

**[DAR ADMINISTRATIVE ORDER NO. 05, S. 2000,
August 30, 2000]**

**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.

SECTION 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

SECTION 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.

SECTION 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.

SECTION 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

SECTION 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.

SECTION 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 (*Madeja vs. Pacho*, 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

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

- (a) The land is a private agricultural land;
- (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;
- (c) The landowner must execute an affidavit as to the aggregate area of his landholding; and
- (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.

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

- (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:
 - 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:
 - 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.

(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 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