



Daniel Baltuch

Options And Rights Of First Refusal

A right of first refusal, also known as a preferential purchase right or right to preemption, “constitutes a promise to offer the res of the right to the promisee for such consideration as the promisor determines to accept on the basis of an offer from a third party before accepting the offer of the third party.” *Power Gas Marketing & Transmission, Inc. v. Cabot Oil & Gas Corporation*, 948 A.2d 807, 810 (Pa. Super. Ct., 2008). In other words, if a property owner decides to sell his property, he must first offer that property to the holder of the right of first refusal for the same price and on the same terms as he was willing to sell it to a third party.

Rights of first refusal arise in many contexts. The most basic scenario involves two neighbors, one of whom holds a right of first refusal. If the first neighbor wants to sell his property, he must first offer it to the second neighbor for the same price he was prepared to accept from a third party. A variation of this first scenario is a tenant who is granted a right of first refusal if the landlord wishes to sell the leased property. Yet a third common situation is in



condominium law, in which the condominium association can have a right of first refusal if an owner wants to sell his or her unit. Another frequent application involves Oil and Gas Joint Operating Agreements (JOAs). These often contain a clause giving the various parties to the JOA a right of first refusal in the event that another party wishes to sell any of its interests under the agreement.

A right of first refusal exists only when there is a contractual arrangement between the property owner (promisor) and the holder of the right of first refusal (promisee). A recent Washington case illustrates the point that without a written contract, covenant, or deed, no right of first refusal exists. *Murphy v. Arp*, 2009 Wash. App. LEXIS 1274 (Wash. Ct. App., June 1, 2009). There, Benjamin Arp, who was interested in subdividing his lot, explored the possibility of purchasing a small part of Sean Murphy’s adjoining property in order to increase the size of own lot to meet city code subdivision requirements. The two parties met and discussed the possibility of an option for Arp to pur-