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Option-to-Purchase Agreements and the Energy/Utility Industry

The Farmers' Advocate Office (FAO) has been informed that some energy and utility companies are offering landowners option-to-purchase agreements for potential future developments. Landowners should be aware of the potential risks of option-to-purchase agreements.

An option-to-purchase agreement:

- Commits the landowner to offering property to a certain company at a fixed price for a specified time frame.
- Does not obligate the company to buy the land.

The company may back out, but the landowner is locked in: for a certain period, the price is fixed and the landowner may only sell the land to the company named in the option-to-purchase agreement.

An option-to-purchase agreement is different than a right-of-first-refusal, which commits a seller to offering property to a specified party first with the same price, terms, and conditions that they would otherwise be selling it. While a right-of-first-refusal can follow market trends, an option-to-purchase provides a static price for an unknown development.

For the energy industry, option-to-purchase agreements provide companies with a low-risk investment. The company will arrange an option-to-purchase based on speculation for future developments. If the developments do not come into fruition, it is no loss for the company. However, if the land is developed, the company gets it for a set price that may not be reflective of current market prices.

Under an option-to-purchase agreement, a landowner may receive less compensation for their land, as the future uses are unknown and the price does not follow market trends. The option-to-purchase also precludes a landowner from making other arrangements during the specified time frame, so they may forgo other opportunities only to have the option-to-purchase turned down at the end of the term.

Please call 310-FARM (3276) if you have any questions.

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