

his purchase money and remove improvements reserved by him, and permit occupants who may be former owners or tenants the privilege of harvesting growing crops and sufficient time to relocate to other locations. Accordingly, the Division or District Engineer may make provision for the former owner, occupant, and/or his tenant(s) to remain in possession of the land under the terms and conditions as follows:

(i) If the tract is to be acquired by direct purchase, the provision for retention will be written into the offer (ENG Form 42, ENG Form 2970, or ENG Form 1564) and will read substantially as follows:

Notwithstanding the provisions of paragraph — of this offer, (and/or consent to option) the occupant (vendor and/or his tenant) now in possession of the property, in consideration of the protection and maintenance of the land, buildings, and structures, and protection of the property against loss by fire, waste, or other causes, to which the occupant hereby agrees, reserves the right to occupy the property until ———. Such occupancy is subject to revocation by the (Division) (District) Engineer at any time by giving — days notice in writing to the occupant if possession of the property is required by the United States; and provided further that the vendor-occupant or his tenant will remove no improvements or timber unless otherwise provided herein.

(ii) When the tract is to be acquired by condemnation, the circumstances of the right to remain in possession, which has been established as herein-after set forth, will be fully described in the correspondence forwarding the condemnation assembly to HQDA (DAEN-REA-C) WASH DC 20314. The retention of possession without payment of rent is directed to the benefit of the occupant of the property with some property maintenance consideration to the Government. This procedure will not be used to permit non-occupant owners a means of retaining possession without payment of rent and at the same time collect cash rents or unreserved crop rents from tenants.

(iii) When the land being acquired is utilized by the owner and/or tenant for agricultural or related purposes, a period of possession may be allowed, if consistent with project requirements, to permit the crop owner to harvest

growing crops, and to avoid abrupt dislocations. The period of possession reserved in the offer, or for which request for the order of the court is deferred in declaration of taking cases, should generally be co-extensive with the crop season or the date that, by custom in the community, leases of such properties ordinarily expire: *Provided, however*, That such period does not exceed 12 months from the date title vests in the Government. Reservation of possession or delay in entry of order of possession that will interfere with the Government's requirements for use of the land will not be allowed.

(iv) In the case of owner-occupied residential property other than farm residences, possession may be permitted for a sufficient time to allow orderly relocation, but no longer than 12 months after title vests in the Government.

(v) In connection with the acquisition of commercial, industrial, tenant-occupied residential property other than residences occupied by farm tenants, and special use properties, ordinarily the procedures of reserving possession to the vendor by a clause in the offer, or deferring the right to possession under a declaration of taking proceeding, should not be utilized. In such cases, after title vests in the United States, the continued possession of the property by vendor or tenant should be formalized by an outlease from the Government. However, if in the opinion of the Division and District Engineer a reservation for possession in the offer or deferral of order of possession is desirable in certain instances from a public relations standpoint or for other compelling reasons, such cases will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration.

(vi) The reservation of use and occupancy in the vendor and/or tenant under the terms of the offer or deferment of possession must be based on adequate consideration to the Government. It is anticipated, however, that items such as the vendor's maintenance of the land, buildings, and structures, his protection of the property against loss by fire, waste, or other causes, and the fact that his possession can be revoked within a short period of time, will, in most instances,

offset any rental for the period of the reserved occupancy or deferred possession which might otherwise be due. However, if possession is reserved by the vendor in the acquisition of commercial, industrial, and special use properties, or other type of property having a potentially high income factor, the fair rental value for the period of reserved use or deferred possession must be deducted from the agreed purchase price.

(vii) Special provisions for protection of the Government, such as those appearing in ENG Form 1366, Department of the Army Lease—River and Harbor or Flood Control Property, will be added to the reservation clause in the offer in cases where, in the opinion of the Division or District Engineer, they are necessary or desirable. If the case is not to be closed by direct purchase, the letter to the vendor notifying him of the Government's intention to file a declaration of taking will set forth the fact that possession is to be deferred and for what period, and will contain a statement as to the Government's expectation that the vendor will properly maintain and protect the premises, and perform such other acts (or refrain from such acts) as deemed advisable by the Division or District Engineer. Both the letter of notice and the reservation clause in the offer will provide that the right to possession may be revoked on 30 days notice to the vendor.

(2) It is recognized that farmers may experience difficulty in finding substitute farms needed for their livelihood within one year, and other owners and tenants may encounter difficulty in relocating within one year. Therefore, the District Engineer, as an exception to the procedure in paragraph (l)(1) of this section may lease properties to former owners or tenants at the fair market rental value for up to one additional year where the circumstances justify such action, and, in such event, the record will contain the reasons justifying the action. Any occupancy by the former owner or tenant beyond 12 months from the date the property was acquired by the Government will be covered by a lease and will provide payment of the fair market rental value of the property leased.

(3) The District Engineer, through channels, may request the Chief of Engineers to grant exceptions to this policy where unusual circumstances warrant such consideration. In keeping with the intent of this action, it is hoped that such cases will be minimal in number.

(4) The following will apply with respect to advance land acquisition projects. Former owners and tenants whose properties were acquired *prior to August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until the establishment of a land management use plan and thereafter, if the property is available for leasing, for a single five-year term. Former owners and tenants whose properties are acquired *after August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until construction commences: *Provided*, The property is available for leasing. After construction commences, if the property is not immediately required for project purposes, such former owners or tenants will be allowed to remain on the property by lease for an additional two years. Continued possession of properties acquired after the date construction commences will be governed by the procedure outlined in paragraph (l)(1) of this section.

(m) *Schools, Cemeteries, and Facilities of State and Local Governments*. ER 1180-1-1, Section 73, provides for the discretionary relocation by the Chief of Engineers of schools and other local governmental facilities, and acquisition of the sites under section 111 of Pub. L. 85-500. Section 73 will be followed in the acquisition and relocation of cemeteries. Where the school was formerly a part of an abutting tract, offers for the abutting tracts will contain a clause whereby the vendor or vendors agree to quitclaim all right, title, and interest whether vested or reversionary, in and to the school site in executing the deed to the United States.

(n) *Reservations Prior to Completion of Offer*. Where immediate possession of areas is necessary and is obtained by right-of-entry or the filing of condemnation proceedings, owners often wish to move, taking with them buildings and improvements, or wish to harvest timber or crops, prior to any offer