

## CHALLENGING AND PROTECTING RIGHTS OF FIRST REFUSAL



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Rights of first refusal (“ROFR”), or purchase options, seem to be relatively straightforward concepts: one person grants another a future right to purchase specific property under a specific set of terms. But as with many things, what might appear to be simple in theory can become complicated in practice. And a lot of that depends on the context in which the right was created.

A series of recent Minnesota court cases that examine these rights in the trusts and estates settings illustrate that context matters. They also show that, because district court rulings interpreting these rights may not be immediately appealable, properly framing the issue below is critical.

In *re Trust of Johnson* involved an increasingly common situation: reciprocal trusts created by aging parents to hold their farm and other personal property for the benefit of their three children upon their deaths. When the last surviving parent passed away in March 2016, the trust documents granted their son, who also became the trustee, an option to purchase the farm. One clause stated that, upon the death of the last surviving parent, “the Trustee shall offer the [farm] to Paul Johnson.” Another stated that Mr. Johnson’s right to purchase the farm “shall cease upon his death or in the event of his failure within sixty (60) days to purchase the property after a written offer by the Trustee.” Seven years later the son, acting as trustee, presented himself with a “written offer,” and exercised his option to purchase the farm. His sisters, the co-beneficiaries, sued.

The central issue at the trial court level was whether the 60-day purchase option ran from the surviving parent’s death, or the Trustee’s offer. Mr. Johnson argued for the latter. The district court chose the

former, reasoning that requiring the trustee to make an offer to himself was nonsensical. As a result, the option ran from the last parent’s death.

The central issue at the appellate level was whether the district court’s order interpreting the purchase option and removing Mr. Johnson as trustee was immediately appealable. The Court of Appeals and the Supreme Court held that it was not, under Minn.R.Civ. App.P. 103.03(b). The Court of Appeals additionally held that it was not appealable under Minn.R.Civ. App.P. 103.03(g) and Minn. Stat. 501C.0204. Although the district court had resolved the key disputes, the matter remained open pending resolution of other outstanding matters relating to reimbursements owed to the trust, which were pending before the court.

The Court of Appeals reached the opposite conclusion in *In re Trust of Ronning*, which also involved a trust created by parents to hold a farmstead and other real property for the benefit of adult children. Upon the surviving parent’s death, the trust documents called for the trustee to distribute the estate “in equal shares” to the beneficiaries. Prior to his death, however, the husband executed a statement of preference (“Statement”), and a last will and testament (“Will”), each of which purported to give one of the daughters the first option to purchase the properties, in whole or in part.

Once again, the key issue at the trial court level concerned the purchase option. The daughter argued that the Statement and Will controlled. The other siblings argued that the trust documents controlled. The trial court sided with the other siblings. Because the trust language was unambiguous, there was no need to consult extrinsic evidence like the Statement or Will.

Also once again, a key issue on appeal was . . . appealability. The siblings argued that issues remained unresolved and were subject to further proceedings. The Court of Appeals disagreed, holding that the order was immediately appealable under Minn. Stat. 501C.0204 because it addressed the two requests in the petition: (1) appointment of a trustee, and (2) approval of a trust distribution plan. That the trustee still needed to execute the distribution plan was not relevant to the appealability issue and had not been the subject of the petition.

Finally, *Damhof Dairy v. Stahnke* involved a ROFR between Damhof Dairy and the deceased mother of three sisters, regarding a parcel of real property. The mother entered into the ROFR in 1992. In 2005, the

mother quitclaimed the property to her daughters, “together with all hereditaments and appurtenances belonging thereto.” In 2009 the mother passed away. And in 2024 the three sisters signed a purchase agreement with a third party. Only after signing the purchase agreement did the sisters learn of the ROFR, and Damhof Dairy learn of the purchase agreement. Damhof Dairy then sued to enforce the ROFR.

Although the original parties had signed the ROFR more than 30 years prior, the district court ordered the sisters to give Damhof Dairy 30 days to exercise its purchase option. The court refused to apply Minn. Stat. 500.20, subd. 2a, which provides that “all private covenants, conditions, or restrictions created by which the title or use of the property is affected, cease to be valid and operative 30 years after the date of the deed, or other instrument, or the date of the probate of the will, creating them, and may be disregarded.” Under Minnesota law, a ROFR is a contract, not a covenant, condition, or restriction. And it doesn’t convey title or restrict the use of the property. As a result, the statute was inapplicable and the ROFR remained in force. The Court of Appeals declined to reach this issue, holding that the Appellant, the would-be third-party purchaser, lacked standing to challenge the ROFR.

Some key takeaways:

- If you have a right of first refusal, or want to create one, carefully consider where and how you do it, e.g., through trust documents, a will, a standalone contract, etc., and what will trigger the right.
- If you want to challenge the exercise of a right of first refusal in a trust setting, consider how you frame your petition, such as by targeting only that issue, so you can immediately appeal any adverse decision.

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