



Key Risks to Developers in Two-Document Lease Option Structures

Why Integrated Option-and-Lease Structures Can Reduce Renegotiation, Title, and Execution Risk

By Eugene Lerman

Renewable energy developers frequently need to secure site control years before a project is ready for construction. During that period, the developer may be evaluating interconnection, title, permitting, environmental constraints, engineering assumptions, project layout, financing requirements, and overall project viability.

Because of that long development timeline, lease option agreements have historically been used to secure early site control while preserving flexibility. In a traditional two-document structure, the developer enters into a standalone option agreement with the landowner and attaches an unexecuted form of lease. If the project later proves viable, the developer exercises the option and requests that the landowner execute the lease form attached to the option.

At first glance, that structure can appear straightforward. The developer secures an option. The landowner commits to sign the lease later. The lease form is attached. The project can move forward during the option period.

In practice, however, the two-document structure can create avoidable execution risk. The central issue is



that the lease itself is not actually signed when the option agreement is executed. As a result, the developer remains dependent on future action by the landowner at the exact moment when the project may be more advanced, more valuable, more time-sensitive, and more difficult to restructure.

For many renewable energy projects, an integrated option-and-lease structure can reduce that risk. Under that approach, the parties execute a single agreement at the outset that contains both the option rights and the lease terms. The developer's later exercise of the option does not require the landowner to sign a new lease. Instead, option exercise causes the lease term or construction/operations phase to commence under an agreement already signed by all required parties.

That distinction can become critically important over a multi-year development timeline.

The Future Signature Problem

One of the most significant risks in a standalone option structure is the need to obtain a future lease signature at option exercise.

When the option agreement is signed, the developer may assume that the attached lease form has been agreed and that execution later will be largely administrative. But years may pass before the developer exercises the option. During that time, the landowner's circumstances may change. The property may be transferred. Family dynamics may shift. Original landowners may pass away. Estates may be opened. Heirs, devisees, trustees, executors, or successor owners may become involved. The number of necessary signatories may increase.

In some cases, the original landowner group may no longer exist in the same form by the time the developer is ready to move forward.

This can create substantial risk. A developer may exercise an option expecting a ministerial lease execution process, only to discover that multiple new parties must sign the lease. Some may be difficult to locate. Some may not understand the original transaction. Some may be represented by new counsel. Some may object to terms previously agreed by their predecessors. Some may seek additional compensation. Others may simply be unresponsive.

The developer may have a contractual right under the option agreement to require execution of the lease. But enforcing that right may take time, create uncertainty, and introduce transaction friction at a sensitive point in the development timeline.

That timing matters. Option exercise often occurs after the developer has invested significant time and



capital in the project. Interconnection, engineering, permitting, title, environmental review, and commercial development may all be well underway. If lease execution becomes uncertain at that stage, the issue can affect financing, project sale timing, construction planning, and overall project viability.

An integrated option-and-lease structure reduces this risk because the lease is already signed. The developer does not need to locate successor owners or obtain new signatures to make the lease operative. The option exercise becomes a notice or other contractual trigger, not a new negotiation or signature campaign.

Renegotiation Risk at Option Exercise

The future signature problem is closely related to renegotiation risk.

In a two-document structure, a landowner may view option exercise as a new negotiation opportunity, even if the attached lease form was intended to be final. A landowner may ask to revisit economics, impose new operational restrictions, revise key rights, modify lender protection provisions, or update surface-use terms based on changed circumstances.

Those requests may arise for many reasons. Neighboring landowners may have negotiated different terms. Local market expectations may have changed. New counsel may become involved. Family members or successors may have different views than the original signatory. The project may appear more likely to be built, giving the landowner a perception of increased leverage.

From the developer's perspective, the problem is not simply that a dispute may arise. The problem is that the dispute arises late.

By the time the option is exercised, the developer may have moved from speculative early-stage development into a more advanced project phase. Delays may affect interconnection deposits, financing milestones, permitting submissions, acquisition timelines, or construction schedules. What might have been a manageable issue at initial signing can become an execution problem years later.

An integrated option-and-lease structure helps avoid that dynamic. The parties negotiate the lease once, at the beginning. The lease is signed when the option is signed. The developer's exercise of the option does not depend on the landowner's willingness to sign again later.

That structure does not eliminate all landowner issues, but it materially reduces the risk that the developer will be forced to renegotiate core lease terms after the project has advanced.

Title Priority and Intervening Encumbrances

Another major issue with standalone option structures involves title priority.

In a traditional two-document structure, a memorandum of the option may be recorded, but the lease itself does not become effective or recorded until later. If new encumbrances arise during the option period, those encumbrances may create priority issues for the future lease.

This can include new deeds of trust, mortgages, easements, rights-of-way, judgment liens, mineral leases, or other recorded interests affecting the property. If those interests arise after the option but before the lease is executed and recorded, the developer may need to analyze whether the later-executed lease is subordinate to those intervening interests. Depending on applicable recording and priority rules, the later-executed lease may be subordinate.

That can create title curative work, financing concerns, and acquisition diligence issues.

For example, if a landowner grants a mortgage during the option period, the future lease may not have priority over that mortgage unless appropriate subordination and non-disturbance protections are obtained. If a new easement is granted, the developer may need to determine whether it conflicts with planned project facilities. If a judgment lien attaches, curative work will generally be required before financing or closing.

These issues can be particularly problematic because they often emerge late. Title is reviewed again before financing, construction, or sale. At that stage, an intervening encumbrance may require additional diligence, additional agreements, or negotiations with third parties who were not involved when the option was signed.

An integrated option-and-lease structure can reduce these risks by creating a single executed instrument, a memorandum of which is recorded at the outset. Because the lease rights are established from the beginning, the project can maintain a cleaner chain of title and reduce the risk that intervening interests will impair the developer's leasehold position.

The practical benefit is not merely cleaner documentation. It is reduced title uncertainty during the later stages of the project lifecycle, when transaction timing may be more sensitive.



Administrative Burden and Document Inconsistency

Two-document structures can also create administrative and drafting complexity.

When the option and lease are separate documents, the parties must manage two instruments that are intended to work together over time. The option must correctly incorporate the lease form. The lease form must remain attached, identifiable, and consistent. Amendments to one document may require corresponding amendments to the other. Exhibits, legal descriptions, payment terms, notice provisions, assignment provisions, and defined terms must be coordinated carefully.

Over a multi-year development period, that coordination can become more difficult.

Versions may circulate. Exhibits may be updated. Project descriptions may change. Title or survey work may result in revised legal descriptions. Ownership information may change. A later reviewer may need to determine which lease form was attached, whether it was modified, and whether the form being presented at option exercise is the same form agreed at option signing.

Even where the documents are ultimately enforceable, this structure can create unnecessary transaction friction.

A single integrated option-and-lease instrument reduces the risk of mismatch. The parties sign one document. The rights are defined in one place. The option exercise mechanism is built into the same agreement that contains the lease terms. A memorandum can be recorded at the outset to put third parties on notice of the developer's rights.

For development platforms negotiating across multiple landowners, this simplicity can be meaningful. It reduces document-management risk, improves consistency across the project, and helps avoid future disputes about what was agreed.

Option Exercise Often Occurs at a Sensitive Stage

Another practical concern is timing.

Option exercise often does not occur in a vacuum. It may coincide with major development milestones. The developer may be approaching financing, finalizing layouts, advancing permitting, submitting deposits, negotiating project sale documents, or preparing for construction.

At that point, delays in lease effectiveness can create cascading consequences.



A landowner's refusal to sign, a dispute over the attached lease form, a probate issue, a missing successor signature, or a newly discovered title encumbrance may not simply delay a document. It may delay financing, closing, construction commencement, or project sale execution.

This is why the structure chosen at initial site control can have effects years later.

The integrated approach does not eliminate the need for later diligence, amendments, title curative work, or landowner coordination. But it reduces the risk of needing to obtain a new lease signature, or pursue curative work that may have been avoided through a single-agreement structure, at a later and more sensitive stage of development.

Why Integrated Structures Are Often Preferable

An integrated option-and-lease structure is generally designed to make option exercise a contractual trigger rather than a future closing process.

The developer signs the lease at the outset. The landowner signs the lease at the outset. The document provides that the developer has an option or development period during which certain rights apply, and that the lease term, construction term, or operations term commences upon exercise or another defined trigger.

That structure can provide several practical advantages.

It reduces renegotiation risk because the lease terms have already been agreed and executed. It reduces successor-signature risk because future owners, heirs, or estate representatives are not required to sign a new lease for the developer's rights to become effective. It supports title continuity because the developer's rights can be reflected in a recorded instrument from the beginning. It reduces drafting inconsistency because the option and lease rights are contained in a single integrated document. It also supports transaction readiness because future buyers, lenders, and title companies can review one operative site-control document rather than reconstructing the relationship between an option and an attached lease form.

For developers building portfolios, the integrated approach can also support standardization. It allows the developer to maintain a consistent site-control structure across multiple landowners and reduces the number of future execution events that could disrupt the project.



Not Every Structure Is Identical

The point is not that every renewable energy project must use the same form.

Project documents vary by market, technology, landowner group, title structure, project phase, and financing strategy. Some developers may continue to use standalone option structures in particular contexts. In some situations, local practice, counterparty expectations, tax considerations, or project strategy may influence the preferred structure.

But developers should understand the risks created by a structure that requires a separate lease to be signed later.

The issue is not merely theoretical. Over multi-year development timelines, landowner groups can change. Original signatories can pass away. Successor owners can become involved. Previously aligned parties can become uncooperative. New encumbrances can be recorded. Project economics can change. Financing and diligence expectations can become more stringent.

When those events occur, the developer's site-control structure determines whether the project can continue moving forward efficiently or whether the developer must solve a new execution problem before the lease becomes operative.

Conclusion

Traditional two-document option and lease structures can create avoidable risk for renewable energy developers. The risks are not limited to ordinary renegotiation concerns. They include future signature dependency, successor-owner issues, probate or estate complications, intervening title matters, document inconsistency, and transaction timing problems that may emerge years after the original option agreement was signed.

An integrated option-and-lease structure can reduce those risks by establishing the lease terms at the outset and making option exercise a contractual trigger rather than a future negotiation or signature event. In many projects, that structure better supports continuous priority, transaction readiness, development momentum, and long-term site-control certainty.

For developers advancing projects over long timelines, the objective is not simply to obtain an option. The objective is to secure site control that can withstand changes in ownership, project structure, financing requirements, and transaction timing over the life of the development process.



If you are evaluating option structures, integrated option-and-lease forms, site-control documentation, or transaction-readiness issues in connection with renewable energy project development, we would be happy to discuss.

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