

# "What Is the Difference Between an Option and a Right of First Refusal?"

An option is a right granted to a party that permits, but does not obligate, such party to purchase or lease property at a specified price within a specified time period. As consideration for such right, the option holder will typically pay a fee (or provide other consideration) to the landowner.

A right of first refusal (ROFR), meanwhile, is a right to purchase property, or lease space, that is commonly triggered when a property owner receives an acceptable offer from a third party. Prior to accepting the third party offer, the property owner must allow the holder of the ROFR to either purchase or lease (as applicable) the subject property either upon the same terms and conditions contained in the third party offer or upon terms otherwise spelled out in the parties' ROFR agreement.

While the terms "option" and "right of first refusal" are oftentimes associated with one another, the legal rights are separate and distinct. The main difference between an option and ROFR is that an option holder has the right to unilaterally compel the landowner to convey or lease property at any time during the option period. In contrast, the ROFR holder only has the right to compel conveyance or lease of property after the ROFR is triggered when the landowner receives another acceptable offer from a third party. In effect, a ROFR is a type of option that is contingent upon the landowner receiving a third party offer.

An option is more desirable than a ROFR from the standpoint of the holder for the following reasons: (1) the price and key terms of purchase or lease are set forth in advance; (2) the price is negotiated between the parties as opposed to being based upon a third party offer; and (3) the option holder, rather than the landowner, is granted more discretion to determine if and when property will be conveyed or leased.

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