



## **The Right of First Refusal (ROFR) Process for Land in Chapter 61, 61A or 61B**

### ***What Land is Subject to the ROFR?***

Any land that is taxed under one of the three chapters, or has been within the last year. Land is under the chapter for fiscal years not calendar years. Someone who filled out an application by October 1<sup>st</sup>, 2008 is applying to be taxed under the program from July 1<sup>st</sup>, 2009 – June 30<sup>th</sup> 2010 for chapters 61A and 61B and from July 1<sup>st</sup> 2009 to June 30<sup>th</sup> 2019 for chapter 61 unless they are removed from the program prematurely. If they are not removed prior to those dates, then the October 1<sup>st</sup> 2008 filing would mean that the town has an ROFR on the property through June 30<sup>th</sup> 2011 or 2020 in the case of chapter 61.

### ***What Actions Trigger a ROFR?***

The sale for conversion or the conversion of land, described above to residential, industrial or commercial use is what triggers the ROFR (prior to the actual sale or conversion.) The ROFR is not triggered just simply by a sale of the property, such as a subdivision of the property, or a “discovered” nonqualifying use (provided there has been no conversion to that nonqualifying use) on the property. In these cases there is also no requirement that the town be notified of the sale, subdivision or other action. The town must only be notified in cases where the ROFR is triggered. Further, there are some conversions that do not trigger a ROFR such as the conversion of agricultural lands to open space, the conversion from one type of agriculture to another, or a conversion to use for a residence for the owner, the owner’s spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the use of land (as taxed.)

### ***At What Point Does the Town Need to be Notified?***

The town must only be notified if the ROFR will be triggered, and they must be notified prior to any *sale for conversion* or *conversion*. A landowner need not notify the town if they are marketing a property, nor if they are seeking approvals, or in the planning stages of a conversion. Prior to any closing for a sale that is for a conversion, and prior to any actual conversion of the land, the town must be notified of its ROFR and that process (the ROFR) must proceed to completion.

### ***What is a Sale Not for Conversion?***

If the land is being sold, it is the buyer's intent at the time of the purchase that will determine if the sale is for conversion or not. This is for both ROFR purposes and for the assessment of Rollback Taxes and Conveyance Taxes if any. A seller is strongly encouraged to have the buyer sign an affidavit stating their intentions to not convert the property if that is the case. This can be used to insulate the seller in the event of any future issue arising from the true intent at the time of the sale. If the intent of the buyer is to convert the property at any time in the future, not just within one year of being taxed under the program, then that sale is one for a conversion. For example, if the buyer purchases the property with the intent to build houses 3 years from the date of sale, this would be considered a sale for a conversion. Conversely, if the intent of the buyer at the time of purchase is to not develop the property, but for whatever reason, their intent changes, the sale would not have triggered a ROFR. However their conversion may trigger a ROFR prior to that conversion. Mortgage foreclosures also do not trigger an ROFR, but they do trigger a separate notification to the parties.

### ***If a ROFR is Triggered What Must Be In A Notification?***

A notification for an Intent to Sell must include ALL of the following:

- a statement of the intent to sell,
- a statement of the proposed use of the land by the prospective buyer,
- the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated,
- the name, address and telephone number of the landowner,
- a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter (also known as The Chapterland), and which shall be a bona fide offer (see "*What Constitutes a Bona Fide Offer?*")
- any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

Any notice of Intent to Convert must include ALL of the following:

- a statement of intent to convert,
- a statement of proposed use of the land,
- the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated,
- the name, address and telephone number of the landowner and the landowner's attorney, if any.

***What Constitutes a Bona Fide Offer?***

A good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed. The Offer MAY contain other contingencies such as being able to be built upon (receiving reasonable costs for utilities, passing percolation tests, etc) provided that these are not part of a subdivision plan (residential development that does not require subdivision of the lot.)

***Who Must Be Notified, and How Must They Be Notified?***

In order for notification to be complete, and for the town’s clock to start, ALL of the following must be notified by mail or hand delivery:

<b><i>Who:</i></b>	<b><i>What Address Constitutes “Duly Mailed”:</i></b>
<i>Mayor<sup>1</sup></i>	<i>Addressed to the Mayor and mailed in care of the city clerk</i>
<i>City Council<sup>1</sup></i>	<i>Addressed to the City Council and mailed in care of the city clerk</i>
<i>Board of Selectman<sup>1</sup></i>	<i>Addressed to the Board of Selectman and mailed in care of the town clerk</i>
<i>Board of Assessors</i>	<i>Addressed to the Board of Assessors and mailed to them directly</i>
<i>Planning Board</i>	<i>Addressed to the Planning Board and mailed to them directly</i>
<i>Conservation Commission<sup>2</sup></i>	<i>Addressed to the Planning Board and mailed to them directly</i>
<i>State Forester</i>	<i>Addressed to the Commissioner of the Department of Conservation and Recreation</i>

If you are mailing, use the United States Postal Service, and make sure to send each notification separately, and to send each letter individually and by certified mail, return receipt requested. If you are hand delivering, make sure to get a receipt for each individual letter that is hand delivered. All of these must be retained to prove notification if questions arise.

The municipality, within 30 days of receipt shall notify the landowner in writing if such notice is insufficient, or does not comply.

### ***How Long Does a Municipality Have to Exercise or Assign Its ROFR?***

The town has 120 days after the date following the last date of deposit in US mail of the notice to any of the above parties, or 120 days after the date of the last hand delivery to any of the parties above to exercise or assign its ROFR. The notice of exercise or the notice of assignment must be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them. Failure to record this notice within the 120 day period shall be conclusive evidence that the municipality has not exercised its ROFR.

### ***What Must a Town do to Exercise Its ROFR?***

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The notice to the landowner of the municipality's decision to exercise its ROFR shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

If the municipality chooses to assign the ROFR, the assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

### ***Who May the Town assign Its ROFR Too?***

The city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate.

***What Must The Recipient of the Assigned ROFR Then Do?***

The option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them. The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee. The statute does not contain any statement as to how long the assignee has to send its written notice to the landowner. It does, however, state that the assignee must send such a notice in order to act, and that the landowner is only not obligated to sell to its original buyer during the 120 day window.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

***What Rights to Inspect the Land Do the Town or Its Assignee Have?***

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, soil testing for purposes of Title V and the taking of water samples. In addition to this, the city or town or its assignee shall have all rights assigned to the buyer in the purchase and sale agreement contained in the notice of intent. With the statutes specific limitation of soil testing for Title V compliance, soil testing for other purposes such as 21Es is not allowed unless expressly provided to the buyer in the P&S.

***How is a Price Determined in the Event of a Conversion Not Involving a Sale?***

In this case, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal. To assure that a fair value is determined, the statute sets out the following procedure:

- The first appraisal is to be performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality.
- In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert.
- If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration.

Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option.

***What Happens If I Don't Like the Final Price that is Determined by Those Appraisals?***

If at any time in this process, the price is not agreeable to both parties, the town may elect not to purchase, or the landowner may walk away from the process by revoking the notice to convert in writing. If the notice is revoked, the town may not purchase, but the landowner may not convert.

***If the Town Chooses Not to Exercise Its ROFR, Can the Terms of the Sale With the Original Buyer be Changed?***

Not if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell or to convert.