



### Options on the Table

**Options to purchase real estate are back.** Whether popping up in leases or in standalone agreements, options seem to be very a popular vehicle in today's real estate market, with benefits for parties on both sides of the transaction.

**What is an option?** In its most general terms, an option grants a party the exclusive right to purchase a particular piece of property, at an agreed upon price, during a certain period of time in exchange for the payment of an "Option Fee". The exclusive nature of the option allows the optionee to "reserve" or put a certain piece of property "on hold" for the term of the option. Options give the option holder the benefit of future appreciation on optioned property, even though the option holder does not own the property.

**What is a lease with an option to purchase?** In the context of a lease agreement, the option grants the tenant the right to purchase the property being leased. Options are common in both commercial and residential transactions. In this troubled real estate market, lease options have many benefits. For tenants/options, it allows them to take advantage of current real estate prices - even if they may not presently have the financial resources to purchase the property. It also allows tenants to "test-out" a space before buying, to ensure that the location, size and other characteristics are suitable for their purposes. For real estate owners/options, they are more easily able to identifying a potential purchaser for their property, while making a set fee for the option, in this otherwise buyer-friendly market. With record foreclosures, there a number of prospective commercial and residential tenants that have been forced into renting, but eventually want to regain a "pride of ownership." In connection with a lease, typically, tenants pay a monthly payment towards the option fee that is the consideration for granting of the option, in addition to their monthly rent. In some cases, landlords agree to apply some portion of the rent to the predetermined option purchase price.

**How does an option need to be structured?** Option Agreements (or memorandums thereof) can be recorded in the real estate records, to ensure that other potential purchasers and lienholders are on notice of the option. An option must also be crafted to ensure that it complies with applicable law and avoids unintended consequences. For example, great care should be taken to spell out what happens in the event of a default under a lease option and to specify what funds are being held as a security deposit versus what amounts, if any, are refundable in connection with the option. Likewise, the option agreement should address what remedies are available to the optionee if, for whatever reason, the property is unavailable to be conveyed at the time the option is exercised (i.e., if the option grantor failed to pay its own mortgage and lost the property to the bank unbeknownst to the option holder). It is also critical to establish the rights (if any) the option holder has to use, market or improve the property before the option has been triggered. In all cases, it is important to remember that the option holder does not own the property until the option is exercised and the deed is conveyed.

**What are some additional considerations?** Careful consideration should be given to whether an option is assignable or if it can only be exercised by the specific party to whom the option was granted. In addition, there are also tax considerations regarding the treatment of funds being paid for the option fee and fees that may be applied toward the purchase price.

We assist real estate investors analyze and prepare agreements such as options (and option provisions) to come up with creative ways to thrive in any market while protecting their interests and achieve their objectives.

For more information please call (480) 889-8948, send an email to [info@steinlawplc.com](mailto:info@steinlawplc.com) or visit [www.SteinLawPLC.com](http://www.SteinLawPLC.com).

### Speaking Engagements

[Scott J. Stein](#) will be presenting to the Commerical Group of the Southeast Valley Regional Association of Realtors (SEVRAR) (<http://www.sevrrar.com>) on Thursday, May 27, 2010, on recent trends in commerical real estate sales and leasing and ways in which landlords, tenants and brokers can protect their real estate interests.

### In the News

[Scott J. Stein](#) was exclusively featured as the "Sole Practitioner of the Month" in the premier issue of [Attorney At Law Magazine](#), a new magazine being launched for private practice attorneys in



launched for private practice attorneys in  
Maricopa County.



Scott J. Stein was named  
among the 2009 Top People To  
Know In Commercial Real Estate by [AZRE \(Arizona  
Commercial Real Estate\) Magazine](#) in the Attorney category.

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