

Importance of Complying With Contract Notice Provisions

Corporate News: A Legal Update

By Katherine Hampel on November 20, 2025

When negotiating any type of contract, it is important to give due attention to all terms, even topics that appear merely ministerial or administrative, as their interpretation may have serious implications in the performance of the contract. The Wisconsin Court of Appeals recently analyzed a right of first refusal agreement ("ROFR Agreement") on the sale of a property after one party failed to comply with its notice provision. The decision underscores the importance of understanding and adhering to all terms of a contract as written.

The Agreement and Its Notice Provision

The ROFR Agreement was entered into after the Bennetts sold a parcel of land to S&L and retained a fractional piece of the property. The agreement required the Bennetts to give notice to S&L if they received an offer to purchase the retained property. Giving notice was defined in the ROFR Agreement to specifically require delivery of written notice of the offer, including a complete copy of the offer to purchase, to S&L's manager and its attorney. Upon receipt of proper notice, S&L would have 30 days to exercise its right of first refusal to purchase the property.

The Wisconsin Appellate Court's Findings

The court determined that the Bennetts failed to give proper notice to S&L of the offer they received to purchase the subject property on multiple occasions. The first time they delivered the notice to S&L, the notice included a copy of the offer to purchase, but because it was missing the exhibit that included the property description, it was not a complete copy as required by the ROFR Agreement. The Bennetts attempted to correct this by delivering a second copy of the offer to S&L that included this exhibit. However, their delivery of this complete copy of the offer was not given to both of the individuals that the ROFR Agreement required.

The court rejected the Bennetts's argument that the combination of the two notice deliveries gave S&L reasonable notice of the offer to purchase started the 30-day clock for exercising the right of first refusal upon the second delivery. Because the ROFR Agreement expressly dictated how proper notice must be delivered—written notice of a complete copy of the offer to purchase delivered

to both the manager and attorney of S&L—the failure to deliver notice exactly that way was not sufficient and did not trigger the clock for S&L to exercise its right of first refusal. Only when the Bennetts fully corrected the delivery on the third attempt did the clock start, and S&L's exercise of its right of first refusal within 30 days of that time was determined to be proper.

Implications for Contracting Parties

Although miscellaneous contract provisions such as notice requirements are easy to overlook because they come across as boilerplate or standard language, they can have a significant impact on your contract and its enforceability. Contracting parties should take care to understand the implications of *all* terms of the contract to ensure they are fully complying with its terms. In particular, contractual terms that have timing implications should be well understood by all parties before the contract is executed. It would be good practice to calendar reminders ahead of due dates for notices and other post-signing contract actions, and in preparation for their arrival to review the relevant contract provisions and follow their requirements carefully.

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