



REPUBLIC OF THE PHILIPPINES
MINISTRY OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE MINISTER
MANILA

October 6, 1983

MINISTRY ORDER)

NO. **65**

Series of 1983)

SUBJECT: Revised Guidelines on the
acquisition and payment of
right-of-way for public
works and highways projects

In order to standardize system and procedures in the acquisition of right-of-way to preclude possible delays in the prosecution of our infrastructure and other capital outlay projects with a view of expediting the payment of right-of-way claims, particularly those of small lot owners, the following guidelines are hereby promulgated:

I - Funding of Right-of-Way

It is hereby made a policy of this Ministry that in the listing of projects and their estimated costs for purposes of inclusion in all capital outlay programs (both General Appropriations and Public Works Acts-funded) the cost of acquisition of needed right-of-way shall be included in said estimates, and programs of work, to assure availability of funds for payment thereof.

Funds to cover the preparation of parcellary plan and related works thereto shall be appropriated and made available immediately after the Ministry has decided to implement the project.

II - Acquisition of Right-of-way before Bidding

No project shall be advertised for bids unless the necessary right-of-way for the project had been acquired. However, where the project is of such magnitude that it would take more than one (1) year to complete, advertisement and bidding of the same may be allowed if at least fifty percent (50%) of the required right-of-way had been acquired on the date of bidding, or the corresponding complaints for expropriation of the needed right-of-way had already been filed with the proper courts, and deposit had been made with the PNB, or corresponding permit to enter premises and use lot, issued by the lot owners, for at least fifty percent (50%) of the areas needed for right-of-way is secured.

These requirements shall be certified to have been complied with by the Senior Legal Officer or the Right-of-way Engineer of the Office concerned.

To avoid unnecessary complaints and/or court litigations, no affected lot shall be occupied or traversed unless the necessary complaints for expropriation had already been filed with the proper courts or corresponding permit to enter premises issued by the lot owners is secured.

III - Modes of Acquiring Real Properties or Rights thereon for Public use

Under our existing laws, there are different modes of acquiring title to, and ownership of, private property particularly real estate property, as well as modes of acquiring right to use the private property of another person. The most common methods are as follows: (1) donation; (2) purchase; (3) easement; (4) quit claim; (5) exchange or barter; and (6) condemnation proceedings.

A - DONATION

Donation, as defined under Art. 2725 of the Civil Code, "is an act of liberality whereby a person dispose gratuitously of a thing or right in favor of another who accepts it."

A donation to be valid, must be made in a public instrument and must be accepted by the donee during the lifetime of both the donor and the donee. Pursuant to Opinion No. 145, Series of 1962 of the Secretary of Justice, donation can be accepted by the Secretary of Public Works, Transportation and Communication (now Minister of Public Works and Highways). However, acceptance of donations of real property to be used by MPWH Offices in the region was delegated to the Regional Directors and maybe redelegated, in writing, to District or City Engineers as the exigency of the service may require (Ministry Order No. 65, series of 1982).

The deed of donation to be acceptable to the government, should be pure and simple and not conditional or onerous. A clause to the effect, that such donation is being made by the donor not to defraud his creditors and that the donor had reserved for himself enough property for his and his family's subsistence should be incorporated.

The deed of donation should be registered with the Register of Deeds for the purpose of either having it annotated at the back of the title of the whole property in cases where only a portion was donated or for securing a separate or a new title in favor of the government if the whole lot has been donated.

B - PURCHASE

When the owner of property needed for public use is not willing to donate his property to the government, then the government shall acquire his property and pay him just compensation. A contract of sale shall be executed between the property owner, otherwise known as vendor, and the government known as vendee.

Purchases made by the government are governed by existing and special laws, particularly with respect to:

1. Price or consideration

- a) For lots and improvements acquired before the promulgation of P.D. 76, just compensation thereof shall be determined by the Appraisal Committee, using all available informations and records of sale at the time of taking, but in no case shall such price exceed the market value as determined by the Assessor pursuant to P.D. 76.
- b) For lots and improvements acquired between 1974 and 1978, the basis shall be the price determined by the Assessor, as appearing in the tax declaration issued pursuant to P.D. 76, or the current market price as stated in the sworn statement filed by the owner on or before October 31, 1973 pursuant to P.D. 76, whichever is lower.
- c) For properties acquired between 1979 and 1981, the basis shall be the current market value as appearing in the tax declaration issued by the Assessor for the year 1979 or the current market value as declared by the owner in a sworn statement filed on or before August 15, 1977 pursuant to P.D. 464, whichever is lower.
- d) For properties acquired between 1982 and 1984, the basis shall be the current market value as appearing in the tax declaration issued by the Assessor in 1982 or the current market value declared by the owner in a sworn statement filed on or before June 30, 1980 pursuant to the provisions of P.D. 1621, whichever is lower.
- e) In cases where the owners failed to file a sworn statement, a certification of non-filing should be secured from the Assessor concerned in addition to the Affidavit executed by the owner to attest his failure to file such sworn statement.

In compliance to P.D. 1533 dated June 11, 1978, when a project is already approved for implementation during a specified calendar year, the officials charged with the acquisition of right-of-way shall immediately gather all tax declarations and the corresponding sworn statements of owners relative to all lots affected by such construction, including the improvements thereon. Thereafter, the owners of the above-mentioned property shall be notified in writing, and the just compensation to be paid for these affected properties shall be based on the tax declaration or the sworn statement filed and existing at the time notice was given and not at the time actual construction of the project shall commence.

2. Effectivity of the Sale

The mere signing of the deed of sale by the owner of the property, the District Engineer/Project Manager and/or the Regional Director does not ipso facto perfect the deed of sale. The deed of sale has still to be approved by the proper department head (now Minister) as provided under Sec. 568 of the Revised Administrative Code, as amended or by officials delegated with authority to approve same pursuant to Ministry Order No. 65, S. 1982, in order that such deed of sale shall be deemed perfected.

Accordingly, said deed of sale should be duly registered with the Register of Deeds of the province/city where the property is located, for the purpose of having the same annotated at the back of the title of the property in case only a portion thereof was purchase or for the purpose of having the old title cancelled and a new title in favor of the government be issued if the whole lot has been purchased.

3. In the preparation of deeds of sale, the following requirements and conditions should be observed and complied with:

- a) Where the subject property is registered or titled, the vendor must be the registered owner thereof and must possess a clear and clean title thereto under the Torrens System free of any lien and encumbrances whatsoever. A xerox copy of the title, with all the pages thereof included therein, must form integral part of the deed.
- b) Where the subject property is unregistered or untitled, the vendor must submit a certified true copy of the tax declaration and an indemnity bond, which must either be a surety bond or property bond. Surety bond shall be issued by a surety company duly authorized to act as surety under Act 536, as amended, and certified to be in good standing by the Insurance Commissioner. Property Bond shall specify sufficient property of the bondsman with assessed values of not less than the purchase price for the subject property. In either case, the bond shall remain in force until the government obtained the corresponding title to the subject property.
- c) A deed of conveyance or sale must be executed in the proper form by the parties concerned, specifically describing the property to be sold. The marital consent of the spouse of the owner-vendor should generally be indicated in the Deed.
- d) If the owner of the property is a corporation, a certified copy of the resolution of the governing board of such corporation or partnership authorizing any of its officers to execute the deed shall be attached to the deed. In the case of partnership the managing partner should execute the deed.
- e) If the owner is already deceased, the heirs must first consolidate their ownership of the property either thru court proceedings or thru an extra-judicial settlement, subject to the provisions of Rule 74 of the New Rules of Court.
- f) If the property is under guardianship or administration, approval by the proper court of the deed of sale executed by the guardian or administrator/executor must first be secured. The corresponding Letters of Administration and/or Guardianship should be submitted as an integral part of the Deed.

- g) If the property being sold was acquired under the Public Land Act, the government shall be entitled to a twenty (20) meters strip free under Sec. 112 of CA 141, or Sixty (60) meters strip under P.D. 635. (January 7, 1975).
- h) If it appears that the property is subject to the provisions of Section 4 Rule 74 of the New Rules of **Court** and the period of two (2) years from the registration of the consolidation or settlement has not yet expired, an indemnity bond (either surety or property bond), conditioned for the payment of any adverse claim against the **property** filed within the said period of two, (2) years, should be posted.
- i) If the vendor is represented by an Attorney-In-Fact, the corresponding special power of Attorney should be attached to and made an integral part of the deed of sale. If the vendor is presently residing abroad, such special power of attorney should be duly attested by the Philippine Consulate of the country where the vendor reside.
- j) Where the subject property is mortgaged, the consent of the mortgagee to the sale thereof or release of the mortgage must first be secured.
- k) All Real Estate taxes due on the property must have been paid as evidenced by a tax clearance certificate issued by the proper authority.
- l) The Deed of conveyances should be witnessed by at least two persons and if the vendor affixed his signature by thumbmark, same should be witnessed by two additional persons.
- m) The accountant concerned should also witness the contract, and his signature shall be considered as constituting a certification that funds for the purpose is available (LOI 968).
- n) A certificate as to the availability of funds in the proper form, duly verified by the Auditor concerned, indicating the particular source and nature of the funds to be used in payment of the consideration of the sale, must be secured and attached to the Deed. (Sec. 607, Revised Administrative Code and Sec. 86 of P.D. 1445).
- o) The Right-of-Way Engineer, in addition to verifying the ownership of the lot to be purchased, as well as any encumbrance to which such lot may have been subjected to, should likewise verify and inspect the actual lot to be purchased to determine whether the classification made by the Assessor is in accordance with the actual use of the property (Sec. 19 P.D. 464). A certification to this effect should be issued by the Right-of-way Engineer.
- p) The papers and documents submitted in support of the claim in every case should be carefully verified as to their authenticity and genuineness in order to forestall fraud.

4. Payment of Claims

- a) Payment for lots should be effected only after the corresponding deed of sale had already been registered with the Register of Deeds concerned and Torrens Title to the subject lot is already vested in the name of the government. For parcel of lands partially affected, payments should be effected only after the corresponding deed of sale had already been annotated at the back of the title of the subject lot.
- b) If the Deed of Conveyance was not signed by the owner but was signed by his duly and legally constituted agent, the owner should also be notified in writing of the amount due him as payment of his property. Accordingly, the treasury warrant or check for the payment of said property should be drawn in favor of the registered owner.
- c) Officials or employees responsible for releasing checks or warrants should require positive identification of the payee before releasing these checks or warrants.
- d) To implement the Presidential policy/directive of expediting payment of right-of-way claims (LOI 1037), the District/City and Regional Offices as well as Project Management Offices shall act on all claim within forty eight hours from receipt thereof. Should there be no sufficient funds to pay all claims presented with complete documents and ready for payment, the smaller claims should be given priority in payment; and in case the amount of claim are equal, priority of payment shall be based on the period/date the property (lot) were taken by the government.

C. EASEMENT OF ROAD RIGHT-OF-WAY

This mode of acquiring property, or the right to use private property for public use is done thru a road right-of-way agreement executed by the owner of the property granting an easement for right-of-way. This method is resorted to if the value of lot involved is very nominal for the reason that expenses of surveying or segregating the affected portion from the main lot would be very much more than the value of lot being acquired. While the government is actually paying the value of the private property, it only acquires a right of easement for right-of-way, but the owner still retains ownership of the lot traversed by the road.

In order to protect the interest of the government whenever this mode is used to acquire the right to use private property, the Auditor General (Now Commission on Audit) had recommended the following conditions, which were approved by the President, to be incorporated in the road right-of-way agreement:

1. In case of change of alignment of the road, the government shall be allowed by the owner of the lot to enjoy the easement of right-of-way in another portion of his property, that may be traversed by the realigned road, equal in area to that previously paid and without additional compensation;

2. That in the event the government should abandon the road at some future date, the area occupied by the abandoned road may revert to the owner upon payment of a price agreed upon between the government and such owner, which in no case shall be less than what the government had previously paid him;
3. That this mode should be utilized only when the value of the lot involved is less than ₱5,000.00;

As in the case of donation or deed of sale, the road right-of-way agreement should be registered immediately with the Register of Deeds concerned.

D. QUIT CLAIM

This mode is applicable to private property or land acquired under the provisions of Special Laws, like Commonwealth Act 141, known as the Public Land Act. Under the provisions of this law, especially Sec. 112 thereof, a strip of twenty (20) meters of the property acquired under such law is reserved by the government for public use with damages to improvements only. The twenty (20) meters strip had subsequently been increased to sixty (60) meters under P.D. 635, which took effect on January 7, 1975, amending Sec. 112, C.A. 141.

Sec. 112 of C A 141 was further amended (P.D. 1361, April 26, 1978) to widen the scope of works covered, not only for public highways, railroads, irrigation ditches aqueducts, telegraph and telephone lines but including airport runways, sites necessary for terminal buildings and other government structures needed for full operation of the airport, as well as areas and sites for government buildings for Resident and/or Project Engineers needed in the prosecution of government - infrastructure projects and similar works.

P.D. 1361 also authorize government officials charged with the prosecution of the aforementioned projects or their representatives to take immediate possession of the portion of the property subject of the lien as soon as the need arises and after due notice to the owners. It is, however, understood that ownership over said properties shall immediately revert to the title holders should the airport be abandoned or when the infrastructure projects are completed and buildings used by project engineers are abandoned or dismantled, but subject to the same lien for future improvements.

A quit claim is also availed of in cases when private parties had already occupied or are already occupying a tract of land by virtue of an application under the Public Land Law for the grant of public lands to said applicants. Such applicant should be requested to execute a quit claim instrument for the area or portion of the lot applied for, which is needed by the government for public use. Such quit claim instrument duly executed by the applicant should be immediately transmitted, thru the District Land Officer,

to the Director of Lands in Manila so that the affected area could be segregated from the total area applied and/or occupied by the applicant in the eventual issuance of his free patent.

E. EXCHANGE OR BARTER

There are instances where the owner of a property needed for road right-of-way would request the government to exchange an old abandoned road or government lot near the project instead of being paid the money value of his lot. This request may be favorably considered especially if the lot being taken from the owner is his only lot. When this mode is availed of by the government, the following conditions should be taken into considerations:

1. The areas of the lots proposed to be exchanged, as well as the corresponding market value of each of them should first be determined. The exchange should be based not only on the corresponding area involved but also on the price it commands.
2. If the area (abandoned road) proposed to be exchanged was acquired through donation, the terms and conditions stipulated in the Deed of Donation must first be verified to justify disposal thereof. If through sale the former owner/s of the land (abandoned road) shall have the first priority to re-acquire such land, or if not interested in repurchasing same, he shall waive his right thereto.
3. Whether there will be lot owners abutting the abandoned road to be deprived of an access (egress or ingress) to the new highway.

The mere signing of the deed of exchange by the owner and the representative of the agency concerned does not result in a valid exchange. The approval of the Office of the President is still necessary to perfect the deed and make it valid pursuant to the provisions of Sec. 567 of the Revised Administrative Code. Such deed should be registered with the Register of Deeds concerned in order that the old Certificate of Title may be cancelled and a new Certificate of Title be issued to each of the parties concerned.

F. CONDEMNATION PROCEEDINGS

When the owner of a private lot needed by the government does not agree to convey his property to the government by any of the foregoing modes of acquiring and/or transferring ownership to the property, then the government will have to exercise its right of eminent domain. It will file a complaint for the expropriation of the private property it needs for public use, pursuant to provisions of Sec. 64 (h) of the Revised Administrative Code. This was supplemented by a Memorandum issued by the Executive Secretary, by Authority of the President, dated October 17, 1972 which authorized the Solicitor General to file expropriation proceedings for properties needed by the government for the construction of roads. Said Memorandum further leaves to the Secretary of Public Works, Transportation and Communications (now Minister of Public Works and Highways) the determination of the propriety of filing expropriation proceedings.

Under P.D. 1533, upon the filing of the complaint for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of an amount equivalent to ten percent (10%) of the amount of compensation provided in Section 1 hereon, the government or its authorized instrumentality, agency or entity shall be entitled to immediate possession, control and disposition of the real property and the improvement thereon, including the power of demolition if necessary, notwithstanding the pendency of the issues before the courts.

In order to enable the Office of the Solicitor General to file the necessary complaint for expropriation, the District/City Engineer and/or Project Manager concerned shall furnish the Ministry (MPWH) the following pertinent documents and/or informations:

1. The Certificate of Title of the lots to be condemned;
2. The technical description of each and every parcel sought to be expropriated;
3. The residence, age, civil status and other personal circumstances of the owner. If any of the owner is minor, state whether he or she has a duly appointed guardian. If the owner is dead, then the name/s and residence of the surviving heirs;
4. Encumbrances on the property, if any, the nature and amount of encumbrance; to whom, and date of the contract creating such encumbrance;
5. Sketch plan showing the parcels of land to be ~~ex~~propriated, including the corresponding name of owners, area affected and the improvements thereon;
6. Certified true copy of the tax declaration of the lot involved, with the corresponding sworn statement of the owner, both valid and effective at the time the owner was notified of the project.

IV - REMOVAL OR DEMOLITION OF IMPROVEMENTS OR BUILDINGS

If the owner of an improvement is willing to remove and transfer the building to another lot, then an agreement to demolish or remove the improvements should be executed at a consideration to be determined pursuant to P.D. 76 as amended. As regards fruit bearing trees and other similar improvements which have not been included in the tax declaration, the value of such improvements should be paid in accordance with the schedule of values approved by the Ministry of Finance.

Payment of improvements shall always be covered by an Agreement to Demolish and Remove Improvements to be signed by both parties and approved by an official of this Ministry pursuant to Ministry Order No. 65, series of 1982.

The following documents should be made an integral part of the claim.

1. Certified true copy of tax declaration.
2. Certified true copy of sworn statement or a certification issued by the Assessor concerned attesting the failure of the owner to file such statement aside from the affidavit executed by the owner attesting the failure to file such sworn statement.
3. Tax Clearance from the Municipal/City Treasurer (Real Estate Taxes).
4. Picture or pictures of the improvements to be duly certified by the Project Engineer.
5. Inspection report duly signed by the Project Engineer and the Auditor's representative (Sec. 14, COA Memorandum No. 80 - 39).
6. In case the improvements were introduced by the claimant on the land of another, the latter must execute a Quit Claim or Waiver of Claim to Improvements.

For purposes of consolidating all records relevant to acquisition of real state properties, all regional and Engineering District Offices are directed to submit to the Office of the Assistant Minister for Legal Affairs, this Ministry, copies of Deeds of Sale and Agreements (for improvements), including other supporting papers. Likewise, the corresponding title of said properties in the name of the government should be submitted which in turn will be transmitted to the Records Management and Archives Office for safekeeping.

All instructions, directives, orders, rules and regulations previously issued by this Ministry which are in conflict with the provisions of these guidelines are hereby amended or modified or repealed accordingly.

This Order shall take effect immediately.



JESUS S. HIPOLITO
Minister



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE SECRETARY
MANILA

10 July 1989

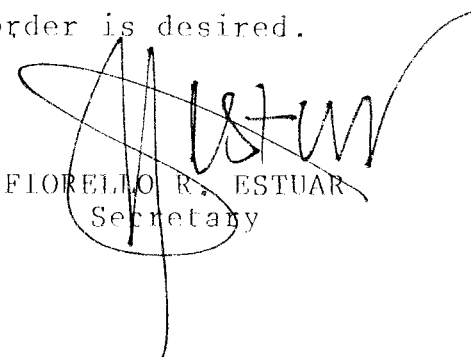
DEPARTMENT ORDER) SUBJECT: REITERATING COMPLIANCE WITH THE
NO. **89** *7/12* PROVISIONS OF DEPARTMENT ORDER
Series of 1989 *7/12* NO. 65, S. 1983, ON SAFEKEEPING
OF CERTIFICATES OF TITLE OF
LOTS ACQUIRED BY THE GOVERNMENT

In order to protect the interest of the government with respect to private property (lots) acquired for road right of way or other public purposes, it is desired that all concerned strictly adhere to, and comply with, the provisions of Department Order No. 65, series of 1983, particularly with respect to the safekeeping of the certificates of title of private property acquired.

For their information and guidance, quoted hereunder is the pertinent provision of the said Department Order:

"For purposes of consolidating all records relevant to acquisition of real estate properties, all regional and Engineering District Offices are directed to submit to the Office of the Assistant Minister for Legal Affairs (now Assistant Secretary for Legal Service) x x x the corresponding titles of said properties in the name of the government x x x which in turn will be transmitted to the Records Management and Archives Office for safekeeping."

Strict compliance with this order is desired.


FLORELINO R. ESTUAR
Secretary