

Client Alert

Arizona Court of Appeals Update: Real Estate Options Without Keys Terms Will Not Be Enforced

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By: [Michael Charles Brown](#)

An option to purchase is often part of a lease contract. But beware: if an option lacks key terms, the courts in Arizona will likely not enforce it. At least that was the key takeaway in a recent Arizona Court of Appeals decision, which held that specific performance of an option was unavailable where that option's express terms were vague and incomplete.

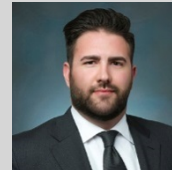
In *Offerman v. Granada LLC*, the parties—landlord and tenant of a residential property—had entered into a lease with the following option for the tenant to purchase:

At the completion of the 24 month lease, the Tenant has the option to purchase [the] property ... for a sales price to be determined at that time by an independent appraiser acceptable to both Tenant and Landlord. (Terms and Conditions to be stipulated by both parties at such time).

If the Tenant chooses to exercise his right to purchase this property at the end of the 2 year lease agreement, he shall be credited \$200.00 of each \$1900.00 of monthly rent paid towards purchase.

The acceptable condition of the property when Tenant takes occupancy will be considered the condition Tenant agrees to accept at time of closing. All inspections and contingencies to be performed and satisfied prior to initial move-in. Property to be sold AS-IS.

As the end of the lease term neared, Tenant informed Landlord he intended to exercise the option, and when the Landlord failed to respond to Tenant's request to appoint an independent appraiser, Tenant hired his own, who appraised the property at \$240,000. Tenant shared this appraisal with Landlord, who then sent Tenant a draft purchase contract with a proposed \$350,000 sale price. Tenant rejected this



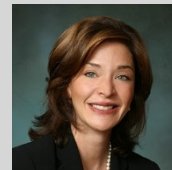
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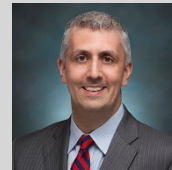
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proposal. Tenant subsequently sued Landlord for specific performance of the option at the appraised value of \$240,000, and the trial court ultimately ordered specific performance of the option at that value. The trial court also named a title agency to hold escrow, determined the date for close of escrow, divided the transaction fees between the parties, and ordered Landlord to arrange for a property inspection. Notably, none of these terms were agreed to, or even mentioned by, the parties in their contract—they were all determined by the court.

The Court of Appeals reversed, holding that while an option contract does not require “completeness in every detail,” this option was so lacking that it could not be enforced. The parties did not agree to—or establish a means to determine—many key terms of a real estate transaction, such as how to select an appraiser if the parties could not agree, the timing of payment or closing, terms of payment, condition of title, method of conveyance, and whether escrow would be handled by a title agency. Instead, the parties had simply agreed to defer negotiating these terms until the end of the lease term. As such, the parties had made merely an “agreement to make an agreement” rather than an option with clear terms on which a court can order specific performance. Because “it is not within the superior court’s authority to flesh out an option agreement that lacks certainty,” the appellate court held specific performance of the option could not be ordered. The court left open whether the Tenant could seek other remedies (such as money damages) against the Landlord.

This case is a reminder that options in real estate-related contracts must be detailed and include key terms in order to be enforced by the courts. Simply referring to an “option” in a contract, but leaving key terms for future negotiation, is insufficient to create an enforceable option. If you have questions about these developments or related issues, please contact a member of the Phoenix Real Estate Industry Team at Lewis Roca Rothgerber Christie LLP.

[Click here to view a PDF of the court’s decision.](#)

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