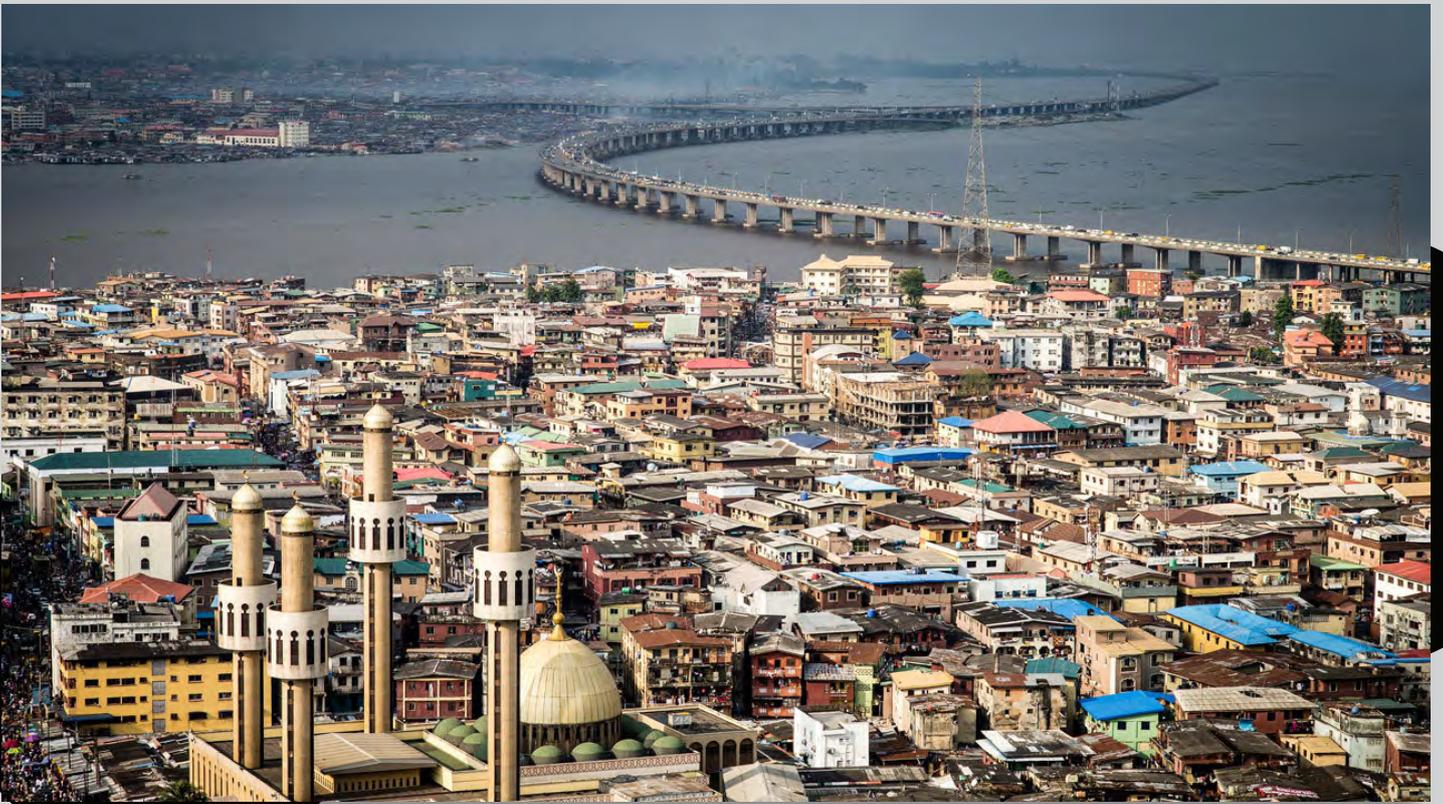


THE LEGAL FRAMEWORK FOR COMMERCIAL REAL ESTATE IN LAGOS STATE



INTRODUCTION

As Nigeria's population grows, so does its real estate market, as housing is a basic necessity. This has made the real estate market an increasingly lucrative sector, more so in populated and metropolitan areas such as Lagos and Abuja.

Commercial real estate is very viable in Lagos State, which has been labelled the economic capital of Nigeria due to it being one of the most populated states in the country and the leader in commerce.

LAWS REGULATING COMMERCIAL REAL ESTATE

From the value attached to the real property sector, it is a given that the market is saturated with as many legitimate vendors as fraudsters. Therefore, if allowed to run free-wheel, it will be prone to abuse by unscrupulous individuals who simply take advantage of unsuspecting clients in fraudulent transactions or individuals who only care about maximizing the use of their land without factoring the impact on the environment or on urban and town planning.

This is why regulations have been put in place to protect investors and stakeholders in the sector. While some regulations are general and cover all aspects of real estate, others are sector-specific.

The principal laws regulating real property in Nigeria are the Constitution of the Federal Republic of Nigeria (1999) as amended and the Land Use Act of 1978.

Nigerians are empowered by Section 43 of the Constitution to own land anywhere in the country while Section 1 of the Land Use Act vests all the land within Nigeria in the Governors of the various states as the Over-Lords. The implication of this is that the State Governor holds all land in trust for the citizens whose titles are simply rights of occupancy. The only exception to this is Customary land which is held by the community and administered by the Local Government (See Section 2 of the Land Use Act 1978).

Other laws regulating Real Property include: The Property and Conveyancing Law of 1958 and Conveyancing Act of 1881 whose scope of application are geographical.

While the Property and Conveyancing Law covers the states in Western Nigeria including the former Bendel States (Edo and Delta States), the Conveyancing Act covers the North, East and the Federal Capital Territory.

The position of the Governor as Head Lessor undeniably places each state in the prime position to regulate its own land laws and further make the laws industry specific.

As the commercial hub of Nigeria, Lagos has a bustling commercial Real Estate market which implies that its laws have to be very robust to adequately regulate market players

Chief of these laws is the Urban and Regional Planning and Development Law of Lagos 2010. Its aim is effective planning and development of the state. The Law is administered by the Lagos State Ministry of Urban and Regional Planning through the following agencies:

1.Lagos State Physical Planning Permit Authority (LASPPPA)

The Mandate of the Planning Permit Authority is to issue permits for any physical development on land. Therefore, anyone with intentions to develop any structure on land must get a permit from this agency before the commencement of the project.

2.Lagos State Building Control Agency (LASBCA)

The Building Control Agency has the responsibility of ensuring that every building complies with building control regulations. They are also empowered to remove illegal and non-compliant buildings.

3.Lagos State Urban Renewal Agency (LASURA)

The Urban Renewal Agency assesses areas in Lagos state qualified for an upgrade and advises the State government accordingly.

Failure to obtain the relevant permit or meet with the required standards of these agencies may result in a demolition notice, a stop-work order, sealing-off the premises, contravention notice, regularization notice, or a quit-notice. There is also a criminal sanction that provides for payment of a fine up to ₦250,000.00 (Two Hundred and Fifty Thousand Naira Only) or community service for 1 (one) month. ¹

Another relevant law is the Land Registration Law (LRL) 2015, which is the most comprehensive law regulating title to land in Lagos State. This law attempts to digitize the land registration system through the Land Information Management System (LIMS).

It aims to ensure that there is more transparency in land transactions in Lagos State. It repeals the Registration of Titles Law (RTL) of 1935 and Registered Land Law 1965. ²

In response to land grabbing in the State, the Lagos State Property Protection Law 2016 was enacted. The crux of this law is to dismantle the illegal operation of land grabbers in Lagos, popularly called Omo-onile. It prohibits four main conducts concerning land thus:

- *forceful entry into landed properties;*
- *illegal occupation of landed properties;*
- *violence in relation to landed properties; and*
- *fraudulent conducts in relation to landed properties*

The law gives a 3 (three) month period of grace to those who forcefully took unlawful possession of land before the legislation came in force to vacate the land or be deemed to have committed an offence and be liable to 10 (ten) years imprisonment. ³

It also punishes trespassers who have refused to vacate a parcel of land after an order to do so. It criminalizes demands for money by these Omo-oniles as a pre-requisite to allow a person to commence construction on the land, among others. ⁴

As Lagos State is the commercial hub of Nigeria, the investment opportunities replete within it constantly attract foreigners who wish to invest in its booming economy.

It is, therefore, important that these persons have access to land. The right created in Section 43 of the Constitution applies only to citizens, therefore foreigners who wish to acquire property in Nigeria are subject to a different set of rules.

Other laws regulating Real Estate in Lagos State include:

Land Use Charge Law 2018

This law consolidates all laws governing property and land-based charges in Lagos State. It is mandatory for everyone who owns real property in the State to pay this charge. It sets the charge payable on commercial land at 0.76% of the market value of the property.

The law gives a 40% general relief to liable people (this is automatically deducted from what is assessed as payable) and up to 100% relief for specific classes of people.

Capital Gains Tax Act

The Act was enacted by the Federal Government in 1967 and domesticated by Lagos state in 2003. It provides for the capital gains tax which is a tax charged on the disposal or sale of assets at the rate of 10%. It allows for deductions of costs incidental to the disposal of the asset.

Land Development (Provisions for Roads) Law

This law applies where large expanse of land is sold to different individuals. Before the sale is concluded, the vendor must forward 4 identical copies of the survey plan to the Ministry of Works and Transport, identifying the area of the land he intends to use as roads. Failure to do this is a criminal offence, and any sale of land which has been set aside by the Ministry as a road is void.

LAW REGULATING FOREIGN ACQUISITION OF PROPERTIES IN LAGOS

The Acquisition of Lands by Aliens Law of Lagos State steps in to regulate and control the acquisition of Land by Aliens from citizens (an alien is defined by the Law as being any person other than a Nigerian citizen and corporate bodies).

The primary objective of this law is to the effect that no alien may acquire an interest or right of ownership in or over any land from a Nigerian citizen unless the transaction under which the interest or right is acquired has been previously approved in writing by the Governor.⁵

The conditions that must be met for the approval of the transaction are:

1. An application for approval is made in the form set out in the First schedule of the law
2. The interest or right to be acquired under the transaction will be subject to provisions of regulation 4 of the regulations, which provides that;
 - a. The transaction shall not exceed, including an option to renew, twenty-five years
 - b. The transaction shall not commence more than one month after the approval of the transaction
3. Prescribed fees are paid
4. The transaction, if approved, will be evidenced by an instrument duly registered in accordance with the provisions of the Land Instruments Registration Law or the Registration of Title Law. Note, however, that the Registration of Titles Law has been repealed by the Land Registration Law (LRL) 2015.

The provisions of this law will not apply where the rights or interest to be acquired is for a period less than three (3) years (including any option to renew).

Though not industry specific, this Law goes a long way to affect commercial real estate and a positive to this law remains that the requirements for the approval are not so stringent as to disturb or prevent non-Nigerians from acquiring rights or interests in land.

Conclusion

While this list is inconclusive, it reveals a concerted effort by the Lagos State Government to stabilize the commercial real estate sector and make it easier for investors to transact business.

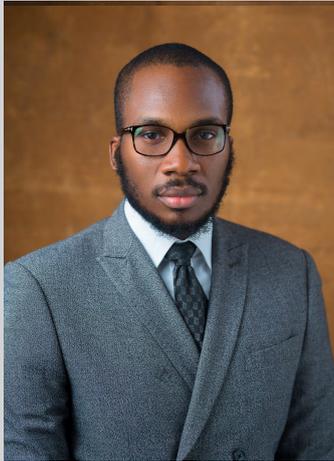
Every Legislation targets specific pain points suffered by stakeholders in the real estate market, including consumers and attempts to tailor solutions to deal with them.

Notwithstanding the fact that the laws in themselves are good, there is still a problem faced with the enforcement of those laws. Ultimately, an investor has to tread cautiously and with sound legal advice to avoid falling prey to the lapses in the system.

ENDNOTES

- 1 Section 75(1) Urban and Regional Planning and Development Law of Lagos 2010
- 2 Section 122 Land Registration Law (LRL) 2015
- 3 Section 2(2) Lagos State Properties Protection Law 2016
- 4 Section 11 Lagos State Properties Protection Law 2016
- 5 Section 1(1) (a) Acquisition of Lands by Aliens Law of Lagos State 2015

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