

Philippines-Australia Land Administration and Management Project

MORTGAGE STUDY for LAMP PIO1 AREAS

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REPORT C48



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MORTGAGE STUDY: LAMP PIO 1 Areas

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CHAPTER I

INTRODUCTION

The Land Administration and Management Program (LAMP) aims to reduce poverty and enhance economic growth through improved tenure security which may lead to efficient land markets in urban and rural areas. To contribute to the achievement of this objective, a learning and innovation loan, carried out for the period 2001-2004, was developed to test alternative procedures for the improvement of mass titling and land records management approaches, and to develop policies that lay the foundation for the long term program.

The testing of participatory approaches enabled a deeper understanding of the social dynamics in the communities where titling activities are being undertaken. Through investigations and analysis, a number of social issues have been identified in relation to the titling of currently untitled public Alienable and Disposable (A&D) lands.

Documentation from LAMP PIO 1 pilot areas such as in Barangay Capilla, Pastrana, Leyte, reveals a significant level of transactions carried under informal land market situations. A number of properties subject to titling are currently mortgaged by their claimants under various arrangements.

The reasons for farmers taking on mortgages are as varied as the modality of mortgaging. Observations reveal that many borrowers refer to either health or education needs as the reason for the mortgaging their properties, even when the titling process is in progress.

LAMP's attempt to provide security of tenure by confirming the rights of a recognized claim to the land is taking place within the context of these arrangements. Amid these social realities, certain issues arise regarding the appropriateness of LAMP intervention vis-à-vis its direction toward alleviating poverty through improved land security of tenure.

- What are the various mortgage arrangements?
- How do these mortgage arrangements affect titling activities?
- How does titling affect mortgaging activities?
- Is the slow process or delayed action of the government in the titling of A & D lands of public domain the reason why land claimants resort to these different mortgage arrangements?
- How can the law be used as a vehicle to attain the social agenda of protecting the rights of land claimants, the mortgagors and the mortgagees?
- What must be the direction of LAMP intervention?

OBJECTIVES AND TASKS

The main objective of this study is to look into the potential impacts of titling on "mortgaged" properties, to examine the implications of mortgages on the titling process, and to understand the laws relating to this situation. Moreover, this study seeks to provide recommendations that can improve the prospect of LAMP achieving its goal of improving tenure security and improving the incomes of claimants through the formalization of their land rights. Along these objectives, the study will investigate the following:

- The potential negative and positive impacts of titling given the debt/"mortgage" situation in the rural communities, and given the level and scope of social protection available under existing laws.
- The opportunities available and concrete recommendations for LAMP to address, in the context of the identified potential impacts.

In order to provide LAMP with a comprehensive situationer and analysis of the effects of titling on mortgaging arrangements, as well as the effects of mortgaging on titling activities, the services of two (2) consultants have been engaged whose tasks include:

Legal Consultant

It is important to bear in mind that lands acquirable through free patents are still lands of the public domain, hence, their disposition is governed mainly by the provisions of the Public Land Act (Commonwealth Act 141, as amended). Hence, the study will particularly focus on the following issues:

- Can lands of the public domain be used as "collateral" in "informal mortgages" executed by land claimants? Is the transaction valid or legal?
- Will non-payment of the amount of the "mortgage" on the days it falls due, ripen into "foreclosure of mortgage?" In this case, will it bind the land used as collateral, it being still public in character?
- How will the rights of the mortgagor or a land claimant/applicant be protected?
- How will the rights of the mortgagee be protected considering the amount of money he has given to the mortgagor?
- Is the transaction as a whole moral? Is it legal?
- Will the DENR, the government agency mandated by law to process applications covering A & D lands, accept/process applications filed by land claimants which are covered by "Mortgages/" If yes, why? If no, why not?

Other tasks:

- Review and annotate existing laws and policies relating to the adjudication and registration of Free Patent application of parcels covered "mortgage"

arrangements. Also make reference to existing practices by DENR and ROD under sporadic adjudication.

- Research on available decisions on both the Court of Appeals and then Supreme Court on mortgages entered into by and between the land claimants and private individuals affecting A & D lands of the public domain which are still untitled and unapplied, those which are untitled and applied and under process, and those which are already patented/titled.
- In coordination with the Social Development Consultant, discuss findings and recommendations with PIO 1, DENR, ROD and other concerned agencies and stakeholders, and prepare revised report.
- Make presentation with relevant stakeholders on the findings and recommendations.

Social Development Consultant

- Investigate and clearly document the forms of lending/borrowing arrangements in the PIO 1 pilot area through appropriate community engagement methods. Also examine and investigate the disputes arising from mortgages and how they are resolved.
- Assess the potential negative and positive impacts of titling on "mortgaged" properties through:
 - analysis of changes in social structure or land ownership before titling approaches (local practices), during titling, as well as the likely changes which may happen as a result of titling;
 - examination of its implications to improve the welfare of the poor rural households in the *barangay*.
- In coordination with the Legal Consultant, make recommendations for possible amendments to:
 - LAMP policy and practice in mass systematic titling
 - existing laws with the aim of strengthening the social protection of the poor families in areas subject to titling
 - mitigate any unintended negative social impacts

EXPECTED OUTPUTS

The main output will be a joint report to be integrated by the Legal Consultant, with inputs from the Social Development Consultant. The report will contain the following:

- Annotated review of applicable policies and laws related to "mortgaged" properties in areas where Free Patent titles apply;
- Documentation of "mortgaging" practices in PIO 1 pilot areas, their impacts on the people, and assessment of any negative potential social impacts that titling may bring, especially with respect to the rights/tenure of mortgagors;
- Recommendations:

- for improving the current practices given the provisions of existing laws; and
- for possible amendments in laws and policies to mitigate any undue negative social effects of titling under the Free Patent option.

METHODOLOGY

Issues concerning land security of tenure have to be understood and appreciated in the context of both the legal and social dimensions vis-à-vis the objectives of the Land Administration and Management Program in improving the welfare of rural agricultural households by ensuring the rights of claimants to the land. Hence, research methods in law and the social sciences prove to be handy tools in generating the relevant information. The dynamics and mechanisms of existing socio-economic institutions and norms, which define the way of life of land claimants in providing higher cash incomes, must be interfaced with the legal framework within which these same institutions are protected and sustained.

Research Locale

With the assistance of the LAMP-PIO 1, three (3) municipalities were identified as the research locale. These are the LAMP pilot municipalities of San Miguel, Sta. Fe, and Pastrana, all of the province of Leyte. The choice considered the following factors: agricultural lands with claimants whose LAMP titling process has been completed, on-going, or incomplete. These are lands which are mortgaged in any form either in the formal or in the informal markets.

The choice of the barangays per municipality was also made with the assistance of LAMP PIO 1. These are areas where the Land Tenure Profiles exist. The Land Tenure Profiles though did not have complete information on the lands which are under mortgage arrangements. The few information, however, proved helpful since they provided points where to start the survey, and how to identify the Focus Group Discussion (FGD) participants. Further referrals in the community were sought.

The survey areas include: Barangays Impo, Bairan and Bahay, all of San Miguel Leyte; Barangays Katipunan and San Juan, both of Sta. Fe, Leyte; and Barangays Socsocon, Jones and canino-an, all of Pastrana, Leyte. A total of eight (8) barangays were visited by the Study Team.

Research Design: *Joint Social Development Component and Legal Component*

The methods of both the social science research and legal research served as convenient tools in gathering the data which the Social Development Consultant found to be relevant in this study. Surveys, focus groups discussions (FGDs), site visits and field observations were employed.

Survey

A survey was conducted during the first three weeks of May 2004. Focus was made on the various mortgage arrangements entered into by land claimants and/or landowners who have been issued titles through LAMP, or the titling of which may be on-going, or incomplete. Disputes arising from mortgages and the corresponding resolutions were noted.

The survey was also intended to gather a wide range of information regarding the impact of titling on mortgaged properties, and the effects of mortgaging on titling. Recommendations to improve land security of tenure through the formalization of land rights of claimants was likewise be looked into.

Focus Group Discussions (FGD)

The FGD was expected to fill in information gaps that were not captured by the survey. By directly talking to parties concerned and by discussing issues with them in an FGD, inner thoughts and insights on the needs and aspirations of land claimants and mortgagees emerged. Open discussions allowed the Social Development Consultant to probe further into issues and concerns that may be of interest to the study on hand, in particular, and to LAMP, in general.

Representatives from the various groups of mortgagors and mortgagees were identified with the assistance of LAMP PIO 1 and the field staff in San Miguel, Sta. Fe, and Pastrana. The Barangay Chairman, representing the LGUs, were also invited to the FGDs.

An FGD was conducted in each municipality with an average of 12 participants per session. These were conducted during the first week of May 2004.

Site Visits and Field Observations

To complement surveys and FGDs, and in the spirit of triangulation of research methods, site visits and field observations were made. This approach proved to be helpful specifically in the matter of community profiling, and determining the cultural nuances of the sample areas. The physical environment provided parameters and indicators of certain socio-economic dynamics of poverty, distribution of wealth, and access to land as an economic resource.

Respondents

The number of respondents was largely dependent on the available data provided by the LAMP base camps. For a better appreciation of field patterns, the survey team targeted as many respondents for the survey, as far as time and budget could allow. Originally, this study expected to get samples according to the following categorization:

- a) those who received titles through LAMP
 - mortgagors
 - mortgagees
- b) those awaiting titles in process by LAMP
 - mortgagors
 - mortgagees
- c) those who have been interviewed/documentated by LAMP, but whose documents are still incomplete
 - mortgagors
 - mortgagees

The incompleteness of the data available in LAMP Base Camps vis-à-vis the extent of its accomplishment relevant to the issuance of land titles, was a major constraint in

the Mortgage Study. Only four(4) mortgagors with LAMP-issued titles were included in this study. All of them come from San Miguel, Leyte. In all other study areas, the mortgagors claimed of either waiting for the titles to be issued (after having gone through the titling process), or of being in the process of completing the documents to be submitted to LAMP for titling (after having been interviewed by LAMP as qualified land claimants).

Data on the mortgagees was more incomplete. However, the survey team was able to trace the mortgagees based on the mortgagors' responses. Had there been a longer time for field work (e.g. an additional month), then the experiences of mortgagees as land claimants, if any, could have been documented.

Table 1 below summarizes the number and distribution of mortgagors and mortgagees included in the study, by barangay/municipality. A total of seventy eight (78) mortgagors and forty seven (47) mortgagees were included in the survey. Their names appear in lists in Annex B and Annex C, respectively.

Table 1. Distribution of Respondents by Barangay and Municipality, May 2004

Municipality	Barangay	Mortgagors (N = 78)	Mortgagees (N = 47)
San Miguel	Impo	10	10
	Bairan	10	6
	Bahay	6	4
Sta. Fe	Katipunan	9	11
	San Juan	11	4
Pastrana	Sococon	3	2
	Jones	12	7
	Canino-an	17	3
Total, All Areas		78	47

Instruments

A structured questionnaire was prepared for the survey (Annex A-1). It consisted of six (6) parts:

- socio-economic profile of mortgagors and mortgagees
- nature and forms of mortgage arrangements
- implications of mortgaging on the titling process
- impact of titling on mortgaged properties
- problems and prospects

The instrument were pre-tested in one *barangay* of a LAMP pilot municipality which is not included in the research locale. The choice was made in consultation with LAMP PIO 1.

For the FGDs, a set of guidelines and an outline of topics was prepared. (Annex A-2). This served as basis for FGD facilitators, indicating which topics to focus, probe, and give more emphasis. An audio tape recording of the FGDs was made available for easy retrieval of data.

For the site visits and field observations, a set of field indicators and parameters that are relevant to the study was prepared (Annex A-3). This guided the field workers on aspects to observe and to be keen about.

Treatment of the Data.

Simple descriptive statistics is used, specifically in presenting the profile of mortgagors and mortgagees. Percentages and frequencies, along with tables and charts are employed.

Sample case reports are written to capture the nuances of the various forms of mortgage arrangements existing in the research locale. The insights and perspectives of the respondents regarding titling and mortgaging vis-à-vis LAMP intervention as expected, emerged in these reports (Annex D). All real names of mortgagors and mortgagees have been withheld for reasons of confidentiality. Fictitious names are used throughout the report except in the Annexes (that is, the case studies, and the list of respondents). LAMP PIO 1 is provided with the codes for its reference and guidance.

Data from site visits and field observations were integrated in the textual presentation and analysis of other primary data derived from surveys and FGDs.

Preparation of the Draft Report

Per TOR, the Social Development Consultant will provide the Legal Consultant with her findings which will serve as inputs when the latter makes recommendations to improve current Project procedures. Hence, the Social Development Consultant wrote Chapter I to Chapter IX of this Report. A contribution was also made in writing the last Chapter which is a product of a series of discussions and continuing coordination between the Social Development and Legal Consultants and/or the Survey Team and FGD Facilitators.

The following discussion points were considered: matters related to possible amendments to LAMP policy and practice in titling given the provisions of the laws; to mitigating negative social impacts under the Free Patent option; and towards strengthening social protection for poor households in areas subject to titling. Attention will be given to determining the appropriateness the current practices of PIO 1 in its attempt to ensure land security of tenure of FP claimants.

Presentation of Findings

Research findings and the consultants' recommendations will be presented before concerned stakeholders: LAMP PMO and PIO 1. This phase of the research is intended to validate findings and draw insights and inputs from sectors which are involved in the implementation of the Project.

CHAPTER II

THE MORTGAGORS

A total of seventy eight (78) mortgagors surveyed are land claimants. The circumstances surrounding their decision to mortgage land are described in this chapter.

DEMOGRAPHIC PROFILE

Gender

Table 2 shows that 55.1% of the mortgagors are males while 44.9% are females. In a patriarchal Gemeinschaft society, the dominance of men over women is a state by which community activities are carried out. In the survey, however, the proportion of male over female mortgagor has a relatively narrow difference. This may reveal the increasing role of women outside the confines of the household. More particularly, this pattern may be viewed as extensions of women's homework. That is, mortgaging is a woman's work along her traditional roles at home which are budgeting, nurturance and protection of properties.

Table 2. Distribution of Mortgagors by Gender (N=78)

Municipality	Male		Female		Total	
	F	%	F	%	F	%
San Miguel	17	21.8	9	11.5	26	33.3
Sta. Fe	12	15.4	8	10.2	20	25.6
Pastrana	14	17.9	18	23.1	32	41.0
Total	43	55.1	35	44.9	78	100.0

Marital Status

Seventy one (71) or 91.0% of the mortgagors are married. The remaining nine (9) or 9.0% are widows/widowers.

Religion

All of the mortgagors are Roman Catholics.

Age

The youngest mortgagor is 35 years old while the oldest is 82 years old. The average age of mortgagors is 54.6 years old. This age level is part of that life cycle where families are aging and needs for medical care and education are widening. With incomes not increasing as fast, informal forms of mortgaging becomes a ready solution to cash shortages amid the absence of formal credit facilities such as banks.

Table 3. Distribution of Mortgagors by Age (N=78)

Barangay/Municipality	Age (years)		
	Youngest	Oldest	Average
San Miguel: Impo Bairan Bahay	42	70	54.8
	37	77	54.7
	50	79	59.8
Sta. Fe: Katipunan San Juan	38	63	46.9
	35	82	57.6
Pastrana: Socsocon	45	49	47.3

Jones	41	75	56.7
Canino-an	49	65	58.8
All Areas	35	82	54.6

Educational Attainment

No incidence of no formal schooling was registered. About half of the mortgagors have some years of elementary education (Table 4). Another 38.4% reached secondary level and the remaining 15.4% had tertiary education. There is no college or university in the areas of study. Children of mortgagors have to go to Tacloban City, about 20 kilometers away, and the nearest higher education center. This entails financial requirements as transportation to and/or from school costs a lot. For students who choose to stay in boarding houses, the costs of living near the universities costs much more.

Table 4. Distribution of Mortgagors as to Highest Educational Attainment (N=78)

Municipality	Highest Educational Attainment						Total	
	Elem		Secondary		Tertiary			
	F	%	F	%	F	%	F	%
San Miguel	10	12.8	9	11.5	17	21.8	36	46.1
Sta. Fe	9	11.5	9	11.5	12	15.4	30	38.4
Pastrana	7	9.0	2	2.6	3	3.8	12	15.4
All Areas	26	33.3	20	25.6	32	41.0	78	100.0

Dependents

Household size is generally small with an average of 4 dependents living in the same dwelling unit and depending on the mortgagor for their daily needs (Table 5). The smallest and biggest number of dependents is 2 and 10, respectively

Table 5. Distribution of Mortgagors as to the Number of Dependents (N=78)

Municipality	Number of Dependents		
	Smallest	Biggest	Average
San Miguel	2	7	4
Sta. Fe	2	7	4
Pastrana	3	10	5
All Areas	2	10	4

SOURCES AND LEVELS OF INCOME

Income Derived from the Land

Average income derived by the mortgagors from the land is below the poverty threshold, that is, the minimum income needed for a family of six to meet its basic daily nutritional requirements. The mortgagors' income is computed at only Php3,145.00 a month.

The lands cultivated are either rice lands or coconut lands. In rice lands which are irrigated, harvests are made two to three times a year. On the other hand, non-irrigated rice lands are limited to only two harvests per year. In coconut lands, harvests are made twice per annum.

There are documented cases when mortgagors derive no income from the lands being claimed. An example is the case of Mr. Crisanto Toribio of Brgy San Juan, Sta. Fe whose inherited lands have all been mortgaged. Mr Toribio has no share in the harvests since the mortgagees take full possession of the mortgaged lands. On the other hand, the highest estimated monthly income from the land can reach up to Php20,000.00, indicating that land is a profitable sources of income. Table 6 shows the mortgagors' income levels.

Table 6. Distribution of Mortgagors as to Estimated Monthly Income Derived from the Land (N=78)

Barangay/Municipality	Income Level (PhP)		
	Lowest	Highest	Average
San Miguel			3,881.00
Impo	1,200.00	20,000.00	5,320.00
Bairan	1,500.00	3,400.00	2,240.00
Bahay	1,500.00	6,000.00	4,083.00
Sta. Fe			2,271.00
Katipunan	1,000.00	5,300.00	2,788.00
San Juan	0	3,700.00	1,754.00
Pastrana			2,993.00
Sococon	3,000.00	4,500.00	3,500.00
Jones	0	3,600.00	1,275.00
Canino-an	3,000.00	6,000.00	4,205.00
All Areas	0	20,000.00	3,145.00

In many cases, the mortgagor does not mortgage all of his parcels of land. If he has only one parcel, he does not mortgage the whole area. Hence, he still derives income from the land. Moreover, some of the mortgage arrangements include the provision for the mortgagor to continue tilling the mortgaged property. He does not get the whole produce per harvest but he may get from 1/2 to 1/3 share of the harvest, depending on the mortgagee-mortgagor agreement.

San Miguel mortgagors appear to have the highest estimated monthly income derived from the land at Php3,881.00. This is followed by Pastrana and Sta. Fe at Php2,993.00 and Php2,271.00, respectively.

Mortgagors' Sources of Income

Multiple sources of income cushion the low cash incomes derived from the land. Mortgagors have off-farm work, although farming still constitute a major source for many land claimants (Table 7).

Table 7. Mortgagors' Sources of Income (N=78)

Sources of Income/Occupation	Municipality						All Areas	
	Sn Miguel		Sta. Fe		Pastrana		F	%
	F	%	F	%	F	%		
Employment government	1	1.3	-	-	-	-	1	1.3
Farming, rice	23	29.5	19	24.4	28	35.9	70	89.7
Farming, coconut	9	11.5	4	5.1	10	12.8	23	29.5
Farming, cash crops	2	2.6	-	-	2	2.6	4	5.1
Pension	1	1.3	-	-	1	1.3	2	2.6
Bus driving	1	1.3	-	-	-	-	1	1.3
Tricycle driving	2	2.6	-	-	-	-	2	2.6
Tuba dealer	1	1.3	-	-	-	-	1	1.3
Store owner	1	1.3	1	1.3	-	-	2	2.6

Owner of rice mill	1	1.3	-	-	-	-	1	1.3
Barangay official	2	2.6	-	-	-	-	2	2.6
Livestock raising	-	-	1	1.3	-	-	1	1.3

San Miguel mortgagors seem to have the most number and variety of off-farm sources of income. These range from formal employment in the government/barangay, to jobs in the service and sales sector for profit, to nonlabor incomes such as pension. Pastrana and Sta. Fe mortgagors are generally confined to land-based incomes.

Other Family Members' Contribution to Total Income

Aside from engaging in multiple livelihoods, other members of the mortgagors' families help earn. In 22 cases comprising 228.2%, other able-bodied family members work to make both ends meet (Table 8).

Table 8. Other Family Members who Contribute to Family Income (N = 22)

Other Family Members	Municipality						Total	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
Spouse	2	9.1	2	9.1	1	4.5	5	22.7
Son, 15 yrs old & below	-	-	-	-	3	13.6	3	13.6
Son, over 15 yrs old	2	9.1	3	13.6	2	9.1	7	31.8
Daughter, 15 yrs & below	-	-	-	-	-	-	-	-
Daughter, over 15 yrs old	3	13.6	2	9.1	3	13.6	8	36.4
Niece/nephew	-	-	1	4.5	-	-	1	4.5

It is usually the daughter who is over 15 years old who is the first to enter the labor market. This is true for 36.4% of the mortgagors' families. No female child labor is reported. On the other hand, there is a 13.6% child labor incidence among males. Boys are encouraged early in life to prepare for the traditional role of adult men in the farms. This is along masculinity and the financial-provider constructs. Sons who are over 15 years old, comprising 31.8% readily swell the ranks of family income contributors. Spouses (22.7%) come next. For extended families, nieces/nephews (4.5%) lend a hand.

While income from rice farms is still one of the top sources of income of other family members, employment in the private sales and service sectors, and the employment in the government have outranked it (Table 9).

Table 9. Other Family Members' Sources of Income (N = 22)

Sources of Income	F	%	Rank
Employment in private sales and service sector	8	36.4	1
Employment in government	7	31.8	2
Rice farming	6	27.3	3

Total Family Income

Total family income from all sources is generally low at an average of PhP4,846.00 per month (Table 10). It can be as low as PhP1,200 per month to as high as PhP20,000.00 per month depending on such factors as number of alternative livelihoods, number of family members who are employed, and the level of land-based incomes derived.

Land-based income comprises about 57.1% of the total family income. This shows that while farming is the major source of income, it is not enough to support the farm family's needs. The remaining 42.9% of total family income is derived from off-farm sources. In extreme cases, mortgagors no longer derive income from the land because of the consequences of mortgaging activities. It is either that mortgagees take full control of the mortgaged property, and/or when the mortgagees have already purchased the mortgaged property when the mortgagors' debt reach the market value of the land.

Table 10. Distribution of Mortgagors as to Estimated Monthly Family Income (N = 78)

Municipality	Total Family Income (PhP), all sources			Total Family Income (PhP), derived from land			% of Income derived from Land to Total Income		
	Lowest	Highest	Ave.	Lowest	Highest	Ave.	Lowest	Highest	Ave
San Miguel	1,500	20,000	6,570	1,200	20,000	3,914	80.0	100.0	59.6
Sta. Fe	1,500	13,100	3,597	0	5,300	2,327	0	40.5	64.7
Pastrana	1,200	14,000	4,371	0	4,700	2,052	0	33.6	46.9
All Areas	1,200	20,000	4,846	0	20,000	2,764	0	100.0	57.1

MORTGAGING BEHAVIOR

Motivations for Mortgaging

In the absence of credit facilities in the barangay, land claimants find it easy and convenient to mortgage their lands. In an informal economy where farmers/land claimants do not have the security of employment provided by the formal sector, the land provides the only collateral for any borrowed money.

The top three reasons for mortgaging are (Table 11): to defray hospital expenses (39.7%), to send children to school (33.3%), and to buy daily food and household needs (20.5%). Without savings to meet unforeseen emergencies such as the hospitalization of a sick family member, the land claimants have their lands to save them.

At low incomes, sending children to college will require sums of money which is beyond the farm households' capacity. Moreover, farm incomes do not come regularly every month, while school expenses and payment of fees are made as monthly installments. Entrance school fees and related board and lodging expenses may also be high that it pushes land claimants to mortgage their land.

At still very low and unstable incomes, daily needs for food and basic survival items cannot be met. Land becomes a survival kit. Mortgaging it is the farm households' last recourse when no relative, or sari-sari store, or friend is willing to lend.

Other reasons for mortgaging include: to pay a debt (15.4%), for burial and related expenses (9.0%), to construct a house (9.0%), to buy farm inputs (e.g., landmaster) and/or to pay hired farm labor (9.0%).

Reasons for mortgaging are generally for consumption purposes rather than for production. This pattern spells a high probability of non-redemption of mortgaged lands at a time the mortgage falls due. The cycle of poverty will perpetuate as there is increase in production ventures that may improve the cash position of the farm household. The pattern

also shows that had there been other credit facilities or other structural mechanisms in the community that can answer the health, education, death, housing, and various (multipurpose) needs of the family, then mortgaging the land would have been reduced. In Focus Group Discussions (FGD), mortgagors have expressed that they really do not want their lands mortgaged both for sentimental reasons (lands have been inherited) and land is their major income source.

Table 11. Distribution of Mortgagors as to Reasons for Mortgaging (N = 78)

Reasons for Mortgaging	F	%
For consumption purposes:		
• To defray hospital expenses	31	39.7
• To send children to school	26	33.3
• To buy daily food/needs of the family	16	20.5
• To pay a debt	12	15.4
• For burial and related expenses	7	9.0
• To construct a house	7	9.0
• To go abroad/Manila	3	3.9
• To celebrate <i>fiesta (Hermana Mayor)</i>	2	2.6
• For cockfighting	2	2.6
• For drinking sprees	2	2.6
• For socialization with friends/ <i>barkada</i>	2	2.6
For production purposes:		
• To buy farm inputs e.g. landmaster	6	7.7
• To pay hired farm labor	1	1.3
• To buy tricycle for hire	1	1.3
• As seed capital for a lending business	1	1.3

Choice of Mortgagees

About 94.9% of the mortgagors mortgage their lands with the same mortgagee. Only 5.1% have two or more mortgagees. Table 12 presents the reasons for choosing only one mortgagee.

Table 12. Distribution of Mortgagors as to Reason for Mortgaging with the Same Mortgagee (N = 74)

Reasons for mortgaging with the same mortgagee	F	%
Mortgagee is well-liked; OK	19	25.7
Mortgagee is a relative/friend	18	23.8
To minimize possible problems	16	21.6
Mortgagee is approachable in times of need	10	13.5
Mortgagee can be trusted	7	9.5
I just want to	5	6.8
Mortgagee is insistent that the land be mortgaged to him	2	2.7

All the reasons cited, except one, pertains to the personal qualities of the mortgagee -- being well-liked, being a close friend, being approachable, and one who can be trusted. In the same light, the reason "I just want to" implies good qualities of the mortgagee which the mortgagor feels most comfortable with. Even the mortgagees' being insistent that the land be mortgaged to him, spells of a personal trait, although not necessarily in a positive tone. The

only non-personality-related reason for choosing the same mortgagee is the mortgagor's desire to avoid possible disputes.

For four mortgagors who have changed mortgagees, the decision was made in the process of "lito" (that is, second mortgage) where the new mortgagee is willing to transact at a higher mortgage price. The decision may also be a result of the a mortgagors desire to have the land mortgaged to him redeemed by the mortgagor because the former already needs his money back.

The choice of a mortgagee depends on the mortgagee's capacity to lend money, the mortgagees' relationship with the mortgagor, the mortgaging terms, the mortgagee being the only one available, or as a matter of practice (Table 13).

Table 13. Factors Affecting a Mortgagor's Choice of a Mortgagee (N = 78)

Factors Affecting Choice of Mortgagee	F	%
Mortgagee's relationship with the mortgagor (i.e, relative or friend)	39	50.0
Mortgaging terms (best terms offered; previous mortgage experience with the mortgagee)	22	28.3
Capacity of the mortgagee to lend money	1	1.3
Mortgagee is the only one available	13	16.7
As a matter of practice in the <i>barangay</i>	11	14.1

As much as possible, land claimants do not want to mortgage their lands. It may be the only parcel they have, it may be the only source of family income, or it has been inherited. When mortgaging the land due to poverty becomes inevitable, land claimants choose relatives and/or close friends as mortgagees. The reason is more sentimental rather than material. For mortgagors, if their lands are with relatives/friends, they feel that the latter are extensions of themselves and their immediate families. They feel that the land is still theirs. Should maturity fall due, mortgagors are confident that relatives/friends will wait until they find the money to redeem the land. That is, extensions and grace periods are not hard to transact. In unfortunate cases of non-redemption, mortgagors feel that they do not really lose the land as it goes to a family member. For mortgagors, it is difficult to let go of a land.

This behavior must be understood in the context of the people's culture. From a Western point of view, a non-redemption of land means lost income, foregone future benefits from land, a reduction in material assets, and a change in the land ownership structure in the community. While this is a fact, the value attached by the rural *barangay* folks to land is different. The loss is primarily a sentimental issue more than an immediate economic concern. While they may resent the non-redemption, rural mortgagors would take it as a natural consequence of debt. What is important is that they were able to send a child to school and earn a degree, or to bring a sick family member to the best medical care, or to be able to save a life, or to meet the survival requirements of a family. The future will take care of its own in due time. Hopes are high that the educated child and the healthy family members will lift the farm household out of poverty. They will find employment and generate income for the family.

Timing of Mortgage vis-a-vis Titling

Except for one mortgagor, all of the other mortgagors (98.7%) believe that the best time to mortgage land is after titling, for the following reasons (Table 14):

Table 14. Distribution of Mortgagors as to Reasons why Mortgaging is Best Made After Titling (N = 77)

Reasons for Mortgaging After Titling	F	%
Establishment of ownership:		
• Security of land tenure	31	39.7
• Proof of ownership	9	11.5
• No hassles expected upon mortgage	6	7.7
• Mortgagor is ensured that it will not be claimed by others	4	5.1
Financial considerations:		
• As collateral in banks	4	5.1
• Higher value of land when mortgaged	6	7.7

When interviewed, the responses of mortgagors revolve around security of land tenure (39.7%), having proof of ownership (11.5%), expecting no hassles upon mortgage since documents are legal and in order (7.7%), and the mortgagor is ensured that no one can ever claim the land because he has the title (5.1%). These responses imply the need of the mortgagor to be able to establish his ownership of the land.

On the financial/material aspect, mortgaging after titling is beneficial because the land will command a higher mortgage price (7.7%), and the land can be used as a collateral in banks (5.1%). These type of responses are not as dominant as the ownership-related aspect. This is consistent with the observation that mortgagors generally mortgage the lands they claim at a price equal to their financial need at the moment of mortgage, which is not necessarily based on the market value of the land.

Much as mortgagors realize the benefits derived from mortgaging the land after titling, they still mortgage the land before it is titled or during the titling process due to dire financial necessity.

Chapter Summary

Of the 78 mortgagors, 55.1% are males and 44.9% are females whose ages range from 35 to 82 years old. Their educational attainment is generally low, with more than half of them not reaching tertiary level.

A number of mortgagors have multiple sources of income. About 89.7% derive income from rice farming and 29.5% from coconut farming, the top 2 major sources of income. Off-farm sources of income such as keeping a variety store, bus driving, employment as barangay official, and receiving cash gifts/transfers from children augment family income. Despite these multiple sources, mortgagors' estimated monthly income is only PhP3,145.00 which is below the poverty threshold.

As a result of mortgaging, family income derived from land can fall to zero level. At the other extreme, for some other reasons, there are families who derive 100% of family income from the land. Motivations for mortgaging are generally for consumption purposes, rather than for production. The top 3 reasons for mortgaging include: to defray hospital expenses, to send children to school, and to buy the family's daily food and upkeep.

A mortgagee is chosen usually on the basis of blood relationship with the mortgagor. The latter feels that a relative-mortgagee is considerate, approachable, and willing to extend maturity dates in many of the cases when the mortgagor has no money yet for redemption.

CHAPTER III

THE MORTGAGEES

A total of forty seven (47) mortgagees were included in the study. Twenty (20) have mortgage arrangements of lands located in San Miguel, fifteen (15) in Sta. Fe, and twelve (12) in Pastran, all of Leyte province.

DEMOGRAPHIC PROFILE

Gender

The male-female ratio among mortgagees is 1:0.96, representing that the number of males is almost equal to the number of females (Table 15). The latter is an active player in the informal land market, being the keeper of the purse in their respective families.

Table 15. Distribution of Mortgagees as to Gender (N = 47)

Municipality	Gender				Total	
	Male		Female			
	F	%	F	%	F	%
San Miguel	12	25.5	8	17.0	20	42.6
Sta. Fe	5	10.6	10	21.3	15	31.9
Pastrana	7	14.9	5	10.6	12	25.5
All Areas	24	51.0	23	48.9	47	100.0

Religion

Ninety eight percent (98.0%) or 46 mortgagees are Roman Catholics. The remaining 2.0% or 1 mortgagee belongs to the Iglesia ni Cristo.

Civil Status

Ninety two percent (92.0%) or 43 mortgagees are married. The remaining 8.0% or 4 mortgagees are widows/widowers.

Age

The average age of mortgagees is 55.7 years old, which is not significantly different from the mortgagors' average age which is 54.6 years old. Table 16 shows the age distribution of the mortgagees where the youngest age registered is 39 years old, the oldest being 82 years old.

Table 16. Distribution of Mortgagees as to Age (N = 47)

Barangay/Municipality	Age (years)		
	Youngest	Oldest	Average
San Miguel:			
Impo	43	64	51.8
Bairan	40	81	57.5
Bahay	46	68	61.7
Sta. Fe			
Katipunan	44	80	61.7

San Juan	39	70	58.8
Pastrana			
Socsocon	43	52	47.5
Jones	43	79	62.0
Canino-an	40	58	50.0
All Areas	39	81	55.7

Educational Attainment

The educational profile of mortgagees show that higher levels have been attained compared to mortgagors. Fifty five percent (55.0%) have reached tertiary level with about 2/3 finishing a degree. Four percent (4.0%) even have master's degrees.

**Table 17. Distribution of Mortgagees as to Educational Attainment
By Municipality (N = 47)**

Municipality	Highest Educational Attainment								Total	
	Elementary		Secondary		Tertiary		Master's			
	F	%	F	%	F	%	F	%	F	%
San Miguel	2	4.2	3	6.4	14	29.8	1	2.1	20	42.6
Sta. Fe	4	8.5	2	4.2	8	17.0	1	2.1	15	31.9
Pastrana	5	10.6	3	6.4	4	8.5	-	-	12	25.5
All Areas	11	23.3	8	17.0	26	55.3	2	4.2	47	100.0

Dependents

Average number of dependents range from small to medium with 5 as the computed value for all areas (Table 18). This is the number of persons living with the mortgagee in the same dwelling unit and depending on him for their daily needs.

Table 18. Distribution of Mortgagees as to Number of Dependents (N = 47)

Municipality	Number of Dependents		
	Smallest	Biggest	Average
San Miguel	2	11	5
Sta. Fe	2	7	4
Pastrana	3	10	5
All Areas	2	11	5

SOURCES AND LEVELS OF INCOME

Income Derived from the Land

Mortgagees' income from the land is on the average two times higher than the mortgagors'. Computed values are PhP6,618.67 for mortgagees and only PhP3,145.00 for mortgagors (Tables 19 and 6, respectively).

This pattern is expected since in many cases, when the land is mortgaged, full possession of the property goes to the mortgagee. There, in effect, is a transfer of wealth/income from the mortgagor to the mortgagee once the mortgage agreement takes effect. The lost income of the mortgagor becomes an additional income of the mortgagee. Moreover, with the mortgagee putting more investments on the land, incomes derived are expected to be higher than pre-mortgage levels.

Other factors that can raise the mortgagees' income from the land are the number of lots mortgaged to them, and the area of the mortgaged property. Table 19 shows the estimated monthly income derived from the land. Income from land can be as low as PhP300.00 per month. This is true to cases under any of the following circumstances: a coconut land with few trees, sharing scheme of the harvest between mortgagor and mortgagee, only one parcel of land mortgaged, small size of land mortgaged, or the mortgagee has off-farm sources of income. On the other hand, income derived from land can go as high as PhP20,000.00 per month under opposite circumstances.

Table 19. Distribution of Mortgagees as to Estimated Monthly Income Derived From the Land, by Municipality (N = 47)

Municipality	Income level (PhP)		
	Lowest	Highest	Average
San Miguel	360.00	20,000.00	3,856.00
Sta. Fe	300.00	15,000.00	6,260.00
Pastrana	600.00	26,000.00	9,740.00
All Areas	300.00	26,000.00	6,618.67

Mortgagees' Sources of Income

Table 20 shows the mortgagees' sources of income. Land-based income is a major component. About 80.8% depends on rice farms and 48.9% depends on coconut farms. A relatively sizeable portion also derives income from employment in the government (25.5%). Another 10.6% have pensions that augment family income.

Table 20. Mortgagees' Sources of Income (N=47)

Sources of Income/Occupation	Municipality						All Areas	
	Sn Miguel		Sta. Fe		Pastrana		F	%
	F	%	F	%	F	%		
Employment government	6	12.8	3	6.4	3	6.4	12	25.5
Farming, rice	20	42.6	11	23.4	7	14.9	38	80.8
Farming, coconut	9	19.1	6	12.8	9	19.1	23	48.9
Pension	1	2.1	3	6.4	1	2.1	5	10.6
Aid from children	-	-	1	2.1	-	-	1	2.1
Cook	-	-	-	-	1-2	2.1	1	2.1
Store owner	1	2.1	-	-	2	4.2	3	6.4
Tuba dealer	-	-	1	2.1	1	4.2	3	6.4
Baby sitter	-	-	-	-	-	2.1	1	2.1
Barangay official	1	2.1	-	-	-	-	1	2.1

Other Family Members' Contribution to Family Income

In fifteen cases, comprising 32.0% of the mortgagees, there exists other family members who are economically active. These are usually the spouses (46.7%) and the sons/daughters who are over 15 years old (33.3%), as shown in Table 21.

Table 21. Distribution of Mortgagees as to Other Family Members' Who are Employed (N = 15)

Other Family Members	Municipality						Total	
	San Miguel		Sta. Fe		Pastrana		F	%
	F	%	F	%	F	%		
Spouse	2	13.3	3	20.0	2	13.3	7	46.7

Son, 15 yrs old & below	-	-	1	6.7	-	0	1	6.7
Son, over 15 yrs old	2	13.3	1	6.7	2	13.3	5	33.3
Daughter, 15 yrs & below	-	-	1	6.7	-	-	1	6.7
Daughter, over 15 yrs old	-	-	3	20.0	2	13.3	5	33.3
Niece/nephew	-	-	-	-	1	6.7	1	6.7

Sources of income, as presented in Table 22 are: government employment (40.0%), rice farming (33.3%), coconut farming (13.3%), and employment in the private sales and service sector (40.0%). The latter includes the domestic helper, sales clerk/cashier, painter, electrician. Working children are getting out of land-based work. The spouses, however, generally, remain in the farms.

Table 22. Distribution of Mortgagees as to Other Family Members' Sources of Income (N = 15)

Sources of Income	F	%	Rank
Employment in private sales and service sector	6	40.0	1.5
Employment in government	6	40.0	1.5
Rice farming	5	33.3	3
Coconut farming	2	13.3	4

Total Family Income

Estimated total monthly family income of mortgagees from all sources is expectedly higher than that of mortgagors by 176%. While the latter registers PhP4,846.00, the former has a computed value equal to PhP12,867.00 (Table 23).

Table 23. Distribution of Mortgagees as to Estimated Total Monthly Family Income (N = 47)

Municipality	Total Family Income (PhP), all sources			Total Family Income (PhP), derived from land			% of Income derived from Land to Total Income		
	Lowest	Highest	Ave.	Lowest	Highest	Ave.	Lowest	Highest	Ave
San Miguel	2,500	20,000	12,394	300	20,000	4,083	12.0	100.0	32.9
Sta. Fe	2,000	25,000	8,813	1,500	10,600	5,852	75.0	42.0	66.4
Pastrana	4,000	35,000	17,395	600	26,000	9,483	13.9	74.3	54.5
All Areas	2,000	35,000	12,867	300	26,000	6,472	15.0	74.3	50.3

Mortgagees with multiple sources of income, with more family members employed, and more productive lands mortgaged to them have higher incomes. However, income from land constitutes only half (50.3%) of the total family income. This shows that off-farm employment is just as important as farm work in terms of income contribution. A number of mortgagees have stable and regular income sources in government. A few are not even residents of San Miguel, Sta. Fe, or Pastrana but are residing in the cities of abroad. Having made good in other places, they have the money to enter into mortgage agreements as mortgagees.

MORTGAGING BEHAVIOR

Becoming a Mortgagee

Various circumstances surround the mortgagees' emergence as one. Having worked abroad and/or having married to a foreigner enables one to earn more than their rural counterparts. When they start sending financial support to their families left in the barangays, the latter become potential sources of borrowed money by those who are in need. This is specially true in times of emergencies.

Alice, a mortgagee from Brgy. Canino-an, Pastrana is working as a baby sitter in Pennsylvania, USA. She is married to a foreigner and is now an American citizen. Betty, another mortgagee, is also residing abroad, having married a German national. She works part-time in Germany. She has bought several lands in Barangay Impo, San Miguel.

Having a number of cultivated ricelands and/or coconut lands is another factor which can make a mortgagee out of an ordinary farmer. When these farmers produce the most in the barangays and are known to be financially stable and capable, they become ready sources of borrowed money in the community. Without formal credit facilities, these farmers provide the mechanism to cushion the ill effects of poverty. At first, relatives who are in need seek refuge. By word of mouth, other non-relatives start coming to mortgage their lands.

Conchita, a mortgagee from Brgy. San Juan, Sta. Fe has quite a number of inherited and purchased lands. Danny, of Brgy. Jones, Pastrana has inherited ricelands and coconut lands, and has derived incomes from these. Another mortgagee, Editha, of Brgy. Canino-an, Pastrana also has a number of inherited lands which she and her husband farm. Her husband similarly has a number of inherited lands from his parents. Editha became a mortgagee long before she became the Barangay Chairman.

A third circumstance seems to be that of a mortgagee who had been in business and has accumulated material wealth through the years. Coupled with a kind heart for relatives and friends who are financially in need, the businessman emerges to become a mortgagee, too.

Frank has other businesses in District III, Pastrana. His income from business and from farming contributed to his capacity to enter into mortgage agreements. Mortgagors feel that he is approachable, hence, they will not find it difficult to mortgage their properties.

Gloria of Brgy. Jones, Pastrana sells "*tuba*" aside from farming. She extends help to her relatives such as his brother-in-law from whom she finally purchased a mortgaged parcel of land when the latter decided to sell the land due to financial constraints.

Finally, being well-off and popular in the barangay can make someone a mortgagee. Henry is approachable and well-liked. He was a former Vice-Mayor. He is married to a registered nurse, and has three grown-up children. All of his siblings are residing abroad. He is not strict in imposing maturity dates of mortgages. The townsfolk knows that he has the capacity to lend bigger amounts. The absence of formal credit facilities makes Henry a convenient alternative.

Duration as a Mortgagee

One's experience as a mortgagee can date back to as far as ten (10) years ago or "many years ago," according to some mortgagees, to as recent as three(3) weeks ago. Table 24 presents the duration of the mortgagees' experience.

The data shows that more than half of the mortgagees have been in the mortgage market from 3 to 4 years. About 40.0% have been from 5 to 10 years or more as mortgagees. The remaining 6.3% are more recent. Having stayed as mortgagees for a long time may prove that there is more profit in mortgaging than in other alternative money placements such as in banks.

Table 24. Distribution of Mortgagees as to Duration of Being Mortgagees (N = 47)

Duration	Municipality						All Areas	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
3 weeks	-	-	1	2.1	-	-	1	2.1
9 months	-	-	1	2.1	-	-	1	2.1
2 years	1	2.1	-	-	-	-	1	2.1
3 years	6	12.8	5	10.6	6	12.8	17	36.2
4 years	8	17.0	3	6.3	-	-	11	23.4
5 years	2	4.2	1	2.1	2	4.2	5	10.6
6 years	2	4.2	3	6.3	1	2.1	6	12.8
7 years	2	4.2	1	2.1	2	4.2	5	10.6
8 years	-	-	1	2.1	-	-	1	2.1
9 years	-	-	-	-	-	-	2	4.2
10 years	-	-	-	-	2	4.2	-	-
many years ago	-	-	-	-	1	2.1	1	2.1

Helping the Mortgagor

Mortgagees unanimously declare that their primary motive for entering into mortgage agreements is to be able to help a relative/close friend who is in dire need of financial help at the time the latter comes. Mortgagors understand that when they are not given access to mortgaged lands, mortgagees have the right to get the harvest in lieu of the interests the money could have earned if invested somewhere else. It becomes a win-win situation.

Mortgagees feel that they are primarily helping the mortgagors who have nowhere else to go for financial assistance. Making profit is secondary. Being able to purchase a mortgaged land is more of a consequence of a mortgage whose mortgagor has been withdrawing money through time in consideration of the mortgage price (which ultimately reaches the land's selling price). Or it is a consequence of the mortgagor not being interested in redemption for various reasons like a change in residence.

Purchasing a mortgaged land is a last resort that mortgagees would make, after all attempts of extending maturity dates and giving grace periods fail. There are various ways though by which mortgagees help mortgagors redeem their property.

Table 25. Distribution of Mortgagees as to How they Help the Mortgagors Redeem the Mortgaged Land (N = 47)

Help Given to Mortgagors	F	%
Just wait until the mortgagor has the money (extend maturity dates indefinitely, and give longer grace periods)	37	78.7
Does not force the mortgagor nor give him unfair terms (no automatic foreclosure upon maturity date)	4	8.5
Mortgagor continues to till the land so that his income is sustained	1	2.1
Willing to adjust mortgage arrangements in favor of mortgagors when maturity date falls	3	6.3
Constantly remind the mortgagors ahead of time regarding the maturity date of the mortgage	1	2.1
Police blotter so that the mortgagor who seems uninterested to redeem the land, will be forced to do so	1	2.1
No help. I want to buy the land	1	2.1

The responses of mortgagees show that unlike in formal credit facilities, mortgagees do not readily foreclose mortgaged lands. This behavior reduces the incidence of land losses due to foreclosures of unredeemed lands. It also improves the probability of the mortgagors in motivated to redeem their mortgaged properties.

Chapter Summary

The forty seven mortgagees are composed of 51.1% males and 48.9% females. Their ages range from 39 to 81 years old. They have better educational qualification than the mortgagors. About 55.3% reached tertiary level, and another 4.2% reached master's degree level.

Mortgagees' estimated monthly family income which is computed at PhP6,618.67 is on the average, twice than those of mortgagors'. Rice farming and coconut farming are major sources, with employment in the government following closely behind. Multiple sources of income is common. Farm income can be as low as 12% or as high as 100% of total family income.

Various circumstances surround a mortgagee's emergence as one: having worked abroad, having married a foreigner, having a number of cultivated rice/coconut lands, being a businessman, or being well-off and popular in the barangay. Mortgagees do not automatically foreclose mortgaged lands whose redemption falls due. They willingly wait until the mortgagor has the money (that is, maturity dates are extended, or grace periods are lengthened), or adjust the mortgage terms in favor of the mortgagor upon the latter's request.

CHAPTER IV

NATURE OF MORTGAGE IN INFORMAL MARKETS

Farmers and land claimants have low, unstable incomes which fall below the poverty threshold. In times of emergencies and/or occasions which require large sums, land claimants resort to mortgaging in the informal land markets. There are no formal credit facilities which are accessible in the *barangays*.

ACQUISITION OF LANDS

About 88.5% or 69 of the mortgagors acquired lands through inheritance. Only 11.5% comprising 9 mortgagors acquired lands through purchase. This pattern indicates that low incomes may not allow farm households to allocate an amount for land purchases. These purchases, when made, usually happen between relatives Installment terms is cot uncommon.

Inherited lands are not vast tracts. For several generations characterized by inheritance as form of succession on ownership of properties, land fragmentation has been hastened (which has adverse effects on economies of scale). Proof of ownership is usually the Tax Declaration as claimed by 75.6% of the mortgagors (Table 26).

Other proofs of ownership are the TCT (17.9%), the Deed of Sale (3.8%) and the Certificate of Land Transfer (2.6%).

Table 26. Distribution of Mortgagors as to Proof of Ownership of the Mortgaged Land (N = 78)

Proof of Ownership	Municipality						All Areas	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
TCT	3	3.8	10	12.8	1	1.3	14	17.9
Tax declaration	19	24.4	9	11.5	31	39.7	59	75.6
Deed of Sale	1	1.3	1	1.3	1	1.3	3	3.8
Certificate of Land Transfer	2	2.6	-	-	-	-	2	2.6

Land Areas Mortgaged

Mortgagors:

Generally, mortgagors have only one parcel of land that is mortgaged. As shown in Table 27, only 11 mortgagors comprising 14.2% have more than one parcel of land on mortgage. A total of 93 parcels are mortgaged by the 78 mortgagors in this study.

Table 27. Distribution of Mortgagors as to the Number of Parcels of Land Mortgaged (N = 78)

Number of Parcels Mortgaged	Municipality						All Areas	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
One	24	30.8	16	20.5	27	34.6	67	85.8
Two	1	1.3	3	3.8	4	5.1	8	10.3
three	1	1.3	-	-	1	1.3	2	2.6

four	-	-	1	1.3	-	-	1	1.3
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The area of each parcel ranges from about 0.3 hectares in Brgy Katipunan, Sta. Fe to 11 hectares in Brgy. Bahay, San Miguel, with less than a hectare as the mode (Table 28).

Table 28. Areas of Parcels of Land on Mortgage (N = 93)

Barangay/ Municipality	Area (hectares)								Mode
	Less than 0.5		0.5 - 0.9		1.0-1.9		2 and over		
	F	%	F	%	F	%	F	%	
San Miguel:									
Impo	2	2.1	6	6.4	1	1.0	1	1.0	<1
Bairan	2	2.1	6	6.4	2	2.1	1	1.0	<1
Bahay	1	1.0	2	2.1	3	3.2	2	2.1	1.0
Sta. Fe									
Katipunan	4	4.2	6	6.4	1	1.0	2	2.1	<1
San Juan	10	1.08	1	1.0	1	1.0	1	1.0	0.5
Pastrana									
Sococon	2	2.1	2	2.1	2	2.1	1	1.0	<1
Jones	3	3.2	3	3.2	6	6.4	2	2.1	<1
Canino-an	7	7.5	7	7.5	1	1.0	2	2.1	0.5
All Areas	31	33.3	33	35.5	17	18.3	12	12.9	<1

Parcels of land are small, that is, less than a hectare. This comprises 68.8% of the total number of lands on mortgage. These are not big tracts of land --- a typical characteristic of poor rural farm households who acquire lands mostly through inheritance. After generations of being sub-divided among heirs, lands become smaller and more fragmented.

Land areas mortgaged have not increased during the past 5 years. Only 2 out of the 78 mortgagors mortgaged wider areas for the reason that they needed money for their daily upkeep. Mortgaging more areas, however, may make it more difficult for mortgagors to redeem their properties considering that they are not getting any better job and sources of income. In cases when mortgagors have no other parcels of land to mortgage, yet are in need of additional cash, the same parcels are subjected to "lito" or second mortgage at a higher mortgage price.

Mortgagees:

Among the forty seven (47) mortgagees, 34 or 72.3% have only one mortgagor. Four or 8.5% have two mortgagors, seven or 14.9% have three mortgagors. The remaining two have four or five mortgagors each (Table 29).

Table 29. Distribution of Mortgagees as to Numbers of Mortgagors (N = 47)

Number of Mortgagors	Municipality						All Areas	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
One	16	34.0	12	25.5	6	12.8	34	72.3
Two	1	2.1	1	2.1	2	4.2	4	8.5
Three	3	6.3	2	4.2	2	4.2	7	14.9
Four	-	-	-	-	1	2.1	1	2.1
Five	-	-	-	-	1	2.1	1	2.1

This pattern indicates that mortgagees are generally small capitalists, having only one mortgagor. The same pattern holds true for the number of parcels of land mortgaged per

mortgagee. About 36 mortgagees or 76.6% have only one parcel of land mortgaged to them (Table 30). This data lends support to the findings presented in Table 29.

Table 30. Distribution of Mortgagees as to the Number of Parcels Mortgaged (N = 47)

Parcels of Land per Mortgagee	Municipality						All Areas	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
One	17	36.2	12	25.5	7	14.9	36	76.6
Two	-	-	2	4.2	2	4.2	4	8.5
Three	3	6.3	1	2.1	1	2.1	5	10.6
Four	-	-	-	-	1	2.1	1	2.1
Five	-	-	-	-	1	2.1	1	2.1

In terms of total land area mortgaged, parcels of land measure from as small as 0.25 hectares to 11 hectares (Table 31), with a mode of less than a hectare per mortgagee.

Table 31. Total Land Area Mortgaged per Mortgagee (N = 47)

Barangay/ Municipality	Area (hectares)								Mode
	Less than 0.5		0.5 - 0.9		1.0-1.9		2 and over		
	F	%	F	%	F	%	F	%	
San Miguel:									
Impo	-	-	6	12.7	3	6.3	1	2.1	<1
Bairan	-	-	6	12.7	-	-	-	-	<1
Bahay	-	-	-	-	-	-	1	2.1	1.0
Sta. Fe									
Katipunan	1	2.1	5	10.5	4	8.5	1	2.1	1.0
San Juan	-	-	3	6.3	1	2.1	-	-	<1
Pastrana									
Sococon	-	-	1	2.1	1	2.1	-	-	<1
Jones	-	-	2	4.2	4	8.5	1	2.1	1.0
Canino-an	-	-	-	-	-	-	3	6.3	2.0
All Areas	1	2.1	23	48.7	16	34.4	7	14.9	<1

Convincingly, mortgagees are not on a large-scale business in the informal land market. They play an important role in a local economy where financial markets are not fully developed, and where potential borrowers are not ready to play in the formal market.

BASES FOR VALUATION OF MORTGAGED LANDS

Table 32 shows the responses of both mortgagors and mortgagees as to who determines the value of the mortgaged property.

Table 32. The Party who Determines the Value of the Mortgaged Property

Party	Responses of Mortgagors (N = 78)		Responses of Mortgagees (N = 47)	
	F	%	F	%
Mortgagor only	29	37.2	22	46.8
Mortgagee only	2	2.6	-	-
Both mortgagor and mortgagee	47	60.2	25	53.2

Both mortgagors and mortgagees declare that the value of the mortgaged land is set by both parties. About 60.2% of the mortgagors and 53.2% of the mortgagees practice the same. In the remaining cases, 37.2% of the mortgagors and 46.8% of the mortgagees declare that it is the mortgagor alone who sets the value. This happens when mortgagors are not really so particular in getting an amount that is equal to the market value of the land, but are basing the price on their financial need at the moment

of mortgage. Many of these mortgagors do not want to mortgage their properties at amounts bigger than their need, for fear that they might not be able to redeem the land. They consider possible/expected money flow in the future that will enable them to redeem the land. However, under low incomes, there occasions when the mortgagor comes back to the mortgagee to get additional amounts. This raises the original mortgage price and non-redemption may result. On the other hand, when no additional amounts are withdrawn, there are greater chances that the mortgagor can redeem the land on time.

From another point of view, the practice of mortgagors in setting a mortgage price which is lower than the land's market value represents a mortgagor's loss. The difference between the actual mortgage price and the true mortgage price per standards of formal mortgage institutions is one part of the mortgagor's loss. Had the true mortgage price been followed, then a bigger amount could have accrued to the mortgagor, and used for further investments, hence, generate higher incomes for the mortgagor.

Another part of the mortgagor's loss is the foregone income from the mortgaged property when it is fully controlled/possessed by the mortgagee. The foregone income is reduced under a mortgage arrangement which allows the mortgagor to till the land and be entitled to a share of 1/2 or 1/3 of the harvest, depending on the agreed sharing scheme. In this latter case, the mortgagor turns to become a tenant of his own land; in the former, the mortgagor is displaced from his own land.

Table 31 further shows that in only 2.6% of the cases did mortgagees dictate the mortgage price. This is an isolated case in the study areas, hence, not a cause for immediate concern.

Bases for valuation from the standards of mortgagors do not differ markedly with the standards set by mortgagees, as indicated in Table 33.

Table 33. Bases for Valuation of Mortgaged Lands

Bases for Valuation	Responses of Mortgagors (N = 78)		Responses of Mortgagees (N = 47)	
	F	%	F	%
None; just "gut feel"	35	44.9	17	36.2
The financial need of the mortgagor	16	20.5	10	21.4
The land Area	13	16.7	7	14.9
Land productivity	6	7.7	5	10.6
Depends on the parties' agreement	5	6.4	4	8.5
Whatever money is available when mortgagor comes to transact with mortgagee	-	-	3	6.4
Market value of the land	1	1.3	2	4.3
Mortgagor-mortgagee relationship (relative)	1	1.3	2	6.4
Existing practice in the barangay	2	2.6	1	2.1

It is a matter of "gut feel" when mortgagors and mortgagees agree on a mortgage price. For them, there is really no standards or bases for valuation. About 44.9% of the mortgagors and 36.2% of the mortgagees claim so.

Next in rank is the financial need of the mortgagor. The amount that the mortgagor demands is usually less than the true market value or existing mortgage price in formal land markets. The land area ranks third as basis for valuation of mortgaged land, followed by the land productivity as indicated by the total harvest and potential incomes to be generated.

Much lower in rank include the valuation of the property that is based on the agreement of parties, on whatever amount is available that the mortgagee can lend to the mortgagor, on the market value of the land, on the blood relationship between the mortgagor and the mortgagee, and on the existing practice in the barangay.

Six out of the nine bases for valuation of mortgaged property are very subjective. This is not surprising considering that transactions are carried out along informal mechanisms that are heavily based on trust and kindness. Both mortgagors and mortgagees seem to be satisfied with the mortgage price set.

On the other hand, three objective bases for valuation emerge: land area, land productivity, and the market value of the land. These factors rank relatively low in the list, indicating the lesser importance that is attached to these by both mortgagors and mortgagees.

It may be noted that while these three bases are quantifiable and measurable, they are not used as accurately and as correctly as they are used in the formal markets such as in banks. While these serve as guides at the start of the mortgage process, most often, the final mortgage price is a result of lower estimates. Ultimately, the value of the mortgaged property boils down to what mortgagors and mortgagees agree on --- "*guinkikita-kita la*" which connotes "gut feel."

Below are randomly selected examples of mortgage arrangement variants, taken from each barangay in the study areas. There is no standard for the valuation of mortgaged properties.

- Case 1: Irma, Mortgagor (Brgy San Juan, Sta. Fe, Leyte)
A 0.46 hectare riceland is mortgaged for 9 years in the amount of PhP33,000.00. The mortgagee has full possession of the land.
- Case 2: Jessie, Mortgagor (Brgy. Katipunan, Sta. Fe)
A 0.8 hectare riceland is mortgaged for PhP15,000.00 for ten years. The mortgagor loses access to the land since the mortgagee will cultivate it.
- Case 3: Karlo, Mortgagor (Brgy. Impo, San Miguel)
A 0.7 hectare riceland is mortgaged for 5 years in the amount of PhP15,000.00. The mortgagor continues to till the land. He gets one half of the harvest.

- Case 4: Leandro, Mortgagor (Brgy. Bahay, San Miguel)
A 0.5 hectare riceland is mortgaged for PhP10,000.00 for the next ten years. The mortgagor continues to use the land on a 50-50 sharing scheme of the harvest.
- Case 5: Merlie, Mortgagor (Brgy. Bairan, San Miguel)
A 0.5 hectare coconut land is mortgaged for ten years in the amount of PhP30,000. The mortgagor has no share in the harvest.
- Case 6: Nestor, Mortgagor (Brgy. Jones, Pastrana)
A 0.5 hectare coconut land is mortgaged for 7 years in the amount of PhP10,000.00. The mortgagor continues to administer the land and gets 1/2 of the harvest.
- Case 7: Ophelia, Mortgagor (Brgy, Socsocon, Pastrana)
A 0.5 hectare riceland is mortgaged in the amount of PhP30,000.00 for the next 5 years. The mortgagee takes full control of the mortgaged property.
- Case 8: Pete, Mortgagor (Brgy. Canino-an, Pastrana)
A 3-hectare coconut land was mortgaged for 10 years in the amount of PhP5,000.00. Mortgagor has no share in the harvest. Meanwhile, he kept withdrawing additional cash from the mortgagee until his debt reached PhP120,000.00, which became the buying price of the land.

Maturity Period of the Mortgage

On the average, lands have been mortgaged for 4.2 years (Table 34). The longest time for a mortgage to mature is 15 years as in the case in Brgy Jones, Pastrana. On the other hand, the shortest maturity period is 0.5 years as in the case of Brgy. Katipunan, Sta. Fe.

Table 34. Distribution of Mortgagors as the Maturity Period of Mortgage (N = 78)

Maturity Period (years)	Municipality						All Areas
	San Miguel		Sta. Fe		Pastrana		
	F	%	F	%	F	%	
Longest Period:							20 yrs
1	-	-	2	2.6	1	1.3	
2 -3	12	15.4	5	6.4	8	10.2	
4 - 5	10	12.8	9	11.5	13	16.7	
6 - 7	1	1.3	2	2.6	7	8.9	
8 - 9	1	1.3	-	-	-	-	
10 and over	2	2.6	2	2.6	3	3.8	
Shortest Period:							0.5 yr
Less than 1	-	-	1	1.3	-	-	
1	5	6.4	2	2.6	4	5.2	
2	15	19.2	13	16.7	20	25.6	
3 - 4	2	2.6	3	3.8	3	3.8	
5 and over	4	5.2	1	1.3	5	6.4	
Average Period	4.1		4.1		4.5		4.2 yrs

The maturity period of the mortgage, locally called "tatasyon," depends on the following factors arranged in descending order of importance: the financial need of the mortgagor vis-à-vis capacity to redeem, the financial capacity of the mortgagee, and the agreement of both parties (Table 35).

When a "tatasyon" is set, the mortgagor considers his ability to earn in the succeeding periods which will spell the probability of being able to redeem the mortgaged land. When the "tatasyon" falls due and the mortgagor is still in financial need (and unable to redeem the mortgaged land), then the mortgagor can request the mortgagee to extend the "tatasyon." The extension may be indefinite, while the mortgagee waits for the time that the mortgagor will voluntarily offer to redeem the mortgaged land. In this case, the mortgagee takes full possession of the land for the duration.

Table 35. Distribution of Mortgagors as to Factors Affecting Maturity Period of Mortgage (N = 78)

Factors	Municipality						All Areas	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
Agreement of parties	10	12.8	12	15.4	10	12.8	32	41.0
Financial needs of mortgagor	16	20.5	7	9.0	23	29.5	46	59.0
Financial capacity of mortgagee	2	2.6	1	1.3	1	1.3	4	5.1

The financial capacity of the mortgagee also affects the maturity period. It seems that the greater is the cash outlay that mortgagees are capable of, then the longer is the "tatasyon," especially if the land area is relatively small. Moreover, any extension of the "tatasyon" will also depend on the mortgagees' cash position. There are instances when the mortgagee already wants the land to be redeemed because he needs his money back. There are also cases when the extension of the "tatasyon" is made as a consequence of the mortgagor who is still in financial need and asks additional amounts in consideration of the mortgage price. In the former case, the mortgagee is not in a better cash position, while in the latter case, the mortgagee can still increase cash disbursements to the mortgagor due to his financial capacity.

Mortgage Instruments

Being an informal market transaction, a written contract between parties is enough. Sixty seven mortgagors or 85.9% and 33 mortgagees or 70.2% use this instrument. The written contract is made with or without the assistance of the Barangay Chairman. The latter signs after the mortgagor and the mortgagee have affixed their signatures. Two or three witnesses also sign the document.

For mortgage transactions which involve large sums of money, the mortgagee may want the written contract to be made and notarized by a lawyer. Otherwise, it is the practice in the barangays to leave the document without proper notarization by the lawyer.

Table 36 shows the same pattern regarding the mortgage instruments used by mortgagors and mortgagees. In the absence of TCT, the written contract and/or Tax

Declaration of the land are more than enough for the mortgage transaction to be valid. Samples of written contracts and a Deed of Sale with the Right to Repurchase are found in Annex E.

Table 36. Mortgage Instrument Used

Instrument	Responses of Mortgagors (N=78)		Responses of Mortgagees (N=47)	
	F	%	F	%
Tax declaration	2	2.6	9	19.2
Written contract between parties	67	85.9	33	70.2
Notarized agreement	7	9.0	8	17.0
Deed of Sale with right to repurchase	1	1.3	2	4.2
TCT	2	2.6	1	2.1
Verbal agreement	-	-	1	2.1

Chapter Summary

About 88.5% of the mortgagors acquired lands through inheritance, the others through purchase. Lands are not vast tracts. A Tax Declaration is the common proof of ownership.

Mortgagors generally mortgage one parcel of land whose are may range from about 0.3 hectare to 11 hectares. The modal area is less than a hectare. Mortgagees, similarly reported at least one parcel of land mortgaged to them. One mortgagee had four parcels, another one have five.

There is no standard basis for the valuation of mortgaged land. Both the mortgagor and mortgagee simply come together and agree. The mortgage price may be purely "gut feel" of the parties, or influenced by the financial need of the mortgagor, or the land area. Maturity period is as long as 20 years, and as short as 0.5 year, with 4.2 years as the average.

In many cases, the maturity period and the mortgage price is determined by the financial needs of the mortgagor. The mortgagor considers his capacity to redeem the land in the future. A written contract between parties, not notarized or notarized, serves as the mortgage instrument for 70.2% and 17.0% of the mortgage transactions, respectively.

CHAPTER V

FORMS OF MORTGAGE ARRANGEMENTS

Case studies on the various forms of mortgage arrangements are documented, representing the LAMP-PIO 1-covered municipalities of San Miguel, Sta. Fe, and Pastrana (Annex D). From these case studies emerge six (6) variations of mortgaging in the informal land market:

- *Prenda nga may tatasyon, waray notaryo*
- *Prenda nga may tatasyon, may notaryo*
- *Prenda nga waray tatasyon*
- *Paglito*
- *Kaanaw*
- *Nayubusan/Nabutong*

PRENDA NGA MAY TATASYON, WARAY NOTARYO

This is a mortgage arrangement which has a maturity period. It is not notarized.

This is the most common form of mortgage arrangement in the study areas. A mortgagor who is financial need looks for a mortgagee. The latter is usually a close relative or a friend. Referrals are not necessary. The mortgagee is known by everyone in the barangay. He is also a person who has been accepting lands for mortgage.

Depending on the financial need of the mortgagor, and the valuation of the mortgagee of the land vis-à-vis his cash position, an agreement is reached. A contract is prepared with or without the help of the Barangay Chairman. Together with at least two (2) witnesses, the latter signs the document after the mortgagor and the mortgagee have affixed their respective signatures. No notarization of the document is required.

In the written contract, the terms of the mortgage are spelled out. These include: the maturity period ("tatasyon"), the land area and location, the sharing scheme, and the mortgage price. It also includes a provision on cases of non-redemption at the end of the period. Usually, an indefinite extension period is agreed upon. That is, until the time that the mortgagor is ready with his cash to redeem the mortgaged property. Meanwhile, the original terms of the mortgage continues.

There are a lot of examples of this mortgage arrangement. Rea, a mortgagor from Brgy. Jones, Pastrana, surrendered her Tax Declaration when she mortgaged 1.6-hectare coconut land to Frank for 2 years in the amount of PhP25,000.00. The latter took the full possession of the land. The written contract between the parties was not notarized. At present, it is already 4 years beyond the maturity period or "tatasyon." The original terms of the mortgage continues while Frank waits for the time when Rea is ready to redeem the land.

Sixto, of Brgy. Impo, San Miguel mortgaged his 0.8 hectare riceland for 10 years in the amount of PhP50,000.00, without him getting a share from the harvest for the whole mortgage duration. The written contract was prepared without the assistance of the Barangay

Chairman since the financial need was an emergency and there was no time to consult the head of the barangay. Teresa, the mortgagee, was kind enough to disburse the money immediately.

Non-notarization of the contract is acceptable based on the trust that each party has on each other. Mortgagors and mortgagees may be related by blood.

PRENDA NGA MAY TATASYON, MAY NOTARYO

This is a mortgage arrangement which has a maturity period. The contract is notarized by a lawyer.

In cases when large sums of money are involved, that is, when the mortgage price reaches almost 100,000 of pesos, the mortgagee may want that the written contract be notarized by a lawyer. The mortgagee also wants the security of his money as an investment. Examples are the case of Alice of Brgy. Canino-an, Pastrana, and Henry of Brgy, Bahay, San Miguel. Both are mortgagees.

Urbana mortgaged her 0.5 hectare riceland to Alice for PhP90,000.00 for a period of 20 years. Venecio mortgaged his 11-hectare riceland to Henry for PhP100,000.00 for 10 years.

Mortgage arrangements indicate the maturity period. The notarized contract bears also bears other provisions such as: the mortgage price, the sharing scheme, and the options in case of non-redemption when maturity date fall.

PRENDA NGA WARAY TATASYON

This is a mortgage arrangement where no maturity period is agreed upon.

Mortgaging without a fixed maturity date is rare. This happens only among very close relatives where the level of trust for each other is high. A written contract is prepared and the terms are agreed upon by both mortgagor and mortgagee.

Wilma mortgaged her 0.5 hectare riceland to Danny of Brgy. Jones, Pastrana. The mortgage price was PhP32,000.00. While the land remains mortgaged, Danny will get all the harvests. Should the mortgagor, at any one time, be ready to redeem the land, she has to notify the mortgagee in advance so that the latter will not cultivate it when the next production cycle starts. Otherwise, in case the mortgagor makes her intent known before harvest time, the mortgagor has to wait until after harvest.

Danny is one of the biggest mortgagees in Brgy. Jones, Pastrana. Mortgagors choose him because of the perception that Danny's mortgaging activities stems from his kindness and the goodness of his heart to relatives who need money for health or educational needs of children. Danny is already old.

PAGLITO

This is a mortgage arrangement which entails a second mortgage.

The incidence of second mortgages is recently increasing. This mortgage arrangement happens when the mortgagor transfers the mortgage to another mortgagee who bids a higher mortgage price.

Yolando of Brgy. Canino-an, Pastrana first mortgaged his riceland (which measures less than a hectare) to a relative in the name of Editha. That was ten years ago when Yolando needed money for his children's schooling. The mortgage price was PhP5,000.00 but reached to PhP20,000.00 when Yolando kept on borrowing money from the mortgagee. On the maturity date of the mortgage came due, he "lito" (second mortgage) the land to Alice who was willing to take the new mortgage price of PhP70,000 for a mortgage period of 10 years. The transaction makes Yolando happy because he gets to take home PhP50,000.00 after paying Editha with PhP20,000.00

Zosimo, a mortgagor from Brgy. San Juan, Sta. Fe has several inherited lands which are now all mortgaged to different mortgagees. He had a 0.25 hectare riceland which he first mortgaged to Annie, a cousin. The original mortgage price was PhP10,000.00 but reached PhP21,000.00 since Zosimo kept on borrowing more money from the mortgagee. Recently, he still needed more money which could not be met by Annie. Zosimo entered into a second mortgage with Conchita for PhP50,000.00 for a period of 20 years.

Before a second mortgage or "lito" is made, the mortgagor who is looking for additional cash goes to the mortgagee. If the latter is not interested in the further mortgage of the land, or if he has no money to meet the additional money requirements of the mortgagor, he then advises the latter. Consequently, the mortgagor looks for another mortgagee who is willing to take the mortgage at a higher price. The second mortgagor gives the amount to the mortgagor who uses the money to pay the first mortgage. In all cases, there is extra money left to be taken home.

Depending on the agreement between the mortgagor and the first mortgagee, the land can be redeemed on maturity period to evade foreclosure, or before maturity date with corresponding changes in the original terms of the mortgage. In the latter, this may entail the mortgagor paying the first mortgagee a pre-redemption price that is higher than the agreed price at original redemption period.

Whether the second mortgage is done on pre-redemption or on redemption date, two advantages accrue to the mortgagor: avoiding foreclosure, and sourcing out additional cash for the farm family's daily upkeep. These advantages, however, are short-lived. First, since second mortgages are undertaken at higher prices, the probability of redeeming it in the future becomes nil unless drastic improvements in the farm family's income levels take place.

Secondly, maturity periods in second mortgages have been observed to be longer than 15 years. This is understandable from the point of view of the mortgagee who has to get sufficient returns of the money disbursed. On the other hand, a ver

long redemption period will mature at a time when the mortgagor would have been too old to earn and derive incomes that will enable him to redeem the mortgaged property. Or, the

mortgagor may have been dead by that time. If a mortgagor is 45 years old, he will be 70 years old after 20 years, as in the case of Zosimo. Can he redeem the land? Will his children be able to redeem the land?

Third, usually, the mortgagor does not get any share of the land's harvest. This further increases the probability of the mortgaged land's non-redemption since the mortgagor would have foregone incomes for the whole mortgaged period.

Hence, second mortgage or "lito" may just be a mechanism that postpones the ultimate and inevitable foreclosure of mortgaged lands. It may also be a mechanism to shift the burden of redeeming the land to a future generation who never directly benefited from the mortgage entered into more than a decade ago.

KAANAW

This is a mortgage arrangement where no payments take place at the end of the mortgage period. It is more like a fixed term lease, than a mortgage.

Only one of the mortgagees included in this study used "kaanaw." The mortgagee takes full possession of the land. He gets all the harvest. At the end of the mortgage period, the mortgagee returns the mortgaged property to the mortgagor without the mortgagor paying him an amount.

Benny of Pastrana, Leyte had two parcels of land which were mortgaged to him under "kaanaw" system. The mortgagor was Conrado of Brgy. San Juan, Sta. Fe. One parcel was a half a hectare riceland which was mortgaged for PhP10,000.00 for a period of "upat ka tanom" or 4 production cycles. The second parcel was a one hectare riceland which was mortgaged for "upat ka tanom" which is equivalent to 2 years. The former was mortgaged in 1998, the latter in year 2000. In both cases, the lands have been given back to Conrado.

This arrangement seems to be pro-mortgagor and protects the right of the mortgagor to own the land after the mortgage period. No foreclosure is expected. Land loss will be avoided and the land ownership structure in the community will not be adversely changed. The accumulation of lands by the rich mortgagees will be avoided.

NAYUBUSAN/NABUTONG

This is a mortgage arrangement which ends up with the purchase of the mortgaged land.

Literally, "nabutong" means "was purchased," while "nayubusan" connotes that the land has been fully paid up, the mortgage price having reached the selling price of the property through constant borrowings by the mortgagor.

The mortgage price may be originally low. However, some mortgagees allow the mortgagor to borrow additional amounts while the mortgage is in place. The amount is added to the original mortgage price. Consequent borrowings by the mortgagor further increases the original mortgage price, until it reaches a level equal to the land's market/selling price.

By this time, land is "nayubusan." A Deed of Absolute Sale is then executed between the mortgagor and the mortgagee. After purchase is consummated, then the land is "nabutong."

A variant of this mortgage arrangement happens when the mortgagee, who is in need of money, decides to get in full the amount which is equal to the difference between the original mortgage price and the market/selling price. This usually takes place before redemption period. That is when the mortgagor decides that selling the land is the best option open to him at the moment.

With "nayubusan" or "nabutong," land loss is hastened. The structure of land ownership in the community is expected to drastically change in favor of the mortgagees, the richer sector of society.

The probability of "nayubusan" or "nabutong" is high because: (1) every time the mortgagor gets additional cash from the mortgagee, the "tatasyon" is most likely to be extended and hence, gets longer. This implies a longer period for foregone income for the mortgagor. (2) Due to the non-alleviation of poverty, some mortgagors develop the habit of getting additional cash from the mortgagee as if the mortgagee is an Automatic Teller Machine, ATM. (3) the lack of formal credit facilities leaves the mortgagor with no choice but to depend on the mortgagee for his finances.

Chapter Summary

Six forms of mortgage arrangements were documented:

- 1. A mortgage with a maturity period. The contract is notarized.*
- 2. A mortgage with a maturity period . The contract is notarized.*
- 3. A mortgage without a maturity period. No contract is made.*
- 4. A second mortgage ("paglito"). A mortgaged land is redeemed, but only to be immediately mortgaged again at a higher price. The second mortgagee usually finances the redemption of the mortgaged property from the first mortgagee.*
- 5. A mortgage where the mortgaged property is returned to the mortgagor without the latter giving any payment. This is called "kaanaw." While the mortgage is in effect, the mortgagee takes full possession of the land.*
- 6. A mortgage which ends up with the purchase of the land by the mortgagee. This happens when the mortgagor, while the mortgage is in effect, keeps on withdrawing cash advances from the mortgagee in consideration of the land.*

CHAPTER VI

EFFECTS OF MORTGAGING IN INFORMAL MARKETS

The insights and perceptions of the mortgagors regarding the benefits and costs derived from mortgaging in informal markets were captured from the survey and FGDs that were conducted. Except for three (3) cases, all of the mortgaged lands are untitled. Only those of Venecio, Diosdado, and the heirs of Efren, all of San Miguel are titled through LAMP.

BENEFITS DERIVED FROM MORTGAGING

Mortgagors are excited and at the same time thankful to the mortgagees who rescue them from the adverse effects of problems brought about by low incomes and no savings. Table 37 summarizes the mortgagors' responses regarding the benefits derived from mortgaging in informal markets.

Responses indicate that mortgaging in informal markets is beneficial for the following micro-economic or household level concerns that are given immediate solutions:

First is for daily survival: help in sustaining daily needs (39.7%).

Table 37. Distribution of Mortgagors as to the Benefits Derived from Mortgaging (N = 78)

Perceived Benefits		F	%
Actual Responses (Leyte-Samar dialect)	English translation of responses		
<i>Nakakabulig pagpaospital han nasasakit nga kapamilya</i>	Help for the hospitalization of sick family members	11	14.1
<i>Nakapagpapaeskuwela han mga anak</i>	Being able to send children to school	13	16.7
<i>Nakakabulig han pan-adlaw-adlaw nga gastuson ha balay</i>	Help in sustaining the daily needs of the family	31	39.7
<i>Nakaprenda na, nakakagamit ka pa han tuna. May kutsitsa ka pa</i>	Able to get lump sum from the mortgage, at the same time I can still use the land.	19	24.4
<i>Diri nagmamadali hin paglukat han tuna</i>	Not in a hurry to redeem the land; possible extensions	6	7.7
<i>Madali makakuha hin kuwarta bisan-o</i>	Can easily get cash advances any time	1	1.3
<i>Waray problema kun may emergency</i>	There's no problem when an emergency arises	2	2.6

Second, is for meeting family obligations: being able to send children to school (16.7%), and giving immediate health care and hospitalization for sick family members (14.1%)

Third, is for augmenting family income: being able to get a lump sum upon mortgage, while at the same time being able to till the mortgaged land and earn (24.4%). This, however, is true only for mortgage arrangements where mortgagees allow the

mortgagor to continue tilling the land. The latter's share though is only a portion of the harvest.

Fourth, is for precautionary purposes: the mortgagor can easily get additional cash from the mortgagee any time there is an emergency or dire financial need as long as the land is mortgage (3.9%). Should unforeseen undesirable events arise, or should future transactions need big sums of cash, the mortgagor readily knows where to go. The mortgagee becomes a big help --- convenient, easy and quick source of cash.

Fifth, is for allowing budget flexibility: when take-home pay falls short, there is no pressure to redeem the land (7.7%). When the mortgage falls due, the mortgagors can request for an extension or a grace period from the mortgagee. There is no fear of foreclosure. There is, therefore, no pressure on the budget to immediately allocate an amount for redeeming the land.

For the mortgagors, while the first three aforementioned benefits are possible under formal credit/mortgage arrangements, the last two are not. One cannot get additional amounts in consideration of the mortgaged property at any time while the land is mortgaged to the bank. Foreclosure is inevitable when redemption date falls and the mortgagor still has no cash to pay the banks. For these, the preference for the informal land market is heightened.

For the mortgagees, there are also perceived benefits (Table 38). About 55.3% recognize the additional income derived from the mortgaged land. Another 12.6%

believe that investing in the land is a better option than saving money in the bank. The remaining 38.3% of the mortgagees claim non-monetary benefits: the satisfaction felt by being able to help the mortgagor at a time when he is financially needy. This is a relatively sizeable proportion which indicate a certain philanthropic behavior of the mortgagees.

Table 38. Distribution of Mortgagees as to Benefits Derived from Mortgaging (N=47)

Perceived Benefits		F	%
Actual Responses (Leyte-Samar dialect)	English translation of responses		
<i>May dugang nga kutsitsa tikang ha tuna</i>	Additional income derived from the land	26	55.3
<i>Malipay ako kay nakakabulig ha kakuri-an</i>	Happy for being able to help others in need	18	38.3
<i>Mas maupay kontra ibutang ko an akon kwarta ha bangko</i>	A better option than saving in the bank	6	12.6

At the macroeconomic level, there are benefits from mortgaging in the informal market, as identified by the 78 mortgagors: a pro-mortgagor arrangement, reduction in land losses, hastening of land titling, ca convenient source of credit, and the absence of disputes.

A PRO-MORTGAGOR ARRANGEMENT

All of the mortgagors signified that they are satisfied with the terms of their respective mortgage transactions. Table 39 presents the factors which makes them feel satisfied.

Table 39. Distribution of Mortgagors as to What Makes them Satisfied with The Informal Mortgage Arrangements (N = 78)

Motivating Factors	F	%
Period of redemption is long	52	66.7
No redemption date	1	1.3
Mortgagee is approachable (<i>madadaupan</i>)	25	32.5
Mortgagee can be trusted (<i>matatapuran</i>)	1	1.3
Accessible and available while land is on mortgage	18	2.3
Mortgagor is allowed to till the land	2	2.6

About 66.7% feel good about the long redemption period of mortgaged lands. Moreover, extensions and grace periods are allowed with the least worry of foreclosures. When daily income is barely enough to sustain daily needs, thinking about short-term loans/debts and their maturity is more than enough to stress the farm couple, especially the wife who holds the purse. Hence, knowing that it will take years for the mortgage to mature means being able to spread the debt burden over a long period.

Brought to the extreme of having no redemption period does not attract mortgagors, either (Table 39). This may indicate that mortgagors need the motivation to target/aim as to when to get back the land. They will be motivated to work hard for it.

Another source of mortgagors' satisfaction is the mortgagee himself and his personal qualities: approachable, can be trusted, and willing to grant cash advances any time within the mortgage period.

Finally, two (2) other mortgagors consider their being allowed to continue tilling the land makes them satisfied with the mortgage arrangements.

Minimal Change in Land Ownership Structure

Both mortgagors and mortgagees agree that generally, mortgaging in the informal markets does not hasten land loss. Table 40 shows the responses of both parties, by barangay. Individual experiences in land loss due to mortgaging may explain the response differentials.

About 88.5% of the mortgagors and 87.2% of the mortgagees believe that land loss in favor of the rich not be hastened. This is an expected result based on the mortgaging arrangements being followed in the community ----as a matter of norm and tradition. That is, the minimization of foreclosures by extending the mortgage redemption dates beyond maturity, and offering grace periods. Blood relationship and the strong kinship structure in the rural communities make this possible.

Table 40. Responses to the Question: Will Mortgaging Hasten Land Loss?

Barangay/ Municipality	Responses of Mortgagors (N =78)				Responses of Mortgagees (N = 47)			
	Yes		No		Yes		No	
	F	%	F	%	F	%	F	%
San Miguel								
Impo	-	-	10	12.8	-	-	10	21.3
Bairan	-	-	10	12.8	1	2.1	5	10.6
Bahay	2	2.6	4	5.2	-	-	4	8.5
Sta. Fe								
Katipunan	1	1.3	8	10.2	3	6.3	8	17.0
San Juan	3	3.9	8	10.2	-	-	4	8.5
Pastrana								
Sococon	2	2.6	1	1.3	-	-	2	4.2
Jones	1	1.3	11	14.1	1	2.1	6	12.8
Canino-an	-	-	17	21.8	1	2.1	2	4.2
All Areas	9	11.5	69	88.5	6	12.8	41	87.2

Hence, if land losses are minimized, then a significant change in the land ownership of the land structure in the community is not immediately foreseeable. Certain cultural nuances become automatic stabilizers that do not feast on foreclosures.

Mortgaging as a Convenient Alternative to Banks

Fifty eight mortgagors comprising 78.4% would still prefer to mortgage their lands in informal markets, even if formal credit facilities were available (Table 41). Mortgages are a better alternative to banks. Mortgagees are more kind, more flexible about mortgage arrangements, accessible, and fear of foreclosure is nil compared to formal credit facilities.

Table 41. Responses of Mortgagors to the Question: If there were Formal Credit Facilities, will you Still Mortgage your Land? (N=78)

Municipality	YES		NO	
	F	%	F	%
San Miguel	12	15.4	14	14.9
Sta. Fe	19	24.4	4	5.1
Pastrana	30	38.6	2	2.6
All Areas	58	78.4	20	22.6

The remaining 20 mortgagors (22.6%) signified that they will not mortgage in the informal market anymore. They would rather avail of other credit facilities that will not require land as a collateral. The following reasons were cited:

- Land is their main source of income (30%)
- Might not be able to redeem the land if used as a collateral (10%)
- Land has a sentimental value (10%)
- I want to be the one to cultivate the land; not the mortgagee (15%)
- To try other sources of credit (5%)

These reasons presuppose that other credit facilities will not require land as a collateral, such that if it is, the mortgagors will still prefer the informal mortgage arrangements. Mortgagors seem to want to have their lands while at the same time be able to source out money from somewhere, to defray consumption and production expenses. This

may remain a hope rather than a reality. What loan security can they show before formal creditors? Unlike the fixed income earners in government offices who can show their certificates of employment and their monthly pay slips to avail of a loan, land claimants are not in the same position. Nor do they have an equivalent certificate as a loan security.

Ultimately, the mortgagees in the informal market, as a convenient source of credit, perks up the local economy.

Absence of Disputes

Generally, there are no disputes that have arisen due to mortgaging. All of the 78 mortgagors and the 47 mortgagees declared the absence of disputes. When asked about problems encountered, only one mortgagor and mortgagee signified that they had. A mortgagee in Brgy. San Juan, Sta. Fe wanted his terms. He was also encouraging the mortgagor to finally sell the land to him. This became a problem of the mortgagor, and "paglito" helped him get out of the predicament.

In Brgy. Canino-an, Pastrana, a mortgagee already wanted his money back when the maturity date fell due. However, the mortgagor seemed disinterested in redeeming the land. The mortgagee, then, had the case reported at the police station (police blotter). The mortgagor promised to redeem the land this July 2004. For the mortgagee, the land has been mortgaged for a long time and many grace periods have been granted. The land productivity, however, has been decreasing recently. The mortgagee felt to be at the losing end. Her share from the harvest was decreasing, too.

COSTS INCURRED FROM MORTGAGING

There are costs/disadvantages that have been experienced in informal mortgage arrangements. Table 42 and Table 43 present the summary of the mortgagors' and mortgagees' responses, respectively.

Table 42. Distribution of Mortgagors as to the Disadvantages Experienced from Mortgaging (N = 47)

Disadvantages/Costs		F	%
Actual Responses (Leyte-Samar dialect)	English translation		
<i>Nawarayan kutsitsa tikang ha kalugaringon nga tuna</i>	Lost source of income from the land	12	15.4
<i>Kinukuri-an paglukat kay nagtitikadako and gasto ha balay kada adlaw</i>	Getting to be more difficult to redeem the land since daily expenses at home are increasing	4	5.1
<i>Nawarayan ako katungod ha tuna</i>	Had no more right to the land	9	11.5
<i>Ginuti-ay an akon bahin tikang ha tuna</i>	Had reduced income from the land	6	7.7
<i>Waray man gud hito epekto ha akon</i>	No effect really	47	60.2

Nothing in the mortgagors' responses pertain to their worries about not being able to get a title to their land. Many of them believe that the land can still be titled even if it is

mortgaged. Rather, a major proportion (60.2%) feel that mortgaging in informal markets have no costs/disadvantages to them.

For those who feel otherwise, the responses revolve around income and land rights. About 15.4% resents having lost their income from the land, while 7.7% had reduced income derived from the farms. The former are mortgagors who are not given share from the harvests while the land is on mortgage. The latter are the mortgagors who have access to the land, having been allowed by the mortgagee to continue cultivating the property.

The second concern emanates from the first one. There is also the loss of land rights (11.5%), and the fear of losing it in case of non-redemption (5.1%). When mortgagees take full possession of the mortgaged property, the mortgagor loses access to his own land. When it is not redeemed, then he loses his land forever.

For the mortgagees, disbursing cash in consideration of a mortgage price for a land is a gamble. Like in any business/investment, mortgaging will not always spell profit. Below is a table that summarizes the costs/disadvantages experienced by the mortgagees in the informal market.

Table 43. Distribution of Mortgagees as to the Cost/Disadvantages Experienced In Informal Mortgages (N = 47)

Disadvantages/Costs		F	%
Actual Responses (Leyte-Samar dialect)	English translation		
<i>Mas dako pa an akon kita hadto han diri pa ako nagpapaprenda</i>	Had higher income before when I was not yet a mortgagee	26	55.3
<i>Kulang an hulog han lubi; guti-ay an ani. Salit waray ganansiya</i>	No profit because of poor coconut yield/palay harvest	12	25.5
<i>Pabalikbalik hin taglagudti nga utang an nakaprenda</i>	Mortgagor comes every now and then to get additional cash advance	1	2.1
<i>Ginpipinangawatan an akon tuna (lubi)</i>	Other persons steal the coconuts. I do not earn much	6	12.8
<i>Guti-ay an kutsitsa kay may kuhol ngan bagyo</i>	Reduced farm income due to typhoons and kuhol	2	4.2

All costs/disadvantages cited revolve around reduced incomes derived from the mortgaged property, hence, less gains for the mortgagee. One mortgagee, however, cited that the habitual requests for small additional cash advances by the mortgagor is annoying.

Lost or Reduced Farm Income

The loss in farm income is a quantifiable cost to mortgaging. It is equal to the market value of the total farm produce per harvest. That is, in cases when the mortgagor ceases to have full control and access to his own land.

The amount of lost income is lesser when the mortgage arrangements allow the mortgagor to continue tilling his land. The mortgagor gets a share of 1/2 or 1/3 of the harvest, depending on the mortgage agreement.

Owner-Mortgagor Becomes a Tenant

Along with income effects is the incidence of owner-mortgagors becoming tenants in their own lands. This may appear unfortunate, but in effect, is a better provision than having lost all rights to access one's property.

Among the 78 mortgagors, 36 or 46.2% have become tenants in the lands they are claiming to be their own. For the 47 mortgagees, 18 or 38.3% have allowed the owner-mortgagor to continue tilling the land on a 75-25 or a similar sharing scheme, in favor of the mortgagee.

Non-redemption of Mortgaged Lands

Although the dynamics of the informal land market provides for grace periods and extensions of maturity dates in order to minimize foreclosures, there are still a number of inevitable cases of non-redemption (that is, for 38.5% of the mortgagors). Reasons for non-redemption are cited below (Table 44).

Table 44. Distribution of Mortgagors as to Reasons for Non-redemption of Mortgaged Properties (N = 30)

Reasons for non-redemption	Municipality						Total	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
I did not want to redeem the land	-	-	1	3.3	-	-	1	3.3
I had no money to redeem the land	8	26.7	5	16.7	15	5.0	28	93.3
The mortgagee wanted to buy the land	-	-	-	-	2	6.7	2	6.7

The results show that the non-redemption of mortgaged property is not generally because mortgagees act as usurers and/or land-grabbers, taking all opportunities to own mortgaged lands without giving the mortgagor humane considerations. Only 2 out of the 30 mortgagors experienced not being able to redeem their mortgaged properties due to the greed of the mortgagees. The notion that those who have the economic and political power in the community accumulate lands by purchasing mortgaged properties may not be significantly true in the study areas.

The most important reason for 93.3% of the mortgagors is the lack of financial capacity to redeem the land. The provision of a community-based mechanism that will raise farm incomes is in order.

Additional Costs Incurred: Taxes

A burden on the mortgagors' pockets are the annual land taxes that have to be paid. There appears to be a double burden in this situation. On one hand, a mortgagor loses access to his land, and loses incomes as a consequence of the mortgage. On the other hand, the mortgagor is still expected to pay the regulatory dues on the land.

PERCEIVED EFFECTS OF MORTGAGING ON TITLING

Below is a summary of the mortgagors' and mortgagees' responses to the question on the effect of mortgaging on titling. A similar pattern emerges, where a significant number (i.e., 35.9% of the mortgagors and 65.9% of the mortgagees) believe that mortgaging has no effect on the titling process. A lesser number believe that mortgaging will hasten titling. Least number believe that mortgaging will not hasten titling (Table 45).

This pattern can be interpreted to work adversely vis-a-vis activities. A total of 47.2% believe that they can keep on mortgaging their lands even if it not yet titled or even if the titling process is on-going. For them, mortgaging will have no effect on titling. If the proportion of those who believe that mortgaging will hasten titling (31.2%) will be added to this 47.2%, then the scenario becomes more challenging for LAMP activities such that it will meet its objectives.

Mortgaging will Hasten Titling

Both mortgagors and mortgagees identified three (3) ways by which mortgaging in informal markets can even hasten titling.

- The mortgagor will have renewed interest to redeem the land and have it titled. Consequently, the land can be mortgaged again at a higher price.
- Since in a mortgage there is no change in land ownership, mortgagors will still be motivated to apply for titling and acquire a solid proof of ownership.
- Since mortgagees in the informal market are willing to have the land redeemed any time, then the land can be mortgaged at the same time that the titling process is on-going. The mortgagees act as the survival bridge of the poor farm households who are waiting for the long release/issuance of land titles.

Mortgaging will Obstruct Titling

On the other hand, there are mortgagors and mortgagees who believe that mortgaging in the informal markets will obstruct titling. The following reasons were cited by this group which comprise 21.6% of the respondents in this study.

- The mortgagor may lose interest to apply for land titling because it is mortgaged and it might not be redeemed.
- The mortgagor is not interested to apply for titling because he is not the only owner of the mortgaged property.
- The mortgagee wants to buy the land. He will apply for land titling.
- Mortgagors' and/or mortgagees' notion that application for titling cannot be undertaken while the property is on mortgage.

Perceived no Effect of Mortgaging on Titling

A significant bloc are the 28 mortgagors and 31 mortgagees comprising 47.2%, who perceive that mortgaging in informal markets has no effect on titling. When titling application documents/requirements have been submitted to LAMP, all that they do is wait for the title. Meanwhile, family budgetary needs rise and mortgaging is the answer. It will

have no effect on LAMP action on the titling application. For those whose documents have not been submitted yet to LAMP, the urge to mortgage is a priority when cash shortages are mostly felt by the household. Both sectors believe that despite existing mortgage contracts, the land can still be titled.

Chapter Summary

Mortgagors perceive the following benefits from mortgaging (in descending order): to help in sustaining the daily needs of the family, to easily/quickly source out lump sum money when badly needed, being able to send children to school, and for hospitalization.

On the part of the mortgagees, they also perceive benefits from the mortgage: to get additional income derived from the land, feeling happy for being able to help someone in need, and accepting mortgage being a better option than saving in a bank.

Mortgagors believe that the best time to mortgage a property is after its titling. However, they cannot help but mortgage before or during the titling process due to dire financial needs of the family, and the inavailability of alternative credit facilities. They find "prenda" in the informal market as the best option because: redemption period is long and can be extended upon the agreement of the parties; the mortgagee is kind, approachable, and can be trusted; and the mortgagor may be allowed to till the land even while the land is on mortgage.

There are costs incurred from mortgaging. Mortgagees cited lower income derived from land due to poor yield/harvest. On the part of the mortgagors, 60% feel no costs incurred. The fewer mortgagors who felt otherwise, cited lost income source and losing the right to one's one land as a result of mortgage.

With regards to the effect of mortgaging on titling, both mortgagors and mortgagees reveal similar patterns. More than half believe there is no effect, lesser proportion cited mortgaging hastens titling, while least believe that titling will be obstructed by mortgaging activities.

CHAPTER VII

STATUS AND EFFECTS OF TITLING ON MORTGAGED PROPERTIES

TITLING STATUS

The mortgaged properties are all untitled, except for three in San Miguel, Leyte. These are the parcels of land owned by Venecio of Brgy. Bahay; Diosdado of Brgy. Bairan; and the heirs of Efren, represented by Freddie of Brgy. Bairan, too.

Table 46 summarizes the status of titling of the mortgaged lands in the three LAMP PIO 1 municipalities of San Miguel, Sta. Fe, and Pastrana

Table 46. Distribution of Mortgagors as to the Status of Titling of Mortgaged Properties (N = 78)

Status of Titling	Municipality						Total	
	San Miguel		Sta. Fe		Pastrana			
	F	%	F	%	F	%	F	%
Titled through the LAMP	3	3.8	-	-	-	-	3	3.8
Titling in process: documents complete	9	11.5	11	14.1	13	16.7	33	42.3
Land claimant has been interviewed by LAMP; documents incomplete	14	17.9	9	11.5	19	24.4	39	53.8

Lands Whose Titling are in Process

All of the 33 mortgagors whose titling application have been submitted to LAMP have signified that they were the ones who paid for all the fees related to the titling process. From recall, they declared that the titling process at LAMP started about two to four months already as of May 2004 (Table 47).

Table 47. Distribution of Mortgagors as to the Length of Time that Titling Has Been In Process (N = 33)

Period	F	%
2 months	20	60.6
3 months	11	33.3
4 months	2	6.1

For these land claimants, there is already a certain degree of delay in the processing of their application for titling. They cited factors which they think is causing the delay (Table 48).

Table 48. Mortgagors' Perception as to the Factors Causing Delay in the Processing of Their Applications for Titling (N = 33)

Perceived Factors	F	%
I do not know what to do next	17	51.5
I do not know; my papers are complete already	8	24.3
Processing in LAMP is slow	4	12.1
LAMP may have other more urgent things to attend to	2	6.1
Maybe there is none; but process is long	2	6.1

All of the mortgagors' responses revolve around the lack of information regarding the titling process itself, and the status/updates of their individual applications pending at LAMP office. The responses can be at one extreme, be interpreted as leaving everything to LAMP and wait, since they do not know what is next to happen. Responses show how the LAMP clients are wondering about what happened to the papers they submitted. These are normal realities when there is lack of information dissemination, regular updating of information, coupled with a set of clients who may not be as confident to go to the LAMP office to inquire. It must be noted that many of the clients belong to the lower socio-economic stratum in the communities. Cultural nuances dictate that following-up papers in offices is a taboo.

The seeming delay in the processing of titling applications have affected 18 out of the 33 land-claimants as follows:

- Much as he would like to, the land claimant cannot mortgage his property.
- The land claimant is worried that he may not be awarded the land title by LAMP; that ownership might go to others.
- The land claimant is hesitant to put more investments into the land.

Mortgagors are responsible for completing/submitting all the documents required for the titling of the land. They realize that they have other roles, too (Table 49). Similarly, the mortgagees of lands being applied for titles also recognize their part/roles in the LAMP titling process:

Table 49. Responses as to Roles Played in the LAMP titling Process

Party	Roles	F	%
Mortgagor (N = 78)	Submit proper and required documents	52	66.7
	Attend all LAMP meetings that are called	5	6.4
	Follow-up status of titling application at LAMP office	13	16.7
	Raise the money needed to pay the titling fees	6	7.7
	Always be available for LAMP interviews	2	2.6
Mortgagee (N = 47)	Make available the documents required for titling	7	14.9
	Help the mortgagor financially so he can pay the titling fees	2	4.2
	Assist LAMP in surveys that are conducted	7	14.9
	Attend all LAMP meetings that are called	4	8.5

	Follow-up the papers that have been submitted to LAMP	7	14.9
	Be interviewed upon the request of LAMP	7	14.9
	Help in whatever way possible so as to hasten titling	13	27.6

The responses show the willingness to cooperate and be an active participant in the titling process. Aside from the documentation requirements, both mortgagors and mortgagees are willing to be interviewed by LAMP and attend its meetings,

Following-up papers in the LAMP office seems to rank relatively high on the list for both mortgagors and mortgagees. While they believe they have to do it, they are not as active in reality in following-up papers. Lack of time and lack of confidence in transaction business with offices emerge as reasons.

Lands Whose Titling Process Has Yet to Start

After having been informed that the mortgagor was a qualified land claimant under the LAM Program about 3 to 5 months ago, the more tedious steps of applying for a land title ensues. About 42 mortgagors have been interviewed by LAMP but all have yet to submit required documents to LAMP. Table 50 shows the lacking documents that keeps titling from starting soon. Whether the documents are submitted early or late now depends on the land claimant-mortgagor.

Table 50. Documents that Mortgagors Lack (N = 42)

Documents	F	%
All	4	9.5
Documentary stamps	7	16.7
Many	9	21.4
I forgot (My spouse/sister takes care of it)	9	21.4
Deed of Sale	2	4.8
Judicial Partition	4	9.6
Tax Declaration	7	16.7
Cedula	8	20.5

Responses show that some land claimants know exactly what documents are necessary to be completed. They are aware that they need to produce the Deed of Sale, the Judicial Partition, the Tax Declaration. For them, it is clear what should be done next. The lack of time is a commonly cited excuse for not being able to produce these documents the soonest.

Others, however, are less interested: they forgot what documents are to be secured because it is the spouse/sister who takes care of the transactions. They can also tell that they lack all or many of the required documents, however, they may not be able to enumerate these documents readily.

The third set of land claimant-mortgagors need a cedula and/or documentary stamps. For these three aforementioned sets of land claimants, different sets of motivating factors may be needed to fast track their completion of the required documents. For the first type, they need to locate who possesses the documents. Time is the essence. For the second type,

better information from LAMP may be necessary. For the third type, money matters in order to buy a cedula and the documentary stamps.

These points are corroborated by the findings regarding the problems encountered by land claimants, such that they cannot complete the documentary requirements. Financial considerations and information dissemination concerns top the list at 52.4% and 59.8%, respectively (Table 51). Land claimants complain of high titling costs, and that they are still looking for money. They also mention about not knowing what to do. Time constraints on the part of land claimants emerged, but not at the higher end of the list. It is worthwhile to note that 26.2% of the land claimants do not encounter problems. Yet, they have not yet submitted the required documents for titling applications. What keeps them from doing so? This should pose as a major area of concern for LAMP.

Table 51. Problems Encountered by Land Claimants such that they Cannot Complete Documents for titling (N = 42)

Problems Encountered	F	%
High cost of titling	22	52.4
Do not know what to do	23	54.8
I have no time yet to follow-up papers	6	14.3
Still looking for money	4	9.5
No problem	11	26.2

Lands with Titles Issued by LAMP

Last year, three land claimant-mortgagors included in this study, were awarded titles that were processed through LAMP.

Freddie (heir of Efren), Venecio, and Diosdado now have proofs of ownership to their lands. Low incomes still push them to mortgage their lands with mortgagees in the informal market.

This case may not be isolated. The probability of using titled lands for mortgage in the informal market may be beyond LAMP's control. Under the same informal mortgage arrangements of flexibility, trust, and accessibility, the mortgagor is not afraid of quick and automatic foreclosures when maturity date falls. This time, the titled land can command a higher mortgage price, even in the informal market.

In unfortunate cases of non-redemption and foreclosure, there will be a quick transfer of land ownership to the mortgagee. More issues/concerns will arise: the change in community land ownership structure in favor of the rich; change in interest in the mortgagee as to willingness to extend maturity dates and grant grace periods; quick losses in land rights and incomes from the land for the landowner-turned-mortgagor.

Will mortgaging or titled lands in the informal market turn to be an easier mechanism to acquire titled lands (rather than for mortgagees to go through the whole titling process)? Will it also turn out to be the least costly option for mortgagees to acquire titled lands?

EFFECTS OF TITLING ON MORTGAGING

Since the titling experience is very limited to three mortgagors who were awarded land titles, then its effects may not be comprehensively captured. Two land title holders believe that titling has facilitated mortgaging; the other one believes otherwise.

Titling has facilitated mortgaging in the following way: being able to get better mortgage terms; having the titled land readily available as loan collateral; and getting more mortgagees in the informal market interested. On the other hand, titling has hindered/obstructed mortgaging activities: taxes have to be paid; and more paper work is needed in processing a loan.

For the land title holders nothing much has changed after the titling of the land, except the security of tenure which has been established. With the land titles, land claimants are now sure that they are the owners of the land they till. There may be wider choices of mortgagees including formal creditors, but questions of the latter's accessibility arise. Mortgagees in the informal market are more accessible.

Chapter Summary

Only 3 out of the 78 mortgagors claimed having titled lands from LAMP. Others either have their titling applications in process, or had been interviewed by LAMP as qualified claimants but have not yet submitted complete documents.

For those whose applications are in process, issues about not knowing what to do next bothered half of the mortgagors. Another quarter of the mortgagors are wondering why the titling process is slow when they believe that they have submitted complete documents already.

For those whose documents have yet to be submitted to LAMP, not knowing what to do next is similarly a major concern of the mortgagors. High cost of titling, and the lack of time to complete the documents were also cited. Ironically, almost all of the land claimants know what documents to prepare and submit to LAMP.

Effects of titling on mortgaging is limited to the experiences of the three mortgagors with titled lands. Titling facilitates mortgaging by being able to get better terms, by having the land available as a collateral in formal credit facilities, and by getting more mortgagees interested. On the other hand, titling may obstruct mortgaging since taxes have to be paid, and more paper work will be required to process a loan in the formal market.

CHAPTER VIII

INSIGHTS AND PROSPECTS

The Focus Group Discussions and the survey that were conducted created a picture on the insights and thoughts and prospects as viewed from the mortgagors' and mortgagees perspectives.

THE DESIRE FOR LAND TITLING

All the mortgagors want their lands to be titled for the reasons summarized in Table 52, below.

Table 52. Mortgagors' Reasons for their Desire to Have their Lands Titled (N = 78)

Reasons for Land Titling		F	%
Actual Responses (Leyte-Samar dialect)	English translation		
<i>Para makalaro nga akon it tuna; para waray maagaw</i>	Land security	36	46.2
<i>Para mayda ako madig-un nga karig-unan</i>	Proof of ownership	26	33.3
<i>Para areglado kun waray na kami; Diri mabaraka an bilin</i>	Children will know what to inherit; avoid dispute	8	10.3
<i>Madagmit pagbahinbahin ha mga anak</i>	Can be subdivided easily among the children	3	3.8
<i>Para makautang ha bangko hin durudako</i>	To avail credit from the bank, at a higher amount	4	5.1
<i>Bulig kay proyekto man han gobyerno</i>	It is a project of the government	1	1.3
<i>Gusto la naman nga mag-asawa an magpatitulo</i>	My spouse and I just want to have the land titled	1	1.3

Land security tops the list at 46.2%. With a land title, claimants/owners are sure that no one else can take the land away from them (*diri maaagaw hin iba*). It will become clear that they are the owners (*para maklaro nga ako gud an tag-iya*), and that nobody will cause a dispute over it (*waray masamok*).

For 33.3% of the mortgagors, having a title is having a proof of ownership (*may karig-unan*), that the name of the claimant now appears on the legal document (*para ha ngaran ko na it tuna*).

Another 10.2% of the mortgagors believe that a land title will save their children from possible disputes at a future time when they would have been dead already (*para areglado kun waray na kami; para diri mabaraka an bilin*).

With a land title, it will also be easy to subdivide the land among the heirs (*madagmit magbahinbahin han tuna ha mga anak*). For current use, land titles will improve access to formal credit facilities such as the banks.

PREFERRED MORTGAGE TERMS

The dynamics of the informal land market has unique characteristics that attract mortgagors away from formal credit facilities. The long redemption/maturity dates, the possibility of extensions and grace periods, and the flexibility of arrangements make the informal land market a norm and a social institution that cushions the ill effects of poverty.

Table 53. Features that Will Comprise the Best Mortgaging Terms (N = 78)

Features	F	%
Flexibility of mortgage agreements	30	38.5
Mortgagor can cash advance any time	15	19.2
Sharing of harvest	12	15.4
With long redemption period/maturity dates	21	26.9
Trust in each other since parties are oftentimes relatives	9	11.5
Clear terms, with legal documents	21	26.9
Accessible and quick	18	23.1

In descending order, mortgagors like to the following features in a mortgage:

- Flexibility of mortgage arrangements (even while the mortgage is in effect, the terms can still be revised upon the agreement of the parties)
- Long redemption periods/maturity dates
- Clear terms; with legal documents
- Accessible and quick
- Mortgagor can cash advance any time
- Sharing of harvest
- Mutual trust between parties who are oftentimes relatives

A closer look at the features show that these are mainly characteristics of informal mortgages, not of formal credit facilities. The latter may not include cash advances while the mortgage is in effect.

PRE-TITLING EXPECTATIONS

Mortgagors have fears and hopes regarding their mortgaged properties at this time that no titles have been issued yet. To be able to redeem the land tops the list (Table 54).

Table 54. Pre-Titling Expectations of Mortgagors (N = 78)

Pre-titling expectations	F	%
Redemption of the mortgaged property	54	69.2
• Hoping to find money to redeem the land	36	46.1
• Afraid that land will be lost if not redeemed	9	11.5
• Mortgaged land might be purchased by mortgagee	4	5.1
• Mortgagee will still utilize the land	5	6.4
Titling to continue	13	16.7

• Land can still be titled even if mortgaged	9	11.5
• LAMP might discontinue titling process	1	1.3
• Hope that no disputes will arise	3	3.9
Land as collateral for loans in informal markets	11	14.1
• Can not borrow from the bank	7	9.0
• Low values of the land	4	5.1

Mortgagors hope to find the money to be able to get back their lands and start cultivating it. They are afraid that they might lose their lands if not redeemed.

Mortgagees are ready to purchase the land. While on mortgage, farm incomes are adversely affected especially when mortgagees are the ones cultivating the land.

Second on the mortgagors' list is the hope for the titling to continue even if the land is currently mortgaged. They hope that LAMP will help them by not discontinuing the titling process. Moreover, they hope that no mortgagor-mortgagee dispute should otherwise as it might have unfavorable effects on the titling applications.

The third pre-titling expectation is for the untitled land to continuously serve as a collateral for loans in informal markets. Mortgagors are aware that they cannot use untitled lands as collateral in banks. They have to resort to the informal mortgagees who usually assign lower values and mortgage prices to the untitled lands.

Mortgagees, on the other hand, face another set of fears and hopes (Table 55). They face the risk of losing in a mortgage transaction should it turn out that the one who mortgaged the property is not the rightful and true owner of the mortgaged property.

Nevertheless, mortgagees would still venture into mortgage arrangements because they feel the need of cash-strapped mortgagors. Valuation of the land will

necessarily be lower than in formal credit markets. Since there are no land titles to show, mortgagees agree to accept other mortgage instruments such as Tax Declarations.

Mortgagees also help the mortgagors by letting them continue their land titling applications. They know that they themselves cannot file the application since relevant documents are not with them but with the owner-mortgagor. Mortgagees know that they are not the owners.

Table 55. Pre-Titling Expectations of Mortgagees (N = 47)

Pre-titling expectation	F	%
Risk: mortgagor might not be the real owner of the mortgaged property	4	8.5
To financially help the mortgagor	26	55.3
• Lend money	14	29.8
• Give the best mortgage price, though lower than in banks	12	25.5
Encourage the mortgagor to continue the titling application	17	36.2
• The land cannot be owned by the mortgagee	11	23.4
• Mortgagee cannot apply for land titling	5	10.6
• Get the help of LAMP	1	2.1

POST-TITLING SCENARIO

Micro Effects (Household Level)

After the issuance of titles, two possibilities are expected: mortgagors will choose the formal credit facilities like the banks; or the mortgagors will continue mortgaging in the informal market. In either case, mortgagors are aware that with the titles, they can get better terms, the value of the land will increase, and they have security of land tenure. They will also be motivated to redeem the land once the maturity date falls due (table 56).

Table 56. Post-titling Expectations of Mortgagors (N = 78)

Post-titling expectations	F	%
Increased value of the land: for mortgage or for sale	13	16.7
Better mortgage terms	32	41.0
• In informal markets, mortgagees will have more trust	13	16.7
• Can ask mortgagee for long maturity period	23	29.5
• Can be a loan collateral in banks	6	7.7
Higher motivation to redeem the land because it has a title	9	11.5
Having land security	16	20.5
• No fear that others will claim it	11	14.1
• Title as proof of ownership	2	2.6
• There will be peace of mind	2	2.6
• Can now be subdivided among the heirs	1	1.3

From the mortgagors' responses, there are indications that mortgagors will still prefer the informal market. Only 6 mortgagors or 7.7% ever thought of using it as a collateral in the bank.

For the mortgagees, the post-titling expectations are similar (Table 57). They are aware that mortgagors will now demand better mortgage terms, higher mortgage price, and will be more motivated to redeem the land when maturity falls due.

Mortgagees expect that their number in the informal market will increase. This will also bid up mortgage prices as mortgagors search in the market for the highest bidder. The banks also become their competitors as mortgagors already have the option to prefer banks and other formal credit facilities.

There is an advantage of land titling that accrues to mortgagees. They will no longer face the risks inherent in pre-titling scenario: that is, they are now sure that the mortgagor is the real owner of the property being mortgaged.

Table 57. Post-Titling Expectations of Mortgagees (N = 47)

Post-titling expectations	F	%
More players in the land market: formal and informal	5	10.6
• Increase in number of mortgagees	2	4.2
• Mortgagors can prefer banks	3	6.4
Better mortgage terms	14	29.8
• Longer redemption period	10	21.3
• Mortgagors will ask for higher prices	4	8.5

Mortgagors' heightened motivation to redeem their land	9	19.1
Reduced risk faced by the mortgagee		
• Mortgagor presents proof of ownership	16	34.0
Land security for the mortgagor	3	6.4

Macro Effects (community level)

Mortgagors and mortgagees were also asked regarding post-titling scenarios at the macro or community level. Table 58 presents a summary of their responses.

Table 58. Responses as to Post-titling Scenario , Macro Level

Macro level effects	Responses			
	Mortgagors (N=78)		Mortgagees (N=47)	
	F	%	F	%
Land fragmentation will be fast	17	21.8	7	6.4
Land will be more equitably distributed	15	19.2	7	14.9
Land ownership structure will be favorable	18	23.1	8	17.0
Access to formal credits	41	52.6	25	53.2
Minimal land loss in favor of mortgagees	12	15.4	5	29.8

Access to formal credits

Both sectors are highly aware that formal credit facilities can be availed of after lands are titled. This awareness have to be tapped such that mortgagors can get better mortgage prices, hence, take home more cash for production purposes.

Land Fragmentation

Couples put importance in the land titles because it is the basis for subdividing real properties. In the rural communities, private ownership of properties is a coveted economic institution. Through generations, the subdivision of lands among the heirs will hasten land fragmentation. Without titles, subdivision is hard to come by. The original owner remains even if he/she has been dead for so long.

Equitable land distribution

Equitable distribution of land takes place when the economically poor farm household also gets a share of the wealth of the nation. With a title, there is a proof of ownership that is legal and in effect. Hence, the farm household can freely (with peace of mind) develop the piece of land.

Favorable land ownership structure

Along equity constructs, if land claimants who have been qualified by LAMP will be issued land titles, then the land ownership structure will be favorable as there will be more owners to more parcels of land. Unless non-redemption of mortgaged properties continue at a large scale, there appears to be no significant accumulation of properties by a few.

Minimal land loss in favor mortgagees

Motivation to redeem a titled lot is strong. By all means, mortgagors would find ways to redeem mortgaged lands. However, if lands were mortgaged with banks and a foreclosure results, the highest bidder for the purchase of land will most likely be those with financial capacity.

ROLES OF STAKEHOLDERS

Along LAMP objectives of improving land tenure security, it is not only the mortgagor nor the mortgagee who evolves as the stakeholder. The project implementers and participants have roles to play, too.

LAMP PIO 1

Mortgagors and mortgagees have indicated concerns which LAMP PIO 1 can address. On the matter of information-getting. Table 59 shows the extent and nature of information that LAMP clients get.

Table 59. Nature and Extent of Information from LAMP

Nature of Information	Responses							
	Mortgagors (N=78)				Mortgagees (N=47)			
	Yes		No		Yes		No	
	F	%	F	%	F	%	F	%
Adequate information regarding effects of mortgaging on titling and vice versa	69	88.9	11	14.1	37	78.8	10	21.3
Prompt information on mortgaging and titling	71	91.0	7	9.0	38	80.8	9	19.2

The clients generally get adequate and prompt information from LAMP Those who felt that they are not getting the information they needed cited the reasons below.

- Responses for not being able to get adequate information:
 - Lack of information dissemination from LAMP
 - I am not aware
 - I am not a qualified land claimant
 - I do not go to LAMP office
- Responses for not being able to get prompt information
 - Not interested; no immediate plans for titling
 - Maybe I was not at home when LAMP came to visit
 - Haven't gone to LAMP to ask
 - Lack of information dissemination from LAMP

The reasons indicate that the clients themselves realize their role as information seekers. They also recognize the functions of LAMP and the availability of LAMP in entertaining queries. Clients believe that had they visited the LAMP office, they would have gotten prompt and adequate information.

Among the information that they need, the following items rank highest:

- Status of the titling application
- The titling process: when what, how, and where to follow-up papers

- Paper requirements
- Meetings called by LAMP

On the other hand, the mortgagors and mortgagees who signified that they were getting prompt and adequate information listed the following as available information.

- FP titling
- LAMP schedules
- Land survey
- Paper requirements for titling
- Meetings called by LAMP
- Qualifications of claimants.

However, they still need information on the status of their titling applications.

What then should LAMP do and not do in order to facilitate and hasten titling? Tables 60 and 61 summarizes the responses of LAMP clients: mortgagors and mortgagees. The DO's are:

Table 60. LAMP DO's in order to Hasten Titling (N = 125)

DO's	F	%
Continue their work based on mandate	28	22.4
Provide more information	33	26.4
Improve service delivery	3	2.4
Guide us in every step in the titling process	8	6.4
To expedite processing once papers are submitted	18	14.4
Conduct land survey	8	6.4
Verify the true and rightful land owners before titling	5	4.0
Zero titling costs	2	1.6
Prioritize titling of all to those who are ready with their papers	2	1.6
Constantly remind claimants about lacking documents	2	1.6
Attend to the needs of land claimants when they visit the LAMP	3	2.4
It is up to them (LAMP)	2	1.6
Invite both parties always	2	1.6

The DONT's are:

Table 61. LAMP DONT's in order to Hasten Titling (N = 125)

DONT's	F	%
Stop collecting titling fees	17	13.6
LAMP makes us keep on coming back to the Office	5	4.0
Not giving claimants the information re titling status	21	16.8
Not answering clearly the clients' queries	6	4.8
Not getting permission from owners when they conduct surveys	2	1.6
None	82	65.6

Three immediate actions may be done by LAMP, if these are not being practiced yet. First is to establish a weekly/monthly (regular) monitoring sheet or board that will show the updates and status of titling applications.

Second, an Officer of the Day (OD) can be assigned at the LAMP Office. His task will be to entertain queries of daily clients who come to the Office and seek guidance and more information.

Third, to provide a venue by which misconceptions and false notions of clients can be addressed. Example is the notion that "free patent" means "zero titling costs;" or to explain the meaning of mass titling which is not the titling of individual claims separately as they come.

On the whole, the comments regarding LAMP are very satisfactory. About 14.4% of the clients feel that LAMP should continue what they are doing based on mandate. This is supported by the 65.6% clients who believe that there is nothing that LAMP should stop doing in order to hasten titling.

The Local Government Unit (LGU)

The barangay is another stakeholder in the LAM Project. The support of the local officials is commendable in the research locale. One indication was their active participation during the FGDs and survey. The Barangay Chairmen and the Barangay Tanods attended the activities.

Two concerns were raised before the mortgagors and the mortgagees during the FGD and the survey; How can LGUs lessen the ill effects of mortgaging? How can LGUs help improve land security? Tables 62 and 63 summarizes the responses.

Table 62. Responses to the Question: How can LGUs help Lessen the Ill Effects Of Mortgaging? (N=125)

Responses	F	%
Have agencies which will provide credit to farmers	34	27.2
Provide livelihood opportunities	22	17.6
Provide legal assistance regarding contracts/agreements	28	22.4
Cooperate with LAMP	10	8.0
Assistance to clients in following-up papers	11	8.8
Help in information dissemination	7	5.6

LAMP clients believe that the provision of other credit facilities will help them out of the ill effects of mortgaging. This, however, must be complemented with more livelihood opportunities to enable creditors to pay their debts on time. If credits are all made consumption purposes, the ill effects of unpaid credit may just be as costly as the adverse effects of mortgaging. The need to produce and earn becomes imperative.

Help of LGUs can be through legal assistance, and through cooperation with LAMP so as to facilitate land titling.

LGUs, though indirectly, can also help improve land security through the mechanisms that would improve farm incomes. Hence, mortgaging will be minimized. It can also be

through assistance extended to LAMP and the land claimants in his barangay in the following-up of titling applications.

Table 63. Responses to the Question: How can LGUs Help Improve Land Security? (N=125)

Responses	F	%
Sincerely help LAMP in its titling efforts	57	45.6
Legalize contracts	19	15.2
Settle disputes, if any	11	8.8
More credit facilities have to be provided	32	25.6
Support government programs that increase productivity	5	4.0
More livelihood projects have to be set up	4	3.2

POs and NGOs

People's organizations (POs) and non-government organizations (NGOs), if any, in the barangay can also lend assistance on the titling of lands. Mortgagors' and mortgagees' responses are consistent. Tables 64 and 65 show the same patterns with Tables 62 and 63. That is, the ways by which POs and NGOs can help, are the same ways that LGUs can undertake in order to hasten land titling and to improve land security.

Table 64. Responses to the Question: How can POs/NGOs Lessen the III Effects of Mortgaging? (N=125)

Responses	F	%
Establish lending agencies and credit facilities	27	21.6
Provide livelihood opportunities	31	24.8
Help farmers improve land productivity	23	18.4
Help LAMP in its titling efforts	34	27.2
Legal assistance	11	8.8

Table 65. Responses to the Question: How can POs/NGOs Help Improve Land Security? (N=125)

Responses	F	%
Help LAMP in information dissemination	47	37.6
Provide livelihood assistance	38	30.4
Settlement of disputes	13	10.4
Establish credit facilities	13	10.4
Legal assistance	12	9.6
Propose/introduce bill to eliminate land loss.	2	1.6

The stakeholders' roles, therefore, revolve around a mix of the following aspects:

- Mechanisms to improve land productivity and farm incomes
- Mechanisms for improved land claimants; participation in the titling process
- Mechanisms that will provide alternative options to mortgaging in the informal market (flexible, accessible, can be trusted)

Chapter Summary

All the mortgagors desired land titling for the following major reasons: land security, to have proof of ownership, and so that children will know what to inherit.

The dynamics of the "prenda" system in the informal market has unique characteristics that attract mortgagors away from the formal credit facilities. These are: long redemption/maturity dates; granting extensions and grace periods; flexibility of mortgage terms even while the mortgage is in effect; accessible and quick; and cash advances can be made any time upon mortgagor's requests.

At present, while the land is mortgaged, mortgagors highly hope that they can redeem the land before the titles are issued. Mortgagees, on the other hand, are worried that the mortgagor may turn out to be not the real owner of the land.

A post-titling scenario painted by the mortgagors and mortgagees is one where mortgaging in the informal market will continue, at least in the same extent, for the following reasons: inaccessibility of the banks and formal credit facilities, more stringent and long processing of loans in banks, strict observance of maturity dates in formal markets, and the automatic foreclosures made by banks.

The LGUs, NGOs, and LAMP are stakeholders in ensuring land security and improving the incomes of land claimants amid the mortgaging transactions going on in the informal markets. Both mortgagors and mortgagees believe that prompt, accurate, and adequate information dissemination about the LAMP and its vision is imperative. Moreover, mechanisms to improve land productivity, to provide alternative options to "prenda," to increase off-farm livelihood opportunities, and to enhance land claimants' participation in the titling process have to be addressed.

CHAPTER IX

LAWS AFFECTING MORTGAGES IN THE PHILIPPINES

In our study we found out that the lands covered by mortgages “prenda” in the municipalities of San Miguel, Sta. Fe and Pastra, are all alienable and disposable public lands and the land claimants therein qualified to acquire said lands under the FREE PATENT provisions of the Public Land Law or Commonwealth Act 141, as amended.

This study therefore included in its research, the pertinent provisions of the Constitution, the Civil Code of the Philippines, the Public Land Act and other laws to better understand and appreciate the mortgage practices in these areas which somehow has already become a norm, and everyday means of survival and which through, the years, has become, a part of their culture. Further, this work is not intended to be an encyclopedia of all the details concerning these laws, but the principal features thereof have been carefully and sufficiently discussed and illustrated to give a comprehensive idea on the application of these laws and serve at the same time as a guide to future research.

THE 1987 CONSTITUTION OF THE PHILIPPINES

Our Constitution enumerates our natural resources thus as:

Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence

fisherman and fish-workers in rivers, lakes, bays and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefore.

THE PUBLIC LAND ACT (COMMONWEALTH ACT 141, as amended)

The provisions of this Act shall apply to the lands of the public domain. Section 2 states: The provisions of this Act shall apply to the lands of the public domain; but timber and mineral lands shall be governed by special laws and nothing in this Act provided shall be understood or construed to change or modify the administration and disposition of the lands commonly called “friar lands” and those which, being privately owned, have reverted to or become the property of the Republic of the Philippines, which administration and disposition shall be governed by the laws at present in force or which may hereafter be enacted.

Sec. 3 further states that the Secretary of the Environment and Natural Resources shall be the executive officer charged with carrying out the provisions of this Act through the Director of Lands, who shall act under his immediate control.

Sec. 4 affirms that subject to said control the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any form of concession or disposition and management of the lands of the public domain, and his decisions as to question of fact shall be conclusive when approved by the Secretary of Environment and Natural resources.

Sec. 5 states that the Director of Lands, with the approval of the Secretary of Environment and Natural Resources, shall prepare and issue such forms, instructions, rules and regulations consistent with this Act, as may be necessary and proper to carry into effect the provisions thereof and for the conduct of proceedings arising under such provisions.

The words, “alienation,” “disposition,” or “concession,” as used in this Act, shall mean any of the methods authorized by this Act for the acquisition, lease, use or benefit of the lands of the public domain other than timber or mineral land

PUBLIC LAND

The terms “public lands’ or “public domain’ which are regarded as synonymous refer to all lands that were not acquired by private persons or corporations wither by grant or purchase or as habitually used in the United States to designate such lands of the United States or of the state as are subject to sale or other disposal under general laws and are not held back or reserved for any special governmental or public purpose and do not include lands to which rights have attached and become vested through full compliance with an applicable law (50 C.J. p. 886, 22 R.C.L. p. 249.)

PUBLIC LANDS DISTINGUSHED FROM OTHER GOVERNMENT LANDS

The phrase “public lands” is held to be equivalent to public domain and does not by any means include all lands of government ownership but only so much of said lands open to private appropriation and settlement by homestead and other like general laws. Accordingly, government land and public land are not synonymous terms; the first include the second as well as other lands of the government devoted to public use or subject to private right. (Montano vs. Insular Gov’t. 12 Phil. 573)

Lands of the Public Domain are classified into:

1. Alienable and Disposable
 2. Timber Lands
 3. Mineral Lands
- (Sec. 6 Ch.2 PLA)

PATRIMONIAL PROPERTY OF THE GOVERNMENT

Private or patrimonial property of the state or of the provincial or municipality is that which belongs to the State or to the province or to the municipality as a private individual without being devoted to common use. Such of the lands of the private domain of the state as are not needed for the public service are disposable under the provisions of Act No. 3038 of the Philippine Legislature in relation to Chapters V, VI and IX of the Public Land Act.

The so-called “friar lands” are lands acquired by the government during the Taft administration in 1903 from religious corporations or orders. These are not public lands but private lands of the government (Jacinto vs. Director of Lands, 49 Phil. 853). Their administration and disposition are governed by Act No. 1120 as amended and Commonwealth Act No. 32, as amended by Commonwealth Act No. 316.

ALIENABLE AND DISPOSABLE LANDS

These are lands of the public domain or public lands that are open to disposition and which have been subject of the present system of classification and declared as not needed for forest purposes. Alienable lands of the public domain shall be limited to agricultural lands (Sec. 9, CA 141; Act XII Sec. 3 Constitution, Revised Forestry Code).

The words “alienation” or “disposition” (alienable and disposable) or concession as used in the Public Land Act shall mean any of the methods authorized by this Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral (Sec. 10 Ch.2).

For the purpose of their administration and disposition the lands of the public domain alienable and open to disposition shall be classified according to the use of or purposes to which such lands are destined as follows:

1. Agricultural
2. Residential, Commercial, Industrial or similar productive purposes
3. Educational, Charitable or other similar purposes
4. Reservations for townsites and for public and quasi-public uses
(Sec. 9, Ch. 2 PLA)

Under Sec. 11 of the Public Land Law (CA 141), public lands suitable for agricultural purposes can be disposed of only as follows:

1. for Homestead Settlement
2. by Sale
3. by Lease
4. by Confirmation of imperfect or incomplete titles:
 - a. by Judicial Legalization
 - b. by Administrative Legalization (Free Patent)

Let us dwell on the No. 4 mode of disposition because most of the lands covered by these mortgages fall within this category.

FREE PATENT APPLICATION: CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES

It is a mode of acquiring through the confirmation of an imperfect title of an actual occupant, a parcel of land of the public domain suitable for and actually devoted to agricultural purposes as provided in Chapter VII of the Public Land Law (C.A. 141 as amended). It may either be a judicial confirmation of an imperfect title or an administrative confirmation of an imperfect title. In confirmation of imperfect title cases, the applicant shoulders the burden of proving that he meets the requirements of Section 48, Commonwealth Act No. 141, as amended by Republic Act No. 1942 (Director of Lands vs. Intermediate Appellate Court, 209 SCRA 214). Free patent over private land is void (Mendoza vs. Navarette, 214 SCRA 337).

Administrative Legalization (Free Patent)

The following are the required qualification of a Free Patent applicant:

- natural born citizen of the Philippines
- not an owner of more than 12 hectares
- continuously occupied and cultivated, either by himself or through his predecessor-in-interest, for at least 30 years prior to the effectivity of RA 6940 (16 April 1960)
- paid the real estate tax on the land while the same has not been occupied by any person
- the land is free from claims and conflicts;

Judicial Legalization of Imperfect or Incomplete Title

The following may apply with the Regional Trial Court of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter under the Land Registration Act:

- any person by himself or through his predecessors-in-interest who has been in continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona-fide claim of acquisition of ownership, since June 12, 194
- members of the national cultural communities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture whether disposable or not, under a bona fide claim of ownership, since June 12, 1945.

Applications for judicial confirmation of imperfect titles shall be heard in the same manner and shall be subject to the same procedure as established in the Land Registration Act for other applications. It shall be lawful for the Director of the Land Management Bureau (LMB) to oppose the application whenever public interests require it.

If in the hearing of any application the court shall find that more than one person or claimant has an interest in the land, such conflicting interests shall be adjudicated by the court and decree awarded in favor of person(s) entitled to the land according to the laws, but if none of said persons is entitled to the land, or if the person who might be entitled to the same lacks qualifications, the decision shall be in favor of the government.

EFFECTS/ ADVANTAGES ON THE ISSUANCE OF FREE PATENTS (TITLES)

While we adhere to the principle of Regalian Doctrine that all natural resources belong or are owned by the State we likewise subscribe to the consistent laudable thrust of the government to allow legitimate claimants to perfect their individual ownership over the lands they are claiming, unlike in other countries, where the thrust is in leasehold, with government retaining ownership of the land.

FREE PATENT is the most affordable means by which a legitimate claimant can acquire a title over the land he is lawfully occupying. This is different from the other mode of titling which is through judicial proceedings, where the private individual has to undergo the rigors of court processes and has to contend with the litigation expenses that usually accompany this mode of land acquisition.

A land title issued to a free-patent applicant does not only improve his financial standing but it also elevates him to a higher stratum in the social order of his community; for then, he is no longer a simple farmer buried for life in a mountain of debts, a convenient victim of usurious practices, but is now a respectable citizen armed with life's symbol of security – a title to the land he occupies and possess. As a bona-fide landowner, he is now at par with everyone in the community. But that is only as far as the individual farmer is concerned. From the vantage point of the whole nation, surveyed lands and titled properties mean much to the national economy inasmuch as the wealth of any single country can best be measured by the combined wealth of its population.

The indefeasible titles that these farmers will now hold will provide them and the nation at large, capital potential to step up our agricultural economy. This is because they can now easily borrow money from legitimate financial institutions to finance their farming operations by simply applying for loans at minimum interest and affordable installment arrangements with their patents (titles) as collaterals.

However, all these are not without restrictions as will be discussed in the next section.

RESTRICTIONS AND LIMITATIONS TO A FREE PATENT GRANT UNDER THE PUBLIC LAND LAW

The patents issued for all lands acquired under the provisions of the Public Land Act carry with them certain restrictions and limitations that affect the patentees or titleholders. These restrictions and limitations are reflected in the title itself issued to the land applied for.

Upon the issuance of patent the land ceases to be of the public domain and becomes private property subject only to the limitations imposed by law. Once a free patent is issued

according to the provisions of the Public Land Act and is registered in conformity with the provisions of the Land Registration Act, it becomes irrevocable and enjoys the same privileges as a Torrens title issued under the Land Registration Act.

However, Sec. 118, 122, 123 and 124 of the Public Land Law provides restrictions and limitations to a free-patent grant:

“Sec. 118 – Except in favor of the Government or any of its branches, units or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall **not** [emphasis mine] be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations or corporations.

No alienations, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources (now DENR) [corrections mine] which approval shall not be denied except on constitutional and legal grounds.”

“Sec. 122 – No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to the persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefore by their charters.

Except in cases of hereditary succession, no land or any portion thereof originally acquired under the free patent, homestead, or individual sale provisions of this Act, or any permanent improvement on such land, shall be transferred or assigned to any individual, nor such land or any improvement thereon be leased to such individual, when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares. Any transfer, assignment, or lease made in violation hereof shall be null and void. *(As amended by Com. Act No. 615, Id.)*”

“Sec. 123- No land originally acquired in any manner under the provisions of any previous Act, ordinance, royal order, royal decree, or any other provisions of law formerly in force in the Philippines with regard to public lands, *terrenos baldios y realengos*, or lands of any other denomination that were actually or presumptively of the public domain, or by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, conveyed, except to persons, corporations or associations who may acquire land of the public

domain under this Act or to corporate bodies organized in the Philippines whose charters authorize them to do so: *Provided, however,* That this prohibition shall not be applicable to the conveyance of acquisition by reason of hereditary succession duly acknowledged and legalized by competent courts: *Provided, further,* That in the event of the ownership of the lands and improvements mentioned in this section and in the last preceding section being transferred by judicial decree to persons, corporations or associations not legally capacitated to acquire the same under the provisions of this Act, such persons, corporations, or associations shall be obliged to alienate said lands or improvements to others so capacitated within the precise period of five years; otherwise such property shall revert to the Government.”

“Sec. 124- Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall produce the effect of annulling and canceling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion o the property and its improvements to the State.”

It is indeed very clear from the provisions of law that lands covered by FREE PATENTS cannot be sold or encumbered within five (5) years from the date of issuance of patent except in favor of any government bank or government financial institutions, units or instrumentalities.

These provisions of law are probably one of the reasons why the land claimants are reluctant to file their free-patent applications in spite of all the vigorous campaigns made by the LAMP personnel for them to come out and apply.

THE PROVISIONS OF THE CIVIL CODE OF THE PHILIPPINES ON REAL ESTATE MORTGAGE

The research on the pertinent provisions of the Civil Code of the Philippines on Real Estate Mortgage further guided us in our pursuit to determine as to whether the mortgage transactions or the “prenda” system entered into by the land claimants in the various areas of our study are legal or not. Again, to better understand the law, we will start with the basic definitions and terms of reference. It may be noteworthy to mention that the Civil Code provisions deal only with Real Estate Mortgages covered by titles duly registered under the Torrens system of registration in the Philippines as it categorically and specifically prohibits mortgages covered by untitled lands.

REAL ESTATE MORTGAGE

Mortgage – Nature and Meaning

According to the Webster Dictionary, mortgage is “a transfer of rights to a piece of property usually as security for the payment of a loan or debt that becomes void when the debt is paid,” while according to the Law Dictionary by James A. Ballantine, mortgage “which was originally called “mortucum vadicum” is a conveyance of property to secure the performance of some obligations, the conveyance to be void on the due performance thereof.”

A mortgage according to Sanchez Roman, is a real right constituted to secure an obligation upon real property of rights therein to satisfy with the proceeds of the sale thereof such obligation when the same becomes due and has not been paid or fulfilled.

By statutory definition under the Civil Code of California, a mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

The Civil Code of Louisiana defines a mortgage as a right granted to the creditor over the property of the debtor for the security of his debt, and gives him the power of having the property seized and sold in default of payment.

From the foregoing definitions, it will be observed that mortgage is regarded as a mere lien, and not as creating a title or estate. It is in essence a charge on property for the purpose of security. Stated otherwise, a mortgage is an accessory of undertaking or the convenience and security of the mortgage creditor, and exists independently of the obligation to pay the debt secured by it. The mortgage can waive the mortgage security and proceed to collect the principal debt by personal action against the original mortgagor (*Benipayo v. Reyes, Benipayo, 67 O.G. 21, May 24, 1971*).

The common-law theory of a mortgage is that the title of the mortgagor passes to the mortgagee, subject to reversion upon the performance of the condition subsequent. In the Philippines, however, we do not adopt the common law theory, for here the owner who constitutes a mortgage retains title to the property and does not lose his attributes as an owner. He only creates a lien or encumbrance upon his property.

He who constitutes a mortgage is called “mortgagor” and he in whose favor a mortgage is constituted is called “mortgagee.”

Kinds of Mortgage

There are various kinds of mortgages, but the most common of them are: (a) conventional or voluntary mortgage; (b) legal mortgage; (c) judicial mortgage; and (d) equitable mortgage.

A conventional or voluntary mortgage is one created by agreement of the parties.

A legal mortgage or voluntary mortgage is one created by operation of law, wherein the creditor is given a mortgage on the property of his debtor, without the

necessity of the parties actually stipulating for it. It may also be defined as one required by express provision of law to be executed in favor of certain persons to secure the performance of a principal obligation.

A judicial mortgage is one resulting from a judgment. For instance, a plain deed of sale may be declared to be a mortgage by a competent court.

An equitable mortgage is one that is not a mortgage in form but in substance a mere security for a debt or obligation. This commonly occurs in the case of pacto de retro sales.

Essential Requisites of Mortgage

According to Article 2085 of the Civil Code of the Philippines, the essential requisites of a mortgage are:

- (a) That it be constituted to secure the fulfillment of a principal obligation;
- (b) That the mortgagor be the absolute owner of the thing mortgaged;
- (c) That the person constituting the mortgage has the free disposal of the property, and in the absence thereof, that he be legally authorized for the purpose.

Special Characteristics of Real Mortgage

The following are the special characteristics of a real mortgage:

- (a) Realty as subject matter: Only real property or alienable rights and interests therein may be the subject matter of a mortgage. Thus, not only the land and improvements thereon may be mortgaged, but also the credits or rights of the mortgagee or other encumbrances.
- (b) Real right: A mortgage lien is a real right and as such it is good and binding against the whole world, and may be enforced by real action against all persons who may have existing rights or interests in the same property, not registered prior to the mortgage. It was held that even if personal action on the debt secured has prescribed, a suit to enforce the mortgage may still lie so long as such debt has not yet been paid (*Sunico v. Ramirez*, 14 Phil. 500).
- (c) Accessory obligation: As an obligation, a mortgage is only accessory and presupposes the existence of a principal obligation. In the absence therefore of a principal obligation, a mortgage cannot stand
- (d) Indivisibility: Even though the debt secured may be divided among the debtors or the creditors or their successors in interest, the mortgage shall remain as one and indivisible, unless there have been several things given in mortgage and

each of them guarantees only a determinate portion of the obligation (Art. 2089, New Civil Code)

However, the mere embodiment of the real estate and the chattel in one single document does not fuse both securities into an indivisible whole. Both remain distinct agreements, differing not only in subject matter of the contract but also in the governing legal provisions. Consequently, the mortgagee has every right to foreclose the real estate mortgage, and waive the chattel mortgage and maintain instead a personal action for the recovery of the unpaid balance of the obligation secured (Phil. Bank of Commerce v. Macadaeg, 109 Phil. 981).

- (e) Inseparability: The mortgage lien and the property affected are inseparable, so much so that whoever may subsequently acquire title to the mortgaged property is bound by the terms of the mortgage, whether the transfer be with or without the consent of the mortgagee. In other words, the mortgage, until discharged, follows the property to whomever it may be transferred no matter how many times over it changes hands as long as the annotation is carried over (Cuchapin v. Lozano, 68 O.G. 3, Jan. 17, 1972, CA).
- (f) Retention of possession: The mortgagor generally retains possession of the mortgaged property inasmuch as a mortgage is a mere lien and title to the property does not pass to the mortgagee.

Chapter Summary

Research results revealed that the lands covered by “informal mortgages” or the “prenda” system of mortgaging in the municipalities of San Miguel, Sta. Fe and Pastrana are alienable and disposable lands of the public domain, hence, could be acquired/applied by virtue of the FREE PATENT provisions of the Public Land Law (Commonwealth Act 141, as amended.)

The “informal mortgages” entered into by the land claimants in these municipalities have become a practice, a norm and part of their culture – a part of their day to day existence, in order to survive the harsh realities of life.

Probably, one of the reasons why some land claimants are reluctant to file their free patent applications is because of the provisions of Sec. 118 of the Public Land law (C.A. 141, as amended) which prohibits a holder of a FREE PATENT TITLE to encumber or alienate his land within 5 years from the date of issuance of patent except in favor of government corporations, associations, units or instrumentalities. The spirit of the law is for the patentee to continue cultivating his land, this mode of acquisition, being, in a form, of a land grant.

Likewise, in order that a mortgage may be valid under the provisions of the Civil Code of the Philippines, the mortgagor must be the absolute owner of the thing mortgaged and that the person constituting the mortgage must have the free disposal of the property and in the absence thereof, that he be legally authorized for the purpose.

CHAPTER X

SUPREME COURT DECISIONS AFFECTING MORTGAGES

OWNERSHIP OF PROPERTY

Article 2085, paragraph 2 of the Civil Code of the Philippines listed as one of the essential requisites of a mortgage “that the mortgager be the absolute owner of the thing mortgaged.” Thus, as held in the case of:

DEVELOPMENT BANK OF THE PHILIPPINES, petitioner
vs. COURT OF APPEALS, MYLO O. QUINTO AND JESUS CHRISTINE S. CHUPUICO, respondents
G.R. NO. 109946 Feb. 9, 1996

A land still subject of a Free Patent Application cannot be validly mortgaged.

The crux of this appeal thus lies in the basic issue of whether the land in dispute could have been validly mortgaged while still the subject of a Free Patent Application with the government. We agree with the court *a quo*. We hold that petitioner bank did not acquire valid title over the land in dispute because it was public land when mortgaged to the bank. We cannot accept petitioner’s contention that the lot in dispute was no longer public land when mortgaged to it since the Olidiana spouses had been in open, continuous adverse and public possession thereof for more than thirty (30) years.

The approval of the sales application merely authorizes the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent could be issued in his favor- what divests the government of title to the land is the issuance of a sales patent and its subsequent registration with the Register of Deeds.

In *Visayan Realty Inc. v. Meer* we ruled that the approval of a sales application merely authorized the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent could be issued in his favor. Meanwhile the government still remained the owner thereof, as in fact the application could still be canceled and the land awarded to another applicant should it be shown that the legal requirements had not been complied with. What divests the government of title to the land is the issuance of the sales patent and its subsequent registration with the Register of Deeds. It is the registration and issuance of the certificate of title that segregates public lands from the mass of public domain and convert it to private property. Since the disputed lot in the case before us was still subject of a Free Patent application when mortgaged to petitioner and no patent was granted to the Olidiana spouses, Lot No. 2029 (Pls-61) remained part of the public domain.

A mortgage constituted before the issuance of the sales patent to the mortgagor is void and ineffective.

With regard to the validity of the mortgage contracts entered into by the parties, Art. 2085, par. 2, of the New Civil Code specifically requires that the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged. Thus, since the disputed property was not owned by the Olidiana spouses when they mortgaged it to petitioner the contracts of mortgage and all their subsequent legal consequences as regards Lot No. 2029 (Pls-61) are null and void. In a much earlier case we held that it was an essential requisite for the validity of a mortgage that the mortgagor be the absolute owner of the property mortgaged, and it appearing that the mortgage was constituted before the issuance of the patent to the mortgagor, the mortgage in question must of necessity be void and ineffective. For, the law explicitly requires as imperative for the validity of a mortgage that the mortgagor be the absolute owner of what is mortgaged.

In the results of the study made (see Table 26, p. 46), 75.6% of the mortgagors used only their Tax Declaration papers to prove ownership of their lands, while on p. 55, seventy three (73) or 96.2% of the mortgages have mortgaged their untitled properties.

CRISTINA MARCELO vda. de BAUTISTA, plaintiff-appellee
vs. BRIGIDA MARCOS, ET.AL., defendants-appellants

He who is not the owner or proprietor of the property mortgaged to guarantee the fulfillment of a principal obligation cannot legally constitute such a guarantee as may validly bind the property in favor of his creditor and the mortgagee in such a case acquires no right whatsoever in the property mortgaged.

Where the mortgage was constituted before the issuance of a patent to the mortgagor, the mortgage is void. A mortgage by one who is not the owner is null and void.

The main question in this appeal is whether or not mortgagee may foreclose a mortgage on a piece of land covered by a free patent where the mortgage was executed before the patent was issued and is sought to be foreclosed within five years from its issuance.

The right of plaintiff-appellee to foreclose her mortgage on the land in question depends not so much on whether she could take said land within the prohibitive period of five years from the issuance of defendants' patent for the satisfaction of the indebtedness in question, but on whether the deed of mortgage Exhibit "A" is at all valid and enforceable, since the land mortgaged was apparently still part of the public domain when the deed of mortgage was constituted when the deed of mortgage was constituted. As it is an essential requisite for the validity of a mortgage that the

mortgagor be the absolute owner of the thing mortgaged (Art. 2085), the mortgage here in question is void and ineffective because at the time it was constituted, the mortgagor was not yet the owner of the land mortgaged and could not, for that reason, encumber the same to the plaintiff-appellee. Nor could the subsequent acquisition by the mortgagor of title over said land through the issuance of a free patent validate and legalize the deed mortgage under the doctrine of estoppel (cf. Art. 1434, New Civil Code, since upon the issuance of said patent, the land in question was thereby brought under the operation of the Public Land Law that prohibits the taking of said land for the satisfaction of debts contracted prior to the expiration of five years from the date of the issuance of the patent (sec. 118, C.A. No. 141). This

prohibition should include not only debts contracted during the five-year period immediately preceding the issuance of the patent but also those contracted before such issuance, if the purpose and policy of the law, which is “to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him” (Pascua v. Talens, 45 O.G. No. 9 [Supp.] 413; De los Santos v. Roman Catholic Church of Midsayap, G.R. L-6088, Feb. 24, 1954), is to be upheld.

The invalidity of the mortgage Exhibit “A” does not, however, imply the concomitant invalidity of the collate agreement in the same deed of mortgage whereby possession of the land mortgaged was transferred to plaintiff-appellee in usufruct, without any obligation on her part to account for its harvests or deduct them from defendants’ indebtedness of P2,000. Defendant Brigida Marcos, who, together with her sisters, was in possession of said land by herself and through her deceased mother before her since 1915, had possessory right she could validly transfer and convey to plaintiff-appellee, as she did in the deed of mortgage Exhibit “A”. The latter, upon the other hand, believing her mortgagor to be the owner of the land mortgaged and not being aware of any flaw that invalidated her mode of acquisition, was a possessor in good faith (Art. 526, N.C.C.), and as such had the right to all the fruits received during the entire period of her possession in good faith (Art. 544, N.C.C.). She is, therefore, entitled to the full payment of her credit of P2,000 from defendants, without any obligation to account for the fruits or benefits obtained by her from the land in question.

NULLITY OF MORTGAGE: EFFECT ON PRINCIPAL OBLIGATION

COMPANIA GRAL. DE TABACOS VS. JEANJAGUET 12 PHIL. 195

LIM JUAN VS. LUCERO 49 PHIL. 703

LORENZO VS. TAN JUICO 23 PHIL. 16

The nullity of a purported mortgage does not affect the validity or efficacy of the principal obligation sought to be secured. Although the mortgage cannot be enforced by foreclosure, the creditor can still rightfully claim the payment of his credit in an ordinary action. An action based upon a document purporting to be a mortgage, void because lacking in some requisite, may be regarded simply as an action upon a contract to pay money, and not an action for foreclosure of mortgag

SALE OF MORTGAGED PROPERTY

GUANZON VS. ANGEL **33 SCRA 474**

In case of default of the principal debtor, the property mortgaged is subject to sale to satisfy the mortgage obligation. The only right of a mortgagee in case of non-payment of a debt secured by a mortgage would be to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness.

PACTUM COMMISORIUM: NULLITY

Art. 2088 of the Civil Code of the Philippines provides that “ the creditor cannot appropriate the things given by way of pledge or mortgage or dispose them. Any stipulation to the contrary is null and void.

The stipulation in the mortgage that the land covered thereby shall become the property of the mortgagee upon failure to pay the debt within the period agreed upon constitute a pactum commissorium and is therefore null and void (Tan Chun Tic vs. West Coast life Insurance Co. 54 Phil. 361; Mendoza vs. Santos (C.A.) 39 Off. Gaz. 738; Perez vs. Cortez, 35 Phil. 211; Esguerra vs. Court of Appeals, 173 SCRA) So is a stipulation providing that upon failure of the mortgager to redeem within a certain period, the mortgage property shall be considered full payment “without further action in court.” (Reyes vs. Nubrija 52 O.G. 1928). A mortgage is but a security and not the satisfaction of the indebtedness (Phil. Bank of Commerce vs. de Vera 6 SCRA 1026.)

The mortgagor’s default will not operate to vest in the mortgage the ownership of the encumbered property. The mortgage does not constitute a just title on the part of the mortgagee as ownership is retained by the mortgagor. (Reyes vs. Sierra 43 SCRA 472)

ELEMENTS OF PACTUM COMMISSORIUM

The elements of pactum commissorium are: (1) that there should be a pledge or mortgage wherein a property is pledged or mortgaged by way of security for the payment of the principal obligation, and (2) that there should be a stipulation for an automatic appropriation by the creditor of the thing pledged or mortgaged on the event of non-payment of the principal obligation within the stipulated period.

SALE WITH PACTO DE RETRO

The essence of a contract of sale with pacto de retro is that the legal title to the property is immediately transferred to the vendee subject to the vendor’s right to redeem or repurchase. The agreement to repurchase or the pacto de retro is merely a personal right stipulated between the parties to the end that the vendor may again acquire the ownership of the thing alienated. This transfer of the legal title to the vendee, in the absence of agreement

to the contrary carries with it the right of possession; for the stipulation reserving the right to repurchase rests on the very assumption of full ownership in the purchaser.

The vendee who takes possession of the property sold under a contract of sale with pacto de retro is under obligation to take care of the thing sold during the period of the right of repurchase as a good father of a family who would take care of his own property. The property must be preserved in such a way that at the time of repurchase, the property would be in the same conditions as of the time it was sold, except the minor ordinary wear and tear and depreciation due to common natural causes.

When the contract of sale with pacto de retro does not have any stipulation as to when the redemption may be effected, the law fixes the period as four (4) years from the date of contract. A failure to redeem within said period consolidates the title of the vendee (Articles 1601-1602 Civil Code of the Philippines).

SALE WITH PACTO DE RETRO

- If the seller does not repurchase the property on the day stated in the contract, he loses all interests therein
- No obligation resting upon the vendee to foreclose
- As soon as rights of dominion are consolidated he may dispose same as absolute owner without restriction

MORTGAGE

- Mortgagor does not lose his interests in the property if he fails to pay his debt at the maturity. Cannot approximate to himself things given in mortgage

“PACTO DE RETRO” SALE WHEN CONSIDERED AN EQUITABLE MORTGAGE

Under the doctrine in a leading case (Cuyugan v. Santos, 34 Phil. 100), where a contract of sale with *pacto de retro* is executed as a security for a debt owing by the grantor from the grantee, such conveyance must be treated in equity substantially as a mortgage, that is, creating a mere equitable charge in favor of the creditor or person named as purchaser therein, and the fact that the conveyance was executed for this purpose may be shown by oral evidence apart from the instrument of conveyance. The equitable doctrine that any conveyance intended as security for a debt will be held in effect to be a mortgage, whether actually so expressed in the instrument or not, operates regardless of the form of the agreement chosen by the contracting parties as repository of their obligations. Equity looks through the form and considers the substance; and no kind of engagement can be devised which will enable the purchaser to evade the effects of the doctrine to which reference is made (Macapinlac v. Gutierrez Repide, 43 Phil. 770).

However, for the purpose of determining whether a contract is truly a sale under *pacto de retro* or an equitable mortgage, the Civil Code of the Philippines has provided a number of tests embodied in the following article:

“Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

- (a) When the price of a sale with right to repurchase is unusually inadequate;
- (b) When the vendor remains in possession as lessee or otherwise;
- (c) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
- (d) When the purchaser retains for himself a part of the purchase price;
- (e) When the vendor binds himself to pay the taxes on the thing sold;
- (f) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.”

In case there should be a doubt as to whether the contract in question is one of sale with right to repurchase or an equitable mortgage, Art. 1603 of the Civil Code of the Philippines resolves it in favor of the latter. So much so that where the repurchase price as stipulated is subject to 12% per annum, the transaction was held to be an equitable mortgage (Estrada v. Millet, 55 O.G. 31, Aug, 1959; CA; Adrid v. Morga, 108 Phil. 927).

On the question of whether or not the price of a sale under *pacto de retro* in “unusually inadequate,” the law apparently leaves the answer to depend on existing conditions. Accordingly, where land which reasonably cost P1,280.00 was sold for only P250.00 in Japanese fiat money, it was held that the price was unusually inadequate (Adrid v. Morga, supra). Mere inadequacy is not sufficient. Thus, in a certain case inadequacy of price was not considered sufficient ground for annulling the contract, it being a common practice to fix a relatively reduced price to afford the vendor *a retro* every facility to redeem the land, unlike in an absolute sale where the vendor, in permanently giving away his property, tries to get, as compensation, its real value (Belonio v. Novella, 105 Phil. 756).

MORTGAGE COMPARED WITH ANTICHRESIS

(a) As to possession of the property given in security, the debtor retains it in the case of a mortgage; whereas, the creditor takes over in the case of antichresis. Thus, *a mortgage, coupled with delivery of possession of the land to the creditor, becomes antichresis* (Trillana v. Manansala, et al., 96 Phil. 865), (b) With respect to the fruits, in a mortgage the creditor does not gather or receives them; whereas, in antichresis the creditor generally receives them, with the obligation to apply the value thereof or proceeds therefrom to the payment of interest due and, if any still remaining, to the principal obligation. (c) In antichresis the creditor is obliged to pay for the taxes and charges upon the estate; whereas, in mortgage it is the debtor.

In this connection, it may be stated by way of observation that out in the provinces we have in practice a peculiar form of mortgage which can easily be mistaken for antichresis. It is a sort of a mortgage subject to usufruct whereby the debtor transfers to the creditor the

possession of the land given as security with the condition, among other things, that the capital or loan shall **not** bear interest but in lieu thereof the creditor shall have the right to have the land cultivated and the products thereof shall belong to the creditor exclusively, which right of usufruct shall pertain to him as long as the mortgage is in full force and effect. As held by the Court of Appeals in a certain case (Palac, et al. v. Cojuangco, et al., 54 O.G. 5, March 15, 1958; CA.), such contract is one of mortgage with usufruct and not of antichresis, citing an earlier authority, which finds recent corroboration, stating thus: “When a contract of loan with security does not stipulate the payment of interest but provides for the delivery to the creditor may administer the same and avail himself of its fruit, without stating that said fruits are to be applied to the payment of interest, if any, and afterwards to that of the principal credit, the contract shall be considered to be one of mortgage and not of antichresis.” (Legaspi and Salcedo v. Celestial, 66 Phil. 372; Diego v. Fernando, 109 Phil. 143).

But whether the contract be treated as a *mortgage with usufruct* or as an *antichresis*, it would seem that the creditor just the same cannot be entitled to a return, in lieu of interest, of more than that allowed under the usury law. As a mortgage, under article 1602 of the new Civil Code, any money, fruits or other benefits received by the creditor shall be considered as interest which shall be subject to the usury law. As an antichresis under article 2138 of the same Code the interest upon the debt may be compensated with the fruits of the property but if the value thereof should exceed the amount of interest allowed by the usury law the excess shall be applied to the principal; hence unless so applied to the principal, there would seem to be usury.

CHAPTER XI

EXECUTION AND REGISTRATION OF MORTGAGES AND FREE PATENTS

As provided by Sec. 60 of P.D. No. 1529, the owner of registered land may mortgage the same by executing a mortgage deed, and such deed may be assigned, extended, discharged, released in whole or in part, or otherwise dealt with by the mortgagee by any form of deed or instrument sufficient in law for the purpose. But such mortgage deed, and all instruments assigning, extending, discharging, and otherwise dealing with the mortgage, shall be registered, and shall take effect upon the title only from the time of registration.

As to when such deeds are executed in a form sufficient in law, section 127 of Act No. 496, as amended by Sec. 112 made substantially in accordance with the forms prescribed therein, signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof, and shall be acknowledged to be his or their free act and deed before a notary public or other public officer authorized by law to take acknowledgment.

As a further requisite, article 2125 of our Civil Code provides that it is indispensable, in order that a mortgagee may be validly constituted, that the documents in which it appears be registered in the Office of the Register of deeds concerned. Failure to register, according to the same article, does not necessarily invalidate the mortgage, but limits its binding effects to the parties only

NORBERTO L. DILAG, petitioner
VS. THE LEGAL HEIRS OF FORTUNATO RESURECCION, ET. AL,
respondents
GR. NO. 48941 MAY 6, 1946

Did such a stipulation constitute a valid mortgage on the five other parcels of land which Laureano Marquez subsequently acquired? We do not think so. In the first place, Laureano Marquez could not legally mortgage any property he did not yet own (see paragraph 2, article 1857, Civil Code). In the second place, in order that a mortgage may be validly constituted the instrument by which it is created must be recorded in the registry of deeds (Article 1875, id.); and so far as the additional as the additional as parcels of land are concerned, the registration of Exhibit A did not affect and could not have affected them because they were not specifically described therein.

THE DIRECTOR OF LANDS, petitioner-appellant
Vs. ESTAQUIO DE LUNA, ET. AL., respondents
EUSTAQUIO DE LUNA, respondent-appellee
GR. NO. L-14641 NOV. 23, 1960

It is not disputed that the free patent to the land in question was issued to respondent on October 4, 1955, on the basis of which Original Certificate of Title No. P-1537 was, likewise, issued to him, pursuant to Section 122 of the Land Registration Act. Well settled is the rule that once the patent is registered and the corresponding certificate of title is issued, the land cases to be part of the public domain and becomes private property over which the

Director of Lands has neither control nor jurisdiction. (Sumail vs. Judge of the Court of First Instance of Cotabato, et al., 96 Phil., 946; 51 Off. Gaz. [5] 2413; Republic vs. Heirs of Ciriaco Carle, 105, Phil, 1231).

There is, likewise, no controversy as to the fact that the present action was instituted by petitioner on February 19, 1958, or more than 2 years after the issuance of the aforementioned free patent to respondent, or more than 1 year after the expiration of the 1-year period provided in Section 38 of the Land Registration Act for review of the certificate of title, on the ground of fraud. A public land patent when registered in the corresponding register of deeds office, is a veritable Torrens title (Dagdag vs. Nepomuceno, 105 Phil., 216; 56 Off. Gaz. (48) 7294) and becomes as indeeasible as Torrens title (Ramoso vs. Obligado, 70 Phil., 86), upon the expiration of 1 year from the date of the issuance thereof (Lucas vs. Durian, G.R. No. L-7886, prom. September 23, 1957). As such it can no longer be cancelled or annulled.

**GUILLERMO JAVIER, petitioner,
vs. COURT OF APPEALS (15TH DIV.), DEMETRIO CARINGAL,
SPOUSES DIONISIO CAAY AND NAZARIA CARINGAL, respondents
G.R. NO. 101177 MARCH 28, 1994**

It is only after the issuance of a Free Patent and title that the Government is divested of its ownership of the land subject of said grant. Under the Public Land Act, even the approval of a sales application merely authorizes the applicant to take possession of the land so that he can comply with the requirements prescribed by law before a final patent can be issued in his favor. Meanwhile, the Government still remains the owner thereof, as in fact the application can still be cancelled and the land awarded to another applicant, if it be shown that the legal requirements have not been complied with. Hence, when the Bureau of Lands did not take action on the sales application of petitioner but instead issued the Free Patent and title to another applicant, herein respondent Caringal, it was only then that the Government was divested of its ownership and the land was segregated from the mass of public domain, converting it into private property.

**REPUBLIC OF THE PHILIPPINES
VS. HON. SOFRONIO G. SAYO, JUDGE, BR. I, CFI, NUEVA
VIZCAYA, ET AL.
G.R. No. 60413 October 31, 1990**

Under the Regalian Doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Hence it is that all applicants in land registration proceedings have the burden of overcoming the presumption that the land thus sought to be registered forms part of the public domain. Unless the applicant succeeds in showing by clear and convincing evidence that the property involved was acquired by him or his ancestors either by composition title from the Spanish Government or by possessory information title, or any other means for the proper acquisition of public lands, the property must be held to be part of the public domain. The applicant must present competent and persuasive proof to substantiate his claim; he may not rely on general statements, or mere conclusions of law other than factual evidence of possession and title.

“The burden of proof in overcoming the presumption of state ownership of the lands of the public domain is on the person applying for registration that the land subject of the application is alienable or disposable.

Unless the applicant succeeds in showing by convincing evidence that the property involved was acquired by him or his ancestors either by composition title from the Spanish Government or by possessory information title, or any other means for the proper acquisition of public lands, the property must be held to be part of the public domain. The applicant must present evidence and persuasive proof to substantiate claim.”

Chapter Summary

It is the registration and issuance of the certificate of title that segregates public lands from the mass of public domain and convert it to private property. Since the disputed lot was still subject of a Free Patent application when mortgaged and no patent was as yet granted, the lot still remained part of the public domain. With regard to the validity of the mortgage contracts entered into by the parties, Art. 2085 paragraph 2 of the New Civil Code specifically requires that the mortgagor be the absolute owner of the thing mortgaged.

The mortgage executed before the issuance of the patent to the mortgagor is void and ineffective, for the law explicitly requires as imperative for the validity of a mortgage that the mortgagor be the absolute owner of what is mortgaged (DBP vs. Court of Appeals, et.al).

In the case of Cristina Marcelo vda. de Bautista vs. Brigida Marcos, et.al. it was reiterated that a mortgage by one who is not the owner is null and void, and the Supreme Court continued that the subsequent acquisition by the mortgagor of title over said land through the issuance of a Free Patent cannot validate and legalize the deed of mortgage under the doctrine of estoppel (Art. 1434, New Civil Code), since upon the issuance of the said patent, the land in question was thereby brought under the operation of the Public Land Law that prohibits the taking of the said land for the satisfaction of debts contracted prior to the expiration of five (5) years from the date of issuance of the patent (Sec. 118, C.A. 141.)

An action based upon a document purporting to be a mortgage but void because it is lacking in some requisites, may be regarded simply as an action upon a contract to pay money and not an action for foreclosure of mortgage (Compania Gral. De Tabacos vs. Jean Jagnet.)

In case of default of the principal debtor, the property mortgaged is subject to sale to satisfy the mortgage obligation. The only right of a mortgagee in case of non-payment of a debt secured by a mortgage would be to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness (Guanzon vs. Angel.)

The stipulation in the mortgage that the land covered thereby shall become the property of the mortgagee upon failure to pay the debt within the period agreed upon constitute “pactum commissorum” is therefore null and void – (tan chun Tic vs. West Coast Life Insurance) as Sec. 2088 of the New Civil Code provides that the creditor cannot appropriate the things given by way of mortgage or dispose them. Any stipulation to the contrary is null and void.

The mortgagor’s default will not operate to vest in the mortgagee the ownership of the encumbered property. The mortgage does not constitute a just title on the part of the mortgagee as ownership is retained by the mortgagor (Reyes vs. Sienna.)

CHAPTER XII

CRITICAL ISSUES OF THE STUDY

There are quite a lot of critical issues to be resolved in this study. Given the present situation in the project area (where lands subject to titling under the Free Patent are being mortgaged in the informal), and given the laws on what should govern these transactions, one can easily conclude that it is not easy to settle them.

The primary reason is because the land claimants have never been informed or that no one has ever advised them on the legality or illegality of the different mortgage transactions they have entered into. It is the practice, a norm and part of a culture that has been handed down from one generation to another. Land claimants seem to have no problem with the informal land market --- they practice "prenda" as often as the family's financial need arises. They think they are the absolute owners of the land. They are not aware of their responsibilities as a land "owner" and more importantly, whether the land they "own" is public land, public domain or alienable or disposable land.

The following are some of the critical issues raised in this study:

Can land, untitled, unapplied; or a land subject of a Free Patent Application be validly mortgaged?

The Supreme Court said that a land still untitled and the subject of a Free Patent Application cannot be validly mortgaged because it still part of the public domain. It is an essential requisite for the validity of a mortgage that the mortgagor be the absolute owner of the thing mortgaged (Art. 2085, Civil Code o the Philippines) The mortgage is void and ineffective because at the time is was constituted, the mortgagor was not yet the owner of the land mortgaged (DBP vs. Court of Appeals, et.al)

Could the subsequent acquisition by the mortgagor of the title over the land through the issuance of a free patent validate and legalize the mortgage?

No, because upon the issuance of the patent, the land in question was already brought under the operation of the Public Law which prohibits the taking of said land for the satisfaction of debts contracted prior to the expiration of five (5) years from the date of the issuance of the patent (Sec. 118, C.A. No. 141). This prohibition should include not only debt contracted during the five (5) year period immediately preceding the issuance of the patent but also those contracted before such issuance (Bautista vs. Brigida Marcos, et.al)

Can non-payment of the amount of the mortgage ripen into a foreclosure of mortgage on the day it falls due?

No. He who is not the legal owner of the property mortgaged to guarantee the fulfillment of a principal obligation, cannot legally constitute such a guaranty as may validly bind the property in favor of his creditor, and the mortgagee in such a case acquires no right whatsoever in the property mortgaged. Where the mortgage was constituted before the issuance of patent to the mortgagor, the mortgage is void.

The mortgage being void, the mortgagee cannot avail of the only legal remedy or right available to him in case of non-payment of a debt secured by mortgage – to foreclose the property and have the encumbered property sold to satisfy the outstanding indebtedness. (Art. 2087, Civil Code of the Philippines)

How will the rights of the mortgagor be protected?

He is protected by the law itself. Their being no mortgage per se, he retains the land because the law prohibits foreclosure of a void mortgage. Art. 2088 also protects him, because it provides that the creditor cannot appropriate the things given by way of mortgage or dispose of them. Any stipulation to the contrary is null and void.

How will the rights of the mortgagee be protected considering the amount of money he has given to the mortgagor?

The nullity of a purported mortgage does not affect the validity or efficacy of the principal obligation sought to be secured. An action based upon a document purporting to be a mortgage is void because lacking in some requisite may be regarded simply as an action upon a contract to pay money and not an action for foreclosure of mortgage.

Will the DENR accept or process applications filed by land claimants which are covered by so called “mortgages?”

Yes, firstly, because they are qualified, free patent applicants, and also, because, as discussed, we will treat these transactions as prenda per se and not as mortgages contemplated by the Civil Code of the Philippines. Otherwise, it will be a null and void transaction.

What are the potential positive and negative impacts of tithing on mortgaged properties on both the mortgagor and mortgagee?

Positive

- Mortgagor now becomes the legitimate absolute owner of the land
- Mortgagor’s financial standing in the community is improved and his status in the social order of the community is enhanced
- Mortgagee is now happy because the land he holds as security is already a titled land

Negative

- Upon issuance of the patent/title both the mortgagor and mortgagee are now covered by the provisions of Sec. 118 of the Public Land Law (C.A. No. 141, as amended) which prohibits sale or encumbrance within the prohibitory period of 5 years from the date of issuance of patent except in favor of the government or any of its branches, units or instrumentalities.

On existing laws and policies, what can you say about the current practices with respect to processing of mortgaged parcels? Should mortgages be annotated? What does the law say about protecting the mortgagees and mortgagors?

Practices

The “prenda” is valid only between parties but when treated as a formal mortgage it becomes contrary to law as it does not have the necessary requisites to make it a valid one under the provisions of law namely:

- That the mortgagor be the absolute owner of thing mortgaged
- Mortgagor must have the free disposal of the property and in the absence thereof that he be legally authorized for the purpose
- That they be constituted to secure a fulfillment of a principal obligation (Art. 2085, Civil Code of the Philippines)

Legally, mortgages in order to bind 3rd persons must be registered or recorded in the Registry of Property, however even if unrecorded it is still binding between the parties (Sec. 2125, Civil Code of the Philippines.)

The beauty of executing a valid formal mortgage is that both the mortgagor and mortgagee are amply protected by law.

How does the law protect the mortgagees?

The mortgagee in a void mortgage can still rightfully claim the payment of his credit in an ordinary action. An action based upon a document purporting to be a mortgage but void because it is lacking in some requisites may be regarded simply as an action upon a contract to pay money and not as an action for foreclosure of mortgage. In valid mortgages, the only right of a mortgagee in case of non-payment of a debt secured by mortgage would be to foreclose the mortgage and have the property sold to satisfy the outstanding indebtedness.

How does the law protect the mortgagor?

The owner preserves all the attributes of the rights of ownership before the creditor institutes the action for foreclosure of mortgage. He can fully administer and enjoy the immovable, make leases, receive its fruits, alienate it, encumber it with new mortgages, usufructs or servitudes (Art. 2130, Civil Code of the Philippines) The mortgagee-creditor cannot appropriate the things given by way of mortgage. Any stipulation to the contrary is null and void (Art. 2088, Civil Code of the Philippines.)

What is “pactum commisorium”? What happens when there is a default by the mortgagor?

Pactum Commisorium is the stipulation in the mortgage that the land covered thereby shall become the property of the mortgagee upon failure to pay the debt within the period agreed upon, is null and void. It is an agreement providing that upon failure of mortgagor to redeem within a certain period the mortgaged property shall be considered full payment without further action in court. A mortgage is but a security and not a satisfaction of indebtedness.

The mortgagor's default will not operate to vest in the mortgagee the ownership of the encumbered property. The mortgage does not constitute a just title on the part of the mortgagee as ownership is retained by mortgagor.

Will mortgaging in the informal market hasten land loss?

Not necessarily, given the current practices of the "prenda" system. Mortgagees, being in almost all cases, relatives of mortgagors, are willing to extend maturity dates and/or give longer grace periods when mortgagors do not have the money yet to redeem the property on maturity dates. Based on the survey results, 88.5% of the mortgagors and 87.2% of the mortgagees have been into this practice. Moreover, land claimants observe that there is no automatic foreclosure of the mortgaged property in the "prenda" system, something which makes it more attractive than the formal market.

How does mortgaging affect titling?

No effect. The titling process can continue even if the land being applied for Free Patent is on mortgage in the "prenda" system. Mortgagors continue to engage in informal mortgage transactions while completing the required documents for titling, and or waiting for the titles to be issued by LAMP. Mortgagees are willing to lend the Tax Declaration which has been used as a mortgage instrument. In other cases, the mortgagor can readily get another copy (certified true copy of the original) of the Tax Declaration from the appropriate offices.

Will titling hasten land loss?

Yes, under the following circumstances:

- Mortgagors continue to have no regular and stable incomes.
- Mortgagors use the titled land as a collateral in formal credit facilities.
- The loan proceeds is used for consumption (e.g., for the daily upkeep of the family) rather than for production purposes. Survey results show that out of the 15 reasons for mortgaging that were cited by the mortgagors, 11 were for consumption purposes. Lowest in the list were for production purposes (Please refer to Table 11).
- Without an increase in family incomes, the probability of redemption of mortgaged properties will decrease. Banks readily foreclose properties that are not redeemed upon maturity.
- In the informal market, the chances of a change in attitude among mortgagees is more likely. That is, more mortgagees may be interested in a titled property as a collateral for loans. They may also be more interested in buying mortgaged properties that are not redeemed on time.

Will titling encourage mortgagors to shift away from informal markets, in favor of banks and other formal credit facilities?

Not necessarily. Land claimants cited the following characteristics which boosts their preference for the "prenda" system. These are not found in formal credit facilities:

- Flexibility of mortgage arrangements
- Accessible and quick cash
- Can cash advance from the mortgagee any time while the land is mortgaged

- Longer maturity dates and grace periods. Extensions can be agreed upon.
- No automatic foreclosure when maturity date falls.
- No paper work for the processing of loan. Many mortgagors have low educational attainment.

If there were formal credit facilities in the community, will mortgagors prefer it over the informal credit system or "prenda?"

Probably no. Survey results show that 78.4% of the mortgagors will still prefer the "prenda." The "prenda" is an accepted socio-economic norm that has become an effective mechanism to cushion the ill effects of poverty, especially during emergencies. The unique characteristics of the informal credit market make it a convenient and accessible tool for farmers who may not have the confidence and the will to transact business with formal institutions. It may be noted that many of the farmer-land claimants have low educational attainment.

CHAPTER XIII

CONCLUSION AND RECOMMENDATION

Conclusion

All the lands subject of the different kinds of mortgage arrangements in the LAMP PIO 1 areas of Sta. Fe, Pastrana, and San Miguel are ALIENABLE and DISPOSABLE public lands, hence could be applied, acquired and eventually titled under the provisions of Chapters 7 and 8 of the Public Land Law (Commonwealth Act 141, as amended).

Research findings, however, reveal that even before the filing of Free Patent Applications by the land claimants therein these lands were already made as collaterals or as securities for the payment of debts in transactions locally called “prenda.” This is an “informal mortgage” arrangement which is distinctly different from the formal mortgages which are treated under the provisions of the Civil Code of the Philippines.

Of the seventy eight (78) mortgages included in the study, only three (3) mortgages are covered with Free Patent Titles. The rest (75 mortgages) are either unapplied or applied. The latter could be awaiting processing of their applications, or had processed applications already but awaiting issuance of Patents (titles).

Various forms of mortgage arrangements in the informal market are documented in the study areas. The "prenda" has unique features which make it a ready source of quick cash for farm households whose incomes fall below the poverty threshold. "Prenda" is almost always made for consumption purposes rather than for investments for farm production. The inability of stakeholders to provide sources of stable and regular incomes to farm households who usually do not qualify in the formal labor market, makes "prenda" the mechanism to cushion the ill effects of poverty.

Moreover, in a situation where farmers do not have the social service facilities that fixed earners have access to, the informal market provides the ready solution. While fixed income earners are provided with PhilHealth benefits, the farmers do not have an agency/institution to take care of their medical and hospitalization needs. While the fixed income earners have the Home Development Mutual Fund to assist in their housing needs, the farmers have none. While fixed income earners have the Government Service Insurance System, and the Social Security System to take care of the educational needs and multipurpose requirements of the family, the farmers have none. In emergencies, the farm households do not have the economic instruments and resources for them to gain access to basic social services and investment opportunities. Hence, they fall into debts using their land as a collateral under the "prenda" system. This practice is a way of life.

The land claimants (mortgagors) do not really like to mortgage their lands because it might be the only parcel they have or this might be the only source of family income. However, due to dire financial needs and for lack of accessible alternative credit facilities mortgaging their lands becomes the ultimate move they have to resort to in order to survive.

Whether the transaction is legal or illegal, will all depend on how we will treat “prenda.” If we treat it, as it is, “prenda” per se, then it is just a loan wherein the “mortgagor” is the debtor and the “mortgagee” is the creditor. Legally, there is thus a relationship of

creditor and debtor from whence rights and obligations emanate. This transaction is valid and legal between the parties only and such rights and obligations are even inherited by their children in case of death by either of the parties involved.

On the other hand, if we treat these transactions “prenda”, as a formal mortgage pursuant to the pertinent provisions of the Civil Code of the Philippines which legally and lawfully governs all mortgage transactions in the Philippines, then the “prenda” system or these so-called informal mortgages will be considered null and void from the beginning or void *ab initio*.

The Supreme Court of the Philippines in a series of decisions discussed in the previous chapters have repeatedly declared that “ a land still untitled cannot be validly mortgaged because it is still part of the public domain and that it is an essential requisite for the validity of a mortgage, that the mortgagor be the absolute owner of the thing mortgaged. It further declared that a mortgage is void and ineffective if at the time the mortgage is constituted, the mortgagor is not yet the owner of the land mortgaged.

It is, therefore, proposed that these mortgage transactions in the LAMP PIO 1 project areas be treated as “prenda” (informal mortgage) as practiced by the people. It will now become a moral obligation on the part of the government, the concerned non-government organizations, or the LAMP to effectively disseminate all the information derived from this study in order to educate the land claimants, by imparting to them all the basic provisions of laws and to make them aware of their rights and obligations under these legal provisions.

Recommendation

A land title per se should not be mistakenly construed as the answer to poverty alleviation. Rather, it is a vehicle or a mechanism for poverty alleviation. It cannot be effective without the complementary structural intervention and the corresponding attitudinal change. It must, moreover, be used responsibly by title holders such that farm productivity is improved and foreclosures are minimized, if not ultimately avoided.

Land titling must continue. At the macro level, more title holders will ultimately widen the tax base, hence, increase government revenues from taxes. This correspondingly will improve the capacity of the government to provide more poverty alleviation services and facilities in the community. At the micro level, land security of tenure for farm households will improve their access to economic resources and to better mortgage terms.

Structural reforms and attitudinal change may take a lifetime to be realized. What can be done is to coordinate a strategic mix of law-income generation-titling activities in order to improve the cash incomes of the farm households.

- **Amend the Public Land Law by repealing Sec. 118**

which states,

“Except in favor of the Government or any of its branches, units or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and or a term of five years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be

mortgaged or pledged to qualified persons, associations or corporations.

No alienation, transfer, or conveyance of any homestead after five years or before twenty-five years after the issuance of the title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds. (As amended by Com. Act No. 456, approved June 8, 1939.)”

This provision is no longer in keeping with the times. The patentee should not be prevented or prohibited from alienating or encumbering his property in favor of private banks, units or institutions immediately upon issuance thereof so he can have the much needed capital to start a small business or undertaking in order to improve his quality of life and that of his family. The success of every single citizen as an entrepreneur will also be the success of the country as whole, economically.

- **Amend Sec. 124 of the Public Land Law**

which provides,

“Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty- two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and canceling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.”

It should now read as follows,

“Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and twenty, one hundred and twenty-one, one hundred and twenty- two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and canceling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.”

- **Passage of the Bill on Free Patent - Residential**

To make proper representations in Congress in order to hasten the passage into law of the Bill on FREE PATENT-Residential so that land claimants in 4th and 5th class municipalities who have only their residential lands and have no agricultural lands at all, may also avail of the free-patent residential titles to the lands they have occupied and possessed for a long period of time already.

- **Hasten Survey and Titling**

To hasten the survey and titling of lands of the public domain, it is recommended that a cadastral survey of all the remaining unsurveyed lands in the province of Leyte be conducted.

- **Massive information drive**

A massive information drive by LAMP personnel to inform the land claimants on the basic provisions of law on Free Patents specifically on the provisions on qualifications of a Free Patent applicant and the requirements needed in order to apply for a Free Patent. The use of community-based IEC materials such as the “comics” to serve as medium for information dissemination regarding survey, titling of public lands and mortgage laws as embodied in the Civil Code of the Philippines can be conducted. The “comics” written in the local dialect is probably the best medium in order to reach everyone in the rural areas.

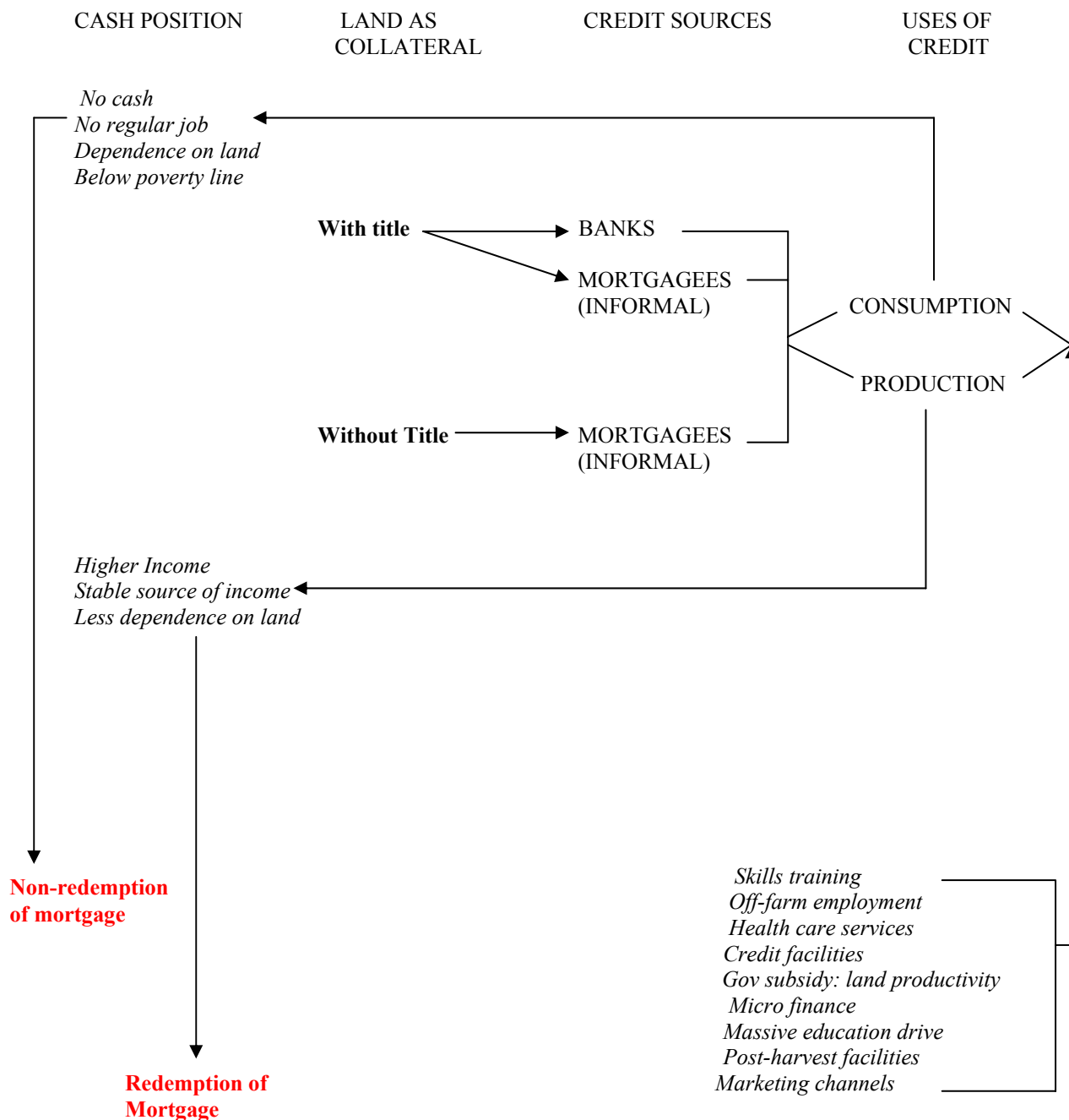
- **Income augmentation strategies**

As long as farm incomes are low, and as long as there are no alternative livelihood opportunities open to the farm household, "prenda" will continue as a way of life. Longer maturity periods, second mortgages, and higher mortgage price will drive the farm households deeper into a debt trap at the expense of ultimately losing farm lands. The following income augmentation strategies are recommended:

- Wider off-farm employment opportunities
- Access of more family members to livelihood options
- Skills training
- Government subsidy for agricultural production
- Improved marketing channels
- Provision of post harvest facilities
- Micro-financing ventures

Below is a schema derived from the findings of the study. It shows the cycle of poverty vis-à-vis the LAMP mission for poverty alleviation.

A SCHEMA FOR A COMMUNITY-BASED POVERTY ALLEVIATION PROGRAM
(Marieta Banez-Sumagaysay)



• **LGUs to influence the terms of the "prenda": a fair deal**

Because of the inherent characteristics of the "prenda" system which entice the poor farm households, "prenda" will be continue to be a socio-economic norm in the LAMP PIO 1 areas. It would be difficult, if not highly improbable to radically change the tradition of "prenda" in favor of banks and formal credit facilities. Hence, it has to be accepted BUT the local government units can influence the informal market in coming up with a fair bases for the valuation of mortgaged properties. That is, the Barangay Chairman who assists in drafting the written contracts used as mortgage instruments can influence a fair

mortgage terms. Long redemption periods that are as long as 20 years has to be reconsidered. The mortgagor may not even live to see the land's redemption after 20 years. Moreover, a high mortgage price that may no longer be affordable to the mortgagor has to be looked into. The terms should not be usurious.

Land titling under the Free Patent has to proceed and continue for purposes of security of land tenure. However, it has to be complemented with LGU assistance, structural support, and amendments to relevant laws in order that the land titles can be used responsibly by its holders as a mechanism to increase land productivity and farm incomes. LAMP's lead role is imperative specially in terms of undertaking massive educational campaigns and information dissemination.

ANNEX A-1

THE SURVEY QUESTIONNAIRE

Barangay _____
Municipality _____
Name of Respondent _____

Interviewer _____
Date/Time _____
Category _____

Block A. Socio-demographic profile

No.	Questions and Filters	Coding Categories	Skip to
A1	What is your marital status	01 Never married 02 Married 03 Separated 04 Widowed 05 Living-in	
A2	How old are you on your last birthday?		
A3	What is your religion?	01 Roman Catholic 01 Protestant 02 Iglesia ni Cristo 03 Others (Specify)	
A4	What is your highest educational attainment	01 No formal schooling 02 Elementary 1 2 3 4 5 6 03 Secondary 1 2 3 4 04 Tertiary 1 2 3 4 5 05 Others (Specify)	
A5	How many are living with you in the same dwelling unit, and depending on you for their daily needs?		
A6	What is your main source of cash income?	01 Employment in government 02 Farming, rice 03 Farming, coconut 04 Farming, cash crops 05 Cottage industries/handicraft 06 Others (Specify)	
A7	How much is your estimated monthly income derived from the land?		
A8	Are there other family members who are economically active?	01 Yes 02 No	A12
A9	How many?		
A10	Who are they?	01 Spouse 02 Son 15 yrs old and below 03 Son, above 15 yrs old 04 Daughter, 15 yrs old and below 05 Daughter, above 15 yrs old 06 Others (specify)	
A11	What are the sources of their income?	01 Employment in government 02 Farming, rice 03 Farming, coconut 04 Farming, cash crops	

		05 Cottage industries/handicraft 06 Others (Specify)	
A12	How much is the estimated total monthly family income from all sources?		
A13	How much is the estimated total monthly family income derived from the land?		

Block B. Nature and forms of mortgage

For Mortgagors (B1-B43); for Mortgagees (B31-50)

B1. How many parcels of land do you claim/ Own?	B2. What is the area of each parcel?	B3. Mode of acquisition? 01 = purchase 02 = Donation 03 = Inherited 04 = Others	B4. Proof of Ownership: 01 = TCT 02 = Tax declaration 03 = Deed of Sale 04 = Others	B5. When Mortgaged? 01 = Before titling 02 = During titling 03= After titling	B6. No. of yrs mortgaged	B7. Mortgage Instrument Used	B8 Mortgagee

No.	Questions and Filters	Coding Categories	Skip to
B9	What are the reasons for mortgaging your land?	01 To send children to school 02 To buy farm inputs 03 To celebrate fiesta 04 To defray hospital expenses 05 To buy daily food 06 To pay a debt 07 To construct a house 08 To avoid dispute on the land 09 To return a favor rendered by the mortgagee before 10 Others (Specify)	
B10	Has the number of parcels/area of land mortgaged increased during the past 5 years?	01 Yes 02 No	To B12
B11	What is the reason for the increase?		
B12	What is the longest time that a land was mortgaged?		
B13	What is the shortest time that a land was mortgaged?		
B14	What are the factors affecting length of time that a land is mortgaged?	01 Per agreement of the parties 02 Emergence of a dispute 03 Financial needs of the mortgagor 04 Financial capability of mortgagee 05 Others (Specify)	

B15	What are the factors affecting the choice of mortgagee?	01 Mortgagee is the only one available within the barangay 02 As a matter of practice in the barangay 03 Best mortgaging terms offered 04 Previous mortgaging arrangements with the mortgagee 05 Referral from friends/relatives 06 Others (Specify)	
B16	Are you satisfied with the terms?	01 Yes 02 No	To B18
B17	What makes you satisfied with the mortgaging terms?	01 Period of redemption is long 02 Mortgagee is approachable 03 I can get additional money from the mortgagee as long as the land is mortgaged 04 Others (Specify)	
B18	What do you think will comprise the best mortgaging arrangement?		
B19	If there were other formal credit facilities, will you still mortgage land?	01 Yes 02 No	To B21
B20	Why not?		
B21	Have you experienced not being able to redeem a mortgaged property?	01 Yes 02 No	To B23
B22	What are the reasons for non-redemption?	01 I purposely did not want to 02 No money to redeem 03 Mortgagee want to buy the land 04 Presence of dispute 05 Others (Specify)	
B23	Who pays the taxes while the property is mortgaged?	01 Mortgagor 02 Mortgagee 03 None	To B31
B24	Are all your mortgaged lands in the same mortgagee?	01 Yes 02 No	To B26
B25	Why?		
B26	Why not?		
B27	How many mortgagees do you have?		
B28	Do you keep on changing mortgagees?	01 Yes 02 No	To B30
B29	Why have you changed mortgagees?		To B31
B30	Why haven't you changed mortgagees?		
B31	What are your expectations regarding the mortgaged property before titling?		
B32	What are your expectations regarding the mortgaged property after it is titled?		
B33	Among your titled lands, have some of these been mortgaged before?	01 Yes 02 No	
B34	Have you encountered problems in the process of mortgaging your property?	01 Yes 02 No	To B36
B35	What are these problems?	01 No collateral to show 02 Mortgagee wants his terms 03 Not enough mortgagees to choose from 04 Others (Specify)	

B36	Have there been disputes arising from mortgaging?	01 Yes 02 No	To B42
B37	What are the causes of these disputes?	01 Mortgagee does not want land to be redeemed 02 Breach of contract 03 Mortgagor want to redeem land before maturity 04 Others (Specify)	
B38	Are the disputes resolved?	01 Yes 02 No	To B41
B39	How are these disputes resolved?		
B40	How long does it take for these disputes to be resolved?		To B42
B41	What are the reasons for non-resolution		
B42	What benefits does mortgaging give?		
B43	What disadvantages have you experienced from mortgaging activities?		
B44	How long have you been a mortgagee?		
B45	How many mortgagors do you have?		
B46	How many parcels of land are mortgaged to you?		
B47	What is the total land area mortgaged to you?		
B48	What mortgage arrangements do you prefer?		
B49	What is the instrument used in mortgaging?	01 Deed of Sale 02 TCT 03 Tax Declaration 04 Written contract between parties 05 Verbal agreement 06 Others (specify)	
B50	How do you help the mortgagor redeem his property upon maturity date?		

Block C. Implications of mortgaging on the titling process

No.	Questions and Filters	Coding Categories	Skip to
C1	Do you think that mortgaging will hasten the titling process?	01 Yes 02 No	To C3
C2	In what way will mortgaging hasten titling?		To C4
C3	In what way will mortgaging obstruct titling?		
C4	Is mortgaging detrimental to your rights to the land?	01 Yes 02 No	
C5	Can mortgagees become tenants?	01 Yes 02 No	
C6	Will mortgaging hasten land loss?	01 Yes 02 No	
C7	When is it advisable to mortgage your land?	01 Before titling 02 While titling is in process 03 After titling	

C8	Why?		
C9	Who determines the value of the mortgaged property?	01 Mortgagor 02 Mortgagee 03 Both	
C10	What are the bases of valuation?		

Block D. Impact of titling on mortgaged properties

No.	Questions and Filters	Coding Categories	Skip to
D1	What is the status of the titling process of the mortgaged land?	01 Titled through LAMP 02 Titling in process 03 Interviewed by LAMP, but documents are still incomplete	To D6 To D10
D2	Has the titling facilitated mortgaging?	01 Yes 02 No	To D4
D3	How has it facilitated mortgaging arrangements?	01 Being able to get better terms 02 Land is readily available as loan collateral 03 Lesser time needed to get a loan 04 More mortgagees interested 05 Others (Specify)	
D4	How has titling hindered/obstructed mortgaging activities?	01 Taxes have to be paid 02 Mortgagees are hesitant to assist 03 More paper work needed in processing a loan 04 Others (Specify)	
D5	What differences in mortgaging terms/arrangements took place after titling?	01 Improved access to credit 02 Choices of formal creditors over informal mortgagees 03 Higher value for mortgaged land 04 Security of tenure 05 Higher probability of redemption 06 Lower incidence of disputes 07 Others (Specify)	To D13
D6	How long has titling been in process?		
D7	Who pays the fees for titling?	01 Mortgagor 02 Mortgagee 03 Both	
D8	What do you think is causing the delay in the titling?		
D9	How has the delay in titling affected you?	01 No effect 02 Can not mortgage my property 03 I am not sure if I can get the title of the land 04 Cannot put more investments on the land 05 Others (Specify)	To D13
D10	What documents are lacking for the titling process to start?		
D11	When were you informed that you are a qualified claimant (no. of yrs. back)?		

D12	What problems do you encounter, such that you cannot complete the required documents?	01 High cost of titling 02 Not interested to have a title 03 No information and guidance from LAMP 04 Do not know what to do 05 Others (Specify)	
D13	If mortgaged lands are titled, how will that change your way of life?	01 No change 02 Costly to be paying annual taxes 03 More production from the farm 04 Higher income from the land 05 Others (Specify)	
D14	Which of the following effects do you expect to happen if mortgaged lands are titled?	01 Land fragmentation will be fast 02 Land will be more equitably Distributed 03 Mortgagees will have a hard time acquiring more lands either from unredeemed mortgaged properties, or by purchase 04 The land ownership structure in the barangay will be favorable 05 Access to formal credits 06 Others (Specify)	
D15	Have you lost land as a result of titling?		
D16	Who completes titling applications?		
D17	What is your role in the titling process?		

Block E. Problems and prospects

No.	Questions and Filters	Coding Categories	Skip to
E1	Do you really want your land to be titled?	01 Yes 02 No	To E3
E2	Why do you want your land titled?		To E4
E3	Why don't you want your land titled?		
E4	Do you get adequate information from LAMP regarding the effects of mortgaging on titling and vice versa?	01 Yes 02 No	To E7
E5	Why do you think you are not getting adequate information from LAMP?		
E6	What information do you need?		
E7	Do you get prompt information on these concern?	01 Yes 02 No	To E9
E8	Why do you think you do not get prompt information?		
E9	What information do you get?		
E10	What should LAMP do to facilitate titling and help security of tenure?		
E11	What should LAMP stop doing in order		

	to hasten titling of land?		
E12	What should LAMP do to lessen the ill effects of mortgaging?		
E13	Whom do think LAMP favors?	01 Mortgagors 02 Mortgagees 03 Both	
E14	Why do you say so?		
E15	Do you believe that mass titling is viable in your area?	01 Yes 02 No	
E16	What do you believe is the best way to recognize your rights to the land?	01 Free Patent 02 Just respect accepted social norms regarding land ownership 03 Others (Specify)	
E17	How can LGUs lessen the ill effects of mortgaging?		
E18	How can LGUs help improve land security?		
E19	How can POs and NGOs lessen the ill effects of mortgaging?		
E20	How can POs and NGOs help improve land security?		
E21	Is land titling the best way to improve land productivity?	01 Yes 02 No	
E22	Without land titles, there can be still be land productivity.	01 Agree 02 Disagree	
E23	Without land titles, I still feel secure about the land I am tilling.	01 Agree 02 Disagree	

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ANNEX A-2

GUIDELINES FOR FOCUS GROUP DISCUSSIONS (FGD)

A. Objective

General Objective:

To elicit from the FGD participants their insights on the prospects of LAMP achieving its goal of improving tenure security and improving the incomes of claimants through the formalization of their land rights, in the context of the "mortgage" arrangements existing in the community, given the scope of social protection under the laws.

Specific Objectives:

- To determine practices on mortgaging in areas covered by Free Patent
- To document community expectations on areas covered by mortgage arrangements, both from the point of view of the mortgagors and the mortgagees
- To determine mortgagors' and mortgagees' plans and intentions before and after titling
- To document the reasons for mortgaging of parcels before titling
- To document the roles and practices of mortgagors and mortgagees in the titling process, such as who completes the applications, who pays the taxes while the land is mortgaged, who pays the fees for titling.

B. Target Groups

The following groups representing the sample *barangays* of LAMP areas in Sta. Fe, Pastrana and San Miguel will be tapped.

- Those who received FP titles through LAMP
 - mortgagors
 - mortgagees
- Those awaiting FP titles in process by LAMP
 - mortgagors
 - mortgagees
- Those who have been documented by LAMP but whose documents are still incomplete
 - mortgagors
 - mortgagees

C. FGD Participants

There will be at least sixteen participants to the FGD that will be conducted in each sample *barangay*, distributed as follows:

Impact of titling on mortgaged properties
Appropriateness of LAMP intervention
Options for improving land security of tenure
Recap/wrap-up

Post-FGD: Documentation of proceedings
Analysis of results
Case writing (one case per field worker/team leader)

F. Discussion Points:

• **Mortgage Arrangements**

For mortgagors:

What is your proof of ownership of the land?
How many parcels are on mortgage now?
What is the total area of mortgaged property?
Has the number of parcels/area mortgaged increased in the past 5 yrs?
What is the longest time that a parcel has been mortgaged? Shortest?
What are the reasons for mortgaging your land?
Who is your mortgagee?
Why did you choose this particular mortgagee?
What are the terms under this mortgage arrangement?
Are you satisfied with the terms?
Why or why not?
When was the first time you mortgaged your property?
For what reason?
If there are credit facilities, will you still mortgage your property?
What instrument do you use in mortgaging your property?
Have you been able to redeem any of your mortgaged properties?
Why or why not?
Who pays the taxes of your mortgaged properties?
Are there disputes resulting from mortgage arrangements?
How are these disputes settled?
What are your expectations regarding your mortgaged property?
Among your titled lands, have some of these been mortgaged before?

For mortgagees:

What is the instrument used in the mortgaging arrangement?
How many mortgagors do you have?
How many parcels of land are mortgaged to you?
What is the area of the smallest parcel? The biggest?
How long have you been a mortgagee?
What mortgage arrangements do you prefer?
Why or why not?
What are your expectations regarding the properties mortgaged?

Have you been involved in disputes arising from mortgages?

How are these resolved?

Among your titled lands, have some of these been mortgaged before?

- Implications of mortgages on the titling process
 - When did you mortgage your land: before, during or after titling?
 - Why do you need to mortgage your lands before titling?
 - Which would you prefer: to mortgage before, during, or after titling?
 - Why?
 - Has mortgaging helped you? How?
 - Do you encounter problems with regards to mortgaging?
 - What are these?
 - Do you think that mortgaging will hasten the titling process?
 - Why or why not?
 - Is mortgaging detrimental to your rights to the land?
 - Have you lost land because of mortgaging?
 - Who determines the value of the mortgaged property?
 - What are the basis for valuation?
 - Are there credit facilities available?

- Impact of titling on mortgaged properties
 - Do you want your mortgaged land to be titled? Why or why not?
 - What are the advantages derived from titling?
 - What are its disadvantages?
 - If the mortgaged lands are titled, how will that change your way of life?
 - What changes in land ownership structure do you foresee?
 - What changes in land productivity will titling bring?
 - Do you believe that your income will increase?
 - Do you believe that titling will facilitate access to formal credits?
 - Why or why not?
 - Will titling of lands hasten land fragmentation?
 - Who finances the titling process?
 - What is your role in the titling process?
 - Have you lost land as a result of titling?

- Appropriateness of LAMP intervention
 - What are LAMP practices on the registration and valuation of FP
 - Applications on parcels that are subject to mortgage?
 - What are the LAMP activities in your area?
 - What information from LAMP do you get?
 - Do you have fair access to relevant information?
 - Do you believe that LAMP can help you get security of tenure?
 - What LAMP actions need to be strengthened? Why?
 - What LAMP actions need to be stopped? Why?
 - Whom does LAMP favor: the mortgagees or the mortgagors? Why?

- Options for improving land security of tenure
 - Do you believe that mass titling is viable in your area?
 - Why or why not?
 - Is Free Patent the best way to recognize your rights to the land?
 - If yes, why is it considered best?
 - If not, why not? What is the better option?
 - Can LGUs help you in improving land security of tenure? How?
 - What other agencies or groups will do the same?
 - Do you see problems regarding titling of mortgaged lands?
 - How should these problems be addressed?
 - How can LAMP help improve land security of tenure?

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ANNEX A-3

GUIDE FOR FIELD OBSERVATION

A. Objective

To gather socio-economic characteristics of the community that are needed in analyzing the data gathered from the survey and the FGDs; and to capture the cultural nuances in the community.

B. Inputs/Resources

Manpower: 4 field workers
1 Team leader

Supplies: 4 pcs notebook
4 pcs. Ball pen

C. Mechanics

Field workers/data gatherers must take note of community characteristics which are relevant to the study.

- Housing characteristics
- Major occupations in the community
- Population structure
- Presence of commercial establishments
- Presence of basic services (school & level of education, church, health facilities, plazas, source of water, electricity)
- Sanitation and cleanliness
- Major commodities and its flow
- Social activities of populace
- Forms of recreation
- Off-farm employment
- Community organizations (formal & informal)
- Sources of information
- Indicators of LAMP presence

*MBS for LAMP/2004***ANNEX B****LIST OF RESPONDENTS: SAN MIGUEL
MORTGAGORS**

Municipality	Barangay	ID No	Name of Mortgagor	Address of Mortgagor
San Miguel	Impo	01	Maximo Martija	Impo, San Miguel
		02	Saturnina Genaro	Impo, San Miguel
		03	Cresencia Cabazares	Youngfield, Tacloban
		04	Jesus Hingpis	Ibag, Barugo
		05	Lino Caubalejo	Impo, San Miguel
		06	Palia Bonifacio	Santol, San Miguel
		07	Jovito Hingpis	Impo, San Miguel
		08	Manuel Vergara	Libtong, San Miguel
		09	Fausto Babiano	Impo, San Miguel
		10	Milagros Tayong	Impo, San Miguel
San Miguel	Bairan	21	Napoleon Ala	Bairan, San Miguel
		22	Erlinda Quilaneta	Bairan, San Miguel
		23	Amador Lagarde	Cayare, San Miguel
		24	Patricio Azores	Bairan, San Miguel
		26	Artemio Brazil	Bairan, San Miguel
		27	Saturnina Babiano	Libtong, San Miguel
		28	Joseph Nalda	Libtong, San Miguel
		29	Vicente Balet	Bairan, San Miguel
		30	Impeng Ariza	Bairan, San Miguel
		San Miguel	Bahay	37
38	Dominador Bariata			Bahay, San Miguel
39	Gaudencio Palin			Santol, San Miguel
40	Apolinario Salazar			Bahay, Sn Miguel
41	Uldarico Quero			Bahay, San Miguel
42	Leon Peñaranda			Cayare, San Miguel

LIST OF RESPONDENTS: STA. FE
MORTGAGORS

Municipality	Barangay	ID No	Name of Mortgagor	Address of Mortgagor
Sta. Fe	San Juan	63	Crisanto Toribio	San Juan, Sta. Fe
		64	Rodrigo Daga	San Juan, Sta. Fe
		65	Fructuosa Fabricante	San Juan, Sta. Fe
		66	Benjamin Olaya	San Juan, Sta. Fe
		67	Erlinda Fulminar	Biasong, Sta. Fe
		68	Isabel Trigeros	San Juan, Sta. Fe
		69	Arturo Olaya	San Juan, Sta. Fe
		70	Ernesto Divino	Catoogan, Sta. Fe
		71	Illuminado Divino	San Juan, Sta. Fe
		72	Manuel Golez	Biasong, Sta. Fe
		73	Vilma Auza	San Juan, Sta. Fe
Sta. Fe	Katipunan	47	Maria Olpiano	Katipunan, Sta. Fe
		48	Marlyn Recquis	Katipunan, Sta. Fe
		49	Virgilio Francisco	Katipunan, Sta. Fe
		50	Celdora Malbas	Katipunan, Sta. Fe
		51	Reyna Parce	Katipunan, Sta. Fe
		52	Benjamin Esquerda	Katipunan, Sta. Fe
		53	Jose Martinez	Katipunan, Sta. Fe
		54	Claridad Planillo	Katipunan, Sta. Fe
		55	Sotero Nugal	Katipunan, Sta. Fe

LIST OF RESPONDENTS: PASTRANA
MORTGAGORS

Municipality	Barangay	ID No	Name of Mortgagor	Address of Mortgagor
Pastrana	Jones	87	Orlando Soriano	Jones, Pastrana
		88	Allan Ladrera	Jones, Pastrana
		89	Norberto Salas	District IV, Pastrana
		90	Elizabeth Gerilla	District IV, Pastrana
		91	Purificacion Gerilla	Jones, Pastrana
		92	Aniceta Escobeja	Jones, Pastrana

		93	Enrique Margallo	Poblacion, Pastrana
		94	Claudia Almeria	District IV, Pastrana
		95	Eltide Gerilla	District IV, Pastrana
		96	Maximo Mercado	District IV, Pastrana
		97	Peping Margallo	Jones, Pastrana
		98	Petra Tibre	Jones, Pastrana
Pastrana	Socsocon	82	Leonila Cordero	Socsocon, Pastrana
		83	Estelita Baldesco	Socsocon, Pastrana
		84	Rita Ibañez	Socsocon, Pastrana
Pastrana	Canino-an	106	Victor Mercurio	Canino-an, Pastrana
		107	Mercedes Soriano	Canino-an, Pastrana
		108	Rafael Metila	Canino-an, Pastrana
		109	Porferia Mora	Canino-an, Pastrana
		110	Rommel Pardilla	Canino-an, Pastrana
		111	Francisco Nugal	Canino-an, Pastrana
		112	Cesar Padilla	Canino-an, Pastrana
		113	Telesforo Barbosa	Canino-an, Pastrana
		114	Anacorita Ganata	Canino-an, Pastrana
		115	Mercedes Pardilla	Canino-an, Pastrana
		116	Andres Pedrosa	Canino-an, Pastrana
		117	Jose Modesto	Canino-an, Pastrana
		118	Salvacion Nacorda	Canino-an, Pastrana
		119	David Pardilla	Canino-an, Pastrana
		120	Cita Pardilla	Canino-an, Pastrana
		121	Luz Nugal	Canino-an, Pastrana
		122	ConcepcionMercurio	Canino-an, Pastrana

ANNEX C

**LIST OF RESPONDENTS: SAN MIGUEL
MORTGAGEES**

Municipality	Barangay	ID No	Name of Mortgagee	Address of Mortgagee
San Miguel	Impo	11	Thelma Maler	Impo, San Miguel
		12	Francisco Caubalejo	Impo, San Miguel
		13	Petra Geraldo	Impo, San Miguel
		14	Agnes Diloy Cabiao	Impo, San Miguel
		15	Beinvenido Balogbog	Sta. Rosa, Barugo
		16	Loreta Casaldan	Ibag, Barugo
		17	Bernardina Aying	Malaihaw, Sn Miguel
		18	Alfredo Aying	Malaihaw, Sn Miguel
		19	Lucio Ala	Impo, San Miguel
		20	Luisito Aballo	Impo, San Miguel
San Miguel	Bairan	31	Consuelo Aboga	Bairan, San Miguel
		32	William Polenio	Bairan, San Miguel
		33	Zenaida Baldos	Bairan, San Miguel
		34	Margarito Asis	Bairan, San Miguel
		35	Disamparado Bacierra	Bairan, San Miguel
		36	Reynaldo Bariata	Bairan, San Miguel
		25	Jerry Babiano	Libtong, San Miguel
San Miguel	Bahay	43	Paciencia Gam	Bahay, San Miguel
		44	Alfredo Quero	Bahay, San Miguel
		45	Manuel Padulio	Bahay, San Miguel
		46	Manuel Gam	Bahay, San Miguel

**LIST OF RESPONDENTS: STA. FE
MORTGAGEES**

Municipality	Barangay	ID No	Name of Mortgagee	Address of Mortgagee
Sta. Fe	San Juan	74	Lily Racho	San Juan, Sta. Fe

		75 76 77 78 79 80	Belen Lacaba Fe Avelino Dayday Sardeña Puring Divino Patrocenia Calceta Paz Lantajo	San Roque, Sta. Fe San Juan, Sta. Fe San Juan, Sta. Fe Tingpus, Sta. Fe San Juan, Sta. Fe San Juan, Sta. Fe
Sta. Fe	Katipunan	56 57 58 59 60 61 62	Antero Regaña Meliton Letrodo Romeo Palamos Froilan Parado Gloria Cebello Ruel Gerilla Judge C. Pontejos	Katipunan, Sta. Fe Katipunan, Sta. Fe Katipunan, Sta. Fe Katipunan, Sta. Fe Katipunan, Sta. Fe Katipunan, Sta. Fe Tacloban City

**LIST OF RESPONDENTS: PASTRANA
MORTGAGEES**

Municipality	Barangay	ID No	Name of Mortgagee	Address of Mortgagee
Pastrana	Jones	99 100 101 102 103 104 105	Pedro Gerilla Natividad Vero Wilfredo Olaya Nestor Balaga Rosita Sales Manuel Martillo Tootsie Cayaco	Jones, Pastrana Jones, Pastrana District III, Pastrana District III, Pastrana District III, Pastrana Jones, Pastrana District III, Pastrana
Pastrana	Socsocon	85 86	Salvador Costiniano Cecilia Ragasa	Socsocon, Pastrana Socsocon, Pastrana
Pastrana	Canino-an	123 124 125	Elsa Gante Lourdes Tobilla Mamerto Calumag	Canino-an, Pastrana Canino-an, Pastrana Canino-an, Pastrana

ANNEX D

CASE STUDIES

CASE #1

**CONRADO BALET
(HEIR OF VICENTE BALET)
Mortgagor
Brgy. Bairan, San Miguel, Leyte**

Conrado Balet is the sole heir of Vicente Balet. He is 47 years old and a resident of Brgy Bairan San Miguel, Leyte. There are seven children still living with and depending on him. Farming is his primary source of income.

The mortgaged land is a one-half hectare riceland. It was first mortgaged to a certain Lucia Ala, also a resident of San Miguel. And was "nalito" (second mortgage) recently to Badong Lacandazo at forty thousand pesos (PhP40,000.00). The money was used to pay the laborers working in Conrado's other ricelands. The second mortgage was necessary because Conrado needed a bigger amount of cash and Lucia could not give him said amount. Mortgagees were chosen by the mortgagor by virtue of their being close relatives, and are perceived to be always ready to help him.

The mortgagor applied under the Free Patent last year and was given a title the same year. The title increased the valuation of the land and it was one of the proofs of ownership that was showed and given to the mortgagee.

There was no formal procedure in the mortgage arrangement between the two parties. The mortgagor just gave the title and the Tax Declaration to the mortgagee. There is no "tatasyon" (maturity date) agreed upon by both parties. The mortgagee will continue to get the "kutsitsa" (harvests) as long as the land is mortgaged to him.

Case #2

**PASTRICIO AZORES
Mortgagor
Brgy. Bairan, San Miguel, Leyte**

Patricio Azores, 71 years old is a resident of Brgy. Bairan, San Miguel, Leyte. He mortgaged part of his 0.9-hectare riceland to Consuelo Aboga, a resident of Brgy. Lukay, a neighboring barangay,

Years ago, 1/4 of this land was first mortgaged to one of his relatives. A second quarter was mortgaged to his neighbor. The remaining half was mortgaged to Consuelo Aboga. When

the period of redemption of the first two mortgages was over, Mr. Azores decided to have a single mortgagee so that possible disputes will be avoided. Having many mortgagees is not comfortable for him. He made a second mortgage ("lito") to Consuelo Aboga, who has now the whole lot. The total loan of the mortgagor amounted to PhP160,000.00. The money was used to send his children to school, and to defray daily household expenses.

This land, with lot number 601 measures 9,608.96 sqm. It is located n Brgy Bairan, San Miguel, Leyte. It is already titled. The mortgagor handed over the land title since the mortgagee required it as a mortgage instrument. The period of redemption is after 6 years. Included in the mortgage arrangement is for the owner-mortgagor to temporarily have no right to work on the land until it is redeemed. Mr. Aboga takes control of the land and Mr. Azores does not receive any share from the income derived from the said land. Like in other case, the mortgagee does not charge any interest on the money borrowed.

Mr. Azores finds the mortgage arrangement reasonable even if he does not receive any share from the land. According to him, the market value or the worth of the riceland is lesser compared to his loan. He is eager to redeem the land. He has the money already, and he is now waiting when the maturity date falls due.

CASE #3

ETILDE GERILLA

Mortgagor

Brgy. Socsocon, Pastrana. Leyte

In 1998, Mrs. Etilde Gerilla, a resident of Brgy. Socsocon, Pastrana, mortgaged her coconut land to Mr. Pedro Gerilla. This coconut land is Mrs. Gerilla's inheritance from her parents. The mortgagee happens to be the cousin of her husband and has mortgagors other than her. The parcel has an area of 6,072 sqm with lot number 1636, and is located in Brgy. Jones, Pastrana, Leyte. Mrs. Gerilla mortgaged the land for PhP25,000.00 to pay for the school fees of her children, and to buy the daily food requirements of the family. This land is located far from Mrs. Gerilla's residence.

The agreement was that the mortgagor can redeem the land after 2 years, but will continue to be mortgaged if Mrs Gerilla still has no money to redeem the property. Four years have now passed after the maturity date. The land is still farmed by the mortgagee. The mortgagor, however, finds the mortgage arrangement flexible in terms of the period of redemption. The mortgagee assures Etilde that she can redeem the land any time she is ready. The mortgage was formalized by a written contract and witnessed by the Barangay Chairman.

The mortgagor has a Tax Declaration to the property. Titling is currently in process by LAMP.

The mortgagor's primary source of income is derived from rice farming from another riceland which is owned by her mother-in-law. She became a mortgagee when this parcel was mortgaged to her for PhP6,000.00 by her mother-in-law. For this mortgage, Etilde allocated

PhP6,000.00 from the PhP25,000.00 cash which she got as mortgage price of her own land (Lot 1636). No written agreement was signed but there seems to be no problem since the mortgagor is her mother-in-law. The harvest from the riceland is 15 cavancs of palay per season. This enables them to earn roughly PhP800.00 per month for their family.

CASE #4

CLAUDIA ALMERIA
Mortgagor
Brgy. Socsocon, Pastrana, Leyte

Mrs. Claudia Almeria, a resident of Brgy. Socsocon, Pastrana, mortgaged her two parcels of coconut land to her close relative, Mr. Pedro Gerilla, who resides in Brgy Jones, a neighboring barangay. Both lots are already patented but these were mortgaged before titling. The parcels were mortgaged in year 2002 for a total of PhP13,000.00. The money was used to pay for the hospital expenses of a family member.

One of the parcels, with an area of 10,453 sqm with lot number 1632 was mortgaged for PhP6,500.00. The smaller lot with an area of 5,900 sqm with lot number 1623 was likewise mortgaged for PhP6,500.00. The mortgagor determined the values of the properties being mortgaged. Both parcels were mortgaged for the same amount since the larger parcel has less coconuts planted to it.

As the usual practice in the community, both parties signed a written agreement which was facilitated by the Barangay Chairman of Jones. The mortgagee will farm and get the income from the coconut lands' harvest until the properties are redeemed. It was agreed that Mrs. Almeria will redeem the property after 5 years. The mortgagor is hopeful that she will be able to redeem the lots when the due dates fall.

The only source of income of Mrs. Almeria's family is the income of her husband who works in the local government office. Mr. Almeria is earning about PhP10,000.00 per month.

CASE #5

ORLANDO SORIANO
Mortgagor
Brgy. Jones, Pastrana, Leyte

In the year 2000, Mr. Orlando Soriano borrowed PhP50,000.00 from Engr. Eliseo Lucenario. He used part of his coconut land as a collateral. The money was used for the placement fee of his daughter who was applying for a job abroad. He promised to return the money immediately, but unfortunately, he was not able to do it since his daughter was a victim of an illegal recruitment.

Mr. Soriano is 65 years old, living in Brgy. Jones, Pastrana. He has six grown-up children and four of them are already married and living close to his residence. The two other children are both single and are living with him. Mr. Soriano works full time in farming.

A written contract was used as mortgage instrument. Engr. Lucenario gives access to Mr. Soriano to work over the land provided that for every cropping season, the latter will give 500 kilos of "copra" to Engr. Lucenario. However, if the harvest is less than 500 kilos, they negotiate as to the sharing of the harvest. Fortunately, no disputes have ever arisen. After six years, Mr. Soriano is supposed to redeem the coconut land. No interest was imposed by Engr. Lucenario on the borrowed money. The mortgagee finds the mortgage arrangement just and reasonable.

At this time, the period of redemption is over, but Mr. Soriano was not able to redeem the land since he has no money yet. However, he still continues working on the land because the arrangement continues. Mr. Soriano fears that Engr. Lucenario might take over the land since it is beyond maturity date already.

When LAMP started titling activities, Mr. Soriano applied for it since his land is not yet titled.

CASE #6

VILMA AUZA

Mortgagor

Brgy. San Juan, Sta. Fe, Leyte

Nine years ago, the mother of Vilma Auza mortgaged her parcel of land located in Sitio Biasong, San Juan, Sta. Fe. The property has a total area of 0.46636 hectares. It is planted with rice. During that time, Vilma Auza was still studying. There was no one in the family to farm the riceland, since her father just died. Seeing the land idle, and knowing that the mortgagor was in need of money, Mrs. Belen Lacaba, offered to lend money to Vilma's mother in exchange for the right to till the land until it is redeemed. Mrs. Lacaba comes from the town of Palo, about 15 kilometers from Sta. Fe. She owns parcels of land in Sitio Biasong. She is also a mortgagee in the sitio.

Auza's land was mortgaged for PhP33,000.00. A Deed of Sale was presented by Vilma's mother as proof of ownership. The land was mortgaged for a period of 9 years. Vilma Auza now claims ownership of the land since her mother has died already.

Titling of the parcel has been delayed. The owner of an adjacent lot claims part of Vilma's parcel. The mortgagor has sought help from LAMP regarding the matter. She also got from DENR the map of the parcel.

CASE #7

BENJAMIN LANTAJO
Mortgagor
Brgy. San Juan, Sta. Fe, Leyte

A riceland and a coconut land measuring at least 3 hectares and located in Brgy. San Juan, Sta. Fe was mortgaged by Mr. Benjamin Olaya to Mr. Iluminado Lantajo. They are both residents of the said barangay, Mr. Olaya is 65 years old and is a full time farmer. His farm income is enough to support him and his wife. All his children are married and are no longer depending on him.

Mr. Olaya mortgaged the land to defray hospital expenses some 3 years ago. The money left was used to buy farm inputs for his other farms. His choice of a mortgagee was based on friendship and the availability of cash at the time of emergency.

The mortgagor did not give the Tax Declaration to the mortgagee. Instead they had a written contract which was notarized by a lawyer. The period of redemption was after 6 years. Mr. Lantajo did not deny the mortgagor access to work on the mortgaged land. Included in the terms of agreement was for Mr. Olaya to give 1/3 of the net income to Mr. Lantajo.

The mortgagor does not believe that mortgaging hastens land loss. It depends on the type of mortgagee one has. In his case, even if Mr. Lantajo is not a relative, he found the mortgage arrangements flexible in terms of the period of redemption, and the sharing arrangement agreed upon is reasonable.

Mr. Olaya applied for the titling of his land through LAMP. He is now waiting for the time that LAMP will hand over the title to him.

CASE #8

CRISANTO TORIBIO
Mortgagor
Brgy. San Juan, Sta. Fe, Leyte

Crisanto Toribio is married, 45 years old, and a resident of Brgy. San Juan, Sta. Fe. His main source of income is pedicab-driving from where he earns approximately five thousand pesos a month (PhP5,000.00). He has six children who are still with him. He has several inherited lands from his parents. However, all these lands (except the parcel where his chouse is located) have all been mortgaged to some cousins. A written contract made by a lawyer served as the mortgage instrument.

One of his inherited lands, a coconut land, was mortgaged to a certain Nenita at ten thousand pesos. Mr. Toribio is no longer interested to redeem the land because according to him he has not derived any income from it. The coconut trees planted on the parcel seldom bear fruit. If ever, the coconuts are stolen by neighbors.

The second lot he has inherited from his parents is mortgaged to Mrs. Lily Racho, his cousin. The mortgage price was ten thousand pesos. The money was used for the hospitalization of his child. More money was later advanced from the mortgagee until it reached twenty one thousand pesos. Just recently, he "lito" (second mortgage) the land to Mrs. Puring Divino, at a higher amount of fifty thousand pesos. Mr. Toribio claimed that he used the amount for the renovation of his house, and for buying a second-hand pedicab which he now drives around for a fee. The "tatasyon" of the mortgage is twenty years. The Tax Declaration was surrendered by the mortgagor to the mortgagee.

According to neighbors and Mr. Toribio's mortgagees, the mortgagor uses the money for his daily needs, for viand and for food. He also uses an amount for his vices such as drinking with friends and for cockfighting.

The third land which Mr. Toribio mortgaged was a riceland measuring less than half a hectare. He mortgaged this land fifteen years ago, while he was still single, at ten thousand pesos. After some time, the mortgagor's debt reached thirty thousand pesos because every now and then, Mr. Toribio would ask for an additional amount in consideration of the mortgaged land. The mortgagee was Mrs. Fe Avelino, a cousin. This time, Mrs. Avelino declared that the amount was already the selling price of the land.

CASE #9

RODRIGO DAGA

Mortgagor

Brgy. San Juan, Sta. Fe, Leyte

Mr. Rodrigo Daga is a resident of Brgy. San Juan, Sta. Fe. He is 66 years old. He is a farmer at the same time a Barangay Kagawad (Councilor). He earns PhP9,000.00 a month from his cultivated land, and PhP1,500.00 a month from being a barangay official. There are five children living with him.

There are two parcels of land that Mr. Daga mortgaged to Mr. Artem Lantajo of Brgy. Lima, Pastrana, Leyte in the year 1998. The arrangement was "kaanaw." He mortgaged one half of his riceland at ten thousand pesos in exchange for "upat ka tanom" (4 production cycles), which is equivalent to 2 years. The mortgagee cultivated the land. At the end of the period, the mortgagee shall have returned the land to the mortgagor without the mortgagor paying the mortgage price, or the amount of money originally borrowed. However, Mr. Lantajo, after the four production cycles, asked for an extension of one year which is equivalent to two production cycles. He gave an additional amount of five thousand pesos to Mr. Daga. Mr. Daga agreed. After the one-year extension of the mortgage, Mr. Lantajo gave back the said riceland to the mortgagor.

The second parcel that Mr. Daga mortgaged in year 2000 to Mr. Lantajo is a one-hectare riceland under the "kaanaw" arrangement. Their agreement was for the land to be mortgaged for

two years or 4 production cycles. Today, the mortgaged land has already been given back to Mr. Daga after the mortgage period expired.

Case #10

DOMINADOR BARIATA

Mortgagor Brgy. Bahay, San Miguel, Leyte

Mr. Dominador Bariata is a 49-year old farmer and a resident of Brgy. Bahay, San Miguel. Three of his children are still living with him and depending on him. He inherited a 3-hectare riceland from his parents. His only source of income is farming.

In year 1998, he mortgaged this riceland to Mrs. Bernardina Aying for seven thousand pesos (PhP7,000.00) only. Dominador's younger sister was hospitalized and he needed money then. Just recently, he looked again for a second mortgagee and "lito" the lot for ten thousand pesos. The seven thousand pesos was paid to the first mortgagee and the three thousand pesos was spent for his vices such as cockfighting, drinking and socialization with friends.

This riceland is still cultivated by the mortgagor and gives a share of the harvest to the mortgagee. The mortgagor still has plans of redeeming the said riceland in the near future if he finds adequate money.

LAMP records show that Dominador was identified as a qualified claimant, He has been interviewed. However, he still has to submit the required documents in order for titling to start.

CASE #11

MILAGROS TAYONG

Mortgagor Brgy. Impo, San Miguel, Leyte

Milagros Tayong is a 49-year old resident of Brgy. Impo, San Miguel, Leyte. There are three children still living with him. Her main source of income is farming. Estimated total monthly family income is five thousand pesos (PhP5,000.00)

In the year 2000, she mortgaged a 3/4 hectare on inherited riceland to Francisco Caubalejo, for twenty thousand pesos. She needed money to pay a debt, and to construct a house. This land is already titled years ago, but not through LAMP.

There was a written agreement between the two parties and this was signed by the Barangay Chairman. The Tax Declaration was surrendered to the mortgagee as the mortgage instrument. For the whole mortgage period, the mortgagee has full possession of the riceland.

This lot has been titled already but according to the mortgagor, she was still interviewed by LAMP adjudicators for a Free Patent application. Her documents are not yet complete. She claims that she is not really interested in applying for Free Patent because she already has a title to the land.

Having a title to the land improved the valuation of the land for mortgage purposes.

CASE #12

MANUEL VERGARA
Mortgagor
Brgy. Impo, San Miguel, Leyte

In year 2002, the heirs of Eufemia Vergara, represented by Manuel Vergara mortgaged their 0.8-hectare riceland to Mrs. Leonila Labarda, a resident of a nearby town. The mortgage price was PhP50,000.00. The amount was used to pay for the expenses incurred for the funeral and burial of Manuel's mother. The parcel, with Lot #3116, is located in San Miguel, Leyte. As proof of ownership, Mr. Vergara has the Tax Declaration to the property.

Both the heirs and their mortgagee agreed to have a written contract without asking assistance from the Barangay Chairman. The mortgagors needed the money urgently. The mortgagee happens to be a good friend of Manuel's late mother, so Manuel and his family were able to borrow a big amount of money. It was agreed that the mortgagee, Mrs. Labarda will take over the possession of the farm until the PhP50,000.00 is paid back after a period of 10 years. Unless the mortgagors return the borrowed money, the mortgagee will manage the land and the mortgagors do not get any share from the farm's harvest.

Mr. Vergara presently derives income from tricycle driving. He earns from thirty to seventy pesos a day.

The heirs would like to apply for a titling of the parcel under the LAMP. However, they still have to decide who among the heirs will pay the mortgagor. They also will still have to decide as to how the property will be subdivided among the heirs.

CASE #13

ELSA GANTE
Mortgagee
Brgy. Canino-an, Pastrana, Leyte

Mrs. Elsa Gante is from Brgy. Canino-an, Pastrana. She is 40 years old, married to a foreigner and is presently residing in Pennsylvania, USA. She is at the same time working as a babysitter in the US where she earns about PhP20,000.00 a month, in order to support her family here who are still depending on her. She is now an American citizen. She is earning another PhP15,000.00 a month from the lands she bought and the lands mortgaged to her in Brgy. Canino-an.

Mrs. Gante has three mortgagors at present, all of them are residents of Brgy. Canino-an. Mortgage arrangements were made when she went home to the barangay for a vacation this year. All these lands mortgaged to her were first mortgaged to Mrs. Lourdes Tobilla, the Barangay Chairman of Canino-an. These lands were redeemed from Mrs. Tobilla through the "lito."

Casar Pardilla, the first mortgagor, mortgaged his coconut land to Mrs. Tobilla at twenty thousand pesos and "lito" the land to Mrs. Gante at seventy thousand pesos for ten years. Mr. Pardilla, the owner is still the one cultivating the land, and the mortgagee is given 1/2 of the harvest.

Rommel Pardilla, from the same barangay, mortgaged his coconut land first to Mrs. Tobilla at thirteen thousand pesos for ten years. Money was used for the construction of his house. The land was recently "lito" to Mrs. Gante for sixty thousand pesos. The mortgagor is cultivating at land. He gives 1/2 of the harvest to the mortgagee.

The third mortgagor, Porferia Mora, mortgaged her riceland first to Mrs. Tobilla for twenty five thousand pesos and was also "lito" to Mrs. Gante at ninety thousand pesos with a "tatasyon" of twenty years. The mortgagor became the tenant of her own land and gives one half share of the total harvest to the mortgagee.

In all these three transactions, the mortgagee always asks for the Tax Declaration as proof of ownership of the mortgaged land. A lawyer makes a written contract signed by both parties. The agreement is notarized. She makes it clear that she is not strict regarding the "tatasyon." Upon mutual consent, she is willing to extend the maturity period should maturity date fall and the mortgagor has no money yet.

The titling of these three lands through LAMP is still in process. The land claimants are still waiting for further instructions from LAMP-Pastrana.

CASE #15

NESTOR BALAGA Mortgagee District III, Pastrana, Leyte

Nestor Balaga is a mortgagee in District III, Pastrana. He is 44 years old with five children. He is earning twelve thousand pesos a month from farming and other businesses.

Year 1998, a 1.4-hectare coconut land was mortgaged to him for twenty five thousand pesos for 2 years by Mrs. Petra Tibre. The mortgagor needed money for additional capitalization of her business in the town's wet market.

At first, the cultivator was the mortgagor and the mortgagee was just given two hundred to three hundred pesos per harvest. Later, sensing that he was losing, the mortgagee decided to cultivate the land himself. He earned five thousand pesos per harvest. There are three harvests in a year.

The mortgage period was originally for 2 years. However, it has reached 6 years now and the mortgagor has not redeemed the land yet. At first, the non-redemption was just fine with the mortgagee because the mortgagor is a distant relative. Now he realized that he is really at a losing end so he wants the land to be redeemed by the owner.

Since the owner have not received the land, the mortgagee filed a police blotter at the municipality of Pastrana for two times, so that the mortgagor will be forced to redeem the land. The last blotter states that the mortgagee will just wait until July 2004 for the mortgagor to redeem the land.

The application for titling of this land through LAMP is still in process. The claimant applied for Free Patent two months ago and at the moment waiting for further instructions from LAMP-Pastrana.

CASE #15

PAZ LANTAJO Mortgagee Brgy. San Juan, Sta. Fe. Leyte

Mrs. Paz Lantajo is a widow and is 70 years old. She is a resident of Brgy. San Juan, Sta. Fe. Two of her children are living with her. She has several inherited ricelands and coconut lands. She derives an estimated monthly income of about eighty thousand pesos from these lands and all other lands mortgaged to her.

In year 1997, Mr. Benjamin Olaya, also a resident of the same barangay, mortgaged a one-hectare riceland to Mrs. Lantajo for seventy thousand pesos. There was a written document/contract made by a lawyer and was signed by both parties. The Tax Declaration of the land was also surrendered to the mortgagee as the mortgage instrument and as proof of ownership.

This land is until now in the hands of the mortgagee since the said land is within the five-year "tatasyon" that was agreed upon. It is already the 6th year. Mrs. Lantajo will just wait until the mortgagor finds money to redeem the land. While she is still the mortgagee, she will continue to get the whole "kutsitsa" (Harvest) from the land.

The titling of this mortgaged land is still in process by LAMP. The mortgagor was informed that he is a qualified claimant last April 2004. He immediately applied for Free Patent.

CASE #16

THELMA MALER
Mortgagee
Brgy. Impo, San Miguel, Leyte

Thelma Quintana Maler is a resident of Brgy. Impo, Sna Migue, San Miguel. She is 50 years old and is married to a German national.

There are three families in San Miguel who are depending on her for suport. So she engaged in part-time jobs in Germany to earn additional income. She was able to buy farm lands in Brgy. Impo eventually, she became a mortgagee since she came to be known in her community as well-off. The first mortgage arrangements took place when she spent a vacation in Brgy Impo.

There were two lands mortgaged to her: those owned by Mr. Saturnino Babiano and Mr. Nalding Maestro. The former's land was mortgaged to her for twenty thousand pesos and the latter's at fourteen thousand pesos. These two lands are all coconut lands. Harvests were made three times a year. Both lands are less than a hectare and the mortgage arrangement between the two parties was only made through a contract written by the Barnagay Chairman, and signed by two witnesses.

There was no specific agreement between the parties as to how many years are the lands to be mortgaged. The mortgagee will continue to get the full harvests from the mortgaged lands as long as it is mortgaged to her. The mortgagee will just wait for the time when the mortgagor will redeem the lands. At present, the land is tilled by the mortgagee's brother, Gil Quintana.

CASE #17

REYNALDO BARIATA
Mortgagee
Brgy. Bairan, San Miguel, Leyte

Mr. Reynaldo bariata is a resident of Brgy. Bairan, a neighboring barangay of Impo. He is married and lives with his family of six. He works full time as a rice farmer where he is able to produce 80 cavans of palay every harvest season.

In the year 2002, Mr. Roberto Azores mortgaged a riceland measuring half a hectare to Mr. Bariata for Php15,000.00 for a period of five years. The mortgagor showed his Tax Declaration as proof of ownership to the property. As the accepted normal mortgage arrangement in the community, both mortgagor and mortgagee signed a written contract and was witnessed by the Barangay Chairman.

The parcel, with Lot #974 is farmed by Ronilo Azores, the tenant who is a relative of the mortgagor. It was agreed that Mr. Bariata will get 1/3 share of the harvest from the mortgaged

property for a period of five years, after which the land will be redeemed. However, if by then the mortgagor does not have the money to redeem the land, Mr. Bariata will continue to receive 1/3 share of the harvest. The remaining 2/3 is equally divided between the owner-mortgagor and the tenant.

Mr. Baraiata is satisfied with the terms. He gets the rent for the use of the land promptly. Mr. Bariata does not know the status of the titling process of the parcel since according to him, the mortgagor is currently in Manila.

CASE #18

NATIVIDAD VERO Mortgagee Brgy. Jones, Pastrana, Leyte

Mrs. Natividad Vero, 62 years old is a resident of Brgy. Jones, Pastrana, Leyte. She is living with her two children while her husband works as a cook in Manila.

The total family income seems to be enough to raise the two children. Aside from selling "tuba," which is one of her sources of income, Mrs. Vero also derives income from cultivating a riceland. Part of this riceland was acquired by purchase from her brother-in-law, Mr. Salvador Vero.

Before the purchase, Mr. Salvador Vero* mortgaged part of his riceland for about PhP2,500.00 to Mrs. Vero. This happened when one of Salvador's family member got sick. Natividad did not require a Tax Declaration since she trusted the mortgagor, a relative. What is important for her was that they both agree on the terms of the mortgage. A written contract was made. Included in the terms was for Natividad to gain full possession of the land. The mortgagor can borrow additional money while the mortgage is in effect. The amount of money borrowed does not depend on the market value of the land, but on simple agreement between parties. This is the common practice in the community. The mortgagee will not charge interest on the borrowed money.

Several months after the mortgage was made, another family member of Mr. Vero got sick. He had no choice but to borrow money in consideration of the mortgage price. After some time, he decided to sell the riceland and was given PhP5,000.00 more by the mortgagee. The land was "nayubusan/nabutong." According to the mortgagor, even if he lost the land, at least it is till owned by someone within the family circle.

**Note: In the LAMP land tenure profile, it is listed that Aniceta Escobeja is the mortgagor. However, according to the mortgagee (Natividad Vero), it is Salvador Vero who mortgagd the land to her.*

CASE #19

MELITON LETRODO
Mortgagee
Brgy. Katipunan, Sta. Fe, Leyte

Mr. Meliton Letrodo, 79 years old is living in Bgy. Katipunan, Sta. Fe. He has an extended family with some of his children living with him even if they already have their respective families. He works full time as a farmer. His family belongs to the Jehovah's Witnesses.

In 1997, a certain Mr. Ulpiano Mare mortgaged a residential lot to Mr. Meliton Letrodo for PhP6,000.00. This lot measures 600 sqm. The latter decided to build a house for his family in this lot since the location is accessible to transportation. As a common practice in this community, only a written contract between parties was used as mortgage instrument. Included in the mortgage arrangement was the period of redemption which was 15 years. Mr. Letrodo does not charge any interest to the amount loaned.

The mortgagee received a letter from the Rural Bank of Palo, Leyte informing him that the lot mortgaged to him was previously used by Mr. Mare as a collateral in acquiring a loan from the bank. Mr. Letrodo did not know what to do. He thought that the bank might take over the land and he will lose possession of the land since he was not the first mortgagee.

When Mr. Letrodo confronted the owner-mortgagor, the latter did not deny it and offered instead to sell the land to him. Mr. Mare was at this time no longer interested in the land since he was now residing in Tacloban City, about 20 kilometers from Sta. Fe. Mr. Letrodo refused to buy the land also for the reason that it was still mortgaged with the Rural Bank.

When LAMP started its titling activities, Mr. Letrodo was told by LAMP to apply for titling since it is not yet titled. But he ignored the suggestion because of the fear that he might be accused of land grabbing. Besides, he is wondering why he should apply for another title if it was already used as a collateral in a bank.. He knows that only titled lands can be made as collateral in banks.

CASE #20

PURING DIVINO
Mortgagee
Brgy. San Juan, Sta. Fe, Leyte

Mrs. Purificacion Divino is a 65 -year old farmer and a resident of Brgy. San Juan, Sta. Fe. She is married to a farmer also from the same municipality. Two children are living with her. She is earning about twenty one thousand a month from all her inherited lands, including those from mortgaged land.

Crisanto Toribio, a relative of the mortgagee and also a resident of San Juan mortgaged less than a hectare riceland to her. Mr. Toribio's land was first mortgaged to Mrs. Lily Racho, also a relative, for twenty one thousand pesos. Later, it was "lito" to Mrs. Divino for fifty thousand pesos. The reason for the second mortgage was to have money for the renovation of the mortgagor's house, and be able to buy a second hand pedicab for business purposes.

The mortgage was made through a written agreement made by a lawyer, and was signed by both parties. The "tatasyon" (redemption period) was after 20 years. They also made a written agreement from the Brgy. Chairman, signed by both parties also and some witnesses. According to the Brgy Chairman, he just wonders if the mortgagor could still redeem the land since the mortgagor has no financial capacity at all. He also wonders if the parties would still be alive by the end of the 20-year "tatasyon."

This mortgaged land has not yet been applied for Free Patent because the mortgagor does not know what to do. The mortgagor is not interested in applying for the title because he believes that he cannot do it since the land is still mortgaged.

CASE #21

ALFREDO QUERO

Mortgagee

Brgy. Bahay, San Miguel, Leyte

One of the well-known mortgagees in Brgy. Bahay, San Miguel is Mr. Alfredo Quero. People mortgage their lands to Mr. Quero since he is approachable. A mortgagor can advance money from him any time as long as the land is mortgaged, and depending also if Mr. Quero has available money at the time.

One of the mortgagors is Mr. Uldarico Quero, a close relative and resident of the same barangay. The land with lot #2548 measures 11 hectares. It was mortgaged for 10 years in consideration of the amount, PhP100,000.00 to defray the hospital expenses of the mortgagor's mother. This is the biggest lot that is mortgaged to Mr. Quero.

Mr. Alfredo Quero is a former Vice Mayor of San Miguel. He is 56 years old and has three grown-up children, all of whom are not yet married. His wife is a registered nurse and is employed in Tacloban City, the region's administrative and commercial center. Mr. Quero does not charge interest to the loan upon maturity. However, he takes full possession of the land while it is mortgaged to him. He does not give any share of the harvest to the mortgagor, but he is willing to help the mortgagor by letting him borrow money when needed. He makes sure that the total money borrowed will not exceed the market value of the land.

If the amount borrowed is less than PhP10,000.00, he requires a written contract signed by both parties and notarized by a lawyer. If the loan is less than PhP10,000.00, a verbal agreement or any written contract (not notarized) will do. There are factors he considers when

lending money to the mortgagor. Some of these are the location of the land, and land classification.

In some instances, however, even if the land mortgaged to him has a less market value than the amount being borrowed, he still lends. In this case, he does not think of the gains from the land, but the intent of being able to help the mortgagor who is in need. The kindness of Mr. Quero to mortgagors is also exhibited by not foreclosing the land when maturity date comes and the mortgagor still has no money to redeem the land. The succeeding period of redemption becomes flexible, upon the agreement of both parties.

CASE # 22

PEDRO GERILLA Mortgagee

Brgy. Jones, Pastrana, Leyte

Mr. Pedro Gerilla is 69-year old farmer. Four children are still living with him. He is earning about fifteen thousand pesos a month from the harvests taken from inherited coconut lands and ricelands, and the incomes derived from lands mortgaged to him. Mr. Gerilla has been a mortgagee for 5 years and he has four mortgagors at present.

In year 2001, Mrs. Norberta Sales, a cousin of wife, mortgaged her 1/2 hectare riceland to Mr. Gerilla for thirty two thousand pesos. Mr. Sales used the money to send a child to school, and to defray daily expenses of the family. It has been three years now since this land has been mortgaged to him but they have no agreement as to the maturity period. The mortgagee will just wait for the mortgagor to redeem his land. They have a written agreement and a receipt to show the amount of money borrowed by the mortgagor.

In year 2002, a certain Claudia Almeria, also a cousin of Mr. Gerilla's wife, mortgaged two parcels: a 3,000 sqm coconut land at PhP5,000.00 only; and a 6,000 sqm coconut land for PhP5,000.00 also. Mrs. Almeria mortgaged her lands because the coconuts were always stolen by neighbors, leaving her almost nothing to harvest. It has been two years now since the land has been mortgaged. A written agreement by the Brgy. Chairman was made. Redemption period is after 5 years.

In the year 2000, Mrs. Etilde Gerilla, a cousin of Pedro Gerilla, mortgaged her 7,000 sqm riceland to the mortgagee at thirty thousand pesos for two years. At that time, the mortgagor needed money for her children who were studying. Today, two years has lapsed since maturity of the mortgage and the land has not been redeemed yet. There is no "tatasyon" such that any time that the mortgagor has money, he can redeem the land. The mortgagee will continue to cultivate the land and get all the "kutsitsa" (Harvests).

All of these lands were mortgaged following the practice in the barangay where the Barangay Chairman or any of the parties makes a written contract, or a receipt of the money lent. In both cases, the parties affix their signatures. A witness also signs the agreement or the receipt.

CASE #23

WILFREDO OLAYA
Mortgagor
District III, Pastrana, Leyte

Wilfredo Olaya, married and a 520year old farmer is a resident of Dist III, Pastrana. Nine children depend on him for support. He is earning about twenty six thousand pesos a month from incomes derived from all his inherited coconut lands and ricelands, including the harvests from lands mortgaged to him.

In the year 1994, a relative of Wilfredo named Patrocenia Camino, mortgaged a one hectare coconut land to him because the mortgagor needed money for her fare to Manila. At first, the mortgage price was fifteen thousand pesos. However, the mortgagor late asked for an additional amount of Php3,000.00. The total amount of the mortgaged land reached eighteen thousand pesos, without the mortgagor getting a share from the land's produce. The "tatasyon" was ten years, and it has already been reached. The mortgagor asked for a year's extension to redeem the land.

There was a written agreement to this effect made by Hon. Primitivo Aures, a Barangay Kagawad (Councilor). It was signed by the two parties and some witnesses. According to Mr. Olaya, he will just wait until the land would be redeemed by the mortgagor. He will remain as the cultivator of the mortgaged land.

In 1999, a resident of Brgy. Jones named Lorenza Militante, mortgaged her 1.5-hectare riceland located in Brgy Jones, Pastrana, for twelve thousand pesos for 5 years. At the end, the land was bought by the mortgagee by giving twenty thousand pesos more to Ms Melitante. The reason for mortgaging the land at that time was that the mortgagor needed money for the hospitalization of her child. Later, she decided to sell the land to the mortgagor.

CASE #24

GLORIA CUBELLO
Mortgagee
Brgy. Katipunan, Sta. Fe, Leyte

Mrs. Gloria Cubello is the mortgagee of one parcel of agricultural land owned by Mr. Romeo Palamos. Mrs. Cubello is 80 years old and is living with her daughter who works as a full time government employee. All her other children are married and live separately with them. Her main source of income is her pension. Mrs. Cubello has never been a mortgagee before.

The mortgaged property, with Lot #70-A is a riceland in Sitio Dango, Brgy. Katipunan. It has a total land area of 1.3420 hectares. The mortgagor and current claimant to the land, Mr.

Romeo Palamos, presented Mrs. Cubello with a Tax Declaration as proof of ownership. Mrs. Cubello required the mortgagor to give her a copy of the document.

The property was mortgaged in August 2003 for PhP10,000.00 with the agreement that it will be redeemed after a period of 2 years. If upon reaching maturity date, the mortgagor still is not able to redeem the land, the original provisions of the contract will be followed. The mortgagee allowed the mortgagor to farm the parcel, on the condition that the latter will hand over 6 cavans of palay as rent to the parcel, after every harvest.

Both Mrs. Cubello and her mortgagor have a copy of their written agreement which is signed by the Barangay Chairman and a witness.

CASE #25

LOURDES TOBILLA

Mortgagee

Brgy. Canino-an, Pastrana, Leyte

Mrs. Lourdes Tobilla is married to a farmer. She is 52 years old with 4 children. At present, she is the Barangay Chairman of Canino-an. Before she became one, the family's main source of income were the harvests derived from lands inherited from the couple's parents. Buying and selling palay for profit was also a significant source of the family's income.

During those times, people in the community would already come to Mrs. Tobilla when they were in need of cash. Fifteen lands were mortgaged to her. In all of these mortgages, the agreement was made through a written contract signed by both parties and at least two witnesses.

One of the mortgagors was Cesar Pardilla, a relative of Mrs. Tobilla. His land was mortgaged because the mortgagor needed money for his children's educational needs. At first, the land was mortgaged for five thousand pesos. As time passed, Mr. Pardilla kept on borrowing more from Mrs. Tobilla until the mortgage price reached twenty thousand pesos. The "tatasyon" (redemption period) was after ten years. On the tenth year last year, the land was "lito" (second mortgage) to Mrs. Elsa Gante, an overseas worker, for seventy thousand pesos, for a period of ten years. The parcel of land is less than a hectare. The mortgagor ceases to possess the land.

The second mortgagor Rommel Pardilla, is a relative of Mrs. Tobilla. A 0.5 hectare coconut land was mortgaged when Mr. Pardilla needed additional money for constructing his house. The price of the land was thirteen thousand pesos. Last year, it was "lito" to Mrs. Gante for sixty thousand pesos. The mortgagor was allowed to cultivate the land, where the sharing scheme is 50-50 of the harvest.

The third mortgagor was Porferia Mora who mortgaged a half hectare rice land to Mrs. Tobilla for the amount of twenty five thousand pesos. The mortgagor used the money for expenses incurred related to the burial and wake of her late husband. Last year, it was "lito" to Mrs. Elsa Gante for ninety thousand pesos with a maturity period of twenty years. The mortgagee gets 1/3 of the harvest. Mrs. Gante asked for the Tax Declaration and other proof of ownership which Porferia Mora has in possession. A notarized written contract was executed.

The fourth mortgagor was Francisco Nugal. Two parcels were mortgaged to Mrs. Tobilla. The first parcel was mortgaged for fifty thousand pesos, while the other, for forty thousand pesos. Just

recently, both lands were "lito" to other mortgagees. The former, a riceland measuring half a hectare, went to Lucia Villablanca for eighty thousand pesos for ten years, with the mortgagee getting full possession of the land. The latter went to Jocelyn Ala for fifty thousand pesos under similar conditions.

The fifth mortgagor was Luz Nugal who mortgaged her riceland so as to send a child to college. At that time, she badly needed the money for college enrolment purposes. This mortgaged land, measures less than half a hectare, is planted with fifteen coconut trees. The mortgage price was PhP5,000.00 for 5 years, with the mortgagee getting all the harvest. At maturity date last year, the land was redeemed by the owner, Ms. Nugal.

The sixth mortgagor was Concepcion Mercurio. The reason for mortgaging her less than half a hectare riceland was to enable her to buy farm inputs needed in her other farms lands. The mortgage price was PhP3,000.00 for a period of 5 years. The mortgagee gained full possession of the land. Today, the land has already been redeemed by the owner, Mrs. Mercurio.

The seventh mortgagor, Mr. Telesforo Barbosa, mortgaged his 3-hectare coconut land to Mrs. Tobilla for PhP5,000.00 for ten years. Later, he asked for an additional amount of then thousand pesos, then more cash advances through the years were made. The mortgage price reached one hundred twenty thousand pesos. By then, Mr. Barbosa decided to sell the coconut land. The mortgage price reached "kabutungan" (selling price). Hence, the land was declared by both parties as "nayubusan" (paid up already).

The eighth mortgagor was Mercedes Pardilla. The mortgaged coconut land measured less than half a hectare. It was mortgaged for PhP5,000.00 for 5 years, without the mortgagor getting a share of the harvests. Upon maturity, the mortgagor decided to sell the land because he was no longer residing in the barangay. The land was "nayubusan." The mortgagee paid Mrs. Pardilla PhP25,000.00 more.

The ninth mortgagor was Jose Modesto. He mortgaged his 2-hectare riceland to Mrs. Tobilla because he was hospitalized. The mortgage price was PhP50,000.00 with the mortgagee getting 1/2 share of the harvest. The maturity period was 5 years. At the end, however, the mortgagor's nine children showed no interest in redeeming the land since all were no longer residing in the barangay. Upon agreement, each of the nine children of the mortgagor was given then thousand pesos by the mortgagee in order to finally buy the mortgaged land.

The tenth mortgagor is Salvacion Nacorda. The area of the land is one hectare. It was first mortgaged for PhP14,000.00 for 5 years with the mortgagee having full possession of the land. When Ms. Nacorda died, her nieces/nephews who were no longer residing in Brgy. Canino-an decided to sell their shares to Mrs. Tobilla. For them, nobody could be trusted to cultivate/administer the land. However, there are still two parcels that has not yet been bought ("nabutong/nayubusan") by the mortgagee because one of the nieces is still living in Canino-an and is interest in redeeming her share.

The eleventh mortgagor mortgaged his half a hectare coconut land to Mrs. Tobilla for PhP5,000.00, for 5 years. The mortgagor, Mr. Victor Mercurio, needed the money because he was hospitalized for a long duration. More cash advances in consideration of the mortgage price shoot up Mr. Mercurio's borrowed money to PhP15,000.00 This land was subjected to "lito" (second mortgage) to Mr. Mamerto Calumag.

The twelfth mortgagor is David Pardilla. He mortgaged his less than half a hectare coconut land for PhP20,000.00 for 5 years. The money was used to defray the expenses for the wake and burial of his wife. This land is still with the mortgagee even if the maturity period has lapsed. However, the mortgagee will just wait. He continues to get the harvest from the land.

The thirteenth mortgagor is Cita Pardilla. Her land was mortgaged for PhP16,000.00 for 5 years with no share for the mortgagor. The mortgage was made because Mrs. Pardilla needed money for the wake and burial of her husband. A written contract was prepared.

The fourteenth mortgagor is Andres Pedrosa who mortgaged his land for PhP10,000. Later, it was sold to the mortgagee for thirty thousand pesos. This land was first mortgaged to a certain Pasagui and was redemption was made possible because of a "lito" that took place. Mrs. Tobilla became the second mortgagee. The long hospitalization of Mr. Pedrosa gave him no choice but to sell the land to Mrs. Tobilla.

The fifteenth mortgagor is Anacorita Garrata. She mortgaged a 0.5 hectare land to Mrs. Tobilla to defray the costs related to the wake and burial of the land's original owner. The mortgage price was PhP16,000.00 for 5 years. Today, the land has not yet been redeemed by the owner.

Out of the 16 mortgaged lands by 15 mortgagors, 6 lands have been subject to "lito" and were redeemed from her, 4 were "nayubusan/nabutong," 1 is partially bought, 2 have been redeemed, and 3 are still mortgaged to Mrs. Tobilla. There are 4 more parcels mortgaged to her (according to Mrs. Tobilla)..

A written agreement is usually made. This is signed by the parties, the Barangay Chairman, and at least two witnesses. Mortgaging is heavily based on trust between parties. There are no strict terms as to the "tatasyon." The mortgagee is always willing to wait until the mortgagor is ready with his money for redeeming the land.

ANNEX E -1

**WRITTEN CONTRACTS
(AS MORTGAGE INSTRUMENTS)**

Republic of the Philippines
Province of Leyte
MUNICIPALITY OF STA. FE
Barangay Katipunan

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OFFICE OF THE PUNONG BARANGAY

(Petsa)

Hibaruan Ha Ngatanan na Bumarasa,

Ako, hi MR. ROMEO B. PALAMOS, inasaw-an, nag-uukoy dinhi ha Barangay Katipunan, Sta. Fe, Leyte nagprenda hin usa (1) ka parcela nga tuna nga tanuman hin humay, nga aada han sakop han Sitio Dango Barangay Katipunan, Sta. Fe, Leyte, nga ini may (tanuman) Lot No. 70-A nga iton guinprendahan amo hi MRS. GLORIA E. CUBILLO nga nag-uukoy ha Barangay Katipunan. Nga iton kaprendahan amo ini in balor diez mil (10,000) ka pesos, cuarta dinhi ha Pilipinas ngan iini iton masunod nga mga condisyones: (1) duha ka tuig iton tatasyon san-o lukaton, kun diri pa malukat padayon la any iton kaprendahan. (2) Ngan an magtatanum amo hi Mr. Romeo B. Palamos la ngahaw. Makakakarawat hi Mrs. Gloria E. Cubillo hin plete nga unom (6) ka sako kada usa katanum. An kada sko amo hin maabot hin 44 kilos ug limpyo na ug diri liwat upahon/papliran.

ROMEO B. PALAMOS
Tagprenda

GLORIA E. CUBILLO
Naprendahan

MA. CHUCIE E. TAÑOLA
Tistigos

HON. BENEDICTO P. CARBA
Punong Barangay

ANNEX E -2

**WRITTEN CONTRACTS
(AS MORTGAGE INSTRUMENTS)**

DEED OF SALE WITH RIGHT TO REPURCHASE RESERVED

KNOW ALL MEN BY THESE PRESENTS:

That I, PETRA C. TIBRE, of legal age, Filipino, a widow, residing at Barangay Jones, Pastrana, Leyte, herein the VENDOR, A RETRO, for and by consideration of the amount of TWENTY FIVE THOUSAND PESOS (P25,000.00), Philippine Currency, to me paid in hand and to my full satisfaction by Sps. NESTOR BALAGA & JOSIE BALAGA, both of legal ages, Filipinos, and residing at Dist. III, Pastrana, Leyte, herein the VENDEES, A RETRO, receipt hereof acknowledged by me, by these presents hereby SELL, CEDE, TRANSFER & CONVEY WITH RIGHT TO REPURCHASE AFTER A PERIOD OF TWO (2) YEARS unto the herein vendees, a retro, their heirs and assigns in interest, that certain parcel of land with all the plants and improvements therein, which is more particularly described to wit:

"A parcel of coco land situated at Guinbaya-an, Jones, Pastrana, Leyte, with an area of 1.6480 has, approx., bounded N by - Bonifacio Dagami, S by - Malirong River, E by - Petroilo Espina, W by - Toribio Juancillo; assessed at P2,350.00; under T.D. No. 4655 (R/7) declared in the names of Petra and Senen Tibre."

That the property is free of whatever liens and encumbrances; that the same is not subject to any restrictive provisions of DAR; my possession hereof being open and public and I hereby warrant the peaceful possession of the vendees, a retro, during the lifetime of this instrument;

That the vendor, a retro herein shall exercise her right to repurchase this property after a period of two (2) years from and after execution of this instrument by paying the herein vendees a retro amount of Twenty Five Thousand Pesos (P25,000.00), Philippine Currency, and if the vendor fails to repurchase the same at the period herein specified then the vendees, a retro shall continue their possession and to avail of the fruits of the property until such time that the vendor shall be able to repurchase the same.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of September, 1996, at Pastrana, Leyte, Philippines.

WITNESS:

1. _____
2. _____

PETRA C. TIBRE
Vendor, A Retro

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
PROVINCE OF LEYTE)
MUNICIPALITY OF PASTRANA) S.S.

BEFORE ME, on this _____ day of _____, 1996, personally appeared PETRA C. TIBRE, with her Community Res. Cert. No. _____ issued at Pastrana, Leyte on _____, 1996, known to me to be the same person who executed the foregoing instrument and acknowledged the same to be her own free act and deed.

WITNESS MY HAND AND NOTARIAL SEAL on this _____ at _____, Philippines.

DOC NO. _____
PAGE NO. _____
BOOK NO. _____
Series of 1996

DIEGO A. CALA
Municipal Trial court Judge
& Ex-Officio Notary Public

CERTIFICATION

I hereby certify that there is no practicing Notary Public in the municipality above stated.

DIEGO A. CALA
Municipal Trail Court Judge
& Ex-officio Notary Public

ANNEX E -3

**WRITTEN CONTRACTS
(AS MORTGAGE INSTRUMENTS)**

Republic of the Philippines
Province of Leyte
MUNICIPALITY OF STA. FE
Barangay San Juan

OFFICE OF THE PUNONG BARANGAY

KASURATAN

Ako hi Corazon Bedua nga taga Barangay San Juan Sta. Fe, Leyte, may igo nga idad, og inasawan.

Nga ako nagprenda hin tuna kan Benio Velasco nga taga Barangay San Juan, Sta. Fe, Leyte.

Nga eni nga tuna aada ha Barangay San Juan Sta. Fe, Leyte.

Nga eni nga tuna may ada kahaluag nga duha ka hektarya.

Nga akon eni guin prenda hin sakub hin duha katuig, hin valor dies mil pesos (P10,000).

Nga kon deri ko malukat eni pag-abot han duha katuig padayon la any nga maposer og matanom hi Benio Velasco.

Nga kon magtanom an naprendahan, hiya an mabayad han kabaraydan han tubig ha irrigation, dida han panahon nga hiya an natanom.

Ngan kon ako magkaada na kuarta, bisan ano nga oras puede ko lukaton eni basta maglapos anay hin duha katuig nga amon sabot paglukat.

Ha pagpamatuod, ha ubos it perma namon ngan han akon naprendahan. Para pagpadig-on heni nga kasuratan. Og upod an perma hadton mga testigos.

Guin hemo yana nga petsa han Enero 11, 2004.

CORAZON BEDUA
Tig prenda

BENIO VELASCO
Guin prendahan

DANILO ESTOPIN
Testigos

EFREN GARCIA
Testigos

JOVITA CALCETA
Testigos

VIRGILIO V. LANTAJO
Punong Barangay
Testigos

ANNEX F

**CODE NAMES
USED IN THE REPORT**

The written report (that is, Chapters II to VIII) contains fictitious names of mortgagors and mortgagees, for reasons of maintaining confidentiality. All names, however, in Annexes B to E contain real names for LAMP PIO 1 use and purpose.

Code	Real Names
Alice	Elsa Gante
Betty	Thelma Maler
Conchita	Puring Divino
Danny	Pedro Gerilla
Editha	Lourdes tobilla
Frank	Nestor Balaga
Gloria	Natividad Vero
Henry	Alfredo Quero
Irma	Vilma Auza
Jessie	Sotero Nugal
Karlo	Juanito Hingpis
Leandro	Dominador Bariata
Merlie	Erlinda Quilaneta
Nestor	Peping Margallo
Ophelia	Estelita Baldesco
Pete	Telesforo Barbosa
Rea	Petra Tibre
Sixto	Manuel Vergara
Teresa	Leonila Labarda
Urbana	Porferia Mora
Vencio	Uldarico Quero
Wilma	Norberto Sales
Yolando	Cesar Pardilla
Zosimo	Crisnato Toribio
Annie	Lily Racho
Benny	Artem Lantajo
Conrado	Rodrigo Daga
Diosdado	Patricio Azores
Efren	Vicente Balet
Freddie	Conrado Balet