



Key Risks to Developers in Separate Option and Lease Agreements

Why Using a Single Document Structure Can Reduce Renegotiation, Title Issues, and Delays

By Eugene Lerman

Renewable energy project 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 leave the developer needing another signature before the lease can take effect. 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 the landowner signing the lease later 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.

The need for another signature can become a real problem when years pass between the initial agreement and option exercise.

Obtaining Lease Signatures Years Later

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 the landowner simply to sign the agreed lease form, 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, require additional expense, and delay financing or construction while the parties resolve the dispute.



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 developer exercises the option by giving notice or following the other agreed procedures, without having to negotiate again or collect new signatures.

Renegotiation Risk at Option Exercise

The need to obtain a lease signature later also gives a reluctant landowner an opportunity to ask for changes to the agreed terms.

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.

The timing makes these disputes particularly difficult for the developer, which may have already committed substantial time and money to the project.

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 a dispute that delays financing or construction years later.

An integrated option and lease structure reduces the opportunity to reopen those terms at option exercise. 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 nondisturbance 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.

Establishing and recording the rights at the outset can reduce the risk of title problems arising when the developer is preparing for financing, sale, or construction and has less time to resolve them.

Keeping the Option and Lease Consistent

Separate option and lease documents also require the parties to keep their terms, exhibits, and amendments consistent over the development period.

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 enforceable, the parties may spend additional time resolving version questions or obtaining confirmation of what was agreed.

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 developers negotiating with multiple landowners, using one document can make it easier to track the agreed terms. It reduces the risk of missing or inconsistent documents and helps avoid later disputes about which lease form applies.

Delays at Option Exercise Can Affect Financing and Construction

The need for a lease signature may arise just as the developer is preparing to finance, sell, or begin construction of the project.



Option exercise may coincide with other commitments and deadlines for the project. The developer may be approaching financing, finalizing layouts, advancing permitting, submitting deposits, negotiating project sale documents, or preparing for construction.

If the lease is not in effect when needed, the developer may be unable to meet those deadlines or satisfy conditions to financing or sale.

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 delay financing, closing, or construction while the developer obtains the missing signature, resolves the dispute, or completes the necessary title work.

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, when financing or construction is approaching.

Why Integrated Structures Are Often Preferable

An integrated option and lease structure is generally designed to allow the developer to begin the lease term by following the agreed exercise procedures, without requiring the landowner to sign a separate lease.

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 avoids the need to obtain signatures from successor owners because future owners, heirs, or estate representatives are not required to sign a new lease for the developer's rights to become effective. It helps preserve the title position established at signing 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 makes later diligence easier 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.

Developers working across multiple projects can also use the same integrated form as their starting point. It allows the developer to maintain a consistent site control structure across multiple landowners and reduces the number of later signatures that must be obtained before the project can proceed.

Choosing the Structure for the Project

The appropriate form will still depend on the project and the circumstances of the transaction.

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.

An integrated option and lease is generally preferable, but a separate option may be appropriate in narrow circumstances, at least temporarily. For example, where a property has known or suspected contamination, the developer may prefer a limited option and access agreement while environmental diligence is completed, before accepting broader rights or obligations under a lease. The appropriate approach depends on the environmental conditions, the rights granted, and the activities contemplated. Once that diligence is complete and the risks have been evaluated, the parties can consider an integrated agreement before the developer commits substantial additional capital or approaches financing or construction.

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

Landowner groups can change over the years between signing an option and exercising it. 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 may determine whether the existing agreement is sufficient to proceed or whether additional signatures, negotiations, or court proceedings are needed before the lease becomes operative.



Conclusion

Traditional two document option and lease structures can create avoidable risk for renewable energy project developers. The need for another signature can expose the developer to renegotiation, changes in ownership, probate or estate complications, intervening title matters, inconsistent documents, and delays 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 allowing the developer to exercise the option without obtaining another lease signature. In many projects, signing and recording the rights at the outset can help preserve their priority and avoid the need for another landowner signature when the developer is preparing for financing, sale, or construction.

For developers advancing projects over long timelines, the initial agreement should secure site control that can withstand changes in ownership, project structure, financing requirements, and transaction timing during the years before construction begins.

If you are evaluating option structures, integrated option and lease forms, or related site control issues for a renewable energy project, [we would be happy to discuss.](#)

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