

Republic of the Philippines DEPARTMENT of AGRARIAN REFORM

ELLIPTICAL ROAD, DILIMAN, QUEZON CITY TELS. 928-70-31 TO 39

14 August 1998

MEMORANDUM CIRCULAR NO. /2
Series of 1998

TO

: All DAR Regional Directors, Provincial Agrarian Reform Officers,

Municipal Agrarian Reform Officers, and Other Personnel Concerned

SUBJECT

: Retention Rights of Landowners and Award to their Qualified Children

In order to ensure that the retention rights of landowners are fully respected, the following clarifications on the rules and regulations governing the retention limits of landowners are hereby issued:

- 1. Section 6 of RA 6657 provides that the landowner may retain a portion not exceeding five (5) hectares and shall have the right to choose the area to be retained, which as far as practicable shall be compact and contiguous. In addition, each child of the landowner may also be awarded three (3) hectares of the landholdings provided the child is at least 15 years old and is actually tilling or managing the farm. Landowners whose lands have been covered by PD 27 shall be allowed to keep the area originally retained by them thereunder.
- In the case of "Association of Small Landowners in the Philippines, Inc., et al Versus The Honorable Secretary of Agrarian Reform" (G.R. No. 78742, 14 July 1989), the Supreme Court ruled:

"Landowners who were unable to exercise their rights to retention under P.D. No. 27 shall enjoy the retention rights granted by R.A. No. 6657, under the conditions therein prescribed."

However, in the resolution of the motion for reconsideration filed by the petitioners on the same Case, the Supreme Court ruled:

"xxx... landowners who, prior to the promulgation of the CARL, complied with the requirements under LOI Nos. 41, 45 and 52 regarding registration of their landholdings, shall be allowed to enjoy the seven hectare retention limit provided in P.D. 27 xxx.... As for the other landowners who continuously refused to comply with the registration requirement, they cannot, in view of the CARL, demand that their retention limit be determined in accordance with P.D. 27."



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- Pursuant to these Supreme Court rulings and Sec. 6 of RA 6657, the following guidelines were issued:
 - 1. DAR Administrative Order No. 11, Series of 1990 and
 - 2. DAR Administrative Order No. 04, Series of 1991
- 5. You are therefore instructed to follow the rules and regulations set forth in the aforesaid administrative orders, copies of which are hereto attached for ready reference. All Regional Directors are hereby directed to follow through implementation hereof and continually monitor compliance herewith.

For strict compliance.

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HORACIO R. MORALES, JR.

Secretary

Attached: as stated





Administrative Order No. ______ Series of 1990

SUBJECT:

RULES AND PROCEDURES GOVERNING THE EXERCISE OF RETENTION RIGHTS BY LANDOWNERS AND AWARD TO CHILDREN UNDER SECTION 6 OF R.A. 6657.

I. PREFATORY STATEMENT

Section 6 of R.A. 6657 provides that the landowner may retain not more than five (5) hectares of agricultural land and shall have the right to choose the area to be retained, which as far as practicable shall be compact and contiguous. Each child of the landowner may be awarded three (3) hectares provided he is at least 15 years old and is actually tilling or directly managing the farm. Landowners whose lands have been covered by P.D. 27 shall be allowed to keep the area originally retained by them thereunder. Similarly, owners of original homesteads, or their direct compulsory heirs, who still own these original homesteads at the time of the approval of R.A. 6657 can retain the same areas as long as they continue to cultivate them. The tenants in the area selected for retention by the landowner shall have the option to choose, within one (1) year from the time the landowner manifests his choice of the area for retention, whether to remain therein as a leaseholder or be a beneficiary in another agricultural land of the same landowner with similar or comparable features.

II. POLICY STATEMENT

- A. A landowner whose landholdings are covered under CARP may retain an area of not more than five hectares thereof. In addition, each of his children, whether legitimate, illegitimate, or legally adopted, may be awarded an area of not more than three (3) hectares provided that the child was at least 15 years of age as of the effectivity of R.A. 6657 on June 15, 1988, and that the child was actually tilling the land or directly managing the farmholding from June 15, 1988 up to the filing of the application for retention and /or at the time of the acquisition of the landholding under CARP.
- B. The landowner has the right to choose the area to be retained by him which shall be compact and contiguous and which shall be least prejudicial to the entire landholding and the majority of the farmers thereon.

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- C. The downer has the obligation cultivate directly or through labor administration, and thereby make productive, the area he retains.
- D. In case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein as lessee, or he a beneficiary in the same or another agricultural land with similar or comparable features. The tenant must exercise this option within the period of one (1) year from the time the landowner manifests his choice of the area for retention.
- E. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under CARP.
- F. For marriages covered by the Civil Code, in the absence of an agreement for the judicial separation of property, spouses who own only conjugal properties may retain a total of not more than five nectares from such properties. However, if either or both of them are landowners in their own respective rights (capital and/or paraphernal), they may retain not more than five hectares from their respective landholdings. In no case, however, shall the total retention of such a couple exceed 10 hectares (Refer to Table 1).
- G. For marriages covered by the New Family Code, which took effect on 03 August 1988, a husband owning capital property and/or a wife owning paraphernal property may retain not more than five hectares each provided they executed a judicial separation of properties prior to entering into marriage. In the absence of such an agreement, all properties (capital, paraphernal and conjugal) shall be considered to be held in absolute community, i.e., the ownership relationship is one, and, therefore, only a total of five hectares may be retained (Refer to Table 1).
- H. In all cases, the security of tenure of the farmers or farmworkers on the land prior to the approval of R.A. 6657 shall be respected. Furthermore, actual tenant-tillers in a landholding shall not be ejected or removed therefrom.
- I. The provisions on preemption and redemption under R.A. 3844, as amended, shall apply to the lessee.
- J. The original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of RA 6657 may retain the same area as long as they continue to cultivate the said homestead.

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A. Who May Apply

Any person, natural or juridical, who owns agricultural lands with an aggregate area of more than five hectares may apply for retention (use Ret. Form No. 1). However, a landowner who exercised his right of retention under PD 27 may no longer exercise the same right under RA 6657. Should he opt to retain five hectares in his other agricultural lands, the seven hectares previously retained by him shall immediately be placed under CARP coverage.

A landowner who owns five hectares or less or lands which are not yet subject of coverage based on the schedule of implementation provided in Section 7, RA 6657 may also file an application for retention for the purpose of issuance of a Certificate of Retention.

B. Venue of Filing

Any duly completed application for retention may be filed with any DAR Office (BLAD, RARO, PARO/MARO). If filed in an Office other than the MARO, the application shall be forwarded to the MARO having jurisdiction over the landholding.

- C. Criteria/Requirements for Retention and Award
 - The land is a private agricultural land;
 - 2. The area chosen for retention shall be compact and contiguous and shall be least projudicial to the entire landholding and the majority of the farmers thereon;
 - The landowner must execute an affidavit as to the aggregate area of his landholding;
 - 4. The landowner must submit a list of his children who were fifteen (15) years old or over as of June 15, 1988 and who have been actually cultivating or directly managing the farm since June 15, 1988.
- .E. Period Within Which to Exercise the Right of Retention
 - 1. Under Compulsory Acquisition (CA)

The right of retention and the possibility of award to children, where applicable, must be availed of by the landowner within a period of sixty (60) days from the date of receipt of Notice of Coverage from the DAR that his landholding is subject to compulsory acquisition. Failure to respond within

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the specified period and after due notice would mean that the landouner caives his right to choose which area to ratein.

2. Under Voluntary Offer to Seil (VOS)

The right of remention may be exercised at the time the line is voluntarily offered for sale. The VOS should indicate the landowner's choice of retained area, which should be not more than five (5) hectares, plus the area/s to be awarded to the qualified children. These areas should be specifically identified and segregated from the portion covered by the VOS.

A landowner who voluntarily offered his retained area for CARP coverage may be allowed to withdraw his offer.

IV. OPERATING PROCEDURES

- A. The Municipal Agrarian Reform Officer (MARO) shall:
 - 1. Through a Notice of Coverage, inform the landowner concerned that his landholding is subject of acquisition under CARP, and that he may exercise his right of retention over his total properties and that his qualified children may be awarded not more than three hectares each.
 - 2. Determine whether or not original homestead grantees or their direct compulsory heirs still own and actually cultivate the homestead.
 - 3. Conduct field verification and investigation of the following (Ret. Form No. 2):
 - Landholding of the landowner in relation to his application for retention;
 - Qualifications of the applicants and their children as their compulsory heirs;
 - c. Tenants, farmworkers and/or actual occupants.
 - 4. Identify the tenants opting to be beneficiaries in another landholding with similar or comparable features of the same landowner.
 - 5. Identify the tenants opting to be leaseholders, and execute corresponding leasehold contracts in accordance with pertinent guidelines (Administrative Order No. 4, Series of 1989).

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- Prepare a Retention Folder to include his findings and recommendations and submit this to the PARO.
- B. The Provincial Agrarian Reform Office (PARO) shall:
 - 1. Review and evaluate the report and recommendation submitted by the MARO.
 - If the documentation of the folder, is in order, forward the same, together with his findings and recommendations, to the RARO for appropriate action. Otherwise, return the same to the MARO.
- C. The Agrarian Reform Regional Director shall:
 - Review and evaluate the report and recommendations of the PARO.
 - Approve or disapprove the application for retention.
 If the decision is approval, issue Oertificate of
 Retention (Ret. Form No. 3). Otherwise return the
 same to the PERO for appropriate action.
 - 3. If the application for retention is approved, forward the certificate of retention and the Retention Folder to PARO.
- D. Upon receipt of the Retention Folder, the PARO in coordination with the LMB-DENR, shall segregate the appropriate retained area. The DENR shall furnish the RARO four (4) copies for distribution to PARO, ROD, LO's, NARO, etc.
- E. For tenants who opt to become beneficiaries on another land, the MARO shall facilitate the necessary land transfer.
- F. On the basis of the owner's duplicate copy of title, approved segregation plan and technical description, the PARO shall request the ROD to prepare two separate titles all in the name of the landowner for (1) the landholding covered by compulsory acquisition, voluntary offer to sell or voluntary land transfer/direct payment scheme, as the case may be, and (2) the landowner's retained area.
- G. The decision of the Regional Director approving or disapproving the application of the landowner for the retention and award shall become final after fifteen (15) days upon receipt of the decision, unless an appeal is made to the DAR Secretary.

V. . EFFECTIVITY

This Administrative Order shall take effect ten (10) days after publication in two (2) national newspapers or general circulation. All orders, circulars, memoranda and rules and regulations inconsistent herewith are hereby revoked, cancelled or modified accordingly.

Diliman, Quezon City, August 30, 1989.

BENJAMIN T. LEONG Secretary

INVESTIGATION REPORT ON RETENTION

A.	BAS	IC INFORMATION			6):		
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APPLICATION FOR RETENTION

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Department of Agrarian Retorm	28 20
Thru: The MARO	

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I have the honor to apply for () hectares more or less, purs	the retention of
my landholding with a total area of less, covered by OCT/TCT/TD Nos. by the Register of Deeds and the Mu Office of respectively.	registered in my name unicipal/Provincial Assessor's
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In support of my applicationecited documents for verticonsideration.	ation, I am submitting the diffication, evaluation and
It is hoped that the corresponshall be issued at the earliest pos	nding Certificate of Retention ssible time.

Very truly yours,

(Landowner) Name & Signature

Att. a/s

Note: Flease omit Far. 3 above if not applicable.

RECOMMENDATION: -

CERTIFIED TRUE AND CURRECT:

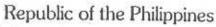
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Table 1. Guide for Retention Limits for Spouses Without Valid
Agreement for Judicial Separation of Properties
(in hectares)

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t The agreement to be valid should have been executed prior to 15 June 1988 or the date of marriage whichever comes later.

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DEPARTMENT of AGRARIAN REFORM

ADMINISTRATIVE ORDER NO. 104 Series of 1991

SUBJECT: SUPPLEMENTAL GUIDELINES GOVERNING THE EXERCISE OF

RETENTION RIGHTS BY LANDOWNERS UNDER PRESIDENTIAL DECREE NO. 27

A. PREFATORY STATEMENT

In the case "Association of Small Landowners in the Philippines, Inc., et al. versus Honorable Secretary of Agrarian Reform" (G.R. No.78742, 14 July 1989), the Supreme Court ruled:

"Landowners who were unable to exercise their rights of retention under P.D. No. 27 shall enjoy the retention rights granted by R.A. No. 6657 under the conditions therein prescribed."

Moreover, in the resolution of the motion for reconsideration filed by the petitioners on the same Case, the Supreme Court ruled:

"x x x landowners who, prior to the promulgation of the CARL, complied with the requirement under LOI Nos. 41, 45 and 52 regarding registration of their landholding, shall be allowed to enjoy the seven hectare retention limit provided in P.D. 27. x x x As for the other landowners who continuously refused to comply with the registration requirement, they cannot, in view of the CARL, demand that their retention limit be determined in accordance with P.D. 27."

Pursuant to these Supreme Court rulings, the following guidelines are hereby prescribed..

B. POLICY STATEMENTS

- Landowners covered by PD 27 are entitled to retain seven hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). An owner of tenanted rice and corn lands may not retain these lands under the following cases:
 - a. If he as of 21 October 1972 owned more than 24 hectares of tenanted rice or corn lands; or
 - b. By virtue of LOI 474, if he as of 21 October 1976 owned less than 24 hectares of tenanted rice or corn lands but additionally owned the following:



DEPARTMENT of AGRARIAN REFORM

ADMINISTRATIVE ORDER NO. 104 Series of 1991

SUBJECT: SUPPLEMENTAL GUIDELINES GOVERNING THE EXERCISE OF RETENTION RIGHTS BY LANDOWNERS UNDER PRESIDENTIAL

DECREE NO. 27

A. PREFATORY STATEMENT

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 - a. If he as of 21 October 1972 owned more than 24 hectares of tenanted rice or cornilands; or
 - b. By virtue of LOI 474, if he as of 21 October 1976 owned less than 24 hectares of tenanted rice or corn lands but additionally owned the following:

- Other agricultural lands of more than seven hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or
- Lands used for residential, commercial, industrial, or other urban purposes, from which he derives adequate income to support himself and his family.
- 2. Landowners who filed their applications for retention before 27 August 1985, the deadline set by Administrative Order No. 1, Series of 1985, may retain not more than seven hectares of their landholdings covered by PD 27 regardless of whether or not they complied with LOI Nos. 41, 45, and 52.

Landowners who filed their applications for retention after 27 August 1985 but complied with the requirements of LOI Nos. 41, 45 and 52 shall likewise be entitled to such a seven-hectare retention area.

However, landowners who filed their applications for retention after the 27 August 1985 deadline and did not comply with the requirements of LOI Nos. 41, 45, and 52 shall only be entitled to a maximum of five hectares as retention area.

3. A landowner who has died must have manifested during his lifetime his intention to exercise his right of retention prior to 23 August 1990 (the finality of the Supreme Court decision in the case "Association of Small Landowners of the Philippines, Inc. et al. versus Honorable Secretary of Agrarian Reform) to allow his heirs to now exercise such right under these guidelines. Said heirs must show proof of the original landowner's intention.

The heirs may also exercise the original landowner's right of retention if they can prove that the decedent had no knowledge of OLT coverage over the subject property.

- 4. A landowner is deemed to have waived his right of retention over a parcel of land by the performance of any of the following acts:
 - Signing of the Landowner-Tenant Production Agreement and Farmer's Undertaking (LTPA-FU) covering the subject property;
 - b. Entering into a direct-payment scheme agreement as evidenced by a Deed of Transfer over the subject property; and

- c. Signing/submission of other documents indicating consent to have the subject property covered, such as the form letter of the Land Bank of the Philippines (LBP) on the disposition of the cash and bond portions of a land transfer claim for payment, and the Deed of Assignment, Warranties and Undertaking executed in favor of the LBP.
- 5. All rights previously acquired by the tenant-farmers under PD 27 are retained and recognized. Section II (d), (e), (h) and (i) of Administrative Order No. 11, Series of 1990 entitled "Rules and Procedures Governing the Exercise of Retention Rights by Landowners and Award to Children Under Section 6 of RA 6657," shall be applied.
- 6. A landowner who owns lands other than rice and corn shall be persuaded to select the area he will retain from these "other lands" to prevent or minimize the possible dislocation of farmer-beneficiaries who have been issued Certificates of Land Transfer (CLTs) or Emancipation Patents (EPs).
- 7. Where there are CLT- or EP-holders in the area to be retained, the DAR shall immediately inform the tenants concerned and provide them the opportunity to dispute or contest the landowner's claim. Moreover, the DAR shall ensure that the affected tenants, should they so desire, will be given priority in the distribution of other lands of the landowner or other lands identified by the DAR for redistribution, subject to the rights of those already in place.

The same tenants may opt to remain in the retained area as leaseholders, in which case, the required lease agreements shall be executed in accordance with existing laws, rules, and regulations. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

C. OPERATING PROCEDURES

- 1. The Municipal Agrarian Reform Officer (MARO) shall:
 - 1.1 Receive .the landowner's application for retention (Ret. Form No. 1).
 - 1.2 Invite all concerned parties to a conference/dialogue regarding the said application for retention. (Ret. Form No. 2).
 - 1.3 Conduct field verification and investigation of the following: (Ret. Form No. 3).

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- a) Landholding of the landowner in relation to his application for retention.
- b) Tenants or actual occupants.
- 1.4 In collaboration with the Land Management Sector, DENR, prepare a sketch plan of the area to be retained by the landowner.
- 1.5 Evaluate the documents and on the basis of findings, submit recommendation to the PARO.
- 2. The Provincial Agrarian Reform Officer (PARO) shall:
 - 2.1 Review and evaluate the report and recommendation submitted by the MARO.
 - 2.2 If the documents are in order, forward the same together with his findings and recommendations, to the RARO for appropriate action. Otherwise, return the documents to the MARO.
- 3. The Regional Agrarian Reform Officer (RARO) shall:
 - 3.1 Review and evaluate the documents submitted by the PARO. If the documents are in order, issue an Order of Approval attaching the sketch plan of the retained area. Otherwise, issue an Order of Denial.

The Order of Approval should specify that the retained area is subject to final survey. Only after final survey of the retained area shall the RARO issue a Certificate of Retention (Ret. Form No. 4).

3.2 Forward the Order of Approval or the Order of Denial to the PARO for distribution to the concerned parties.

The Order of the Regional Director approving or denying the application for retention shall become final fifteen (15) days from receipt of the same, unless an appeal is made to the DAR Secretary.

4. The Municipal Agrarian Reform Officer shall cause the institution of the leasehold arrangements in lands covered by the order of retention in accordance with Administrative Order No. 4, Series of 1989.

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D. EFFECTIVITY

This Administrative Order shall take effect ten (10) days after publication in two (2) national newspapers of general circulation, and amends or revokes all previous orders, memoranda, circulars and issuances, or portions thereof, inconsistent with it. This Administrative Order supplements Administrative Order No. 11, Series of 1990.

Diliman, Quezon City, April 25, 1991.

BENJAMIN E. LEONG .

Secretary -

APPLICATION FOR RETENTION (P.D. 27)

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		Sa Sa		
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Republic of the Philippines DEPARTMENT OF AGRARIAN REFORM

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INVESTIGATION REPORT ON RETENTION

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ReCOMMENDATION:

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