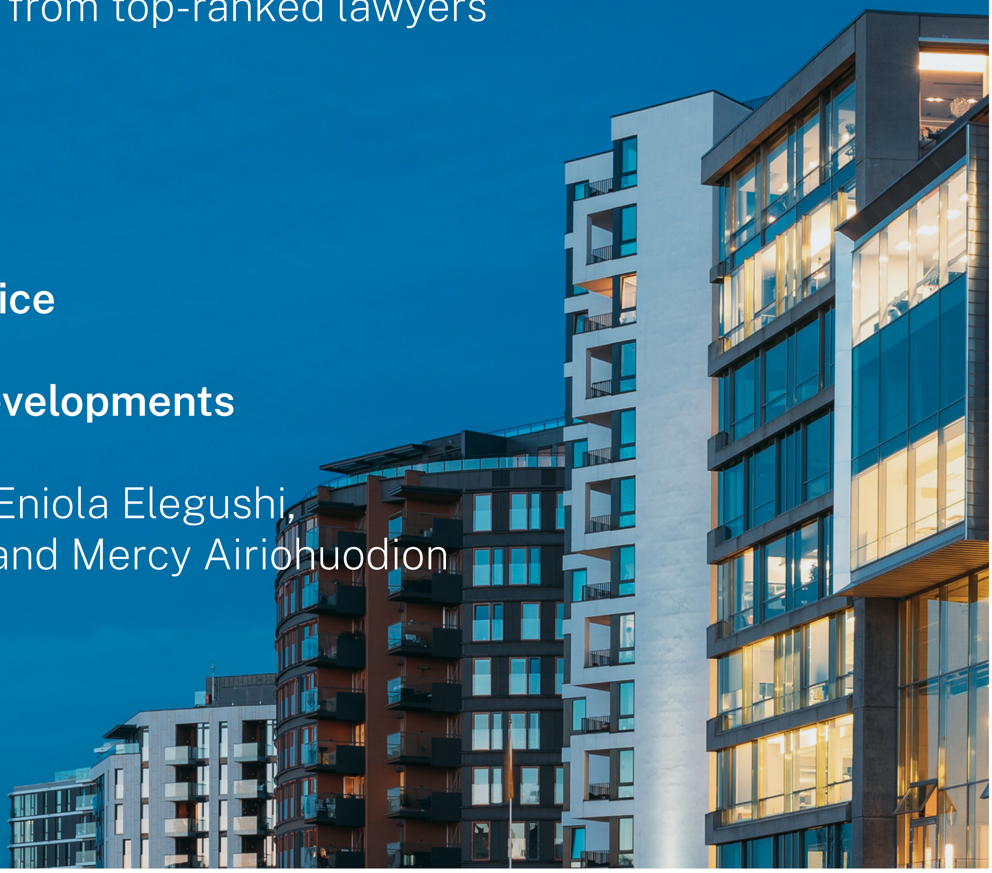
Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Real Estate 2023

Definitive global law guides offering comparative analysis from top-ranked lawyers



Nigeria: Law & Practice
and
Nigeria: Trends & Developments

Oladele Oladunjoye, Eniola Elegushi,
Adebola Babatunde and Mercy Airiohuodion
Greychapel Legal

NIGERIA

Law and Practice

Contributed by:
Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion
Greychapel Legal

Contents

NIGERIA CONTENTS

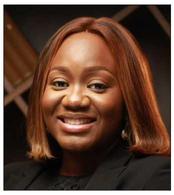
NIGERIA CONTENTS

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion,
Greychapel Legal

Greychapel Legal is an ambitious law firm that renders first-class legal advisory services driven by integrity and a passion for ensuring that commercially savvy, proactive and result-oriented lawyers are accessible round the clock. The firm is located in the heart of Lagos, Nigeria. Its expertise cuts across Real Estate, Finance, Corporate and Commercial advisory, Oil and Gas, Litigation and Dispute Resolution, among others. It has a thorough and practical understanding of the intricacies of the real estate market in Nigeria. Its unique regulatory framework of real estate financing has made the firm an invaluable resource for lenders, borrowers, guarantors, and off-takers. It provides bespoke solutions to diverse real estate financing transactions and has advised clients on high-value transactions with respect to commercial real estate, setting up of joint ventures, development and financing of joint venture projects; and advised investors on financing and investment in construction projects, amongst others.

Authors

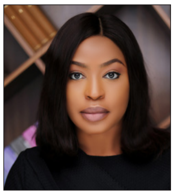
Oladele Oladunjoye holds an LLM (with Distinction) from the University of Warwick, and he is admitted as a Solicitor of the Senior Courts of England and Wales. He is a member of the Nigerian Bar Association, International Bar Association, Chartered Governance Institute, UK & Ireland among others. He is an astute, pragmatic and resourceful lawyer with a track record of providing quality legal services on a wide range of issues. With a sound background in finance, he easily appreciates both legal and commercial issues in structuring real estate transactions; and understands the intricacies of the real estate market.



Eniola Elegushi holds an LLM in Commercial Law from the University College, London. She is a managing associate at Greychapel Legal and has a wealth of experience in corporate, commercial and real estate law garnered over the years. She is a member of the Nigerian Bar Association and the Chartered Institute of Arbitrators, UK (Nigerian Branch). She is fluent in English and has a good command of French. She was awarded a diploma certificate in French by the French Ministry of Education. Eniola has a track record of awards and accolades to her name.

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion, **Greychapel Legal**

Adebola Babatunde is a corporate, commercial and real estate lawyer with a wealth of experience in several high-value transactions, including the setting up of joint ventures, sale of a hospitality business, issuance of bonds, sukuk and fixed income funds, banking, financing of infrastructures and petroleum operations, development of infrastructures under PPP frameworks, and power. He is a member of the Nigerian Bar Association and the Institute of Chartered Secretaries and Administrators of Nigeria. He has advised and assisted various companies on legal and regulatory matters. He balances legal advisory service with commercial awareness.



Mercy Airiohuodion holds an LLB which she obtained from Igbinedion University Okada, Nigeria. She is a legal practitioner with an excellent work ethic and a great passion for the law. She has a wide range of proven legal skills and experience in numerous high-value transactions involving multinationals, constantly ensuring the development of cutting-edge avenues for resolution of complex legal issues. She is a member of the Nigerian Bar Association. She is skilled in real estate advisory, general corporate and commercial advisory, litigation and alternative dispute resolution.

Greychapel Legal

17b, Emmanuel Abimbola Cole Street
Lekki Phase 1
Lagos
Nigeria

Tel: +234 7032811207
Email: oladele@greychapellegal.com
Web: www.greychapellegal.com

GREYCHAPEL
LEGAL

NIGERIA LAW AND PRACTICE

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion,
Greychapel Legal

1. General

1.1 Main Sources of Law

The main sources of real estate law in Nigeria are:

- the Constitution of the Federal Republic of Nigeria 1999 (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 1978, 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 of the federation. 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 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:

- receiving and investigating petitions and complaints against registered real estate professionals;
- collating data on real estate transactions within Lagos;
- serving as mediator in real estate disputes;
- 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

Though the real estate market grew significantly in 2022 and contributed over NGN7 trillion to the country's GDP, home ownership has been difficult for the population as a result of a housing shortage, higher lending rates and inflation-driven increase in the prices of housing or building/construction materials.

Towards the tail end of 2022, the Central Bank of Nigeria (CBN) commenced a redesign of the naira in order to strengthen the value of the naira, and improve the situation of the economy. Thus, the CBN ordered that the old naira notes would cease to be legal tender in the country. In line with this, the CBN imposed low cash limits and stringent requirements to deposit the old naira notes to curb illegal, corrupt and fraudulent transactions that were facilitated by the largely informal and cash-driven economy. This has been seen to have very negative effects on the real estate sector, particularly the construction subsector, as many real estate participants/vendors such as developers and builders deal in cash for purchase of building materials and payment for labour.

The high rate of demand is also a key driver of foreign and local investments into the real estate market as developers are capitalising on local demand to open up new areas for development. Developers hold the view that a significant percentage (55%–65%) of effective demand for real estate projects is driven by Nigerians in diaspora.

Some key trends in the market include the high interest rate environment, increase in the cost of building materials driven by high inflation levels and forfeiture orders on properties owned by politically exposed persons.

Some factors driving growth in the real estate market include increased infrastructure development in the country, as well as increased international developer and occupier activity, particularly of tech players. A prime example is Microsoft's launch of its Africa Development Centre headquartered at Kings Tower.

Lekki Gardens Estate Limited, a property investment and development firm, raised a NGN25 billion Commercial Paper on the FMDQ to be used as working capital. Also, Purple Real Estate Income Plc, a real estate investment firm, launched a NGN10 billion equity public offering whose proceeds are intended to be used for debt refinancing, and acquiring income-producing real estate assets, among others.

Data from the Nigerian Building and Road Research Institute shows that over 90% of construction materials used in the construction of buildings and roads in Nigeria are imported. Growing demand shows the need to encourage local production of these materials.

Also, the urgent need for infrastructure planning has grown even more apparent in the wake of the flooding that affected over 33 states of the federation in 2022, causing significant damage and loss of lives and property.

Due to the rising value of properties in the country, and limited access to financing for the same, the population has faced a measure of difficulty in home acquisition and increasing popularity of alternative models like short-letting and fractional ownership.

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. Disruptive technology is expected to play an important role in the manner of operations in the real estate sector, such that it will no longer be business as usual. Notwithstanding that from all indications, the players in the real estate industry are keen to adapt to the changing business environment in the country, the sector has been very slow to integrating technology into its procedures.

Proptech companies, in the form of online real estate marketplaces, are becoming increasingly popular and recording higher levels of patronage and investor interest. Some of these proptech companies utilise blockchain and decentralised finance (DeFi) technologies, but there has been no known impact from the emergence of blockchain and other disruptive technologies on real estate transactions in Nigeria.

Interestingly, the Nigerian regulatory space is gradually becoming more open to the adoption of disruptive technologies. For instance, the Securities and Exchange Commission (SEC), in May 2022, released new regulations known as the Rules on Issuance, Offering and Custody of Digital Assets in Nigeria. These rules apply to issuers seeking to raise capital in Nigeria through digital asset offerings, Digital Asset Offering Platforms (DAOPs), digital asset custodians and fintechs. Also, the Nigeria Startup Act was passed into law and is expected to remove the legal ambiguities that have hitherto impeded the growth of start-ups. It is hoped that new real estate laws/regulations will be enacted for the adoption of emerging disruptive technologies.

The rise in technology usage, coupled with the influence of the younger demographic, particularly as it relates to the development of proptech firms, enhance the possibilities of emerging technologies significantly impacting the real estate sector in Nigeria, subject to an enabling regulatory environment.

1.4 Proposals for Reform

Prior to the enactment of the Land Use Act in 1978, freehold interest existed in land. However, with the coming into force of the Land Use Act, freehold interest was abolished and the law vests all land within a state in the Governor of the state. The land shall be held in trust and administered for the use and common benefit of all Nigerians. Consequently, the title granted by the Governor to a purchaser of a parcel of land is a right of occupancy (a lease), usually for a period of 99 years, subject to renewal. 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 his interest at the lands registry office 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 in April 2023, there were 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 is that of absolute and derivative rights.

However, with the enactment 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 later sells the property, the subsequent buyer does not receive an absolute ownership of the land/property; rather, they receive title for the remaining number of years left 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 leasehold.

2.2 Laws Applicable to Transfer of Title

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

- the Constitution of the Federal Republic of Nigeria 1999 (as amended), 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 States in the former Western Region of Nigeria and Mid-Western Region of Nigeria);
- the Conveyancing Act, 1881 (applicable in in States in the former Northern and Eastern Regions of Nigeria);
- the Stamp Duties Act, Chapter S8, Laws of the Federation of Nigeria, 2004 (as amended);
- the Mortgage and Property (Amendment) Law, Lagos State, 2015;
- the illiterate protection laws of the various states;
- the wills laws of the various states; 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 transfer 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

With the increased volumes of real estate transactions, real estate participants, particularly purchasers, have become more aware of the associated risks and the need to mitigate these risks. For this reason, the need for due diligence cannot be overemphasised. 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, it is usually required that a written application to conduct a search be submitted to the Registrar of Titles of the state, accompanied by the evidence of payment of the prescribed search fees and other required documents.

Upon submitting the application, the Registrar of Titles will permit the applicant to carry out a physical search of the records of the registry for the relevant property.

In the Federal Capital Territory, Abuja, searches are conducted electronically by the officials of the registry via the Abuja Geographic Information System. The search report is then issued to the applicant by the officials.

Searches at the probate registry are relevant where a 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. This entails 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. The search is usually conducted upon an application to the chief registrar of the court. 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 status of a corporate entity and confirming the existence of any charges over the property proposed to be sold by such an 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 or where there is a successful adverse claim against the title.

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”, “agricultural” or “mixed development”.

Additionally, the buyer may consult with the town planning authority in the state 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 in the terms of grant.

In either case, before the government can expropriate a 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 in 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 derived from the disposal of assets. It is statutorily charged at 10% of the gains.
- Stamp duties – payable by the buyer on an instrument of transfer of property. It is assessed on an ad-valorem basis.
- Personal income tax – payable on the income, profits or gain accruable to an individual party to a real estate transaction. In Lagos, state payment of personal income tax is a requirement for obtaining the consent of the Governor to the disposal of real estate. Where a company is party to the transaction, two directors of the company would be required to present proof of payment of their personal income tax.
- Ground rent is charged and payable on the grant of right of occupancy.
- A consent fee is payable as a requirement for the grant of the consent of the Governor to the sale of a property subject to a right of occupancy.
- A registration fee is payable 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 be compliant in the payment of their income taxes. 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.

Where a property is acquired through the acquisition of shares in a property-owning company, the transaction will not attract property taxes.

2.11 Legal Restrictions on Foreign Investors

The acquisition of interest or right in land in Nigeria by foreign investors is restricted by Acquisition of Lands by Alien laws of several states in Nigeria, save for where such interest or right in land is less than three years, including any option for renewal. The acquisition of real estate by foreigners in Nigeria is subject to obtaining the prior consent of the Governor before executing the relevant instruments for acquiring the land.

Alternatively, an alien can acquire interest in real estate in Nigeria through a special purpose vehicle such as an incorporated company whose majority of members are Nigerians.

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, which is required to be paid on the instrument creating the security;
- a consent fee, which is required to be paid towards obtaining the Governor's consent;
- registration fees, which are to be paid for registration of charges at the Corporate Affairs Commission where the borrower is a company; and
- registration fees, which 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, it has all the powers of a natural person and can create security over its real assets unless its articles of association provide otherwise.

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:

- the instrument creating the security is by deed;
- no intention against sale is expressed in the deed; and
- the facility maturity date has passed.

The power of sale becomes exercisable when one of the following occurs:

- a notice requiring payment has been served on the borrower for a period of at least three months;
- some interest on the facility is left unpaid for a period of at least two months; or
- 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 lender's security interest, save for the usual duty to register the mortgage/charge at the relevant lands registry and the corporate affairs commission.

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 generally takes priority over an initially created floating charge, unless the terms for the grant of the floating charge prohibits the granting of any later charge having priority over the floating charge coupled with a notice of that prohibition to the fixed chargee at the time when the charge was granted to him.

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 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, may not 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 (SOFR), for United States dollars;
- the Euro Overnight Index Average (EONIA), for the euro;
- the Tokyo Overnight Average Rate (TONAR), for Japanese yen; and
- the Swiss Average Rate Overnight (SARON), 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 enacted by each state.

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 obtaining 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 (Amendment) 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 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
- an incorporated joint venture.

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 a private limited liability company and an incorporated joint venture.

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 of association 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, but subject to the provisions of the Acquisition of Lands by Alien Laws. However, in practice, it must have at least one Nigerian director.

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, and 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 and 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.

A real estate investment trust 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. For companies with foreign participation, the required minimum issued share capital is NGN10 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 and rent control 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, which has a limited geographical jurisdiction within the 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.

Also, where there is no agreement between the parties as to the terms of the lease, the tenancy laws of various states generally regulate the lease transaction.

In Nigeria, during the COVID-19 pandemic in 2020, there was no known legislation enacted to address the effect of the pandemic 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 a fundamental term in a lease agreement as leases have to subsist over a defined or certain period of time. This term is subject to the agreement of the parties. The foregoing notwithstanding, the term of the lease must always be lesser than 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. The tenant is expected to keep the property in a tenantable state excepting fair wear and tear.

Frequency of Rent Payments

This is another very important term in a lease agreement. 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 State, 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 events 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 where the property is within the geographical coverage of the Tenancy Law of Lagos State.

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, property agency fees, a service charge for utilities, land use charge or tenement rate, business permits where the property is for commercial use, 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 property 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 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 lease agreement between 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 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.

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 the 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 or illicit 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;
- where the premises is required by the landlord for personal use;
- where the premises has been abandoned;
- where the premises is unsafe and unsound as to constitute a danger to human life or 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 statutorily required 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, which are regarded as tenancies, are also required to be stamped but they are not required to be registered. Stamp duty on tenancies is payable ad valorem but there has been little or no enforcement of this requirement.

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 is usually slow and may last up to six months or more.

6.22 Termination by a Third Party
The government can terminate a lease for overriding public interest, by a revocation of a right of occupancy, whether statutory or customary.

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

Generally, the government gives notice of acquisition and 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
In the case of a 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 may subcontract 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 to guarantee that the contractor would perform its services as agreed under the contract.

7.6 Liens or Encumbrances in the Event of Non-payment

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

The lessee is required to deduct Withholding Tax (WHT) at the rate of 10% from the lease rentals and remit the WHT to the tax authorities. However, in practice, lease agreements do provide that the rent shall be net of taxes, thus enabling lessors to receive the total amount specified as rent.

For foreign investors whose country of origin has a double taxation treaty with Nigeria, WHT 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 a similar 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 exempt 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 that accrue 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, comprised of a three-year initial period and an additional two years. Also, 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 2019 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.

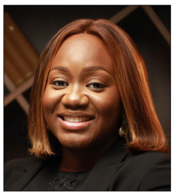
Trends and Developments

Contributed by:
Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion
Greychapel Legal

Greychapel Legal is an ambitious law firm that renders first-class legal advisory services driven by integrity and a passion for ensuring that commercially savvy, proactive and result-oriented lawyers are accessible round the clock. The firm is located in the heart of Lagos, Nigeria. Its expertise cuts across Real Estate, Finance, Corporate and Commercial advisory, Oil and Gas, Litigation and Dispute Resolution among others. It has a thorough and practical understanding of the intricacies of the real estate market in Nigeria. Its unique regulatory framework of real estate financing has made the firm an invaluable resource for lenders, borrowers, guarantors, and off-takers. It provides bespoke solutions to diverse real estate financing transactions and has advised clients on high-value transactions with respect to commercial real estate, setting up of joint ventures, development and financing of joint venture projects; and advised investors on financing and investment in construction projects, amongst others.

Authors

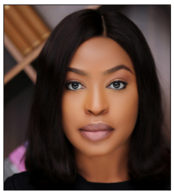
Oladele Oladunjoye holds an LLM (with Distinction) from the University of Warwick, and he is admitted as a Solicitor of the Senior Courts of England and Wales. He is a member of the Nigerian Bar Association, International Bar Association, Chartered Governance Institute, UK & Ireland among others. He is an astute, pragmatic and resourceful lawyer with a track record of providing quality legal services on a wide range of issues. With a sound background in finance, he easily appreciates both legal and commercial issues in structuring real estate transactions; and understands the intricacies of the real estate market.



Eniola Elegushi holds an LLM in Commercial Law from the University College, London. She is a managing associate at Greychapel Legal and has a wealth of experience in corporate, commercial and real estate law garnered over the years. She is a member of the Nigerian Bar Association and the Chartered Institute of Arbitrators, UK (Nigerian Branch). She is fluent in English and has a good command of French. She was awarded a diploma certificate in French by the French Ministry of Education. Eniola has a track record of awards and accolades to her name.

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion,
Greychapel Legal

Adebola Babatunde is a corporate, commercial and real estate lawyer with a wealth of experience in several high-value transactions, including the setting up of joint ventures, sale of a hospitality business, issuance of bonds, sukuk and fixed income funds, banking, financing of infrastructures and petroleum operations, development of infrastructures under PPP frameworks, and power. He is a member of the Nigerian Bar Association and the Institute of Chartered Secretaries and Administrators of Nigeria. He has advised and assisted various companies on legal and regulatory matters. He balances legal advisory service with commercial awareness.



Mercy Airiohuodion holds an LLB which she obtained from Igbinedion University Okada, Nigeria. She is a legal practitioner with an excellent work ethic and a great passion for the law. She has a wide range of proven legal skills and experience in numerous high-value transactions involving multinationals, constantly ensuring the development of cutting-edge avenues for resolution of complex legal issues. She is a member of the Nigerian Bar Association. She is skilled in real estate advisory, general corporate and commercial advisory, litigation and alternative dispute resolution.

Greychapel Legal

17b, Emmanuel Abimbola Cole Street
Lekki Phase 1
Lagos
Nigeria

Tel: +234 7032811207
Email: oladele@greychapellegal.com
Web: www.greychapellegal.com

GREYCHAPEL
LEGAL

NIGERIA TRENDS AND DEVELOPMENTS

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion,
Greychapel Legal

Overview

Nigeria, one of the most prominent countries in Africa and the world, not only has the largest economy, but is also the most populous country in Africa with over 213 million people. Owing to the foregoing, there is a continuous increasing demand for real estate and infrastructure products and services. Furthermore, the World Bank, in its 2021 World Bank Open Data:

- pegged Nigeria's population at 213,401,323 which is a 2.4% total population growth rate; and this population is on the increase;
- pegged Nigeria's annual urban growth rate at 3.9%; 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. The International Human Rights Commission (IHRC) recently stated that Nigeria's housing deficit stands at 28 million units. 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.

According to the GDP Report for Q3 2022 published by the National Bureau of Statistics, Nigeria's real estate sector grew by 4.44%, higher than the growth recorded in the third quarter of 2021, contributing a total of 5.34% to the real GDP of the country for the period under review (around NGN20 trillion – USD62 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 understanding 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

Commissioning of the Lekki Deep Seaport

In 2020, by a joint venture between the Federal Government of Nigeria, through the Nigerian Ports Authority, the Lagos State Government, the Lekki Port Investment Holdings Inc, a special purpose vehicle promoted by the Tolaram Group, and China Harbouring Engineering Company, undertook the construction and development of the Lekki Deep Seaport, a project which was valued at an estimated USD1.5 billion. The project is aimed at decongesting the foremost Apapa Wharf, thus channelling industrial and commercial activities to the Ibeju-Lekki area of Lagos State.

The project was commissioned on 23 January 2023 by President Muhammadu Buhari. It is expected that this project will not only boost Nigeria's GDP and create over 200,000 new jobs, but will also lead to an industrial revolution in the real estate sector, as well as direct and indirect investment opportunities for real estate developers and foreign investors. The Deep Seaport is expected to drive trade activities, improve commerce and encourage investment

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion,
Greychapel Legal

flows into the country. A direct consequence of this is that with the creation of new jobs, the population will continue to grow as more people seeking better opportunities will migrate into Lagos State, thereby increasing the demand for housing, which will, in turn, significantly impact on the value of commercial and residential estate in the State, particularly in the Ibeju-Lekki and Epe axis.

Naira redesign by the Central Bank of Nigeria

Towards the tail end of 2022, the Central Bank of Nigeria (CBN) commenced a redesign of the naira in order to strengthen its value and reduce the risk of counterfeiting or hoarding the naira and vote buying at the 2023 general elections. According to the CBN, the intent of the redesign of the naira was to return the bulk of the money in circulation (over NGN3.2 trillion) back to the banking system, and thereby transition the country into a fully cashless economy.

Thus, the CBN ordered that the old naira notes would cease to be legal tender in the country by 31 January 2023. The deadline was later extended till 31 December 2023. Prior to the extension of the deadline, the CBN had imposed low cash limits on withdrawals and stringent requirements for depositing the old naira notes to curb illegal, corrupt and fraudulent transactions that were facilitated by the largely informal and cash-driven economy.

It is noteworthy that while the currency redesign may have been well-intentioned, its implementation has had multiple negative effects on the population as the new naira notes, which ought to be the new legal tender in Nigeria, became scarce. The retrieval of the old currency and the lack of circulation of the new currency resulted in severe cash shortage in the country and the existing online and electronic banking infrastructure, unfortunately, proved insufficient, inadequate, and ineffective to cater to the daily transactional needs of the population.

The real estate sector is not left out in the heat of the new naira policy and its attendant scarcity. The effect of the foregoing is seen to be prevalent in the construction segment of the real estate sector as activities in the sector have slowed down and market transactions have significantly reduced. This is because a lot of real estate participants deal in cash, and developers and builders alike have been unable to purchase construction materials. This has seen new investors taking a wait-and-see approach, thus impeding real estate development. Also, for the lower-class segment of the population that pays rent on a weekly basis, the cash shortage has affected their ability to pay their rents as at when due.

With the extension of the deadline for the circulation of the old naira notes lately, the CBN has released a huge volume of the old notes back into circulation and this has temporarily doused tension caused by the shortage of the new naira notes. It is hoped that by the new deadline there would be sufficient new naira notes in circulation, and online and electronic banking platforms would have deepened to support the cashless policy.

Flooding in Lagos (and some other parts of Nigeria) and its impact on real estate

The year 2022 was a memorable one in Nigeria as the country recorded intense flooding that affected over 33 states, including Lagos, Nigeria's commercial capital. The flooding resulted in loss of lives and destruction of several properties. It was reported that over 1.3 million people were displaced from their homes and over

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion,
Greychapel Legal

108,393 hectares of farmland were destroyed across the country as a result of the flooding.

Many reasons were attributed to the flooding, such as release of water from the Ladgo Dam in Cameroon, a neighbouring country, climate change, heavy rainfall, poor and ineffective or blockage of the drainage channels and other environmental factors.

The flooding impacted the value of real estate in flood-prone communities. In a research report published in November 2022, it was stated that the flooding affected residential settlements, commercial assets, infrastructural development and tourism-related income, as business and commercial activities were disrupted. The authors, however hold the view that the same cannot be said for Nigeria's commercial hub, Lagos, which has been severally affected by flooding occurrences, particularly in highbrow areas like Lekki, Ikoyi and Victoria Island, yet the value of properties in these areas has continued to rise and demand for them has continued to increase.

Furthermore, the flooding and its impact on the population and the economy at large, has further shown the urgent need for infrastructure planning and heightened environmental awareness and preservation initiatives to prevent the reoccurrence of such unfortunate events in the future.

Introduction of pension-backed mortgages for retirement savings account holders

In September 2022, the National Pension Commission (PenCom) approved the issuance and immediate implementation of the Guidelines on Accessing Retirement Savings Account (RSA) Balance towards Payment of Equity Contribution for Residential Mortgage by RSA Holders ("the Guidelines"). The purpose of the Guidelines was to give effect to the provision of Section 89(2) of the Pension Reforms Act, 2014 which allows RSA holders to utilise part of their retirement savings as equity contribution for the purpose of securing residential mortgage. The Guidelines were designed to improve the standard of living of RSA holders by facilitating their home ownership.

The Guidelines permit an eligible RSA holder to contribute a maximum of 25% of his total RSA balance as at the date of application irrespective of whether it is sufficient to meet the equity contribution required by the mortgage lender or not.

It also sets the eligibility criteria for accessing the RSA balance. As such, it is not all RSA holders that are eligible to access this equity contribution scheme. According to the Guidelines, an RSA holder will be eligible under the scheme if he or she is an active employee registered under the Contributory Pension Scheme and has for a period of at least 60 months (five years) received both employer's and employee's mandatory contributions into his RSA prior to his application, amongst other requirements. The Guidelines outrightly excluded existing retirees from the scheme. Statistics show that as at the end of Q4 of 2022, only about 50% of the RSA holders in Nigeria were eligible.

Following the release of the Guidelines, the Central Bank of Nigeria approved about 34 mortgage banks in the country to work with PenCom and pension fund operators in providing mortgage financing for RSA holders.

The Banana Island building collapse

Ikoyi is arguably the most affluent neighbourhood in Lagos, Nigeria, and houses the most expensive and luxurious commercial and private residential developments. In November 2021, when the 21-storey building collapsed in the Ikoyi area of Lagos claiming the lives of 42 persons, the State Government set up a six-man panel of inquiry into the collapse, consisting of real estate professionals and lawyers, in order to, amongst other things, determine the cause(s) of the collapse and make recommendations on how best to ensure the safety of the construction space and prevent further building collapses in Lagos State.

Notwithstanding the steps taken by the Lagos State Government, just recently, on 12 April 12 2023, another real estate disaster happened in the Banana Island area of Ikoyi, when a seven-storey building under construction collapsed, reportedly claiming one life and leaving many other casualties.

The Lagos State Government has since launched a probe into the collapse and confirmed that the collapse occurred during a casting of concrete slab on the 7th floor of the building which was 80% completed at the time. It was confirmed that the developers failed to obtain approval before commencing the construction work, but they continued to build, hiding under the security guards of the gated estate where the collapsed building was being erected.

The Lagos State Government also sealed the site and directed that all developments on Banana Island be placed on hold, subject to a comprehensive audit by the officials of the Lagos State Building Control Agency (LASBCA) to determine:

- how many buildings are being constructed without approval from the Lagos State Government; and
- if all approved buildings are being built in line with the approval limits provided.

It is hoped that with the incessant building collapse in Lagos State, the Government will take active steps to address the menace and kick against the use of sub-standard construction materials in buildings.

The 2023 general elections

Nigeria's Presidential election was conducted on 25 February 2023, but its effect on real estate is yet to be known as the president-elect will be sworn in on 29 May 2023, following which the cabinet will be constituted, and it is hoped that further improvement will be seen in the sector.

Real estate costs and pricing

In 2021, the Nigerian economy slipped into recession, triggered by the negative impact of the COVID-19 pandemic and the resultant lockdown that stifled commercial activities. However, by the close of the year, the nation was out of recession and the Federal Government of Nigeria has continued to make efforts to stabilise the economy and set it on a path of growth.

Notwithstanding the efforts of the Federal Government, Nigeria continues to face serious fiscal challenges as the economy continues to experience rising budget deficit and shrinking revenue. This was evidenced by the 2022 Q1 fiscal performance report which shows that Nigeria's total revenue stood at NGN1.63 trillion, while its debt stood at NGN1.94 trillion.

The effects of the economic activities of 2021 continue to linger, and the US dollar, which exchanged for about NGN360 at the start of 2021, now exchanges for about NGN750 on the parallel market. Also, the inflation rate is on the rise. According to the World Bank, in its press release of December 2022, the rate of inflation in Nigeria has surged to 21.1% year-on-year as at October 2022. Again, the Russian invasion of Ukraine in 2022, a war that disrupted international trade and weakened global economic activities, has led to a higher rate of inflation.

The direct implication of the foregoing on developing real estate projects is clear. Building materials that sold at considerably at lower prices in 2021 now sell at higher prices. The majority of the construction materials used by developers and builders in Nigeria (Lagos), particularly those used for finishing, such as marbles, chandeliers, etc, are imported. The prices of these imported materials have spiked. This has driven up the cost of both commercial and residential real estate projects. 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.

The rise in the cost of building materials has impacted greatly on rental prices and so, affordable housing is fast becoming a dream. Due to the economic situation in the country, real estate developers, homeowners and property managers have implemented an upward review of the prices of residential units. In a newspaper report on real estate, published in September 2022, it is estimated that the rental value of housing units has increased from 80% to 100%. For instance, the average price of a studio apartment in Lekki area of Lagos ranges between NGN800,000 to NGN1.5 million per annum, as opposed to what it was in the first quarter of 2021. Before now, house owners charged about NGN300,000 to NGN400,000, but the price has doubled.

In spite of the economic crunch, the price of land has steadily appreciated and mortgage rates are higher. 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 NGN1 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 NGN42,0000 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 the 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. Another notable instance is the NGN46 billion five-to-seven-years bonds raised at a rate of 13% and 13.25% respectively, by Shelter Afrique to provide affordable housing. Although the bonds were issued in two tranches, they were oversubscribed, requiring an additional issuance of about NGN6 billion.

As Nigeria as just concluded it 2023 general elections, it has been suggested that the continuous demand for real estate assets, and the seemingly available liquidity for the acquisition

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion, **Greychapel Legal**

of said assets, might be owing to the singular factor of the heavy spending that is typical of a pre-election phase. 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 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 State 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 sector in Lagos State. Some key introductions of the Law are briefly examined below.

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 on 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.

Registration of, and issuance of permits to, real estate professionals

Contrary to what previously occurred, 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:

- be a Nigerian or possess a valid work permit if a non-Nigerian;
- be at least 18 years of age;
- possess a Lagos State Residents Registration Agency number;
- have an ascertained business premises or office within the state;
- possess a secondary/high school minimum educational qualification;
- have proper records of transactions and operate a separate client account;

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion, **Greychapel Legal**

- have three years' tax clearance certificate preceding the date of registration; and
- register at least a business name with the Corporate Affairs Commission.

In addition to the second-last two points 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 compliant 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.

The growth of proptech

Proptech or property technology is, simply put, the digitalisation of commercial activities in 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 segments 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 research the market and 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.

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion, **Greychapel Legal**

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 in the region of USD2 million in venture funding. Despite its infancy, Nigerians are executing newer ideas and others are investing in the 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 a decline. Recent research reveals that “flexible 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-work spaces, although Greychapel Legal’s experience in advising a prominent co-working space company remains 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.

Shared residential apartments are also increasingly becoming popular, 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 parts of a 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 and these are increasingly becoming very popular. 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. Also, the rate of emigration to

Contributed by: Oladele Oladunjoye, Eniola Elegushi, Adebola Babatunde and Mercy Airiohuodion,
Greychapel Legal

other countries to seek greener pastures is on the rise and property owners who have relocated prefer to use their houses as short-stay apartments.

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 of 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.

With the increasing demand for short-let apartments especially owing to their high returns on investment, the authors hold the view that the trend has come to stay, as real estate investors continue to take advantage of the growing demand.

Conclusion

Rising levels of demand, a steadily growing population, increasing industrialisation and enabling regulatory frameworks have all engendered the investment-attractiveness of the Nigerian real estate market. If one thing is clear, therefore, it is that with the right information and guidance, the real estate industry in Nigeria at this time continues to be a prime investment option. The data clearly confirms the aforementioned assertion that there is an increase in demand for real estate generally, and although players are attempting to bridge the demand gap, it appears that the demand for residential real estate, as well as co-working spaces, still exists.

Further, the need for immediate attention on infrastructure planning and development, as well as environmental preservation, has been brought to the fore by the landmark events in 2022. It has become imperative that the government, in collaboration with private stakeholders, devise and implement strategic initiatives to mitigate any potential environmental risks.

Lastly, the high housing deficit levels in the country present an attractive investment opportunity for real estate investors. Limited access to financing, as well as the scarcity of affordable housing options have resulted in the growing popularity of alternative models like shared spaces, short letting and fractional ownership of properties. With the right local advisers, investors can bridge the existing gaps in the market and earn significant returns, both in the short and long term.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com