nominate a third party to be the ultimate buyer?We often see inexperienced Property Lawyers draft Option Agreements that cause your security deposit to then be held as the deposit for your third party buyer under their contract. Yes, you ready that right. Your deposit is used as security for an unrelated ultimate buyer. It is important that the deposit clauses are properly drafted to give you the flexibility to avoid this scenario.We generally recommend the deposit clause be drafted so that you have the choice on whether your deposit becomes the deposit under the third party contract. This election is usually made at the same time you exercise the Call Option and this strategy gives you the greatest level of flexibility.On-selling property using Put and Call Option Agreements. How do I do it?There are a number of different ways that you can on-sell a property using an option agreement. A summary is as follows:Option that contemplates an on-saleThis model has provisions in the put and call option agreement that contemplates an on-sale and requires the seller to pay any uplift to you at settlement of the property.Pros:Contract price is the higher price for the ultimate buyer. This makes it easier for them to get finance and also means they never know the uplift amount.No separate agreement needed with the ultimate buyer as long as they dont need to take advantage of timeframes under the option agreement. They just sign the contract at a higher price.Cons:The seller will be aware that you are contemplating an on-sale at the time you negotiate the option. This generally makes it harder to get the option agreement signed with the seller.Depending how the option and contract are structured, there can be less flexibility with the settlement date. For example, the option may have a 12 month DA period and the contract may have a 30 day settlement. If the ultimate buyer wants to take advantage of the 12 month DA period, there will still need to be a nomination deed with the ultimate buyer.Less flexibility on when you get paid your uplift as it will generally only be paid at settlement (unless there is a separate nomination agreement that goes with it).You can lose control of the option and the deal if the ultimate buyer fails to settle.Nomination agreementThis model has you enter into a nomination agreement with the ultimate buyer where you agree to nominate the ultimate buyer under the put and call option agreementPros:There is a lot of flexibility in when you get paid your uplift and when you nominate the ultimate buyer.You retain control of the option agreement until the point the buyer is nominated.The seller is not aware of the uplift amount.Seller consent is not required for the nomination.No transfer duty is payable on the nomination.It is generally easier to negotiate the option agreement with the seller as it does not contemplate the on-sale provisions, other than allowing a nomination.Cons:The buyer will sign a contract at the lower price. This means it will be harder for them to get finance on the increased price and also means the sale price with the land registry will generally be recorded at the lower amount.The buyer will be aware of the uplift amount.Assignment of the optionThis model has you enter into an assignment agreement with the ultimate buyer and then assign the option to the ultimate buyer.Pros:Depending on the terms of the assignment agreement, you can be paid the uplift and then exit the deal without having to stay in until settlement.Cons:Depending on the terms of the option agreement, you may require the consent of the seller to assign the option agreement.If the option agreement is drafted to allow assignment without seller consent, this will often be negotiated out by the sellers lawyer.If it is a put and call option agreement, you can remain liable for the performance of the ultimate buyer under the option agreement following the assignment.The assignment can trigger a transfer duty liability on the value of the option.Joint ventureThis model has you enter into a joint venture agreement with the ultimate buyer and carry out the development as their partner.Pros:Can allow you to share in the profits of the project which can lead to a higher payment to you.It is very flexible on how the deal is structured. This can include an acquisition fee paid to you upon settlement or earlier.Cons:You are tied to the project until the end.Depending on how it is negotiated, you may not receive your profit share/uplift until settlement of the completed development.Which option is best for on selling?The most common way is to on-sell using a nomination agreement, however we have had experience with all four models.Some examples:We assisted a client that went with an assignment agreement. They received a lump sum uplift payment and exited the deal entirely.Another client used a nomination agreement and on-sold the property within 3 days, got paid half of the uplift as a deposit on signing and then received the balance uplift at settlement about 30 days later.Another client is currently developing out the project with a funding partner. There was an acquisition fee paid on signing of the joint venture agreement and the funding partner is responsible for paying all costs to carry out the development.Another client has entered into a put and call option agreement for a number of blocks of land where the option agreement contemplates an on-sale at a premium. The uplift to the purchase price is then paid to our client on settlement of each lot.The best option will generally depend on who the seller is, who the likely buyer is and the nature of the site. If the ultimate buyer is going to be a sophisticated developer, they shouldnt be too put off by paying you an uplift under a nomination/assignment agreement. On the other hand, if its a 1 into 2 subdivision with a mum and dad buyer then you might struggle to get them to enter into a purchase under a nomination/assignment agreement.Likewise, if you have an unsophisticated seller that youve worked hard to get across the line to sell, you might not want to scare them off with a put and call option agreement that contemplates an on-sale at a premium. Alternatively, if you have a motivated seller that you think will sign anything, this option allows you the greatest flexibility.Got more questions?McAndrew Law is a leading Brisbane Property Development Law Firm. We have extensive experience in drafting Put and Call Option Agreements for developers, option sellers and land owners to ensure your rights are protected. Call us on (07) 3266 8555 or get in touch with usonline to get started. We offer a FREE initial consultation to discuss your needs. iii. The call option exercise periodThis refers to the set duration in which the buyer can exercise a call option. The period is agreed on by the parties before entering the option deed. These two periods are ordinarily sequential. If the call option period expires before the buyer has exercised the call option, the buyer is precluded from doing so. The seller can, therefore, exercise their put option, requiring the buyer to purchase the land during the put option exercise period. Additionally, none of the parties is compelled to exercise an option in the relevant period. The option will end with the expiration of the duration for the final option if none of the parties exercises their option.iv. AssignmentA buyer who enters a call option deed before exercising the call option may assign their rights to a third-party under the call option deed. After completing the assignment, the third-party will assume the position of the buyer. The seller will then continue with the transaction according to the terms of the call option deed.v. NominationsBuyers may appoint a third party to exercise the call option on their behalf. Appointing a nominee is different to and assignment. When a nominee exercises the call option, the new contract will now be between the seller and the nominee and not the seller and the buyer.Put and Call Option agreements have a variety of uses and may be more beneficial than a sale contract alone. However, some significant legal issues will require consideration. Both option agreements and sale contracts have their limitations, and one should seek consultations before entering any real property arrangement.A put and call option agreement is an agreement between a potential Buyer and potential Seller. Also known as an option contract or option agreement, it is not a contract for the sale of property, but an agreement to buy or sell property on a future date or when a specific event occurs.An option agreement is distinct from a contract of sale in that where there is a contract of sale, the Buyer and Seller have present and future obligations to each other in respect to the transfer of property, whereas option agreements are better understood as if contracts; if the party who has the right to exercise the put or call option does not do so, no binding agreement to sell the property has come into existence. It is only on the exercise of either the put or call option that a contract for the sale of the property is formed.What Is An Option?An option is a right under an option agreement to buy or sell property at a future date.In an option agreement, the person granting the option (the grantor) grants the exclusive right to purchase their property at an agreed price to the grantee or beneficiary (the person who can exercise the option and buy the property).There are three types of options;1. Call OptionA call option is where the buyer is given the option to require the seller to call or make the grantor sell the property to them.A call option fee is payable when the option is granted. It is normally a percentage of the purchase price of the property.2. Put OptionA put option is where the Seller is given the option to put or require the buyer to buy the property from them.A put option fee is normally payable, and is usually a nominal amount.3. Put and Call OptionA put and call option is an option agreement that involves both a put and a call option, so that if the call option lapses, the grantor may either exercise the put option (require the other party to buy) or back out of the option agreement entirely.What Is An Option Period?Put or call options must be exercised by the relevant party during a defined period called the option period. Once the option period has expired, the option can no longer be exercised.If an option is not exercised during the relevant option period, then the option will lapse and, usually, any option fee that has been paid will be forfeited.Why Use Put And Call Options Over Property?Put and call option agreements are most commonly found in commercial property sales, but are also sometimes used in residential property sales, including by property developers.Because they delay the formation of a contract of sale, put and call option agreements can be useful for a number of reasons. For example, they can;delay the obligation to pay transfer duty on the contract;delay capital gains tax obligations;allow the buyer to find another person or entity to enter into the resulting contract of sale without entering into a binding contract to buy the property themselves;allow the buyer time to obtain development approval or to do due diligence on the propertyWhat Is Included In The Option Agreement?An option agreement will usually have the following conditions at a minimum;Option Commencement DateThis is usually the date the option is signed.Option Expiry DateThis is the date the option will expire; the option can no longer be exercised after this date.Due Diligence PeriodPut and call option agreement will normally provide for a period in which the Buyer can conduct due diligence on the property.Option FeeThe option fee payable by either party will be set out in the option agreement.Purchase PriceThis is the price the Buyer will pay under the contract of sale if the option is exercised.Nomination or AssignmentIt is common for an option agreement to include a nomination or assignment clause as these enable the buyer to either sell the option or nominate a third party buyer who can exercise the rights of the original buyer under the Option Agreement.ContractThe terms of the contract that will be entered into as a result of the option being exercised under the option agreement are usually set out in a form of contract that is annexed to the option agreement.Seek Legal AdviceIt is strongly recommended that you have a lawyer review and provide advice on any put and call option agreement prior to signing, and that you have a full understanding of your rights and obligations under the proposed agreement.More Questions?If you have more questions about put and call options in property or any other aspect of property law, give one of our friendly, experienced solicitors a call today, or head over to our quote page for an obligation-free quote.The above is not legal advice and is general information only. What do you do when you like a property but cannot purchase it right away? Or a potential buyer agrees on a competitive price but cannot get into the contract of sale immediately. These are lucrative opportunities you would like to lock in. For such circumstances, the put-and-call option agreement exists.Whether you are a developer eyeing the next big project or a seller seeking a safety net, utilising the call-and-put options can be beneficial. Through this comprehensive guide, we shed light on various aspects of the call and put contracts. So, stay with us until the end. Before discussing the put option and the call option in depth, lets familiarise ourselves with the two common terms you will encounter throughout. Grantor: Owner of the property or seller.Grantee: A person who is interested in purchasing the property, i.e., the buyerOption agreement: The put and call agreement also referred to as option contractIn real estate, the call-and-pull option is a contractual agreement that benefits both parties by rendering them the flexibility to transact the property in the future at a pre-determined price. This option ensures that both the grantor and the grantee secure a future right without proceeding with a transaction simultaneously. There are two pivotal options in the call and put contract: The call option enables the grantee the right to purchase the property at the pre-determined price within a specific period of time. It is the buyer who has the levy to exercise the option first. Only if they ignore to do so is the grantor enabled to exercise the put option. Also, the seller must sell the property once the buyer exercises the call option. Only when the grantee seizes the opportunity to execute the call option can the grantor utilise the put option within the agreed timeframe. When done, the buyer must purchase the property at the agreed price. Here is a tabular representation of the Call option vs. Put option AspectCall OptionPut OptionDefinitionProvides the buyer the right to purchase a propertyGives the seller the right to compel the buyer to purchaseParty in ControlGranteeGrantorObjectiveSecures the property for future purchase at an agreed priceEnsures the buyer will buy the property in the futureBenefitBuyer can lock in a purchase price and conduct due diligenceSeller has assurance that the property will be soldTimeframeBuyer has a set period to exercise their right to purchaseSeller can enforce the sale during a specified timeframeCommon UseOften used by developers or investors to secure land dealsUsed by sellers to guarantee a sale, often in complex dealsRiskMarket value may fall below the agreed priceBuyers may default or withdraw if they cant meet the conditionsExample ScenarioDeveloper secures land while awaiting financing approvalsSeller wants assurance of sale after certain approvals are met More often, both these options are in a single agreement, ensuring flexibility and protection for both parties. Most buyers and sellers indulge in the call and put contracts during transactions of large developments where securing finance and receiving approvals is time-consuming. Put-and-call options offer a range of practical advantages for both the buyer and seller. Apart from providing security and flexibility, these also enable each party to reach their specific goals in terms of real estate. Below is a breakdown: Lock the purchase price for your desired property at the outsetSafeguard your finances from the rising real estate marketGain valuable time to conduct due diligence on the propertyHave enough timeline to explore mortgages and choose the most suitable oneProcure development approvals before closing the transactionExplore property potential and ensure its apt for intended projectsFinalise the deal without pressureTransfer rights to another party to complete the transaction Security of a potential saleAssurance of funds for future financial planning or to fund other venturesExperience reduced uncertainty compared to traditional contractsPeace of mind knowing the buyers commitmentFreedom to plan future investments, such as investing in new property or scaling a businessProtect yourself from falling property values due to declining marketsChoose the optimal movement to finalise the transaction Though the put and call options offer numerous advantages, using them effectively is pivotal for legal support. Below are a few best practicesAlways stress on defining every term, i.e., option period, purchase price and other conditions clearly in the agreement.Set your timelines realistically, ensuring these allow enough time for due diligence, avail approval, and financial arrangement.Fix the purchase price during the framing of the option agreement.Include all the necessary documents, such as the contract of sale, before signing the agreement.Consult a conveyancer or conveyancing lawyers to draft the deal, ensuring compliance with Australian property deals. Put and call options provide flexibility, security, and peace of mind for both buyers and sellers in real estate transactions. Whether youre a developer seeking to lock in a future purchase or a landowner wanting the assurance of a sale, these options offer significant benefits. With careful planning, clear agreements, and professional advice, put-and-call options can be a powerful tool in the real estate market.At Easy Link Conveyancing, we simplify complex real estate processes. Our highly qualified expert conveyancers guarantee to complete property selling without any hitches while offering professional recommendations and support throughout the process. We are available for assistance at any stage of the process, whether you are a buyer or a seller. Give us a call today to find out how we may apply our expertise to your conveyancing Sydney and other suburbs requirements. A put and call option agreement in property can be a powerful tool in the hands of a sophisticated buyer. But how do put and call option agreements work in practice, what are the legal foundations for them, and what are some traps to watch out for as a buyer looking to utilise this legal mechanism for profit? You may have come across the idea of options before. They can be used in a corporate setting, as well as in share transactions. In property, an option is where the buyer pays a fee to the seller to secure the right to make the seller sell the property at a given time, on given terms. So, for example: You are selling a block of land;We agree that any time for the next year, I can make you agree to sell me that land on agreed terms for a purchase price of $400,000, during which time you cant sell it to anyone else;I pay you a $10,000 fee for that right. This is a straightforward type of option. In property transactions, our options tend to get pared into two parts: A call option this is the right in the hands of the buyer to call for the property to be sold to them; andA put option this is a right in the hands of the seller to make the buyer purchase the property. Usually, the buyer has the right over a longer period of time to exercise their option, and the seller can only force the purchase if the buyer fails to. So, if, in our simple example above, we inserted a put option, we would end up with something like this: You are selling a block of land;We agree that any time for the next year, I can make you agree to sell me that land on agreed terms for a purchase price of $400,000, during which time you cant sell it to anyone else;I pay you a $10,000 fee for that right;If I do not exercise my right to buy the property within that year, you can give me a notice within 14 days after my option expires and make me go ahead with the transaction. The reason for this is relatively obvious. The option is generally more beneficial to a potential buyer, so the potential seller (who is giving up their right to sell to anyone else for the next year) needs some comfort that they wont be left dry and high at the end of the timeframe. After all, option periods can be a fairly long time, and in a volatile market a lot can happen over that time. What if you are a property buyer and dont want the risk of being compelled to buy the property (that is, you want the call but not the put)? Well, if you can convince the seller at all, you should expect a higher price for the option fee since their risk will be higher as yours gets lower. So knowing what a put and call option agreement is and knowing when to use it are two separate things. As a buyer, there are some main benefits: Locking in the deal while you get your ducks in a row. Perhaps this is a great and timely deal for you, but youre not quite ready to execute in terms of finance, structuring, development approval or the like. The option can secure your deal while you line things up.Due Diligence as a buyer, especially of property with development potential, you might not quite know exactly what can be done with the property. Still, you dont want it selling to someone else while you get town planning advice. An option can give you that time while protecting your ability to buy.Market movement locking in todays price for tomorrows purchase has an obvious benefit if the market rises over the option period. Of course the reverse is true if the market contracts and you are forced to buy the property anyway with the put option.Nomination if your goal is to prepare the property for development approval during the option period and take the profits by immediate on-selling, you may be able to do so efficiently by nominating a buyer (with whom you have done a third party deal) when exercising your option. Many of the elements of the option agreements have potential tax consequences so its good to work through those with your tax lawyer and accountant before committing. While the concept of an option is fairly simple, sometimes the way they are prepared can make life a big headache. Here are a few areas to ensure things are neat: Ensure the option periods for each party are straightforward and easy to calculate. None of this 5 business days after the 3rd gibbous moon cycle stuff is going to help you here. Be clear and make sure everyone is agreed about what happens when. Even common phrases like business days can cause a lot of grief, so its best to just have precise dates or precise numbers of real days anything else is a problem waiting to happen.Make sure the way the option/s are to be exercised is obvious and straightforward. Ensure the addresses for notices will still be around at the end of the option period (and dont change your email address!).Allow periods for both due diligence and development approval (if applicable) well work through this more in our example below.As a buyer, youll need access to the property and potentially information for both due diligence and working towards the development approval. Make sure that these access and information needs are met.As there is no real downside, give yourself a nomination clause so that you can nominate a third party to purchase whether or not that is your plan.Take care to allocate risk for the property during the option period. Who is responsible for the risk of damage, flooding and the like? Are there insurance obligations? Joe wants to buy Suzies property from her, prepare it for development and on-sell it to a property developer. They negotiate and both are happy to enter into a put and call option agreement for the property. The agreement covers these essential terms: Joe will pay Suzie $15,000 as the option fee immediately on signing.The purchase price on exercise of the option is $1,000,000 plus any applicable GST.Joe has 60 days to conduct due diligence on the property. If he is not satisfied for any reason with that due diligence inside 60 days he can terminate the agreement and receive back 50% of the option fee. Otherwise he is bound by the agreement going forward.Joe has a further 120 days to obtain development approval.During the first 180 days, Joe is given unfettered access to the site (empty land) and can conduct whatever testing or analysis on the property he desires, provided the property is not damaged in the process.Suzie bears the risk and insurance obligations for the property until the sale contract. Suzie is not allowed to market the property or seek out other buyers during the option period.Joe is permitted to nominate another buyer if he exercises his option.If Joe does not exercise his call option by the end of 180 days from the option agreement, Suzie can exercise her put option within 14 days after that.Any option exercise is to be by the relevant person signing the contract which is annexed to the agreement and delivering it to the other partys lawyers office. Of course while this simple worked example sets out the fundamentals, there are a lot more elements to consider when getting into more sophisticated property deals involving put and call option agreements. However you can see how with a bit of consideration this can be a good way for Joe to make some money. Here, Joe can prepare the land for development without having to purchase, seek out interested buyers along the way, potentially save on some tax and holding costs, and also get the benefit of any market increase over the next 6 months or so. This isnt an area where you want to sign an agreement that hasnt had a dedicated review from your property lawyers. If youre in the development space and wanting to explore a put and call option for your next purchase, give us a call and well work it through with you. An option agreement is an agreement between a buyer and seller of a property where the buyer or seller (or sometimes both) grant each other options to buy or sell the property to each other. An option agreement will usually be a call option agreement or put and call option agreement.A call option is when a seller grants a buyer an option to purchase their property but not the obligation to purchase (i.e. the seller cannot compel the buyer to purchase). A put option is when the buyer grants the seller an option to compel the buyer to purchase the property. Option agreements are often used when buyers (especially developers) require flexibility in purchasing a property, for example: to secure the right to purchase a property but only exercise the right at a later date (when a contract will be formed); to secure a property before they have established the ultimate purchasing entity; to conduct due diligence or obtain development approval and defer stamp duty obligations until that is completed; to conduct due diligence and then assign the option to a developer or nominate another developer to complete the purchase and development. Call option agreements are generally more favourable to developers as they are not compelled to purchase the property. Sellers need to consider and buyers should explain what benefit a seller will get from granting a call option to a buyer, such as whether or not: They are getting an above market value price for the property that developers often offer due to the potential to develop the property; They are getting paid a reasonable amount for giving the developer the right but not the obligation to purchase the property during the call option period (a longer call option period would usually attract a higher amount payable to the seller in the form of an option fee or a non-refundable deposit); or The developer is improving the value of the property by obtaining a development approval (which runs with the property and which the seller can benefit from even if the developer does not purchase the property). Apart from the obvious details such as the property address and names of the buyer and seller (and their lawyers), a call option agreement commonly includes the following: Purchase price (also known as the strike price) that the buyer will pay if the option is exercised. Call option fee that the buyer pays the seller in consideration of the seller granting the buyer the call option. This is often a relatively small amount such as $1000 so that stamp duty is kept to a minimum in those states where stamp duty is payable on the option fee. Buyers and sellers also need to consider when the call option fee will be paid and whether or not the call option fee will be refundable in certain situations, such as when the option agreement is terminated by the buyer under a due diligence condition. Due diligence condition and due diligence period if the buyer needs to conduct due diligence on the property and the viability of any proposed development. The buyer must give notice to the seller by the end of the due diligence period as to whether or not they are satisfied with its due diligence investigations or wish to waive the condition so that it no longer applies. If the buyer is not satisfied with its due diligence it can terminate the option agreement. Security deposit amount that is usually payable after due diligence has been satisfied or waived and is often non-refundable except where the seller defaults. The security deposit usually forms the deposit (or part of the deposit) when the option is exercised and the contract is formed. Call option period being the period during which the buyer can exercise its call option to purchase the property, with a call option commencement date (of no earlier than 42 days in New South Wales) and a call option expiry date. The option agreement will usually describe how the option must be exercised by the buyer, for example, by giving notice to the sellers lawyer and sending them the contract signed by the buyer in the form of contract attached to the option agreement. Once the option is exercised a contract is formed and the terms of the contract then apply to the purchase. Contract settlement period being the period of time after the option has been exercised that ends on the date of settlement of the purchase when the buyer must pay the seller the balance of the purchase price in exchange for the transfer of title. Assignment clause permitting the buyer to assign the option (which can be for consideration, e.g. when the option is sold) to another buyer or developer. Nomination clause permitting the buyer to nominate another buyer to complete the contract when the option is exercised. Development application clause permitting the buyer and its consultants to access the property to carry out inspections and reports to support its development application. Contract of sale and any seller disclosure documents must be attached to the option agreement. The date of agreement is the date the call option agreement is entered into between the buyer and seller. The call option fee is payable on the date of agreement or within a few days. A due diligence period of three (3) months from the date of agreement. The security deposit is payable within two (2) business days of the buyer satisfying or waiving the due diligence period. A call option period of twelve (12) months from the date of agreement. A contract settlement date of 30 days from the day the call option is exercised and the contract is formed. A buyer can assign an option to another buyer or nominate another buyer to complete a contract once an option is exercised. There can be stamp duty assessed on assignments and nominations depending on the laws in the jurisdiction of the property location. Legal advice should be obtained as early as possible where this is a likelihood. Option agreements are less common that standard contracts of sale and so many lawyers and conveyancers will not be familiar with option agreements and how they work. There is no prescribed form for an option agreement and they need to be prepared to suit the terms of a particular deal. Buyers and sellers should therefore choose a property law firm, such as lawlab, who have extensive experience in dealing with option agreements. Lawlab can provide a template heads of agreement for option to assist buyers when negotiating terms of an option deal. Lawlabs standard fee schedule is as follows for call option agreements to purchase an existing residential property: Item of legal service Fees (inc gst) Comments Preparing or reviewing a call option agreement $990 Preparing sale contract (to be attached to the call option agreement) $242 + expenses at cost Seller usually has their lawyer prepare this at their cost but we can too. Negotiation of call option agreement and contract terms (if required) $594 Hourly rate but capped at $594 (unless extensive negotiations required) Deed of assignment or nomination of ultimate buyer (if required) $891 Required if you assign your option Negotiation of deed of assignment terms (if required) $594 Hourly rate but capped at $594 (unless extensive negotiations required) *Pricing valid 1 July 2022 to 30 June 2023Sign up to Rundl today and order an Option Agreement Rundl now Disclaimer: This information is general in nature only and does not constitute legal advice. Lawlab accepts no liability for the content of this information. You should obtain legal advice specific to your individual circumstances. When it comes to real estate transactions, buyers and sellers have more options than ever before. In some transactions, buyers may consider a real estate option contract - or an option to purchase real estate. But what is an option in real estate? Simply put, a real estate option is a contract that gives buyers exclusive rights to purchase a property.At first glance, real estate options may seem like a complex concept, but in many regards, theyre actually an incredibly straightforward real estate transaction. Lets look further into real estate options, including what they really are, their elements, how they differ from stock options, some of their benefits and an example of how one can work.What is a Real Estate OptionWhat is an option contract in real estate? How does it differ from other types of real estate transactions? Real estate options most commonly occur between landowners and property developers. Theyre an agreement between two parties where the buyer agrees to purchase a property at a certain point and has exclusive rights to the listing during that period of time.A purchase agreement, which is the most common type of real estate transaction, is a signed contract to transfer ownership of a property.Elements of Real Estate OptionsGoing beyond the option real estate definition, there are many different aspects of a real estate option contract. To fully understand what goes into a real estate option, it's crucial to understand all of its elements.Optionee: An optionee in real estate is the prospective buyer of the property.Optionor: An optionor is the seller of the property.Real estate option: An option in real estate is a contract between a buyer and seller, which gives the buyer the option to buy real estate within a specific time period for a fixed price, regardless of market conditions.Option consideration: Also known as earnest money, an option consideration is the payment a buyer provides to the seller in exchange for keeping the property off the market for a period of time.Option period: An option period is a mutually agreed upon time period where the buyer has the option to terminate the contract without losing their earnest money. This typically lasts 7-10 days.Exercise of option: A bilateral contract, where the seller is expected to sell the property at a fixed rate while the buyer is expected to purchase the property within a certain timeframe.Real Estate Options vs. Stock OptionsThe concept of real estate options might not be as well known, and many people generally associate options with stocks. But are they the same thing? In order to understand the different types of options, it's important to ask the following: What does optioned mean in real estate? And how does it differ from stock options?Options are just what they sound like: they give investors or buyers additional choices on a purchase. While stock options can get held until the option expiry, exercised early, or sometimes even sold, real estate options are a bit different. They give buyers flexibility and can sometimes even offer a better investment opportunity.Advantages of Real Estate OptionsReal estate options are less common than purchase agreements, but there are many benefits for buyers and sellers who pursue this type of transaction. For buyers, they lock in the price of the property while giving more time to procure more funds for purchase. For sellers, they can sell to an investor, which is a lower-risk way to sell land for property development.Examples of Real Estate OptionsCommon real estate options might include:Listing option: Buyer might be able to benefit by listing the property and seeing a profit.Holding period option: Buyer pays to have the option to purchase the property (but doesnt have to).1031 exchange option: Buyer pays to be able to hold the property, then can exchange it like for like property.To better understand real estate options, it's important to note why theyre appealing to all parties. One of the most common reasons buyers and sellers pursue real estate options is for property development.For example, you own 200 acres of land you want to sell while a prospective buyer wants to develop a new subdivision. By pursuing a real estate option, the buyer has more time to secure the necessary funds while you can sell the property to a credible, low-risk buyer.Final ThoughtsKnowing about and understanding the nuances of real estate options is important for real estate investors. Using options can provide alternate ways for you to invest and profit from real estate investments while reducing your risk.Sign up with Connect Invest today to stay informed. Our blog offers insight and information about the world of real estate investments, and youll also gain access to exciting investment opportunities. A put-and-call option is a useful mechanism for property developers and owners of property who are selling to a property developer.An option is a contractual right granted under a written agreement that provides a way of allowing parties to buy or sell properties at a future date.The option agreement is entered into between the seller of the property (usually known as the grantor) and the buyer of the property (usually known as the grantee). The grantee has a call option that would compel the grantor to sell the property at an agreed price if the call option is exercised. If the call option is not exercised, then the grantor has a put option that would compel the grantee to buy the property at the agreed price.The call option is exercisable first by the grantee during an agreed timeframe. That timeframe is usually set out in the written agreement. If the call option is not exercised by the grantee, then the grantor can exercise the put option within an agreed timeframe. If neither party exercises their option, then the agreement comes to an end.If either the call or put option is exercised, then a binding contract will be entered into between the parties. A copy of the sale contract must be annexed to the option agreement as this will be the contract required to be entered into on exercise of either option.A call option fee and a put option fee are both payable. An option fee is a payment by both the grantee and the grantor for the grant of the option. Both option fees are usually only a nominal amount (i.e. $1.00).It is also common for an option agreement to require the grantee to pay a non-refundable security deposit to the grantor. The simple reason for this is that the seller is taking their property off-the-market for a considerable length of time. The amount of the security deposit is negotiable between the parties and will usually reflect the period of time over which the option extends.However, if either the call option or the put option is exercised, the security deposit paid by the grantee will become the deposit payable under the contract (which is formed on exercise of the option).An option agreement will generally provide for both a put and call option. However, it is not uncommon for the parties to enter into a call option agreement only. If this is the case, then there is no put option and the seller will have no certainty that the grantee will be exercising the call option and purchasing their property. A seller will need to consider whether they would be prepared to enter into just a call option agreement with a buyer.Why are they useful in property transactions?A put and call option ultimately delays the formation of the final sale contract. There are a number of reasons this could be attractive to either party.For a property developer, an option agreement:Has the ability to lock in a fixed purchase price irrespective of property market fluctuations and settle on the purchase at some point in the future.Allows for longer developer style conditions (e.g. gives time to enter into agreements to purchase of any adjoining properties, a longer due diligence period and obtain development approval).Delays the obligation to pay transfer duty on the sale price.Allows more time for structuring of the ultimate purchasing entity.Can include a nomination provision which enables another buyer to be nominated to buy the property.Allows more time for fund raising.Can contemplate the ability to be able to on-sell the property for a profit.For a seller, an option agreement will:Lock in a sale price which may be over the current market value.Defer capital gains tax obligations.Compel the buyer to settle on the purchase of the property at the agreed sale price.Thinking of structuring your property purchase or sale through the use of options?An option agreement can provide both a buyer and seller of property with flexibility over a property transaction.Both the buyer and the seller must consider a range of issues (such as stamp duty and/or tax implications) that could arise between entering into the agreement and settling the transaction.There is no standard form of option agreement and each agreement needs to be carefully drafted to ensure the terms are appropriate for each partys requirements.Contact UsIf you are thinking of structuring your next purchase or sale through the use of an option agreement, please contact the property law team at ABKJ Lawyers who will be able to help you.Call us on (07) 5532 3199if you have any questions, or visit our Property Law FAQs.

Real estate options. What does a put option do. What is a put and call option in real estate. How does a put option work. How does a put option work for dummies. What is a put in real estate.