



Key Risks to Developers in Lease Option Agreements

A Developer-Focused Overview of Structural Challenges and Preferred Alternatives

Lease option agreements have long been used to secure early site control for renewable energy project development. In their traditional format, developers sign a stand-alone **option agreement** with an unexecuted form of lease attached, and often, years later, if the project proves viable, exercise the option and request that the landowner execute a separate **lease** in the form attached to the option agreement.

Although this two-step structure remains common, it introduces several risks that developers should look to avoid.

This article highlights several of the most salient developer-side risks in this two-step type of option structure.

I. Renegotiation Risk at Option Exercise

One of the most significant risks in a two-document structure is that **the lease itself is not executed at the time the option is signed.**



When a separate, future lease must be signed at the point of option exercise, developers face several problems, often after significant capital has been invested. Landowners may:

- seek to renegotiate previously settled terms
- request changes due to neighbor influence or local activity
- simply refuse to sign the lease as originally expected

An integrated option-and-lease eliminates this risk. Having a lease fully negotiated, executed, and committed on day one, with the option exercise simply determining when the lease term commences, is a structure that significantly reduces renegotiation exposure.

2. Title Curative and Priority Risks During the Option Term

A second major risk in split option and lease structures arises from the **impact of title matters created after the option is signed but before the lease is executed and recorded against the property.**

New encumbrances will take priority over the future lease. Because the option and the lease are two separate instruments, the lease:

- is not yet effective during the option term
- does not relate back to the recording date of the option
- does **not** receive priority ahead of subsequent liens, mortgages, easements, or other encumbrances

This means that **any encumbrance recorded during the option term becomes superior to the lease.** Developers must then cure or mitigate these new issues, sometimes at considerable cost, before financing or construction can proceed.

Examples include:

- new deeds of trust or mortgages
- new easements granted to neighbors, utilities, pipeline companies, or other operators
- judgment liens

A single, recorded option-and-lease instrument solves this. An integrated option and lease structure creates **one unified instrument**, a memorandum of which is recorded at the outset. Because it remains in force throughout the option, construction, and operations terms, it establishes:

- continuous priority
- a single chain of title
- one curative process instead of two



This eliminates the risk of intervening encumbrances taking priority over the lease. This advantage is particularly essential in areas with active lending markets or frequent land use activity.

3. Increased Legal Work, Timing Delays, and Transaction Costs

A two-document option and lease structure also adds administrative burden that often slows down development schedules.

More documents mean more drafting and negotiation. Developers must negotiate:

- the option agreement
- the lease agreement
- two sets of exhibits
- two sets of signatures
- two sets of recorded instruments

This can introduce inconsistencies, create duplicative drafting work, and increase the likelihood of technical gaps between the documents.

Lease renegotiation at exercise can delay critical-path milestones. Option exercise often coincides with:

- interconnection deposits
- financing milestones
- site layout finalization
- permitting submissions

Delays in lease execution at this stage can have cascading impacts across the development schedule.

A unified instrument streamlines the process. The integrated approach minimizes paperwork because:

- only **one document** must be negotiated, executed, and recorded
- all rights are defined up front
- option exercise becomes a simple notice, not a renegotiation process

This provides:

- a single drafting process
- aligned expectations
- reduced legal expense
- faster project momentum at key milestones

4. Practical and Strategic Advantages of the Integrated Approach

Developers who transition from a split option and lease model to an integrated instrument generally experience:

- lower renegotiation risk
 - cleaner title position and fewer curative requirements
 - reduced administrative burden
 - more predictable landowner relationships
 - faster project timelines
 - smoother financing processes
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Conclusion

Traditional two-document option and lease structures carry avoidable risks. Using an integrated instrument ensures continuous priority, reduces renegotiation exposure, and supports efficient project development.

If you would like to explore these structural considerations in more detail, evaluate which structure best suits your portfolio or specific project, or discuss risk mitigation in your existing structure, [we would be happy to discuss.](#)

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