



# Greyson Legal Publications

## Put & Call Options



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A Put and Call Option is an agreement between the Seller of property (usually called the "Grantor") and another person or entity (usually the called the "Grantee") under which the:

- Grantor gives the Grantee a right ("Call Option") to buy the property from the Grantor; and
- Grantee gives the Grantor a right ("Put Option") to sell the property to the Grantee.

Put and Call Options are typically used where parties want to formalise their negotiations regarding the sale and purchase of certain property but with the effect of actually delaying entry into a Contract for Sale. The reason for this might be due to:

- the deferment of transfer duty on the sale price;
- the Seller may want to defer the disposal of the property for CGT purposes;
- the Buyer may want to defer its decision about the ultimate purchasing entity – this might be for liability, taxation, finance or other reasons;
- it gives the Buyer the opportunity to undertake due diligence on the land before the Buyer/Grantee exercises the call option
- possible on-sale opportunities.

As an example, Builders sometimes secure lots within a broad acre estate development from a Grantor under Put and Call Option so that the Builder has control of land whilst marketing off-the-plan house & land packages. Once the Builder secures enough commitment from prospective buyers they may then exercise the Call Option as Grantee and enter into the Contract of Sale to purchase the land from the Grantor/Seller.

Aspects of a Put and Call Option to consider include:-

- there are a number of pieces of legislation which may apply to a Call Option or Put Option depending on the nature of the property, such as: - (a) *Property Occupations Act 2014*; (b) *Land Sales Act 1984*; and (c) *Body Corporate and Community Management Act 1997*
- usually the Grantor's/Seller's solicitor will prepare the Option Agreement and attach to it the Contract of Sale (in the form to be entered into)
- the Option Agreement will identify the property the subject of the Option
- often the consideration ("Option Fee") payable for the giving of the option is nominal
- the Option Fee may or may not be refundable depending on how the Option Agreement is drafted
- the Option Fee may or may not be credited to the purchase price that is payable if the Option is exercised
- the purchase price for the property will be determined at the time the Option Agreement is entered into
- some Option Agreements may contain provisions around "nominees". That is, where an Option Agreement allows a Grantee to nominate another party to exercise the Option and enter into the Contract of Sale with the Seller/Grantor

- it's important to check the period within which the Option must be exercised. Once the period lapses, the Option may be lost
- where the Option is for the purchase of unregistered land or a proposed lot, certain statutory disclosure requirements must also be met
- the Option Agreement will set out any rights of termination for both the Grantor and Grantee
- the method of exercising the option, eg. how to give notice, will also be set out in the Option Agreement

The above are just some matters to consider.

**For assistance with a Put & Call Option or property law matter, contact [Greyson Legal](#).**

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