



DAR ADMINISTRATIVE ORDER)
NO. 05)
SERIES OF 2000)

SUBJECT: REVISED RULES AND PROCEDURES FOR THE
EXERCISE OF RETENTION RIGHT BY
LANDOWNERS

Pursuant to Presidential Decree (PD) No. 27, Section 6 of Republic Act (RA) No. 6657, and in view of the Supreme Court's ruling in *Association of Small Landowners in the Philippines, Inc. vs. The Honorable Secretary of Agrarian Reform* (G.R. No. 78742, 14 July 1989), the rules and procedures governing the exercise of retention rights under PD 27 and RA 6657 by landowners are hereby revised as follows:

ARTICLE I

PRELIMINARY PROVISIONS

SECTION 1. Coverage - These rules and procedures shall apply to all applications for retention under PD 27 and RA 6657.

SEC. 2. Statement of Policies - The exercise of retention right by landowners shall be governed by the following policies:

(a) 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 therein.

(b) The landowner has the obligation to cultivate the land directly or through labor administration and thereby make the area he retains productive.

(c) In all cases, all rights previously acquired by the tenant-farmers under PD 27 and the security of tenure of the farmers or farmworkers on the land prior to the approval of RA 6657 shall be

respected. Furthermore, actual tenant-farmers in the landholding shall not be ejected or removed therefrom.

(d) The sale, disposition, lease or transfer of private lands by the original landowner in violation of RA 6657 shall be null and void. Transactions executed prior to RA 6657 shall be valid only when registered with the Register of Deeds within a period of three (3) months after 15 June 1988 in accordance with Section 6 of RA 6657.

ARTICLE II

EXERCISE OF RETENTION RIGHT

SEC. 3. Who May Apply for Retention - (a) Any person, natural or juridical, who owns agricultural lands with an aggregate area of more than five (5) hectares may apply for a retention area using Retention 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 (5) hectares in his other agricultural lands, the seven (7) hectares previously retained by him shall be immediately placed under CARP coverage.

(a) A landowner who owns five (5) hectares or less, or lands which are not yet subject of coverage based on the schedule of implementation provided in Section 7 of RA 6657, may also file an application for retention and a Certificate of Retention issued in his favor.

(b) The right of retention of a deceased landowner may be exercised by his heirs provided that the decedent landowner 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 ruling in the case of *Association of Small Landowners in the Philippines, Inc. vs. The Honorable Secretary of Agrarian Reform*) to allow his heirs to now exercise such right under these Rules. The heirs must show proof of the original landowner's intention. They may also exercise the original landowner's right of retention if they can prove that the decedent had no knowledge of the OLT coverage over the subject property.

SEC. 4. Period to Exercise Right of Retention - Under the Compulsory Acquisition (CA) scheme, the landowner shall exercise his



right of retention within sixty (60) days from receipt of the Notice of Coverage.

Under the Voluntary Offer to Sell (VOS) scheme, the right of retention shall be exercised at the time the land is offered for sale. The offer should specify and segregate the portion covered by VOS and the portion applied for retention; otherwise, the landowner shall be deemed to have waived his right of retention over the subject property.

SEC. 5. Failure to Exercise Right of Retention Within Specified Period - Failure of the landowner to exercise his right of retention within the period specified in the next preceding section shall mean that the landowner waives his right to choose which area to retain. Thereafter, the Municipal Agrarian Reform Officer (MARO) shall designate the retained area for the landowner.

The MARO shall notify the landowner by personal service with proof of receipt or by registered mail with return card regarding the choice of retention area. The landowner shall inform the MARO in writing whether or not he accepts or rejects the area selected for retention within sixty (60) days from receipt of the notice. Failure to respond within said period means that the landowner has no objection as to the selected area for retention.

If the landowner disagrees with the area selected for retention, he may file his protest with the MARO pursuant to the Rules of Procedure for Agrarian Law Implementation (ALI) Cases.

SEC. 6. Where to File Application - Any duly completed application for retention may be filed with any of the following: the Bureau of Land Acquisition and Distribution (BLAD), the Regional Director (RD), the Provincial Agrarian Reform Officer (PARO), and the Municipal Agrarian Reform Officer (MARO). If the application is filed with an office other than the MARO, the receiving office shall forward the application to the MARO with jurisdiction over the landholding.

SEC. 7. Waiver of the Right of Retention - A landowner is deemed to have waived his right of retention over a parcel of land by any of the following acts:

(a) Executing an affidavit, letter or any other document duly attested to by the MARO, PARO or RD indicating that he is expressly waiving his retention right over the subject landholding;

(b) Signing of the Landowner-Tenant Production Agreement and Farmer's Undertaking (LTPA-FU) or Application to Purchase and Farmer's Undertaking (APFU) covering subject property;

(c) Entering into a Voluntary Land Transfer/Direct Payment Scheme (VLT-DPS) agreement as evidenced by a Deed of Transfer over the subject property;

(d) Offering the subject landholding under VOS scheme and failure to indicate his retained area;

(e) Signing/ submission of other documents indicating consent to have the entire 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;

(f) Performing acts which constitute *estoppel* by laches. *Estoppel* by laches, in a general sense, is the failure or neglect for an unreasonable or unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier warranting a presumption that he has abandoned his right or declined to assert it (*Madaya vs. Pachio*, 132 SCRA 540 [1984]). The elements of laches are: (1) conduct of the defendant which gives rise to a cause of action for which the plaintiff can seek a remedy; (2) delay in asserting the right, complainant being aware of defendant's conduct and having the opportunity to institute a suit; (3) lack of knowledge on the part of defendant that complainant would assert the right on which he bases his suit; and (4) injury or prejudice to defendant in the event relief is accorded to the complainant, or the suit is not barred (*Chacon vs. Court of Appeals*, G.R. No. 46418-19, 29 September 1983); and

(g) Doing such act or acts as would amount to a valid waiver in accordance with applicable laws and jurisprudence.

ARTICLE III

AWARD OF RETENTION AREA

SEC. 8. *Criteria/Requirements for Award of Retention* - The following are the criteria in the grant of retention area to landowners:





(b) Landowners affected by PD 27 who filed their applications for retention before 27 August 1985, the deadline set by DAR Administrative Order No. 1, Series of 1985, may retain not more than

- i. other agricultural lands of more than seven (7) hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or
- ii. lands used for residential, commercial, industrial or other urban purposes from which he derives adequate income to support himself and his family.

1. If he, as of 21 October 1972, owned more than twenty-four (24) hectares of tenanted rice and corn lands; or
2. By virtue of Letter of Instruction (LOI) No. 474, if he, as of 21 October 1972, owned less than twenty-four (24) hectares of tenanted rice and corn lands but additionally owned the following:

(a) Landowners covered by PD 27 are entitled to retain seven (7) hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under OLT. An owner of tenanted rice and corn lands may not retain those lands under the following cases:

SEC. 9. Retention Area - The area allowed to be retained by the landowner shall be as follows:

(d) The landowner must submit a list of his children who are fifteen (15) years old or over as of 15 June 1988 and who have been actually cultivating or directly managing the farm since 15 June 1988;

(c) The landowner must execute an affidavit as to the aggregate area of his landholding; and

(b) The area chosen for retention shall be compact and contiguous and shall be least prejudicial to the entire landholding and the majority of the farmers therein;

(a) The land is a private agricultural land;

seven (7) hectares of their landholdings regardless of whether or not they complied with LOI No. 41, 45 and 52;

(c) Also entitled to such seven-hectare retention area are landowners who filed their application after 27 August 1985 but complied with LOI No. 41, 45 and 52 which provide for the submission of sworn statements containing the following information:

1. List of agricultural lands owned by him throughout the country, indicating therein the area and location of each parcel;

2. Principal crops to which each parcel of land is devoted. For those area devoted primarily to rice and/or corn, the landowners shall indicate (i) the portions actually cultivated by tenants; (ii) the names of such tenants; and (iii) the area tilled by each tenant as of 21 October 1972;

3. The average gross harvest of each tenant (on rice/corn parcel of land) during the three (3) crop years immediately preceding 21 October 1972; and

4. Liens and/or encumbrances, if any, the amounts thereof, and the names and addresses of the parties who have liens and/or encumbrances over such properties as of 21 October 1972.

(d) Landowners who filed their applications after the 27 August 1985 deadline and did not comply with LOI No. 41, 45 and 52 shall only be entitled to a maximum of five (5) hectares as retention area. Landowners who failed to qualify to retain under paragraph (a) of this Section shall also be allowed to retain a maximum of five (5) hectares in accordance with RA 6657.

(e) A landowner whose landholdings are covered under CARP may retain an area of not more than five (5) 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 is at least fifteen (15) years old as of 15 June 1988 and that he is actually tilling the land or directly managing the farmholding from 15 June 1988 up to the filing of the application for retention and/or the time of the acquisition of the landholding under CARP.



(f) The original homestead grantees or their 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.

(g) For marriages covered by the New 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 (5) hectares of 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 (5) hectares of their respective landholdings. In no case, however, shall the total retention of such couple exceed ten (10) hectares.

(h) For marriages covered by the Family Code, which took effect on 3 August 1988, a husband owning capital property and/or a wife owning paraphernal property may retain not more than five (5) hectares each provided they executed a judicial separation of properties prior to entering into the 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 (5) hectares may be retained.

ARTICLE IV

EFFECTS OF THE EXERCISE OF RETENTION RIGHT

SEC. 10. When Retained Area is Tenanted - (a) In case the area selected by the landowner or awarded for retention by the DAR is tenanted, the tenant shall have the option to choose whether to remain therein as lessee or be a beneficiary in the same or another agricultural land with similar or comparable features.

(b) In case the tenant declines to enter into leasehold and there is no available land to transfer, or if there is, the tenant refuses the same, he may choose to be paid disturbance compensation by the landowner in such amount as may be agreed between the parties taking into consideration the improvements made on the land. However, in no case shall the agreed amount be less than five (5) times the average of the gross harvests on their landholding during the last five (5) preceding calendar years pursuant to Section 36 of RA 3844, as



amended by Section 7 of RA 6389. If the parties fail to agree on the amount of disturbance compensation, either party may file a petition for fixing of disturbance compensation with the appropriate Provincial Agrarian Adjudicator (PARAD). In the latter case, the petitioner must show proof that earnest efforts were exerted by the parties to fix the amount of disturbance compensation, which efforts proved unsuccessful, before the same was filed with the PARAD. The tenant shall not be dispossessed or ejected from the landholding unless disturbance compensation is paid and proof thereof is submitted to the MARO.

(c) The tenant must exercise his option within one (1) year from the time the landowner manifests his choice of the area for retention, or from the time the MARO has chosen the area to be retained by the landowner, or from the time an order is issued granting the retention.

(d) In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be an agrarian reform beneficiary (ARB) under CARP. In this case, the required lease agreement shall be executed in accordance with DAR Administrative Order (AO) No. 5, Series of 1993, entitled "Agricultural Leasehold and the Determination of Lease Rental for Tenanted Lands", and other relevant issuances on the matter.

(e) The provisions on preemption and redemption under RA 3844, as amended, shall apply to the lessee.

SEC. 11. *Where Retained Area is Covered by CLTs, CLOAs or EPs -*

(a) Where Certificates of Land Transfer (CLTs), Emancipation Patents (EPs) or Certificates of Land Ownership Award (CLOAs) have already been issued on the land chosen by the landowner as retention area, the DAR shall immediately inform the ARBs concerned and provide them the opportunity to contest the landowner's claim. Moreover, the DAR shall ensure that the affected ARBs, should they so desire, 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 the area. The affected ARBs may choose to avail of the options provided in the immediately preceding section. The beneficiaries shall exercise said option within one (1) year from the time the CLTs, EPs or CLOAs are cancelled.

(b) In order to prevent or minimize the dislocation of ARBs who have been issued CLTs, EPs or CLOAs, a landowner who owns

lands other than rice and corn shall, as much as possible, be persuaded to select the area to be retained from those other lands which have yet to be awarded to beneficiaries.

SEC. 12. *Reimbursement of Amortizations* - In cases where CLTs, EPs or CLOAs are cancelled as a result of the landowner's exercise of his right of retention, all amortizations paid by the ARBs shall be fully reimbursed to them in addition to those benefits or rights which are accorded to holders in good faith under the New Civil Code.

ARTICLE V

OPERATING PROCEDURES

SEC. 13. *Responsibilities of the MARO* - In the processing of applications for retention, the MARO shall have the following responsibilities:

(a) Issue a Notice of Coverage informing the landowner that his landholding is subject of acquisition under CARP; that he may exercise his right of retention over his properties; and that his qualified children may be awarded not more than three (3) hectares each. Likewise, the MARO shall receive the application for retention of landowners who have not yet exercised their right of retention under PD 27;

(b) Determine whether or not the original homestead grantees or their direct compulsory heirs still own and actually cultivate the homestead land;

(c) Conduct field verification and investigation, together with the landowner or his authorized representative, to determine the following:

1. Landholding of the landowner in relation to his application for retention;

2. Qualifications of the applicants and their children as their compulsory heirs;

3. Tenants, farmworkers and/or actual occupants within subject landholding; and

4. Other factors relevant to the application for retention.

(d) Invite all concerned parties to a conference/dialogue regarding said application for retention (Retention Form No. 3);

(e) Identify and facilitate the necessary land transfer for tenants opting to be beneficiaries in another landholding of the same landowner with similar or comparable features;

(f) Identify the tenants opting to be leaseholders and facilitate the execution of the corresponding leasehold contracts;

(g) Facilitate the negotiations between the tenants/beneficiaries in the determination of disturbance compensation should the tenants/beneficiaries opt to accept the same from the landowner;

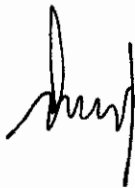
(h) Prepare a sketch plan of the area to be retained by the landowner in coordination with the Land Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR);

(i) Prepare a Retention Folder indicating therein his findings and recommendations and submit the same to the PARO;

(j) Identify prime agricultural areas owned by landowners who waived their right to choose which area to retain or those who waived their right to exercise the right of retention using the following factors:

1. Commodity produced;
2. Terrain;
3. Infrastructure available; and
4. Soil fertility;

(k) Notify the landowner, through personal service with proof of receipt or by registered mail with return card, the portion selected as his retention area upon failure of the landowner to exercise his right of retention within the period specified in these Rules.



SEC. 14. *Responsibilities of the PARO* - The PARO, on the other hand, shall have the following responsibilities:

(a) Review and evaluate the report and recommendations submitted by the MARO;

(b) If the Retention Folder is in order, forward the same, together with his findings and recommendations, to the Regional Director (RD) for appropriate action. Otherwise, return the same to the MARO for appropriate action;

(c) Upon receipt of the Retention Folder and the Order of Approval from the RD, the PARO shall segregate the appropriate retained area in coordination with the LMB-DENR. The DENR shall furnish the RD four (4) copies for distribution to the PARO, MARO, Register of Deeds, landowner and other concerned parties;

(d) Conduct the final survey of the area and issue a Certificate of Retention (Retention Form No. 4); and

(e) On the basis of the owner's duplicate copy of title, approved segregation plan and technical description, request the Register of Deeds to prepare two (2) separate titles: 1) landowner's title for the landholding covered by compulsory acquisition, voluntary offer to sell or voluntary land transfer/direct payment scheme, as the case may be; and 2) landowner's title for the retained area. Likewise, for lands covered by CA and VOS, request the ROD to prepare another title in the name of the Republic of the Philippines.

SEC. 15. *Responsibilities of the Regional Director* - The Regional Director shall have the following responsibilities:

(a) 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. The Order of Approval shall specify that the retained area is subject to final survey to be conducted by the PARO. Otherwise, issue an Order of Denial; and

(b) Forward the Order of Approval or Denial, as the case may be, to the PARO for distribution to the concerned parties.

SEC. 16. *Decision of the Regional Director* - The decision of the Regional Director approving or disapproving the application for retention shall become final after fifteen (15) days from receipt of the



decision, unless duly appealed to the DAR Secretary pursuant to the Rules of Procedure for Agrarian Law Implementation (ALI) Cases.

ARTICLE VI

FINAL PROVISIONS

SEC. 17. *Transitory Provision* - All pending applications for retention shall be processed in accordance with the procedures provided herein.

SEC. 18. *Repealing Clause* - This Order modifies or repeals DAR Administrative Order No. 11, Series of 1990 and DAR Administrative Order No. 4, Series of 1991, and other issuances inconsistent herewith.

SEC. 19. *Separability Clause* - In the event that any of the provisions of this Order is declared unconstitutional, the validity of the other provisions shall not be affected by said declaration.

SEC. 20. *Effectivity* - This Order shall take effect ten (10) days after its publication in two (2) national newspapers of general circulation.

Diliman, Quezon City,
August 30, 2000

HORACIO R. MORALES JR.
Secretary

Published in two (2) national newspapers
of general circulation:

1. THE MANILA BULLETIN

2. THE SUNSTAR

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