



Rights of First Refusal

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Abstract

In property law, a right of first refusal is a contractual right that gives its holder the option to buy a property, according to specified terms, before the property owner is entitled to sell that property to a third party. The terms of a right of first refusal typically specify that the rights holder has the option to match an offer given by a third party.

If a seller of a property has a right of first refusal on a neighbouring property, a buyer of the seller's property does not automatically obtain the seller's right of first refusal on the neighbouring property, even if the right is registered on title to the neighbouring property. The buyer must obtain an assignment of the right of first refusal from the seller, because a right of first refusal is a personal right (obtained by contract) and not a negative covenant that runs with land.

Full Article

In *Cooper v. Wynne*, the owner of a property ("Property A") entered into a right of first refusal agreement (the "Agreement") with the owner of the adjoining property ("Property B"), Wynne. The Agreement granted the owner of Property A a right of first refusal that gave the owner the option to match any offers for Property B before Property B could be sold, except if the property was sold to a child of Wynne. The right of first refusal was registered on the title to Property B.

Property A was sold to a new owner, Cooper, and Cooper was later informed by his lawyer that he obtained a right of first refusal on Property B; however, the first owner never assigned the Agreement to Cooper.

Wynne died and left the property to his daughter. The transfer did not trigger the right of first refusal as per the exception in the Agreement. A short time later, the daughter removed the right of first refusal from title to the property and sold the property to a third party. That daughter declined to recognize Cooper's claim to a right of first refusal. Cooper brought an action against the daughter for breaching his right of first refusal.

Cooper argued that despite the fact that he was not party to the Agreement (as it was not assigned to him), the right of first refusal bound the daughter in his favour as it was a negative covenant that ran with Property B. Alternatively, Cooper's argued that he was a party to the Agreement as a "successor" to the original party.



REAL ESTATE LAW CONCEPTS:

Rights of First Refusal

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The Court stated that a right of first refusal is not a negative covenant that runs with land, but is instead a personal right (obtained by contract) that converts into the equitable right of an option to purchase once an offer on a property is received from a third party. The equitable right allows the property to be obtained from third parties who knowingly take the property in breach of the right of first refusal (see the remedy of specific performance).

Since the Agreement was never assigned to Cooper, he had not obtained a right of first refusal, thus could not enforce a personal right he did not have.

In response to Cooper's argument that he was a successor to the Agreement, the Court stated that although Cooper was a successor in title to the first owners, the word successor had clearly been intended to mean one who received title the property by succession i.e. one who received the property as a result of intestacy. Therefore, Cooper was not a successor under the Agreement.