



AGRICULTURAL PRESERVATION RESTRICTION (APR)

CHANGE IN OWNERSHIP

Selling or Transferring APR Land

Not all, but most APR agreements include an Option to Purchase at Agricultural Value (OPAV) or Right of First Refusal (ROFR) and need an MDAR waiver before the sale – if yours does not MDAR will let you know. A landowner wishing to sell or transfer ownership of an APR property with a ROFR or OPAV should notify APR staff immediately to request a waiver. A waiver states that MDAR waives its right to purchase the farmland which would then allow the sale of the APR to move ahead.

It's important for you to review and understand the process for the sale or transfer of your APR land. The process and timeframe are clearly described in your APR agreement and may be different for each landowner APR agreement. It's important to review your APR agreement with your attorney and realtor. Please note that the process for a decision on an approval for a sale or transfer could take up to 120 days.

Notifying MDAR

If you intend to sell or transfer and receive an offer to purchase, you must notify MDAR in writing as stated in your APR agreement. For example, a letter requesting a waiver for an OPAV must include copies of:

- The offer to purchase
- The purchase and sale agreement and any amendments
- Any appraisal prepared for the proposed sale specifying the fair market agricultural value (FMAV)
- Any appraisal prepared for the sale in which the landowner acquired the APR property
- Other relevant documents relating to the proposed sale

Documentation will be reviewed. If the sale or transfer contains non-APR property, such as a house or land that is not covered by an APR, the landowner should apportion the value between any APR property and any non-APR property. Written notice to MDAR is required and unless otherwise agreed to must be delivered by certified mail, return receipt requested; or hand delivered to MDAR's address listed at mass.gov/agr.

CONSIDERING A SALE OR TRANSFER?

Notify MDAR immediately. Some APRs have an Option to Purchase at Agricultural Value (OPAV) or Right of First Refusal (ROFR) and may need an MDAR waiver before the sale which may take up to 120 days. This information is clearly described in your APR agreement. If you can't find it, notify MDAR to request a copy.

Of the approximately 900 APR agreements about 650 have an OPAV, 100 have an ROFR, and the rest are early APR agreements with no such provisions.

Right of First Refusal (ROFR) is the right to allow the Commonwealth the opportunity to purchase the property if it is offered for sale. If you apply for a waiver MDAR may, and usually does, waive its right to purchase.

Option to Purchase at Agricultural Value (OPAV)

is a legal tool to ensure the agricultural land remains available to farmers at agricultural value.

OPAV, ROFR, and Waiver guidelines are available at www.mass.gov/apr at "APR Program Details".

LANDOWNER INFORMATION

Guideline and Policy Updates

MDAR and the Executive Office of Energy and Environmental Affairs (EEA) have established guidelines, policies, and procedures in addition to APR documents, that are periodically updated and provide further guidance for APR landowners. Any inconsistency between the language of an APR agreement, policy or regulation will be resolved in favor of the APR. All APR regulations and MDAR policy documents are posted on MDAR's website and MDAR will provide copies to a landowner upon request. The ALPC may advise and make a recommendation to MDAR for policy development or changes. ALPC meetings are held quarterly as needed, are open to the public, and are a forum for the public to comment on proposed changes to policy.

The complete regulations are available at www.mass.gov/apr and may be consulted for details. If you would like a printed copy of the regulations, please contact the MDAR APR office at 617-626-1700, www.mass.gov/apr.

OPAV PURPOSE

The OPAV's purpose is to make sure farms are available to farmers at an agricultural value. Because of the OPAV, which was pioneered by MDAR in 1992 as the first in the nation, hundreds of protected farms have remained in the hands of Massachusetts farmers.

Guidance

The pages that follow may assist you with APR change of ownership process.



SELLING OR TRANSFERRING LAND

FOR LANDOWNERS

Selling or Transferring APR Land

Not sure where to start or what to do?

Here are some quick suggestions:

- Review your APR agreement and contact MDAR as early as possible. Can't find your APR agreement? Contact APR staff to request a copy.
- Some APRs contain a Right of First Refusal (ROFR) or an Option to Purchase at Agricultural Value (OPAV). Check your APR agreement to understand if either of these applies to your APR land.
- If there is an ROFR or an OPAV, specific procedures must be followed (samples include: obtaining an appraisal of the Fair Market Agricultural Value (FMAV) or the Fair Market

Value (FMV), preparing a farm plan, drafting an offer letter, etc.) Your APR agreement - in combination with APR guidelines, policies and regulations - lists the requirements and the timeframe for the process. A decision could take up to 120 days after all documents are submitted to MDAR.

- MDAR has published regulations describing the process at www.mass.gov/apr.
- It is advisable to contact an attorney to help you through not only the land sale/transfer process but also the APR-specific process.
- APR staff are available to walk you through the process.

FOR REAL ESTATE PROFESSIONALS

Questions and Considerations Before Listing a Property

- Is all or a portion of the property in agricultural use?
- Does it have an Agricultural Preservation Restriction (APR)? If so, the buyer must be informed and should read the APR agreement before deciding to purchase the property.
- Each APR property has an APR agreement that is a public record at the Registry of Deeds. The landowner and MDAR also have copies of the APR agreement.
- Some APRs contain a Right of First Refusal (ROFR) or an Option to Purchase at Agricultural Value (OPAV).

You and the landowner must check the APR agreement to understand if either of these applies to the APR land.

- If there is an ROFR or an OPAV, specific procedures must be followed (examples include: obtaining an appraisal of the FMAV, preparing a farm plan, drafting an offer letter, etc.).
- The landowner's APR agreement - in combination with APR guidelines, policies and regulations - lists requirements and the timeframe for the process. Information is available at www.mass.gov/apr.

- It could take up to 120 days after all documents are submitted to MDAR before a decision is made.
- Does the listing make it clear that the land is subject to an APR?
- Does the Purchase and Sale limit the price to the FMAV and list the price for any non-APR land separately?
- Does the APR agreement prohibit sub-division?
- The buyer may be required to submit a farming resume, farm business plan and a financial plan.

UPDATES:

Please note that policies and guidelines may change over time. Any inconsistency in the language of an APR agreement, policy or regulation will be resolved in favor of the APR agreement. APR Program updates are available at www.mass.gov/APR or you may contact MDAR staff at (617) 626-1700.

OPAV, ROFR, AND WAIVER POLICY

Option to Purchase at Agricultural Value (OPAV) and Right of First Refusal (ROFR)

As of July 26, 2019, the Department has updated the APR regulations to include sections outlining the approach the Department must take when considering whether to exercise its options to purchase APR land at the time of sale. The new regulations outline the process that MDAR must follow when reviewing APR transfers, describe an automatic waiver process, a withdrawal option and also a right to appeal decisions to the ALPC for landowners. Here is a summary of how it works:

In 1987, the APR program implemented two tools that give the Commonwealth the ability to purchase APR protected farmland when it is put up for sale. These tools, called an “Option to Purchase at Agricultural Value” (OPAV) and “Right of First Refusal” (ROFR) enable, but do not require the Commonwealth to purchase APR protected land when it is up for sale. Since 1987, all APRs have included a purchase option:

- ① APRs before 1987 do not have an ROFR or OPAV
- ② APRs acquired 1987-1991 include an ROFR (*97 APR Properties*).
- ③ APRs acquired after 1991 include an OPAV (*over 630 APR Properties*).

In practice, unlike state agencies such as DCR and DFW, MDAR does not purchase APRs. Yet under certain circumstances MDAR may be required to transfer this right to purchase APRs at the time of sale to an interested buyer other than the original buyer. In the vast majority of transfers, MDAR chooses to “waive” its OPAV or ROFR and not become involved in the transfer.

When an APR landowner has a bona-fide offer from an interested buyer, the APR landowner with an APR agreement that contains an OPAV or an ROFR provision, must notify

MDAR of their intent to sell and offer the land to the Commonwealth to purchase. Along with this notification a landowner can also include a request that MDAR waive its right to purchase. After receiving the notification, MDAR reviews the details of the sale and decides whether to waive its right or elect to utilize its right to purchase the land. If MDAR elects to exercise its right to purchase the APR property, it will not actually purchase the land but will instead seek to transfer or assign its right to purchase to another person or entity, usually a farmer. The Department will do this through a public bidding process. Owners of APRs without an OPAV or an ROFR provision do not have to notify the Department when selling their APR land.

Over the course of the 40-year history of the APR program, MDAR has waived its right to purchase the APR in the vast majority of cases. MDAR has only transferred its right on four occasions. This transfer of rights (also known as “Assignments”) is rare and has only occurred when MDAR’s review of a proposed sale concluded that the proposed buyer was not a farmer or where the property was for sale at a greatly inflated price above agricultural value.

At the 2018 APR Listening Sessions, some comments about the waiver process for ROFRs and OPAVs were brought forward. Later, a state audit of the APR program provided recommended changes; one of these specifically gave a landowner the right to withdraw from the waiver process. Legislation subsequently mandated changes.

As of August 2019, MDAR updated the APR regulations to address how requests for waivers of ROFRs or OPAVs will be managed when submitted. The new regulations outline the process that MDAR must follow when reviewing APR sales; and describe an automatic waiver process, a withdrawal option and also a right to appeal decisions to the Agricultural Land Preservation Committee (ALPC) for landowners. The following is a summary of the main changes to the APR regulations.

WAIVER REQUIREMENTS

Waiver Requirements

When an APR landowner has a bona-fide offer from an interested buyer the APR landowner must notify MDAR of the intent to sell and offer the land to the Commonwealth to purchase or request that MDAR waive its right to purchase the property. Upon receiving the notification, MDAR reviews the details of the sale and decides whether to waive its right or elect to utilize its right to purchase the land.

- An **Automatic Waiver** requires that MDAR waive its right to purchase when all these criteria are met:
 - *The buyer is a farmer.*
 - *The buyer submits a Farm Business Plan.*
 - *The landowner received a good faith offer and submitted to MDAR a certified copy of an executed Purchase and Sale Agreement.*
 - *The landowner provides justification, deemed valid by MDAR, when a purchase price is 20% or greater than the Fair Market Agricultural Land Value (FMALV). Fair Market Agricultural Land Value (FMALV) does not include dwellings that may be on the APR or the value of an Agricultural Business.*
 - *The buyer has no record of a prior violation on an APR held by the Commonwealth. (MDAR may waive this requirement if the violation is deemed minor).*
- If the criteria for an Automatic Waiver are not met, the Department *may* choose to issue a **Discretionary Waiver** when:
 - *The buyer is a farmer, a beginning farmer or a non-profit corporation organized for the purposes of leasing land to one or more farmers or beginning farmers.*
 - *The buyer submits a Farm Business Plan for review by MDAR and MDAR determines the plan is complete and presents a viable and achievable plan that is compatible with the APR and APR parcel.*
 - *The buyer has no record of a prior significant APR violation on an APR held by the Commonwealth. (MDAR may waive this requirement if the violation is deemed minor).*
 - *The buyer provides justification, deemed valid by MDAR, when the purchase price is 20% or greater than the Fair Market Agricultural Land Value (FMAV). Fair Market Agricultural Land Value includes the value of dwellings that may be on the APR and the value of an Agricultural Business.*
- A landowner may withdraw from the offer and process at any point prior to MDAR exercising its right or transferring its right to purchase.
- A landowner may appeal MDAR's decision regarding a waiver by contacting the ALPC which will then hold a hearing to consider the appeal.
- MDAR is always available to discuss the waiver process with the landowner. Future APR agreements will require a meeting with MDAR, the landowner and potential buyer

TIMELINE & TASKS

Thinking about selling or transferring APR land?

STEP 1

Review your APR agreement and contact MDAR as early as possible. Can't find your APR agreement? Call an APR staff member to request a copy.

STEP 2

Notify MDAR of intent to sell. Request a **Waiver** if you have an offer. See Waiver Requirements.

to discuss the ROFR, OPAV and waiver before the sale of an APR.

If MDAR elects to or exercise its right to purchase the APR, it will not typically purchase the land but will, instead, seek to transfer, or assign, its right to purchase to another person or entity, usually a farmer. The Department will do this through a public RFP process.

A landowner can also consult his/her APR agreement to review individual APR seller requirements. If you would like a printed copy of the regulations, please contact Dorothy Du at dorothy.du@mass.gov or (617) 626-1741

WAIVER WORKSHEETS

This page and the next two have checklists to assist you with the waiver process.

MDAR ASSESSMENT: CHECKLIST & TIMELINE

Automatic Wavier	Discretionary Waiver
The potential purchaser is a farmer and has been a farmer for two of the last five years preceding the sale.	The potential purchaser is a farmer, beginning farmer, or a nonprofit corporation organized for the purposed of leasing land to farmers or beginning farmers.
The owner has received a good faith offer.	The owner has received a good faith offer.
The owner has submitted a certified copy of a purchase and sale agreement and complied with the specific terms in the APR agreement.	The owner has complied with the specific terms in the APR agreement.
The potential purchaser has no prior record of a violation of the terms of the APR agreement.	The potential purchaser has no prior record of a violation of the terms of the APR agreement.
Written justification if the purchase price is 20% or more than the Fair Market Agricultural Land Value.	Written justification if the purchase price is 20% or more than the Fair Market Agricultural Value.
The potential purchaser submits a complete, viable and achievable farm business plan covering a 5-year period.	The potential purchase submits a complete, viable and achievable farm business plan covering a 5-year period.
<p>The Farm Business Plan includes:</p> <ul style="list-style-type: none"> ▪ Potential purchaser’s commercial farm experience ▪ All land uses proposed ▪ Production information and products to be sold ▪ Crops to be grown and acreage ▪ Livestock to be raised and acreage ▪ Use of existing structures ▪ Need for additional structures ▪ Description of markets ▪ Personnel Information ▪ Relationship of APR parcel to other land owned or leased by the potential purchaser 	<p>The Farm Business Plan includes:</p> <ul style="list-style-type: none"> ▪ Potential purchaser’s commercial farm experience ▪ All land uses proposed ▪ Production information and products to be sold ▪ Crops to be grown and acreage ▪ Livestock to be raised and acreage ▪ Use of existing structures ▪ Need for additional structures ▪ Description of markets ▪ Personnel information ▪ Relationship of APR parcel to other land owned or leased by the potential purchaser ▪ A farmer must include the total acreage of the current farming operation and the number of years in business ▪ A beginning farmer must include other relevant professional experience, education and training, AND a financial plan ▪ A nonprofit corporation must submit a farm business plan that has been written by the farmer or beginning farmer and also provide corporation Articles of Incorporation.

ASSIGNMENT CONSIDERATIONS (OPAV & ROFR): CHECKLIST & TIMELINE

The owner has not withdrawn their offer to sell.
The potential assignee has complied with the terms of a request for statements of interest.
<p>The potential assignee has satisfied the discretionary waiver criteria:</p> <ul style="list-style-type: none"> ▪ The potential purchaser is a farmer, beginning farmer, or nonprofit corporation organized for the purposes of leasing land to farmers or beginning farmers. ▪ The potential purchaser submits a complete, viable and achievable farm business plan covering a 5-year period. ▪ The potential purchaser has no prior record of a violation of the terms of the APR agreement.
If there is more than one potential assignee the owner shall select the potential assignee.

WAIVER WORKSHEETS

Resume: Farmer CHECKLIST

- Name
- Address
- Telephone Number
- Email
- Describe previous farm ownership or operation
- Size of farming operation
 - Years in Business
 - Acreage
 - Income

Resume: Beginning Farmer CHECKLIST

- Name
- Address
- Telephone Number
- Email
- Describe/List Relevant Degrees, Courses, Workshops, Education, Training
- Financial Plan:
 - a net worth statement
 - an estimate of start-up costs
 - an estimate of production costs
 - gross sales and net farm income
 - income and expense projections for at least three years

Farm Plan Summary CHECKLIST

- five (5) year period
- identification of all land uses on the Farm
- crops to be grown
- acreage for each crop
- livestock to be raised
- pasture acreage
- use of existing structures *(if applicable)*
- need for additional structures *(if applicable)*
- timeline for implementation of the plan
- a map or diagram identifying each land use proposed for the Farm
- market for products
- farm personnel

Farm Business Plan CHECKLIST

- Purchaser Name
 - Mailing Address
 - Home/Mobile Phone
 - Email
 - Legal Structure: Sole Proprietor, Corporation, Partnership, LLC, Other
 - Farm Operation Name and Address
1. Describe your commercial farming experience (as employee, manager or owner). Include name and location of each farm, your title, main responsibilities and number of years at each property.
 2. Provide a description of your short- and long-term goals for the APR parcel. What steps do you need to take to get there?
 3. List the agricultural activities you are proposing for the first five-year period on the APR Parcel. Please provide acres for each crop and yield estimates. For livestock operations please provide type and number of livestock and product projections (example: lbs. of milk or cheese). If the land will be leased to another grower, please provide the grower's name and contact information.
 4. If you currently own or lease other farmland, please describe the operation in as much detail as possible (acres, crops, number of animals, etc.). Describe how the APR Parcel will be used in conjunction with your existing farm business.
 5. Describe how the products grown/produced on the APR Parcel will be marketed (ex. farmstand onsite, farmstand at another location owned by your business, wholesale, farmers' markets, CSA, PYO, etc.). For each outlet provide the estimated percentage and details if possible (ex. specific farmers' markets, restaurants, supermarkets, etc.).
 6. How many people will earn a full time income off the APR Parcel within the first five years?
 7. How many people will be employed part time on the farm?
 8. Provide the name of the proposed farm manager(s) and describe his/her role. Also provide the farm manager's past agricultural experience.
 9. Please list all of the existing structures on the APR and their proposed uses:
 10. List the types of capital improvements (such as new buildings, wells, irrigation, fencing) that you anticipate making (with MDAR approval) on the APR Parcel in the first five years of your ownership of the APR.
 11. What type of agricultural equipment do you possess or intend to acquire to support the needs of your operation?
 12. Do you anticipate seeking approval for a non-agricultural activity or use within the first 5 years of ownership? If so, please describe.
 13. What type of metrics will you use to gauge the success of your business? Examples might be an % increase in sales by year 3 or # of people visiting the farm in 1st year.

WAIVER WORKSHEETS

Notifying MDAR in Writing SAMPLE LETTER CHECKLIST

Proposed Sale or Conveyance of an APR Parcel. If an APR Parcel is subject to a Right of First Refusal or Option to Purchase Real Estate at Fair Market Agricultural Value, and the Owner receives an offer to purchase, the Owner will notify the Department in writing to request a Waiver. The request should be in form of a letter and include the following information:

- Sender's Name
- Sender's Address
- Owner's Name
- Owner's Address
- Property Name
- Property Address

- Property Description:
 - APR acres
 - Non-APR acres
 - Woodlands
 - Building structures
 - Appraised value of APR property
 - Appraised value of non-APR property
 - Explanation of the purchase price if 20% above FMAV or FMALV
- Notification of intent to sell and at a minimum, include copies of the following:
 - The offer to purchase
 - Purchase and sale agreement and amendments

- Any appraisal prepared for proposed sale
- Any appraisal prepared for sale at which Owner acquired the APR property
- Buyer information: farmer resume, businessplan, financial plan
- A request for a waiver from MDAR
- Other relevant documents pertaining to the proposed sale.
- Additional documents specified in your APR agreement such as:
 - Current ownership deed
 - FMAV and any related appraisals
 - FMALV as determined by inflation rate calculation described in the APR agreement

