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Real Estate 2022

Nigeria: Law & Practice
and
Nigeria: Trends & Developments

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Law and Practice

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1. GENERAL

1.1 Main Sources of Law

The main sources of real estate law in Nigeria as a whole are:

- the Constitution of the Federal Republic of Nigeria (as amended), Chapter C23, LFN 2004 – the Constitution guarantees the right of every Nigerian to own immovable property anywhere in Nigeria; and
- the Land Use Act, Chapter L5, LFN 2004.

These sources govern the acquisition and disposition of title in Nigeria. However, real estate is largely regulated by the laws enacted by each state. A few of the real estate laws applicable in Lagos State are:

- the Lagos State Mortgage and Property (Amendment) Law, 2015;
- the Lagos State Tenancy Law, 2011 – this law regulates leases and tenancies in most parts of the state, with few exceptions;
- the Land Registration Law, Chapter L41, Laws of Lagos State of Nigeria, 2015 – this law prescribes and regulates the registration of all land instruments in Lagos State; and
- the Lagos State Real Estate Regulatory Authority Law, signed into law in February 2022 – this law is newly enacted and introduces new modalities into real estate practice in Lagos State. For example, all real estate practitioners within the state are now required to be registered with, and licensed by, the Lagos State Real Estate Regulatory Authority. The Lagos State Real Estate Regulatory Authority's functions further include:
 - (a) receiving and investigating petitions and complaints against registered real estate professionals;
 - (b) collating data on real estate transactions within Lagos;
 - (c) serving as mediator in real estate dis-

putes;

- (d) ensuring the protection of citizens from illegal real estate transactions; and

providing consultancy services on housing data and related matters to all stakeholders in the real estate sector.

1.2 Main Market Trends and Deals

There has been an increase in demand for real estate over the past 12 months, although the workforce encountered challenges in buying homes due to a housing shortage and increasing home-owning barriers such as higher lending rates. There has also been an increase in the price of housing materials such as cement, sand and gravel; land; and roofing supplies.

There has been an explosion of short-let leasing over the past 12 months, perhaps as a result of the foregoing.

The COVID-19 pandemic and its attendant lockdowns significantly slowed down the velocity of the completion of real estate transactions in Nigeria. Several buyers fell into default of payment and several developers were also unable to complete the development of projects, thus leading to disruptions and the abandonment of real estate projects.

However, according to reports, the opportunities created amid the COVID-19 pandemic have raised optimism that the residential, construction and industrial segments of the real estate market are to drive the sector's growth, while yielding good returns for developers, investors and property owners.

There have been several significant real estate deals in Nigeria recently. Although the country lacks a central database where the amount involved in every real estate transaction can be obtained, arguably – and according to reports – the most significant deal so far in the real estate market is the sale of Ikeja City Mall in Lagos

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State by Hyprop Investments Limited and Attacq Limited, for the sum of USD115 million.

1.3 Impact of Disruptive Technologies

Technology continues to be a catalyst for change in all areas of business and industry, and the real estate market is no exception. From all indications, the players in the real estate industry are keen to adapt to the changing business environment in the country.

Proptech companies, in the form of online real estate marketplaces, are being developed, and they have attracted local and foreign investments into the country.

However, there has been no known impact from the emergence of blockchain and other disruptive technologies on real estate transactions. Indeed, in February 2021, the Central Bank of Nigeria directed all banks to stop facilitating and/or processing any transactions relating to cryptocurrencies. Accordingly, there has been little to no need for an adaptation to emerging disruptive technologies.

Although there are no real estate companies built on blockchain technology in Nigeria, they do not presently have any noticeable impact on the real estate market in Nigeria. However, with the rise in technology usage amongst the population, particularly as it relates to the development of proptech firms, and subject to the flexibility of relevant regulators such as the Central Bank of Nigeria, there is a chance that the emerging technologies will have notable impacts on the real estate sector in Nigeria over the next 12 months.

1.4 Proposals for Reform

As prescribed by the Land Use Act, in Nigeria, lands within a state are held in trust for the people by the Governor of that state, and the title granted by the Governor to a purchaser of land

is a right of occupancy (a lease), usually for a period of 99 years. Thus, effectively, there is no absolute ownership of real estate in Nigeria. The authors believe that the Land Use Act needs to be amended, to allow for the ownership of absolute interests in real estate.

Furthermore, in Nigeria, when a piece of real estate is bought, the buyer only receives an equitable title and legal title to a property does not pass until the buyer registers their interest at the lands registry of the relevant state. The process of registration is, however, stringent and expensive, thereby preventing several buyers of real estate from perfecting their title.

From the foregoing, the authors' proposal for reform is twofold:

- an amendment of the Land Use Act to allow for absolute ownership of property; and
- a revision of the perfection process, to make the registration of acquired title easy, flexible, affordable and less time consuming.

At the time of writing, there are no indications that the author's proposals for reform are likely to be effected.

2. SALE AND PURCHASE

2.1 Categories of Property Rights

Historically, the category of property rights that can be acquired in Nigeria are absolute and derivative rights.

However, with the promulgation of the Land Use Act 1978, when a person purchases a piece of real estate and obtains a certificate of occupancy from the state Governor, the buyer merely receives a leasehold for 99 years. In the event that such person thereafter sells the property, the subsequent buyer does not receive an abso-

lute ownership of the land/property; rather, they receive title for the number of years left out of the original 99 years granted in the certificate of occupancy (ie, a sublease).

Thus, the category of property rights that can be acquired in Nigeria is in the form of a lease.

2.2 Laws Applicable to Transfer of Title

The following laws apply to the transfer of title of real estate:

- the Constitution of the Federal Republic of Nigeria, Chapter C23, LFN 2004 (as amended);
- the Land Use Act, Chapter L5, LFN 2004;
- the land instrument preparation laws of the various states;
- the land instrument registration laws of the various states;
- the Property and Conveyancing Law, 1959 (applicable in old Western Nigeria);
- the Conveyancing Act, 1881;
- the Stamp Duties Act, Chapter S8, Laws of the Federation of Nigeria, 2004 (as amended);
- the Mortgage and Property (Amendment) Law, Lagos State, 2015; and
- the customary laws of the various indigenous communities in Nigeria.

There are no special laws that apply to the transfer of real estate in Nigeria.

2.3 Effecting Lawful and Proper Transfer of Title

Every transaction relating to real estate (with the exclusion of leases for a period below three years) is required to be in writing and conducted via a deed.

Furthermore, the law requires the holder of a right of occupancy – ie, the seller/lessor/mortgagor – to obtain the consent of the Governor of the state where the land is situate for the trans-

fer of title to be considered lawful and proper. In practice, however, the burden to process the Governor's consent is often shifted to the buyer, lessee or mortgagee, as the case may be.

In order to obtain legal title over a property, a buyer/lessee/mortgagee is required to register their interest in such property at the respective lands registry office of the relevant state.

Transfers of titles are recorded at the lands registries of each state.

Title insurance is not common in Nigeria. Most deeds of transfer nevertheless contain an indemnity clause whereby the vendor/assignor agrees to indemnify the counterparty in the event of a defect in title.

The processes existing prior to the disruption of activities caused by the COVID-19 pandemic for the documentation and completion of real estate transactions still subsist.

2.4 Real Estate Due Diligence

Real estate buyers carry out due diligence by physically inspecting the property to confirm that it is fit for purpose. For the confirmation of title, searches are conducted at the relevant registries, including:

- the lands registry;
- the probate registry;
- the court registry; and
- the Corporate Affairs Commission, if the transfer is being made by a corporate body.

To conduct a search at a lands registry usually involves:

- a written application to conduct a search, accompanied by the evidence of payment of the prescribed search fees and other required

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documents, is submitted to the Registrar of Titles of the state;

- the application being processed and permission being granted by the Registrar of Titles, for the search to be carried out physically; and
- in the Federal Capital Territory, Abuja, searches are conducted electronically by the officials of the registry via the Abuja Geographic Information System, and a report is issued to the applicant.

Searches at the probate registry are relevant where property is being sold by the executors/administrators of an estate. The aim of such a search is to confirm that the persons purporting to sell the property have authority under the necessary probate documents to sell the said property, and it entails the filing of an application at the offices of the probate registrar.

Searches at the court registry are for determining if there is any pending/past litigation or other dispute in respect of the property proposed to be bought, and they are usually conducted upon an application to the chief registrar. The application must set out the suit number and the name of any parties involved. However, this is not a common practice in Nigeria.

Searches at the Corporate Affairs Commission are aimed at verifying the incorporation of a corporate entity and confirming the existence of any charges over the property proposed to be sold by such entity.

By law, companies are required to register any charge or other encumbrance created over their property. As such, a comprehensive search at the Corporate Affairs Commission will disclose the existence or discharge of any encumbrance over the company's property.

It is understood that after the outbreak of the COVID-19 pandemic, some lands registries have

started to create electronic portals to enable the electronic search of properties. However, at the time of writing, the process of due diligence has largely remained the same.

2.5 Typical Representations and Warranties

The typical warranties and representations given by vendors in real estate transactions include:

- that the vendor's title is not defective;
- that the vendor has the right to transfer;
- that the purchaser shall enjoy quiet possession of the property; and
- that the vendor shall indemnify the purchaser where the former's title turns out to be defective.

Generally, there do not appear to be new representations and warranties informed by the pandemic. Nevertheless, parties to a contract of sale of real estate properties now include pandemics and similar scenarios in their definition of force majeure events, which may excuse a default in fulfilling an obligation under the contract.

There are no known sellers' warranties provided under the statutes with respect to the sale of real estate.

The buyer's remedies against the seller for misrepresentation are rescission of the contract and claim for damages.

Except for where parties agree otherwise, there are generally no securities for the enforcement of the buyer's remedies against the seller.

Representation and warranty insurance have not yet attained usage in Nigeria.

2.6 Important Areas of Law for Investors

Generally, an investor in real estate should be aware of laws relating to the transfer of real estate, the registration of title, taxation, finance and anti-money laundering with regard to payments.

2.7 Soil Pollution or Environmental Contamination

Generally, in Nigeria, a buyer of real estate buys a real estate asset along with all defects and encumbrances. Thus, the buyer is ordinarily expected to physically inspect the property and conduct all due diligence before purchasing the property.

Thus, to protect themselves from liability, buyers may require sellers to covenant to be responsible for all pollution or contamination.

2.8 Permitted Uses of Real Estate under Zoning or Planning Law

The permitted use of, or purpose for, a parcel of real estate is usually indicated in the terms of grant indicated in the Certificate of Occupancy issued by the Governor of a state. The certificate would indicate if a parcel of land is for “residential”, “commercial” or “mixed development”.

Additionally, the buyer may consult with the town planning authority in that jurisdiction to seek clarification on the permitted use of real estate in the specific area where the land is located.

Furthermore, a buyer may apply for a change of use of a property if the law or terms of grant permits.

Private investors can enter into specific development agreements with public authorities for the facilitation of real estate projects.

2.9 Condemnation, Expropriation or Compulsory Purchase

Governmental expropriation of land is possible in Nigeria, and occurs under two main scenarios:

- governmental acquisition of land for public purpose; and
- governmental taking over where the grantee of the land breaches any of the provisions or terms contained in the terms of grant.

In either case, before the government can expropriate private land, the law requires the government to strictly adhere to the following procedure:

- a notice of intention to expropriate the land must have been served upon the landowner;
- the notice must be by personal service or by being left at the landowner’s last known place of abode or business;
- the notice served on them must be published once in the state gazette, and at least two national daily newspapers circulating in the state;
- the government must give the opportunity to make representations or be heard on the proposed expropriation; and
- the government must pay adequate compensation, which is mostly in the form of an alternative land of equal value to the expropriated land or monetary compensation.

2.10 Taxes Applicable to a Transaction

The taxes and levies applicable to the sale and purchase of real estate include the following.

- Capital gains tax, payable by the seller on the gains obtained from the disposal of assets, and statutorily charged at 10% of the profit recorded.
- Stamp duties, payable by the buyer on an instrument of transfer of property, and assessed on an ad valorem basis.

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- Personal income tax, which is payable on the income, profits or gain accruable to an individual. The parties to a real estate transaction are required by law to have an up-to-date payment of personal income tax before the instrument of transfer can be registered.
- Companies income tax (CIT), which is chargeable on profits accruing to a company within a financial year. With the current reforms provided under the new Companies and Allied Matters Act, 2020:
 - (a) companies with a yearly gross turnover of less than NGN25 million are regarded as small companies and are not liable to pay income tax;
 - (b) companies with annual gross turnover of between NGN25 million and NGN100 million are regarded as medium companies and are liable to pay CIT at the rate of 20%; and
 - (c) companies with gross turnover of NGN100 million and above are categorised as large companies and are liable to pay CIT at the rate of 30%.
- Ground rent is charged and payable on the grant of right of occupancy.
- A consent fee is usually paid as a requirement for the grant of the consent of the Governor for the sale of a property subject to a right of occupancy.
- A registration fee is required to be paid under several land instrument registration laws of various states.

Generally, each party is responsible to pay their respective solicitors and other professionals engaged by them in furtherance of the transaction. In respect of taxes, both parties are required to have an up-to-date payment of personal income tax or, where applicable, CIT. The seller pays capital gains tax on the profits of the sale, while the buyer pays stamp duty on the instrument of transfer. The buyer also generally

bears all other costs of perfecting the title to the property.

The same applies for a transfer of shares in the property-owning company (ie, through a share deal).

The transfer, sale or purchase of shares or stocks in companies is subject to capital gains tax (payable by the seller of the shares on gains exceeding NGN100 million).

Change in control of a company does not attract property taxes.

2.11 Legal Restrictions on Foreign Investors

Section 1 of the Land Use Act specifically limits the ownership of land in Nigeria to Nigerians. Therefore, a non-Nigerian cannot apply for a statutory or customary right of occupancy.

Nonetheless, several states in Nigeria have enacted acquisition of lands by alien laws, which enable foreign investors to purchase real estate in Nigeria, subject to obtaining the consent of the Governor before the execution of the relevant instruments.

As an alternative, an alien can acquire interest in real estate in Nigeria through a special purpose vehicle such as an incorporated company.

3. REAL ESTATE FINANCE

3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial real estate are generally financed through:

- debt or equity capital raises, including sukuk;
- mortgages;
- real estate investment trusts; or

- joint ventures.

3.2 Typical Security Created by Commercial Investors

Typically, an investor who is borrowing funds to acquire/develop real estate secures such financing against the property proposed to be acquired through a mortgage.

3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

Generally, there are no known restrictions on granting security over real estate to foreign lenders, apart from the existing restriction on ownership of real estate by foreign investors.

For every loan or investment imported into Nigeria via a Central Bank of Nigeria-approved channel for the importation of capital, there shall be no restriction on repatriation and repayments, provided that upon importation of the funds, the foreign lender obtained a Certificate of Capital Importation from the financial entity through which the capital was imported into Nigeria.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Several fees and taxes are required to be paid towards the perfection of securities created over real estate, including:

- stamp duty is required to be paid on the instrument creating the security;
- a consent fee is required to be paid towards obtaining the Governor's consent;
- filing and registration fees are to be paid for registration of charges at the Corporate Affairs Commission where the borrower is a company; and
- registration fees are payable at the lands registry.

3.5 Legal Requirements before an Entity Can Give Valid Security

Generally, there are no known rules or requirements to be complied with before creating a security over real estate. In the case of a corporate body, however, creating a security over its real estate will be subject to the provisions of the company's articles of association.

3.6 Formalities when a Borrower Is in Default

The mode of enforcing security is generally dependent on the type of security created.

Where the security created is a legal mortgage, the lender will be entitled to enforce the security once the power of sale has arisen and become exercisable.

- The power of sale arises when:
 - (a) the instrument creating the security is by deed;
 - (b) no intention against sale is expressed in the deed; and
 - (c) the facility maturity date has passed.
- The power of sale becomes exercisable when either of the following occurs:
 - (a) a notice requiring payment has been served on the borrower for a period of at least three months;
 - (b) some interest on the facility is left unpaid for a period of at least two months; or
 - (c) the borrower is in breach of a covenant of the deed, other than the covenant to repay.

However, where the security created is an equitable mortgage, the lender is required to institute legal proceedings for the court to grant the lender power to exercise these rights.

Generally, secured creditors receive preference over unsecured creditors. Thus, there are no additional steps required to give priority to the

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lender's security interest, save for the usual duty to register the mortgage at the relevant lands registry.

There are no known policies or regulations enacted by governmental authorities during the COVID-19 pandemic that restrict lenders' right of foreclosure or ability to realise collateral.

3.7 Subordinating Existing Debt to Newly Created Debt

It is possible for existing secured debt to become subordinated to newly created debt. By the provision of the Companies and Allied Matters Act, a fixed charge takes priority over an initially created floating charge, thereby automatically subordinating the initially created floating charge to the fixed charge.

Existing secured debt can also be subordinated by the execution of a subordination agreement.

3.8 Lenders' Liability under Environmental Laws

As established earlier, the title holder of a property is generally responsible for the property, except for where the title holder, by agreement, assigns such responsibility to any other person, such as the occupier of the property.

A person merely holding security is not the title holder of the property, and, thus, ought not to be held accountable for any pollution of the real estate. However, where the security has been enforced and the property sold, any buyer of such property may, subject to the circumstances, be liable.

3.9 Effects of a Borrower Becoming Insolvent

All security interests validly created by a borrower in favour of lenders prior to the borrower becoming insolvent are enforceable against the borrower, and the borrower's estate.

However, any other transaction entered into by the directors of a company after insolvency proceedings have commenced are void and of no effect.

3.10 Consequences of LIBOR Index Expiry

With the expiry of LIBOR at the end of 2021, the banking institutions from the five currencies covered by LIBOR developed alternative reference rates to ease the transition from LIBOR, to wit:

- the Sterling Overnight Index Average (SONIA), for pounds sterling;
- the Secured Overnight Financing Rate, for United States dollars;
- the Euro Overnight Index Average, applicable in Europe;
- the Tokyo Overnight Average Rate, for Japanese yen; and
- the Swiss Average Rate Overnight, for Swiss francs.

The key consequence of the expiry of LIBOR for borrowers whose loan agreements were created using the LIBOR rate is the need to amend the terms of the loans to reflect an alternative reference rate, based on the rate reference selection agreement.

New lending will also now be governed by any of the alternative reference rates adopted by the parties.

4. PLANNING AND ZONING

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

In Nigeria, the governmental controls applicable to planning and zoning across the regions and localities are generally stipulated in the planning and zoning laws.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

At the federal Level, the Urban and Regional Planning Act regulates the development of new, and the refurbishment of existing, buildings.

At the state level, the Urban and Regional Planning Law of each state regulates the development of new buildings.

4.3 Regulatory Authorities

At the federal level, the Federal Capital Development Authority regulates the development and designated use of individual parcels of land under the Urban and Regional Planning Act.

At the state level, each state, by virtue of its Urban and Physical or Regional Planning Laws, has a Ministry of Physical or Urban and Regional Planning, which regulates and designates the use of individual parcels of land.

In Lagos State, the regulating law is the Urban and Regional Planning and Development (Amendment) Law, 2019, and the regulating authorities are the Lagos State Building Control Agency and the Planning Permit Authority.

4.4 Obtaining Entitlements to Develop a New Project

The process for obtention of a building permit necessarily involves the submission of an application for a planning permit accompanied with other relevant documentation, including the technical drawings, analysis and reports of the proposed development.

Upon submission of the required documentation, the application may be granted or refused.

Sections 8 and 16 of the Lagos State Urban and Regional Planning and Development (Amend-

ment) Law, 2019 empower any member of the public, any tier of government, non-governmental organisations and professional bodies to submit written objections against an intended development.

By the provisions of Section 33 of the Urban and Regional Planning and Development (Amendment) Law, 2019, the Planning Permit Authority may consider representations made to it by a person, body or organisation to be affected by an intended development.

4.5 Right of Appeal against an Authority's Decision

Any intending developer who is dissatisfied with the decision taken on their application for a permit by the Physical Planning Authority may appeal to the Physical Planning Appeals Committee.

If the decision reached by the Appeals Committee is still not favourable to the developer, they may appeal, as of right, to the High Court of the state, within 28 days of receiving the written notification of the decision of the Committee.

4.6 Agreements with Local or Governmental Authorities

While it may be possible and, indeed, necessary to sometimes enter into agreements with local government authorities and/or utility suppliers to facilitate a development project, it is not typical/common in Nigeria to enter into such agreements.

4.7 Enforcement of Restrictions on Development and Designated Use

In Lagos, any development that is being undertaken contrary to the specific use granted under a planning permit shall be asked to revert to the original plan.

Failure to carry out any of the directives within the stipulated time shall result in the building

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being removed at the developer's expense, by the appropriate authority; in this case, the Lagos State Building and Control Agency.

Similar provisions are also generally applicable in other states of the federation.

5. INVESTMENT VEHICLES

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

The types of entities available to investors to hold real estate are:

- a private limited liability company;
- a public limited liability company;
- a limited liability partnership;
- a real estate investment trust or company; and
- a joint venture partnership.

The vehicle to be adopted in each instance ought generally to be informed by the objective of the investor. In Nigeria, the most common vehicles for holding real estate assets are via a private limited liability company and joint venture partnerships.

5.2 Main Features of the Constitution of Each Type of Entity

Private Limited Liability Company

- A private company is one that is stated in its memorandum to be a private company.
- It is registered under the Companies and Allied Matters Act, and it has a distinct personality from its shareholders.
- The total number of members of a private company cannot exceed 50.
- There is a restriction on the transfer of its shares.
- It can be wholly owned by a foreigner.

Public Company

- A public company is registered under the Companies and Allied Matters Act, and it has a distinct personality from its shareholders.
- There is no restriction on the number of members.
- There is no restriction on transfer of shares.
- Its shares can be traded on the stock exchange, and the shares can be offered to members of the public.

Limited Liability Partnership

- A limited liability partnership is a body corporate formed under the Companies and Allied Matters Act, and has a separate personality from its partners.
- It has perpetual succession.
- A change in partners does not affect the existence, rights or liabilities of the limited liability partnership.
- There must be at least two designated partners, of which at least one must be resident in Nigeria.

Real Estate Investment Trust or Company

- A real estate investment trust or company is a body corporate incorporated for the sole purpose of acquiring intermediate or long-term interests in real estate or property development.
- It may raise funds from the capital market through the issuance of securities.
- The trust may be constituted for the sole purpose of acquiring a property on a "trust for sale" for the investors, and in such trust, the investors will acquire units in the trust, through which they will be entitled to receive periodic distribution of income and participate in any capital appreciation of the property concerned.
- It is regulated by the Securities and Exchange Commission.

5.3 Minimum Capital Requirement

Private Limited Liability Company

The minimum issued share capital of a private limited liability company is NGN100,000.

For companies with foreign participation, the required minimum issued share capital is NGN10 million.

Public Limited Liability Company

The minimum issued share capital of public limited liability companies is fixed at NGN2 million.

Real Estate Investment Trust or Company

Real estate investment trust companies generally operate as fund/portfolio managers. As such, they are required to have a minimum paid-up capital of NGN150 million before registration.

5.4 Applicable Governance Requirements

There is a requirement that all entities must be registered and fully maintain the minimum threshold and limits required of them at every point in time.

In addition, all companies are expected to file annual returns, audited accounts, tax returns and general changes in the company's leadership and management with the appropriate regulatory authority, at every given time.

Furthermore, real estate investment trusts/companies are expected to file valuation reports and mandatory rating reports bi-annually.

5.5 Annual Entity Maintenance and Accounting Compliance

The cost of procuring accounting professionals to assist with the books largely depends on the volume of transactions conducted and the professionals engaged, whilst the cost of filing at the relevant regulatory offices is as prescribed

by the said regulatory agency, as may be revised from time to time.

6. COMMERCIAL LEASES

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

The law recognises leases and subleases as the type of arrangement whereby a person is allowed to use real property for a limited period without buying it outright.

6.2 Types of Commercial Leases

The law does not distinguish between different types of commercial leases.

6.3 Regulation of Rents or Lease Terms

Although lease terms generally reflect the agreement of parties, and parties are at liberty to negotiate what they deem appropriate and necessary, the tenancy laws of the respective states provide for some statutory terms that are implied in every lease.

Similarly, although the amount payable as rent is largely a reflection of the agreement of parties, the Tenancy Law of Lagos State permits an existing tenant to apply to the court for an order declaring that an increase in rent imposed by the landlord is unreasonable.

In Nigeria, there was no known legislation enacted in 2020 to address the effect of COVID-19 and the attendant disruptions caused by the lockdowns, on lessor-lessee relationships.

6.4 Typical Terms of a Lease **Length of Lease Term**

The length of a lease is subject to the agreement of the parties. The foregoing notwithstanding, the term of the lease must always be lesser than

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the length of time remaining on the lessor's right of occupancy.

Maintenance and Repair of the Real Estate Occupied by the Tenant

Matters concerning maintenance and repairs are dependent on what the parties agree to in the lease agreement. However, it is usual for the lessor to be responsible for structural repairs, while the lessee bears responsibility for other parts of the property.

Frequency of Rent Payments

Depending on the length of the lease, rent is usually due on or before the lease anniversary date. Furthermore, unless the parties agree to vary the length of the agreement, rent shall be paid as frequently as the length of the lease. However, for places covered by the Tenancy Law of Lagos, giving and receiving a premium/rent more than one year in advance is illegal, regardless of the term of years granted.

Also, under the Lagos State Real Estate Regulatory Authority Law 2021, tenants who take an annual lease may, on condition, be entitled to pay rent on a monthly basis.

Coronavirus Pandemic Issues

The outbreak of COVID-19, and the manner in which it caught the world off guard, is one experience that has shaped the manner in which parties commit to commercial agreements. Notably, parties now take cognisance of pandemics or endemics as force majeure terms that are inserted in commercial agreements.

6.5 Rent Variation

Generally, the practice is for lessors, when granting a lease, to insert a rent review clause in the agreement. This clause allows the lessor to obtain the market rental value obtainable on the property as of the review date.

6.6 Determination of New Rent

Typically, the lease agreement may state the timeframe within which the rent will be reviewed. The practice is for the lessor to notify the lessee of the intent to activate the rent review option in the agreement.

In the event that the parties are unable to agree on the revised rent to be paid, an expert opinion may be sought, and where the lessor arbitrarily increases the rent, the lessee may be entitled to approach the courts for an order declaring the increase as unreasonable.

Some factors considered in a rent review are any pre-agreed modality/rate specified in the lease agreement and the current rental value for similar properties in the neighbourhood.

6.7 Payment of VAT

The Finance Act, 2020 expressly excludes lands and buildings, and interest in lands and buildings, from the definition of taxable "goods" and "services" under the VAT Act. Thus, VAT is not payable on rent.

6.8 Costs Payable by a Tenant at the Start of a Lease

Apart from rent, tenants generally bear some extra costs, which may include solicitor's fees, agency fees, a service charge for utilities, a land use charge or tenement and business permits, and where the lease exceeds three years and is to be registered, the lessee will also be required to bear the cost of the registration of the lease.

6.9 Payment of Maintenance and Repair

The lessee normally bears the financial cost of maintaining and repairing common areas such as car parks and gardens. The usual practice is that a lessee contributes an allotted portion of the cost for maintaining the common areas via the payment of a service charge.

6.10 Payment of Utilities and Telecommunications

The cost for utilities and telecommunications that serve a property are usually discharged by the tenants who are the consumers of such services.

6.11 Insurance Issues

The party obligated to insure a property is mostly determined by the nature of the property. Where the property is singular, it is not unusual to pass the obligation to insure same to the tenant. However, where the property comprises terraces or a block of flats, the landlord will usually take out a single insurance policy over the property as a whole, and may, subject to the agreement of the parties, pass the cost on to the tenants. This insurance, however, strictly covers the properties and not the tenant's fixtures, fittings and other properties within the property. Thus, the tenants will still be required to take out insurance over their respective properties.

Generally, tenants have not recovered unused rents paid as a result of office closures, as such recovery is not as of right and is dependent on the parties involved.

6.12 Restrictions on the Use of Real Estate

A landlord can, by express clauses in the lease agreement, restrict the tenant's use of the property.

Further to the above, the Lagos State Tenancy Law, 2011 also contains provisions that restrict tenants' usage of leased properties.

6.13 Tenant's Ability to Alter and Improve Real Estate

The tenant or lessee may be permitted to alter or make improvements to the real estate. This can be stated in the lease agreement or the lessee may apply for, and obtain, the consent of the lessor in writing.

A failure on the part of the lessee to obtain the express written permission of the lessor before embarking on alteration or improvement of the real estate can be a ground for the forfeiture of the lease.

Under the Lagos State Tenancy Law, 2011, which is applicable in Lagos State, where a lessee, having previously obtained the written consent of the lessor, proceeds to make improvements on the property and the lessor determines the lease, the lessee shall be entitled to claim compensation for the improvements made.

6.14 Specific Regulations

The authors are not aware of any laws regulating leases of particular categories of real estate in Nigeria.

6.15 Effect of the Tenant's Insolvency

A tenant's insolvency indirectly determines the tenancy relationship, unless the parties otherwise agree.

6.16 Forms of Security to Protect against a Failure of the Tenant to Meet Its Obligations

The forms of securities obtained by landlords include the following:

- making a security deposit of a certain amount agreed upon by the parties, coupled with the circumstances under which the landlord shall have access to, and make use of, the security deposit;
- obtaining a performance bond from the lessee's bank, to cover for the lessee's inability to offset their rent; and
- obtaining a third-party guaranty for the payment of the lessee's rent, in the event of default.

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6.17 Right to Occupy after Termination or Expiry of a Lease

On the expiry of a lease term, the tenant may hold over the rented property. At law, such tenant has become a statutory tenant or tenant-at-will, and the landlord is prohibited from forcefully re-entering the property. To recover the premises from the tenant, the landlord is required to approach the courts for an order.

There is nothing that the landlord can do to guarantee that the tenant will leave on the originally agreed date.

6.18 Right to Assign a Leasehold Interest

Generally, whether a tenant can validly assign/sublease their interest in the property is entirely dependent on the agreement of the parties. The parties may agree that the lessee shall be allowed to sublet, assign or part with the possession of the premises, subject to obtaining the prior written consent of the lessor.

6.19 Right to Terminate a Lease

Events that can give the landlord the right to terminate the tenancy include:

- the tenant being in arrears of rent;
- the tenant constituting a nuisance;
- the tenant conducting illegal activities in the leased property;
- the tenant altering or carrying out improvements on the property without the express consent of the landlord;
- the tenant assigning or subletting the property without the express consent of the landlord;
- the tenant causing a serious damage to the property; and
- the violation of a term or condition in the lease agreement.

6.20 Registration Requirements

A lease for a period exceeding three years is expected to comply with the statutory requirement to be stamped at the Federal Inland Revenue Service and registered at the lands registry of the state where the property is located. The stamping or registration is usually done after the parties have obtained the governor's consent.

Leases for three years and below are not required to be stamped or registered.

6.21 Forced Eviction

In the event of default, a tenant can be forced to leave the property by the landlord approaching the courts for an order to that effect. A landlord is not permitted to forcefully compel the tenant to leave, other than through a court order.

The process of evicting a tenant may last up to six months.

6.22 Termination by a Third Party

The government can terminate a lease for overriding public interest.

The timeframe for a government compulsory acquisition is not certain and may take six months or more.

Generally, the government pays monetary compensation to the holder of the right of occupancy sought to be compulsorily acquired.

7. CONSTRUCTION

7.1 Common Structures Used to Price Construction Projects

The most common structures used to price construction projects are:

- fixed-price/lump-sum contracts;
- a unit price contract;

- cost-plus;
- a target estimate; and
- a guaranteed maximum cost contract.

7.2 Assigning Responsibility for the Design and Construction of a Project

Traditional Design-Bid-Build

- The owner employs an architect or designer to develop the architectural design of the proposed development;
- bids are taken from general contractors; and
- the winning bid is selected, and the general contractor is contracted to build the project.

Owner-Builder Operation

Here, the owner of the property has the responsibility of designing and constructing the project by themselves, or they may subcontract out the process to another entity, but reserve the decision-making rights for themselves.

Turnkey Operation

Under this arrangement, the owner employs the services of a contractor, who assumes the responsibility of designing and constructing the project.

7.3 Management of Construction Risk

Indemnifications, warranties, limitations of liability and waivers of certain damages are all devices used to manage construction risks.

Indemnification clauses operate to apportion liability to a party who, by their action or omission, in connection with the contract, causes loss or damage to the other party in the contract, and places on the party the need to compensate the injured party for a specific loss in monetary terms, equal to the loss suffered.

Limitation of liability clauses operate to limit the amount payable by each party for damage caused by them to the other party through acts of negligence.

For waivers, the parties may agree to mutually waive a claim for consequential damages.

On warranties, a party may give certain assurances to the other party of the truthfulness or genuineness of certain facts ascribed to them in a contract.

The above devices are subject to legal limitations that include whether the other party was aware of the existence of such devices at the time of entering into the contract.

7.4 Management of Schedule-Related Risk

Schedule-related risk is managed on construction projects through:

- identifying risks;
- assessing possible exposure to the risks;
- setting plans in motion to mitigate or respond to the risks; and
- being on the lookout for further risks or possible reoccurrence.

In Nigeria, parties are allowed to agree that an owner is entitled to monetary compensation if certain milestones and completion dates are not achieved. This is based on the prevailing doctrine of commercial transactions, which is that the parties can freely negotiate the terms of their contract.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

It is common for owners to request additional forms of security.

7.6 Liens or Encumbrances in the Event of Non-payment

Unless otherwise agreed by the parties, contractors are not permitted to lien or otherwise encumber a property in the event of non-payment. It is advisable for the contractor to institute

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an action before a court of law to recover payment for work done.

7.7 Requirements before Use or Inhabitation

The Lagos State Building Control Agency Regulations, 2019 mandates every developer to obtain from the Agency a certificate of completion and habitation upon completion of construction. This certificate must be obtained before a new development can be occupied.

8. TAX

8.1 VAT

VAT is not payable on real estate transactions.

8.2 Mitigation of Tax Liability

In order to mitigate tax liability, the purchaser of a large real estate portfolio is allowed to stamp several originals of their instrument of transfer as one.

8.3 Municipal Taxes

There are taxes payable on the occupation of a business premises, including television licence rates payable pursuant to the Radio and Television Bye-Law (No 9) 2010.

There are no known exceptions to the payment of taxes on the occupation of business premises.

8.4 Income Tax Withholding for Foreign Investors

For foreign investors whose country of origin has a double taxation treaty with Nigeria, withholding tax would be charged at the rate of 7.5%.

Individuals who derive rental income from real estate are liable to pay personal income tax at a rate between 7% and 24% of the rent received, depending on the amount of the rent.

In like manner, companies that receive rental income from real estate are liable to pay between 20% and 30% of the rent received as CIT.

Exemptions

Companies with an annual gross turnover of less than NGN25 million are exempted from paying CIT.

Real estate investment trust companies approved by the Securities and Exchange Commission are also exempted from paying CIT on their rental and dividend income that was earned in a financial year, provided that at least 75% of such income is distributed within 12 months.

Gains accruing from the disposition of real property are taxable as capital gains tax. The capital gains tax payable is assessed at a rate of 10% of the value of the property disposed.

8.5 Tax Benefits

There are tax benefits from owning real estate in Nigeria. Real estate investment vehicles (which include trusts and companies) generally qualify for a Pioneer Status Incentive (PSI) granted under the Industrial Development (Income Tax Relief) Act.

Entities that qualify for a PSI in Nigeria are granted a tax holiday for a cumulative period of five years, comprising of a three-year initial period and an additional two years. Additionally, such entities are precluded from paying withholding tax on dividends payable to their investors and shareholders, thereby allowing the investors and shareholders to receive dividends in full.

The Finance Act 2020 has further incentivised real estate investment vehicles to the extent that:

- real estate investment companies are exempted from paying CIT on rental and dividend income earned in a financial year,

provided that at least 75% of such income is distributed within 12 months; and

- real estate investment companies can claim dividends paid and mandatory distributions to its shareholders, as tax deductibles, for the purpose of CIT.

NIGERIA LAW AND PRACTICE

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Greychapel Legal is a full-service law firm in Nigeria that has over the years acquired cognate expertise in providing pragmatic advice to clients in the public and private sectors on contentious and non-contentious corporate, commercial and finance matters. The team renders first-class legal advisory services driven by integrity and a passion to ensure that its commer-

cially savvy, proactive and result-oriented lawyers are accessible to clients round the clock. The firm has gained national and international recognition for its real estate and finance practice, and is consistently recognised and rated in international legal directories. The firm would like to thank Collins Arikor for their contribution to this article.

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Trends and Developments

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Overview

Nigeria, one of the most prominent countries in Africa, not only has the largest economy, but is also the most populous country on the continent. Owing to the foregoing, there is a continuous increasing demand for real estate and infrastructure products and services. Furthermore, the World Bank, in its 2016 World Bank Open Data:

- pegged Nigeria's annual urban growth rate at 4.3%;
- indicated that there was an increase in housing demand in Lagos, Kano and Ibadan by 20%; and
- estimated that by 2037, the urban population will have doubled.

As widely reported, Nigeria is estimated to have a housing deficit of about 20 million housing units as at October 2021. While players in the real estate sector in Nigeria are making active efforts to bridge the housing gap, it is clear that there is room for more investment as the real estate sector has played, and continues to play, a vital role in the economy of Nigeria, in spite of the negative impact of the COVID-19 pandemic.

According to the GDP Report for Q1 2021 published by the National Bureau of Statistics, Nigeria's real estate sector grew by 1.77%, contributing a total of 5.28% to the real GDP of the country for the period under review (around USD5.3 billion). Barring any negative unforeseen developments, the real estate sector's contribution to the GDP is forecasted to increase.

In spite of the above, there have been instances where investors in the Nigerian real estate sector have recorded losses, owing particularly to a lack of understating of the business and regulatory environment in Nigeria. Many investors also fail to keep abreast of the relevant trends and the prevailing practices in the real estate market, by not obtaining adequate data/information from local advisers.

This article will explore the recent trends and developments in the real estate sector in Nigeria, to serve as a guide for investors, with a key focus on Lagos State, the commercial capital of Nigeria.

Recent Trends

Real estate costs and pricing

In 2021, the Nigerian economy slipped into recession on two occasions, though, by the close of the year, the nation was out of recession and the federal government continues to make efforts to stabilise the economy and set it on a path of growth. However, at the time of writing, the effects of the economic activities of 2021 continue to linger, and the dollar, which exchanged for about NGN360 at the start of 2021, now exchanges for about NGN580 on the parallel market.

The direct implication of the foregoing on developing real estate projects is clear. Building materials that sold at considerably lower prices in 2021 now sell at higher prices. This has driven up the cost of real estate projects, both commercial and residential. It is estimated that the cost of procuring building materials has gone up at a rate between 35% and 75%. In its revenue drive,

the Lagos State government has also reviewed the fees for obtaining building approvals from 25% to about 100% of the assessed value of the property. However, demands for residential real estate continue to increase, and developers consequently require even more funding if the housing demands are to be met at any rate.

In spite of the economic crunch, prices of land have steadily appreciated. In a real estate outlook published in January 2022, a real estate firm posits that the cost of land in the Ikoyi area of Lagos State ranges between NGN550,000 and N1 million per square metre, depending on the location, from the 2020 average of about NGN415,000 per square metre. Land prices in other parts of Lagos State have also seen a sharp increase. For example, lands in Lekki Phase 1, which went for about NGN198,000 per square metre in 2020, went for NGN322,000 per square metre in 2021, an increase of about 61.5%. In the Sangotedo axis, a relatively developing area of the state, the 2020 land price average was NGN27,750 per square metre. In 2021, lands at Sangotedo sold for NGN42,000 per square metre, a 66% jump from the 2020 price. The same is true for a majority of the parts of Lagos State.

Interestingly, none of the economic indices and effects stated above appear to be causing a slowdown in demand for, and/or investment in, real estate assets. Towards the end of 2021, Greychapel Legal advised a real estate development firm in Nigeria on the issuance of sukuk to raise up to NGN5 billion for the funding of 94 urban residential and commercial units in Lekki, Lagos. The issuance was 100% subscribed.

As Nigeria heads to the polls in 2023, it has been suggested that the continuous demand for real estate assets, and the seemingly available liquidity for the acquisition of said assets, might be owing to the singular factor of the heavy

spending that is typical of a pre-election year. The authors do not share this view, as, from their experience, demand has typically exceeded supply in the Nigerian real estate market.

However one looks at it, there continues to be an ever-increasing demand for residential and commercial real estate, and, by implication, the funding requirements and potential returns for investors continue to expand.

The Ikoyi building collapse

Ikoyi is arguably the most affluent neighbourhood in Lagos and houses the most expensive real estate commercial and private residential developments.

It thus came as a rude shock when, on 1 November 2021, a real estate disaster, the like of which had not been experienced in Lagos State, struck: the collapse of an uncompleted high-rise (21-storey), luxury, residential development, which claimed the lives of 42 persons, including the project developer.

To put the word “luxury” in perspective, the price of the apartments in the development ranged between USD1.2 million and USD5 million, and the project was about 65% completed and 65% sold out at the time of the collapse. In the wake of the collapse, several facts have emerged, confirming that the collapse was a result of an apparent lack of regulatory supervision and perceptible lapses on the part of the developer. Taking a scientific approach to deal with the after-effects of the collapse, the Lagos State government set up a six-man panel of inquiry into the collapse, consisting of real estate professionals and lawyers. The terms of reference of the panel included:

- determining the cause(s) of the collapse;
- determining whether there was full compliance with the physical planning, building and

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- building materials testing laws and regulations in Lagos State by the developer or by any other person;
- determining whether there were any supervisory, oversight or enforcement lapses on the part of any of the relevant regulatory authorities in the state;
- investigating and procuring from all listed professionals on the project their contracts of service, drawings, minutes of site meetings, schedules and all other relevant documents that may assist in the inquiry;
- investigating and conducting necessary tests on materials used for the construction of the collapsed building;
- obtaining and scrutinising all project drawings and specifications filed and submitted by the developer to the Ministry of Physical Planning and Urban Development and its sister agencies for building and urban development permits/approvals with respect to the collapsed building;
- making recommendations on how best to ensure the safety of the construction space and prevent building collapses in Lagos State, both for the development of projects and to ensure an effective and efficient regulatory environment; and
- recommending disciplinary action or prosecution of any person or corporate body found culpable.

Amongst others, it is public information that:

- the building approval originally obtained for the project was for eight floors, which was later officially changed to 15 floors; however, the project developer decided to extend the development to 21 floors without approvals;
- milestone approval for each stage of construction was not obtained; accordingly, there was no guarantee of the building's structural integrity; and

- the project was not insured. By necessary implication, compensation for the families of those who passed, as well as for those who had subscribed to units in the project, will prove to be tricky.

Although there have been other building collapses in the country in the past, the Ikoyi collapse was unprecedented, given its location and the scale. So much has now been said about the collapse, but the need for stricter regulations for the real estate industry in Nigeria was certainly reinforced.

Possibly, the Ikoyi collapse, above all else, led to the re-enactment of the Lagos State Real Estate Regulatory Agency Law, 2022, which will be considered below.

The Re-enactment of the Lagos State Real Estate Regulatory Authority Law, 2022

This is perhaps the most celebrated development in the Nigerian real estate industry over the past year. Interestingly, the Lagos State Real Estate Regulatory Authority Law, 2022 (the "Law") merely repeals and re-enacts the Lagos State Real Estate Regulatory Authority Law, Chapter L28, Laws of Lagos, 2015 (the "Repealed Law") and is not a newly enacted law, as many appear to believe.

Admittedly, considering the need to inspire and restore investor confidence in the real estate space in Lagos following the Ikoyi building collapse, there is now the political will by the Lagos State government to sanitise the real estate sector. The government is exercising this will through the Lagos State Real Estate Regulatory Authority (the "Authority"). Under the Law, the Authority has been fortified with more powers and saddled with increased responsibilities compared to the Repealed Law, and with the political backing it enjoys, the now-revitalised Authority appears to be bullish in achieving its

goal of regulating the real estate space in Lagos State. Some key introductions of the Law are briefly examined below.

The re-establishment of the Authority

Although the Authority was established under the Repealed Law, it appeared that it was neither effective nor functional at all. With the new lease of life that the Authority gains from the re-establishment, some of its key functions include:

- the formulation of real estate policies for Lagos State, in line with global best practices;
- the registration of, and issuance of permits to, real estate professionals within Lagos State;
- receiving and investigating petitions and complaints against registered real estate professionals;
- the registration of real estate transactions in Lagos State;
- the collation of data on real estate transactions within Lagos State;
- the registration of tenancy transactions above five years; and
- serving as mediators in real estate disputes.

The registration of, and issuance of permits to, real estate professionals

Contrary to what was previously obtained, professionals who engage in real estate activities in Lagos State (developers, lessors, solicitors, agents, etc) are now required to be registered by the Authority. To be eligible for the permit, an applicant is required to:

- (a) be a Nigerian or possess a valid work permit if a non-Nigerian;
- (b) be at least 18 years of age;
- (c) possess a Lagos State Residents Registration Agency number;
- (d) have an ascertained business premises or office within the state;
- (e) possess a secondary/high school minimum educational qualification;

- (f) have proper records of transactions and operate a separate client account;
- (g) have three years' tax clearance certification preceding the date of registration; and
- (h) register at least a business name with the Corporate Affairs Commission.

In addition to points (f) and (g) above, a corporate entity desirous of obtaining the real estate permit is also required to:

- be duly incorporated with the Corporate Affairs Commission;
- have at least one director who is fully compliant with all the requirements for an individual; and
- ensure that all non-Nigerian directors have valid work permits and are in compliance with all relevant laws applicable to foreigners.

If the registration and permit issuance progress as planned, real estate practitioners in Lagos will now be obliged to comply with uniform standards of practice to be set by the Authority, failing which they may lose their permit. By implication, it can be presumed that the real estate sector may be heading towards a situation where unqualified persons (agents, developers, etc) will no longer have the right to practise, which will, in the long run, ensure that buildings are safe and the conduct of due diligence by investors may now be easier. Considering that the law has only recently been passed, its impact cannot yet be assessed and it is to be seen over the next few months what effect this will have in the sector.

Permission for foreigners to invest in real estate

Foreigners who wish to invest in real estate activities in Lagos are required to obtain the permission of the Governor of Lagos State through the Authority. Where the permission is granted, the applicant will be entitled to invest for a maximum of 25 years, subject to renewal.

NIGERIA TRENDS AND DEVELOPMENTS

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The emergence and growth of proptech

Proptech is, simply put, the digitalisation of the real estate sector, which entails the replacement of traditional systems of conducting real estate transactions with methods compliant with digital technology.

Proptech is growing fast in the Nigerian property space, and some fields of proptech in which there has been recent growth include the following.

- Real estate investment platforms that offer investors an opportunity to be a fractional owner of property for the purpose of receiving rental income. This is particularly relevant for investors who may not have the complete capital required to purchase a real estate asset, or who may not be inclined to directly manage their real estate assets. These start-ups allow investors to make an investment towards the purchase/development of a real estate asset, and thus own the said asset according to the proportion of their investment. Rental income is also accordingly distributed. In providing their services, some of these firms utilise decentralised finance (DeFi) and blockchain technology.
- The explosion of property listing platforms. These platforms are established for the facilitation of sale and lease of property. Properties available for sale/lease are listed on the platforms, and potential buyers/lessees who use any of the platforms are able to remotely identify properties for lease/purchase.
- The advent of digital marketplaces where materials required for real estate development (gravel, iron rods, electrical wires, plumbing pipes, etc) are traded remotely. Greychapel Legal has advised a few start-ups in this space.
- The emergence of flexible rent platforms. Although tenancy laws and practices in Nigeria vary from state to state, generally,

in Nigeria, rent is paid annually in advance. However, start-ups have emerged with the objective of democratising affordable housing and providing flexible living. These start-ups enable tenants to lease properties annually, but make payment on a monthly basis.

- The rise of contech companies. Contech is a sub-branch of proptech that focuses specifically on the construction of real estate assets. On contech platforms, not only are negotiations and conclusion of the construction agreement mostly digitised, but technological aid is also employed to efficiently construct real estate assets in record time.
- Other proptech start-ups focus on creating property, facility and community management tools, as well as software for performing real estate data collection and analysis.

Proptech is still at a nascent stage in Nigeria. In 2021, five notable Nigerian proptech firms were stated to have raised an aggregate sum circa USD2 million in venture funding. Despite its infancy, Nigerians are executing newer ideas and others are investing in same, and it is clear that as innovation continues to expand, more investor and consumer needs will be met.

Shared spaces

This trend, which started around 2016 and experienced a regression after some time due to the COVID-19 pandemic, seems to have picked up steam in the wake of the easing of the lockdowns, particularly as it relates to commercial real estate.

Although the lockdowns were relaxed by Q2 2020, several companies have since gone digital, adopting an e-commerce approach. Others have adopted a partial or fully remote work policy, and small businesses suffering from the negative impact of the pandemic may now be required to vacate their erstwhile affordable office spaces.

Consequently, the overall demand for commercial real estate seems to be experiencing something of a decline. Recent research reveals that “[f]lexible terms and smaller space requirements have come to characterise the Grade A office market” and “the continued decline in demand for Grade A office spaces has accelerated the demand trend for B+ offices and residential conversions”.

In view of the foregoing, there appears to be an increased demand for co-workspaces, although Greychapel Legal’s experience in advising a prominent co-working space company is that users are now demanding a decrease in charges, whilst seeking bespoke arrangements, in spite of the rising costs of power (main and alternative) to maintain the space.

Nevertheless, in view of the expected demand, it is anticipated that, in 2022, there might be increased activities in co-working spaces investment and development.

Shared residential apartments are also increasingly becoming a “thing”, especially in urban areas. Despite many employees losing their jobs and others having to take pay cuts during the pandemic lockdowns, the average price of rent did not drop, and it became clear many people were unable to renew their residential leases. In direct response, one began to observe an increase in the listing of shared apartments. On the average property listing platform, it is estimated that about 20% of the properties listed are shared spaces where several people take a lease of different aspects of one property. For the more prominent shared-space providers, there is typically a 40% waiting list vis-à-vis available space.

Short-letting

Generally, available data shows that there has been a significant increase in the demand for

residential real estate in cities such as Lagos and Abuja over the past year. But beyond the demand for traditional shelter, the need for short-stay apartments is also on the rise. Indeed, in recent times, it is not uncommon to find that while building, developers now specifically earmark some units of their development for short-stay apartments.

Interestingly, experts have forecasted that the residential real estate market will continue along most of the lines established at the start of 2022, with short-stay apartments having critical acclaim, in spite of COVID-19 and its attendant risks.

Naturally, commercial success for short-stay developers and investors will depend on several factors – including location and management quality, as well as services and facilities available in the apartments – but one key factor that developers and investors will be required to bear in mind in venturing into short-letting is in respect to the quality of finishing of the spaces, as short-stay apartments are generally required to be very tastefully furnished. This has improved the real estate value chain, with increased demand for the services of furniture makers, managers, interior designers and the like.

Conclusion

The data clearly suggests that there is an increase in demand for real estate generally, and although players are attempting to bridge the gap, it appears that the demand for residential real estate as well as co-working spaces continues to deepen. The foregoing holds true even in the face of an overall increase in the cost of undertaking real estate development, the COVID-19 pandemic and demanding economic conditions.

If one thing is clear, therefore, it is that with the right information and guidance, the real estate

NIGERIA TRENDS AND DEVELOPMENTS

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Damilola Babade and Ololade Agboola, Greychapel Legal

industry in Nigeria at this time continues to be a prime investment option.

Furthermore, and in a bid to restore investor confidence in the wake of the Ikoyi building collapse, the Lagos State government has re-enacted the LASRERA Law, thereby revitalising the Authority and taking firm control of the regulatory end of real estate activities in Lagos. The Authority will, among others, issue permits to real estate practitioners, and generally regulate the practice of real estate in Lagos State.

At the time of writing, it is still early in the year, but the forecasts for the real estate industry have been increasingly positive, and the coast seems clear for real estate investors to reap phenomenal returns in the short and long term, with the right team of local advisers.

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Greychapel Legal is a full-service law firm in Nigeria that has over the years acquired cognate expertise in providing pragmatic advice to clients in the public and private sectors on contentious and non-contentious corporate, commercial and finance matters. The team renders first-class legal advisory services driven by in-

tegrity and a passion to ensure that its commercially savvy, proactive and result-oriented lawyers are accessible to clients round the clock. The firm has gained national and international recognition for its real estate and finance practice, and is consistently recognised and rated in international legal directories.

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