

IN-DEPTH

Real Estate Law

NIGERIA



LEXOLOGY

Real Estate Law

EDITION 13

Contributing Editor

John Nevin

Slaughter and May

In-Depth: Real Estate Law (formerly The Real Estate Law Review) provides an invaluable overview of how key real estate markets across the globe operate and how they react to major world events. With a focus on recent developments, it analyses the legal frameworks governing real estate ownership and transactions in each jurisdiction, while also offering an incisive outlook of potential future trends.

Generated: April 12, 2024

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Explore on **Lexology** 

Nigeria

Gbolahan Elias, Japhet Eneh, Oluwafunmilayo Mayowa, Moyinoluwa Adegboye and Somtochukwu Anekwe

G Elias

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Introduction

i Ownership of real estate

The Constitution grants Nigerian citizens the right to acquire and own property, anywhere in Nigeria.^[2] The Land Use Act^[3] vests all of the land in each of Nigeria's 36 states in the governor of the state 'for the use and common benefit of all Nigerians'. Land within the borders of a state but owned by the federation before 1978 and land in the Federal Capital Territory are owned by the federation.

In strict law, a private citizen can have a 'right of occupancy', a term typically not exceeding 99 years. To alienate the term, the consent of the governor or minister will be needed. The governors and the minister have rights of expropriation for 'overriding public purpose' subject to giving appropriate notice and paying appropriate compensation.

An individual who seeks to acquire title to land in a state must do one of two things. First, they may obtain a grant from the governor of the state where the land is located or, where the land is in the Federal Capital Territory, from the minister for that territory for a given purpose and duration and be issued a certificate of occupancy. Second, they may, with the consent of the governor of the state where the land is located, take a conveyance from a prior holder of the title and register the conveyance at the land registry for the location.^[4]

In practice, the perfection of land acquisition transactions is typically relatively slow (because the 'consent' of the governor first has to be sought and obtained), expensive (as every governor gives 'consent' only for a fee, typically 3 per cent of the land value or higher) and not uniform. Under the Constitution, the state where land is located, and not the federation, has the power to legislate on it. The regulation of the perfection process and other matters relating to land therefore varies from state to state. Any reform of the law and regulations on these matters must be done on a state-by-state basis rather than by federal law.^[5]

ii System of registration

Registration offers disclosure to the world and may confer priority on later purchasers and creditors. There are three relevant systems of registration:

1. title;
2. land instruments; and
3. company charges.

Most states in Nigeria operate the registration of land instruments system, which was common in old British colonies including Nigeria. The more recent registration of title system has been adopted in the highest-priced real estate markets (Lagos State and the Federal Capital Territory). There is no state guarantee that a title registered under any of the three systems is valid. Title insurance is also largely unknown in practice.

Under a registration of title system, a purchaser who registers a title may gain priority over unregistered interests created earlier in time but held by persons not in occupation of the land. Interests that are not created or backed by documents (e.g., leases arising from part performance) or owned by persons in occupation of the land may be defeated by subsequent purchasers under the registration of title system.

Under a registration of instruments system, a transfer of interest in land that is registrable, but is not registered within a given time, is inadmissible as evidence in court. This means that subsequent purchasers will acquire such land free from any rights created by unregistered instruments. However, this point is now somewhat doubtful as there is recent case law to the effect that state legislation on land cannot govern the admissibility of documents in evidence. The reasoning here is that under the Constitution admissibility of evidence is a federal, not a state, matter.^[6] States cannot make laws on this matter.

Even if the states can properly legislate on evidence in their instruments registration statutes, there is partial relief in two respects where an interest arising under an instrument is registrable, but unregistered. First, the interest is at best only an equitable interest rather than a legal one.^[7] Second, the instrument is admissible in evidence to prove the existence of an equitable interest and the payment of the purchase price for the land.^[8]

A state may have both title and instrument registration systems – Lagos State has both. By proclamation under state law, some parts of the state are governed by the registration of title system (many of the most upmarket areas), while other parts are governed by the registration of instruments system.

The system of registration of company charges is confined to security interests granted by companies and does not extend to rights in land generally. Unlike the registration of title and land instruments systems, its focus is on securing priority over other creditors in insolvency rather than on protecting purchasers, and it is created by federal rather than state law. Company law, unlike land law, is a federal matter under the Constitution, not a state matter.

iii Choice of law

Subject to the Constitution and applicable federal law (for example, as to company or income and capital gains tax), the law of the state where land is located applies by the force of law to matters concerning the land. There is not much room for the parties to choose a different law to apply. Every state has statutes regarding transactions on court civil procedure and the use and control of land within its borders.

Two other sets of states statutes have been especially influential and pervasive:

1. the Property and Conveyancing Law 1959 in the old Western Region States (namely Delta, Edo, Ogun, Ondo, Osun, Oyo and Ekiti); and
2. the Conveyancing Act 1881 in the states of the former Eastern and Northern regions (Rivers, Bayelsa, Cross-River, Akwa-Ibom, Ebonyi, Abia, Imo, Enugu, Anambra, Kano, Kaduna, Borno, Sokoto and Adamawa).

In many respects, (a) is based on (b) and aims to localise and modernise (b). Both sets of statutes continue to apply to the extent that states laws have not repealed them.

Overview of real estate activity

According to a report from the Nigeria Bureau of Statistics dated August 2023, the real estate services sector in the third quarter of 2023 grew by 2.83 per cent. This figure reflects a decrease of 6.30 per cent relative to the same period in 2022, but it represents a modest increase of 0.24 per cent compared to the preceding quarter. Furthermore, the real growth rate of the sector in the second quarter of 2023 was 1.87 per cent. The real estate and construction sectors jointly account for 8.94 per cent of the Nigerian economy.^[9]

Nigeria has had markedly different real estate market cycles. Activity levels in Nigeria's real estate investment market have fluctuated, influenced by economic factors, government policies and market demand. According to the United Nations, Nigeria currently faces substantial housing deficits and requires significant investments in the sector to cater to the ever-increasing population. While Nigeria is estimated to have 28 million housing units, its population is about 223.8 million. This means an average of two dwelling units per 1,000 people, which is apparently far below the United Nations recommended 10 units per thousand people.^[10] It is estimated that Nigeria requires no less than 21 trillion naira (US\$24,561,403,508.77 equivalent as at December 2023) to bridge the housing gap portending an upward trend in the long term, driven by the huge demand gap that must be met.

There has also been a gradual, long-term increase in the naira cost of real estate. Inflation has resulted in increases in the cost of importing construction materials and other critical items such as steel and chemicals for making paint especially in the light of the significant and ongoing devaluation of the naira.

The availability of finance plays a pivotal role in the cycles, as funding is an important factor in real estate development and investment. The sources of finance available to owners, developers and realtors include:

1. personal wealth;
2. bank and development finance institution loans;
3. equity financing from local and foreign professional vehicles and other investors;
and
4. real estate investment trusts (REITs) which facilitate collective investments in income-generating properties.

In recent years, the industry has seen the strong emergence of financing options that previously were neither widespread nor prominent. Chief among these have been stock exchange, private equity and development finance options.

There have also been encouraging developments in the law and regulation – for example, the Lagos State Real Estate Regulatory Authority Law in 2021. This legislation acknowledges the imperative of increasing investor confidence in the Lagos State real estate sector. Initiatives such as shortening timelines for registering titles and the emergence of electronic certificates of occupancy are also parts of the ongoing efforts to modernise and improve efficiency in the real estate sector.

There is also the increased adoption of proptech solutions for the digital transformation of commercial activities within the real estate sector. The Nigerian real estate sector likewise recognises a rising emphasis on environmental, social and governance (ESG) factors. Increasingly, the regulators are requiring higher standards for new construction.

For instance, in addition to the usual environmental impact assessment requirements for commercial real estate projects, there is now great focus on the need for traffic impact assessment in new real estate projects, whether private or commercial. This aims to ensure that any significant burden to the existing road or other transport infrastructure that a project may entail will be well managed.

Developers and investors are also adopting sustainable practices, energy efficiency, social impact and governance standards, thus aligning with global trends towards environmentally responsible and socially conscious real estate projects in the country.

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Foreign investment

It is unclear whether the direct ownership of real estate in Nigeria is subject to restrictions for foreigners. In *Heubner v. AIE & P Company Ltd*,^[11] there were Supreme Court *obiter dicta* to the effect that a foreigner is prohibited from acquiring and owning land in Nigeria except with the prior approval of the Federal National Council of States.^[12] However, this dictum was uttered in reference to an old statute that is peculiar to the northern states and may not apply in Lagos State and other southern states in Nigeria.^[13] Several states in southern Nigeria have in fact enacted laws explicitly allowing foreign ownership of real estate where the governor so consents.^[14]

The *Heubner* dictum says that by virtue of Section 1 of the Land Use Act, only citizens of Nigeria are entitled to own immovable property in the country. This appears to be incorrect. Section 1 only says that land is vested in a governor for the benefit of citizens, not that only citizens can own land. A governor literally 'holds' land for the 'benefit' of Nigerians within a state even where the governor issues a certificate of occupancy to a foreigner who (like the entrepreneur in *Huebner*) creates jobs and will pay taxes in that state, or to a Nigerian company that is controlled by a foreigner (which is clearly permissible) and will pay taxes. Such a grant to a foreigner also benefits the citizens.

The consent of the governor of the state where the land is located must be obtained before any interest in real estate can be transferred to any person, whether Nigerian or not.^[15] In practice, governors do not give foreigners land directly; however, foreigners typically incorporate companies in Nigeria to own Nigerian land. Such companies are undoubtedly

Nigerian citizens in the eye of the law even where they are controlled by foreigners. Practice recognising this point is very well-established.

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Structuring the investment

The key issues in the structuring of investments are tax, limited liability, ease of transfer, financing and securities regulation.

In addition to ownership by individuals, the vehicles recognised by Nigerian law for holding real estate investments include:

1. limited liability companies (both private and public);
2. partnerships (including limited liability partnerships);
3. collective investment schemes with either REITs or real estate investment companies (REICs); and
4. cooperatives.

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i Individuals

Owning land in the name of one or more individuals is a widely used form of investment in Nigerian real estate for both residential and commercial property.

ii Companies

Investors typically incorporate companies, particularly private limited companies, to acquire and hold real estate. It is common practice for investors to register a separate special purpose vehicle (mainly for the purpose of isolating financial risks, getting bank loans and reducing administrative costs) to own and develop land.

One of the primary benefits of forming a company for real estate investment is limited liability. Shareholders are generally not personally liable for the company's debts. The shares of a company can be easily transferred, allowing for straightforward changes in partial ownership. Companies can also raise capital by issuing shares and bonds to investors.

Shareholders must pay income and capital gains tax on their shares. Companies are juristic entities and subject to companies' income tax. The applicable income tax rate varies with the size of the company. There are three categories of companies for this purpose:

1. a small company (with annual turnover below 25 million naira);
2. a medium company (with gross turnover greater than 25 million naira but less than 100 million naira); and
3. a large company (any company that is not a small or medium-sized company).

Small companies are exempt from income tax. Medium-sized companies are subject to a 20 per cent tax rate, and large companies are subject to a 30 per cent tax rate. Additionally, there is a 3 per cent tertiary education tax for all companies.^[16]

iii Partnerships

The attractions of partnerships are primarily limited liability, flexibility and ease of termination rather than tax. By statute, a partnership may be constituted to confer limited liability on the investors even where the partnership does not have juristic personality in law. The parties have much greater room to manoeuvre in writing the terms of a partnership agreement than they have with organising a company as there are fewer restrictive statutory provisions and case law on what partnerships can do than there are on what companies can do.

A partnership that has served its purpose can be dissolved by the agreement of the parties. A company can be dissolved only by official acts after an elaborate statutory process has been pursued. Partnerships that have juristic personality are taxable entities. Those that do not have juristic personality must be organised under state rather than federal law and are not taxable, but the partners themselves are taxable on a pro rata basis on the gains and income.

iv Collective investment schemes

Collective investment schemes (CIS) pool funds from multiple investors to invest in portfolios of real estate assets. CISs for real estate must be registered with the securities regulator (i.e., the Securities and Exchange Commission (SEC)). They must have passive investors and a manager licensed by the regulator. At least 70 per cent (rising to 80 per cent for some schemes with mortgage assets) of their funds must be invested in real estate.

There are two categories of regulated CISs dedicated to real estate: REICs and REITs. REITs are trusts and do not have juristic personality. They may be listed on stock exchanges, offering liquidity and tradability, and may be open-ended or closed-ended. REITs are, however, still not very common in Nigeria as there are currently only three listed REITs on the Nigeria Stock Exchange (NGX), namely the UPDC, Skye Shelter Fund and Union Homes. Despite having one of Africa's oldest REITs markets, the concept remains nascent mainly due to lack of investor awareness and familiarity with the concept and operation of REITs. Also, the lack of a dedicated regulatory framework is another reason for the slow growth of REITs.

The legal title to the properties in the REIT scheme is vested in the trustee while the investors hold equitable and beneficial interests in the assets.^[17] Reflecting the underlying assets that they hold, there are three main types of REITs, namely equity, mortgage and hybrid (a mix of equity and mortgage).

REICs have juristic personality and, like regular companies, are incorporated by the Corporate Affairs Commission (CAC). The assets of a REIC cannot be invested outside Nigeria.^[18] Both equity and debt investments can be made in a REIC. The Finance Act 2021 has made the tax regime for REICs the same as the tax regime for REITs. In each case, the CIS pays no income tax, but the investors do.^[19]

A minimum of 90 per cent of the revenue accruing to a REIT or REIC (excluding capital gains) must be derived from rental income or dividend income. They are also obligated annually to distribute to the investors not less than 75 per cent of their rental or dividend income. Failing that, SEC must de-register them as REITs or REICs.

v Cooperative society

Cooperative societies are associations of members with common economic, social and cultural goals. One of the permissible common objectives of a cooperative society is to own properties. A Cooperative may be organised with or without limited liability, whether under state or federal law, or it may remain unregistered. Cooperatives that are registered have juristic personality.

Regardless of whether they are registered or not, cooperatives can invest in business activities and distribute profits earned to their members. A Cooperative is exempted from the taxation of profits and gains from the business it engages in.^[20] Individual members of cooperatives, however, are not tax-exempt.

Two elements limit the use of cooperatives as vehicles for real estate development for business investors. First, only human individuals, not business vehicles, can be members of cooperatives. Second, it is not clear that in practice the registrars of cooperatives will register as a cooperative an association that aims to develop real estate not for use by its members but for sale and use primarily to and by persons who are not its members. The statutes are not clear on this point and there is no practice affirming it.

Real estate ownership

i Planning

The Nigerian Urban and Regional Planning Act 1992 regulates physical and development planning in Nigeria. By virtue of the Act, permits and approvals are required before commencing construction work on land. In addition to the Act, some states have set up regulatory bodies to oversee real estate development within the state. Examples are the Lagos State Physical Planning Permit Authority and the Lagos State Building Control Agency. These are responsible for granting planning permits, zoning approvals and building permits.

These permits and approvals set out prerequisites for the development of real estate. For instance, real estate development must be consistent with governmental plans for the location where the land is situated. Certain places may be zoned as markets, some for offices and others for residential use. Certain types of structures and approvals can only be given for developments consistent with such town planning.

There are many regulations restricting the development and use of land. Some of these restrictions are set out in the certificates of occupancy. Certificates of occupancy typically say at a minimum that the land is for residential, agricultural or commercial use. They also require the payment of specified land taxes, rates and outgoings on the land.^[21] Failure to comply with the restrictions and covenants set out in the certificate of occupancy are grounds for the minister or governor to revoke the certificate of occupancy.

ii Environment

The owner or occupiers of a property are liable for the environmental sanitation of their premises. In the event of contamination, liability typically attaches to the person or entity responsible for the pollution. According to common law, liability may arise under the *Rylands v. Fletcher* doctrine that imposes liability on those who own, occupy or otherwise control land where hazardous materials escape from their property and cause damage outside it.

The Harmful Waste (Special Criminal Provisions, etc.) Act 1988 is instructive. It prohibits the carrying, dumping, depositing, transportation or importing of harmful waste in the air, lands or waters of Nigeria without lawful authority.^[22] The Environmental Guidelines

and Standards for the Petroleum Industry in Nigeria also set out provisions on liability for contamination.^[23]

Similarly, states have enacted statutes to regulate liability for contaminating land. For instance, in Lagos State, waste management is controlled by the Lagos State Waste Management Authority (LAWMA) established under the Lagos State Waste Management Authority Law (LAWMA Law). LAWMA issues licences for waste disposal and collection. There are penalties for unlawful waste disposal and the contamination of the environment by improper waste disposal.

There is also the Environmental Management and Protection Law of Lagos State 2017 that aims to ensure the protection and management of the environment in Lagos and thus sets out duties for both the owner and occupier.

iii Tax

Several taxes impact on real estate investment. They include:

1. stamp duty, which is levied on instruments. The amount payable as stamp duty depends on the value of the transaction. Stamp duties can be levied at either *ad valorem* or at flat rates, depending on the nature of the instrument;
2. the Capital Gains Tax Act (CGT), which refers to the tax chargeable upon the disposal or sale of assets. The rate for the CGT is 10 per cent of the gains arising from the disposal of a chargeable asset;
3. registration and consent fees, the rates for which typically range from 2 to 4 per cent and vary from state to state. For instance, in Lagos State, the rate is an aggregate of 3 per cent broken down as: the governor's consent fee at 1.5 per cent of fair market value; CGT at 0.5 per cent of fair market value; stamp duty at 0.5 per cent of market value; and registration fee at 0.5 per cent of fair market value.^[24]
4. VAT, which is chargeable at the rate of 7.5 per cent on rent payable by the lessee under a business premises lease and on fees charged by professionals advising on real estate transactions. (Other than in these instances, real estate transactions are not subject to VAT. The Finance Act 2020 excludes residential real estate transactions from VAT);
5. withholding tax at the rate of 10 per cent (deducted by a lessee in a lease from the rent or by a principal paying a real estate professional advising on a real estate transaction and remitted to the relevant tax authority); and
6. state-imposed taxes that vary from state to state and may impact on real estate transactions. These include tenement rates, land use charges, neighbourhood levies, ground rent and development levies.

iv Finance and security

Real estate is one of the most widely used and acceptable classes of assets used as collateral in financing transactions in Nigeria. The use of land as collateral is governed both

by the terms of the contract between parties and relevant statutes where applicable. Real estate may be mortgaged, pledged or charged.

The attractiveness of real estate as collateral is limited by delays both in the process of perfecting at the relevant land's registry and in enforcing the secured lender's rights in the courts.

Leases of business premises

A typical occupational lease of business premises is characterised by terms granting exclusive possession to the lessee, specifying rent, review of rent, tenure and renewal of tenure, terms as to insurance, assignment and forfeiture.

A typical commercial lease agreement in Nigeria sets out covenants and obligations on both the lessor and landlord and the lessee and tenant. The usual clauses include:

1. term: commercial leases typically specify the duration for which the lessee will have exclusive possession of the premises and the possibility of the renewal or otherwise of the term. The way such a renewal request is to be made is also stipulated in the agreement. The lease term is usually limited by the length of the lessor's title. A lessor may grant a term for the length of the landlord's own term less one day. In practice, most leases of business premises are for no more than three years and are therefore not registrable.^[25] Most states have laws exempting short leases (typically from less than three up to five years) from the need for registration;
2. premises: the lease agreement should also contain a full description of the premises;
3. rent: the amount of rent, payment method, due date and interest on delayed payments typically will be set out in the agreement. Having regard to inflation, it is also wise to include clauses for the periodic review of the rent;
4. use of the property: the agreed use of the property should also be contained in the agreement. This is to avoid acrimony over the use of the premises for allegedly illegal purposes or other purposes at risk of impairing the value or physical state of the property;
5. assignment: a commercial lease also typically has clauses prohibiting the lessee from assigning, subletting or parting with the possession of the leased premises except with the lessor's consent, sometimes with the qualification that consent must not unreasonably be withheld, delayed or conditioned;
6. alteration of property: it is also important to include clauses governing fit-outs of, and improvements and changes to, the physical structure of the premises;
7. insurance: while the lessor is usually responsible for insuring the building premises, the lessee is responsible for repairs of the leased premises during the term of the lease as well as insurance costs connected with use of the property;
8. forfeiture for breach: this clause enables a lessor to take back possession of the leased premises in the event of any breach. The lease agreement typically states grounds that would give the lessor an option to forfeit the premises, such as breach of covenants or failure to pay rent;
- 9.

security deposits against damages: this refers to a deposit requested by the lessor to secure the lessee's compliance with its obligations and covenants under the agreement. The security deposit is typically refundable at the end of the lease period provided that the lessee does not owe money to the lessor and has maintained the premises in a good state;

10. service charge: a commercial lease will usually contain provisions stipulating the services that the lessor will provide with respect to the general maintenance of the premises. This will typically attract the payment of a service charge periodically by the lessee to the lessor. In practice, often the lessor will engage a facility manager to be responsible for managing and maintaining the property, especially the common areas in buildings with multiple users, as well as implementing the services to be rendered to the lessee; and
11. termination: the agreement will also typically include grounds for termination and the manner of termination including the mechanics of notification of termination. It is essential that the termination notice period be stipulated in the agreement. If the termination clauses are not well-drafted, the statutory provisions will apply. In ejecting a tenant, a landlord must ensure strict compliance with the termination provisions as to the minimum notice periods under applicable legislation. The prevailing judicial practice is strictly to interpret the statutes in favour of the lessee.^[26]

Recently, however, the Supreme Court in *Pillars (Nigeria) Ltd v. Desbordes*^[27] ended one frequent abuse of the legislation by lessees. The Supreme Court held that even where notice of termination is short of what the law calls for, the service of process in the action to eject the lessee will in itself be notice adequate for eviction purposes running from the date of service.

There is little regulatory control over most of the terms of a lease agreement. However, some states like Lagos have made statutory provisions to govern specific matters such as the payment of rent. By virtue of Section 4 of the Lagos State Tenancy Law 2011, it is unlawful for a landlord or its agent to demand or receive from a new tenant rent in excess of one year for a yearly tenant or in excess of six months for a monthly tenant in respect of any premises. It is likewise unlawful for a new tenant to offer or pay rent in excess of one year or six months (as the case may be). The penalty for both the landlord and tenant involved in such an arrangement is a fine of 100,000 naira (approximately US\$100) or three months imprisonment. The statute applies to both residential and business premises in all of Lagos State except a few upmarket areas.

In practice, however, some landlords still request and tenants still pay rent in excess of one year or six months as there is a high demand for leased premises and very limited monitoring by the authorities.

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6. alteration of property: it is also important to include clauses governing fit-outs of, and improvements and changes to, the physical structure of the premises;
7. insurance: while the lessor is usually responsible for insuring the building premises, the lessee is responsible for repairs of the leased premises during the term of the lease as well as insurance costs connected with use of the property;
8. forfeiture for breach: this clause enables a lessor to take back possession of the leased premises in the event of any breach. The lease agreement typically states grounds that would give the lessor an option to forfeit the premises, such as breach of covenants or failure to pay rent;
9. security deposits against damages: this refers to a deposit requested by the lessor to secure the lessee's compliance with its obligations and covenants under the agreement. The security deposit is typically refundable at the end of the lease period provided that the lessee does not owe money to the lessor and has maintained the premises in a good state;
10. service charge: a commercial lease will usually contain provisions stipulating the services that the lessor will provide with respect to the general maintenance of the premises. This will typically attract the payment of a service charge periodically by the lessee to the lessor. In practice, often the lessor will engage a facility manager to be responsible for managing and maintaining the property, especially the common areas in buildings with multiple users, as well as implementing the services to be rendered to the lessee; and
11. termination: the agreement will also typically include grounds for termination and the manner of termination including the mechanics of notification of termination. It is essential that the termination notice period be stipulated in the agreement. If the termination clauses are not well-drafted, the statutory provisions will apply. In

ejecting a tenant, a landlord must ensure strict compliance with the termination provisions as to the minimum notice periods under applicable legislation. The prevailing judicial practice is strictly to interpret the statutes in favour of the lessee.^[26]

Recently, however, the Supreme Court in *Pillars (Nigeria) Ltd v. Desbordes*^[27] ended one frequent abuse of the legislation by lessees. The Supreme Court held that even where notice of termination is short of what the law calls for, the service of process in the action to eject the lessee will in itself be notice adequate for eviction purposes running from the date of service.

There is little regulatory control over most of the terms of a lease agreement. However, some states like Lagos have made statutory provisions to govern specific matters such as the payment of rent. By virtue of Section 4 of the Lagos State Tenancy Law 2011, it is unlawful for a landlord or its agent to demand or receive from a new tenant rent in excess of one year for a yearly tenant or in excess of six months for a monthly tenant in respect of any premises. It is likewise unlawful for a new tenant to offer or pay rent in excess of one year or six months (as the case may be). The penalty for both the landlord and tenant involved in such an arrangement is a fine of 100,000 naira (approximately US\$100) or three months imprisonment. The statute applies to both residential and business premises in all of Lagos State except a few upmarket areas.

In practice, however, some landlords still request and tenants still pay rent in excess of one year or six months as there is a high demand for leased premises and very limited monitoring by the authorities.

Year in review

There have been several positive developments in Nigerian real estate practice, especially in the leading markets such as the Federal Capital Territory and Lagos. The developments are chiefly in respect of the use of technology, the appeal of ESG principles, improved consumer experience, more impactful law enforcement and increased building activity.

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i Real estate and technology

Technology is increasingly being used to improve transparency and efficiency in the real estate sector. For example, electronic survey plans and electronic certificates of occupancy have been introduced. Electronic platforms (proptech tools) have emerged to offer sales and rentals listings as well as digital marketplaces for supplying and trading building materials and services.

The use of proptech has resulted in replacing traditional systems of conducting real estate transactions with modern methods compliant with contemporary digital technology. With proptech, real estate transactions and activity have become easier. With the property listing

platforms, potential buyers and lessees can remotely search for property. This is still a growing development trend in the industry. It is expected that proptech will continue to provide easier and better options for real estate development, operation and maintenance.

ii Real estate and ESG

ESG principles have also become more important. The environmental limb includes considerations of climate change, pollution, recycling and waste management. There is an increased awareness of the need to reduce the emissions that come from the production of building materials. Investors are more inclined to invest in environmentally friendly properties.

On the social angle, there is a focus on buildings' impact on society. Increasingly preferred are investments in affordable housing and the rehabilitation of infrastructure that causes minimal disruptions to social life. The governance dimension contemplates issues such as management structures, accountability, diversity and ethics.

Real estate sector players who prioritise ESG principles are now preferred by many financiers. Companies are increasingly prioritising the use of sustainable building materials and social factors. New buildings certified as 'green' are emerging.

The ESG dimension is now frequently considered at every stage of a property's life cycle, from due diligence inquiries to construction and property management. Internationally recognised ESG frameworks like the Carbon Risk Real Estate Monitor and the ESG Circle of Real Estate now play a role in real estate sector matters. Although Nigeria has not yet formally adopted any of these frameworks, they are actively shaping and influencing real estate valuations and financing.

iii Regulatory improvements in real estate

Better consumer experience enhancement is evident in at least two sets of new rules. One set consists of rules empowering contributors to pension schemes to access their retirement savings accounts to receive money to fund their equity down payments to support home mortgages under schemes promoted by the federal government. This is in addition to the statutory provisions of Section 89(2) of the Pension Reforms Act 2014.

Another consists of regulations that have been promulgated to forbid landlords to insist on being paid rent many months in advance rather than on a genuinely periodic basis. Depending on the nature of the tenancy or lease, the intervals at which rent should be paid is statutorily stipulated.^[28]

On law enforcement, property tax defaulters are being pursued more vigorously than ever before. Buildings constructed in violation of building regulations are being demolished. Recently, the Minister for the Federal Capital Territory published a list of defaulting individuals and organisations within the Federal Capital Territory with a compliance deadline of 2 November 2023.^[29]

iv Increased building activity

Population growth and other demographic changes have continued to drive demand for more homes. Road-building activity continues to drive the supply of promising localities for building more homes and business premises. The demand for housing whether residential or business continues to soar. It is not difficult to see why the real estate sector continues to grow and is likely to continue to grow for many more years.

Outlook and conclusions

The forecast for improved and continued real estate development across various sectors in Nigeria remains positive. With the government's continuing effort in creating an investor-friendly environment, putting structures in place to ease the hurdles of doing business, developing and improving supporting infrastructure (e.g., good road networks), as well as the country's increasing population, the real estate industry is projected to experience significant growth in the near future.

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Endnotes

- 1 Gbolahan Elias SAN is a partner, Japhet Eneh and Oluwafunmilayo Mayowa are senior associates and Moyinoluwa Adegboye and Somtochukwu Anekwe are associates at G Elias. [^ Back to section](#)
- 2 Section 43, Constitution of the Federal Republic of Nigeria 1999 (as amended). [^ Back to section](#)
- 3 Section 1, Land Use Act 1978. [^ Back to section](#)
- 4 There can be only one certificate of occupancy for any given a parcel of land. Once issued to a title holder, subsequent assignees would only have their title documents registered without a certificate of occupancy being reissued. [^ Back to section](#)
- 5 Section 297, Constitution of the Federal Republic of Nigeria 1999 (as amended), which vests ownership of land in Abuja in the federal government. [^ Back to section](#)
- 6 *Agba et al v. Jubu* (2019) LPELR-47189 (CA). [^ Back to section](#)
- 7 *Mohammed v. Farmers Supply Co (KDS) Ltd* (2019) 17 NWLR (Pt 1701) 187; *Nsiegbe v. Mgbemena* (2007) 10 NWLR (Pt. 1042) 364. [^ Back to section](#)

- 8 *Benjamin v. Kalio* (2018) 15 NWLR (Pt 1641) 38. The Supreme Court emphasised that an unregistered 'registrable land' instrument is admissible in evidence to prove, not only the payment and receipt of the purchase price, but also the equitable interest of the purchaser in the subject land. [^ Back to section](#)
- 9 Nigeria Bureau of Statistics 'Nigeria Gross Domestic Product Report Q3 2023', <https://nigerianstat.gov.ng/elibrary/read/1241415>. [^ Back to section](#)
- 10 *The Guardian*, 'Nigerians still burdened by huge housing deficit 63 years after', <https://guardian.ng/property/nigerians-still-burdened-by-huge-housing-deficit-63-years-after/#:~:text=The%20nation's%20housing%20deficit%20is,units%20and%20bridge%20existing%20deficits>. [^ Back to section](#)
- 11 (2017) 14 NWLR (pt 1586) 397. [^ Back to section](#)
- 12 There is, however, currently no regulation enacted by the National Council of States pursuant to its power under the Act. [^ Back to section](#)
- 13 The National Council of States, being a federal body, should not have power to bind status on a land law matter; however, our view is that since the Land Use Act that makes land ownership a state regulated issue and deals with land ownership by Nigerians and not foreign ownership, the requirement for approval from the National Council of States addresses that lacuna even though it arose under an old northern regime. With the enactment by states of specific laws on foreign acquisition of land, the governors of states now regulate the ownership of land by foreigners. [^ Back to section](#)
- 14 For example, Rivers State pursuant to Section 2(1) of its Acquisition of Land by Aliens Law permits foreign land acquisition upon receipt of the commissioner's approval. [^ Back to section](#)
- 15 Section 22, Land Use Act 1978. The Acquisition of Land by Aliens Law of Lagos State 1971 also allows a foreigner to acquire an interest in land subject to the prior written consent of the Governor of Lagos State. [^ Back to section](#)
- 16 Pursuant to Section 1 of the Tertiary Education Trust Fund (Establishment, Etc) Act as amended by the Finance Act 2023. [^ Back to section](#)
- 17 Rule 509 SEC Consolidated Rules and Regulations (2013). [^ Back to section](#)
- 18 Rule 521(3) SEC Consolidated Rules and Regulations (2013). [^ Back to section](#)
- 19 By section 23(1)(s) of the Companies Income Tax Act as amended by the Finance Act, dividend and rental income received by a real estate investment on behalf of its shareholders are generally exempt from tax. However, the dividend or rental income distributed by the Real Estate Investment Company to the shareholders is fully taxable in the hands of the recipient shareholders on PIT basis. The REIC withholds and remits the same as PIT for the shareholder/investor. [^ Back to section](#)

- 20** Section 20 Nigerian Cooperative Societies Act, Section 23(1) Companies Income Tax Act (as amended), and Section 26(1) Capital Gains Tax Act (as amended). [^ Back to section](#)
- 21** Section 10 of the Land Use Act. [^ Back to section](#)
- 22** Section 1 of the Harmful Waste (Special Criminal Provisions, etc) Act [^ Back to section](#)
- 23** See clause 8 of the Guidelines. [^ Back to section](#)
- 24** Lagos Lands Bureau 'Schedule of fees and levies', <https://landsbureau.lagosstate.gov.ng/schedule-of-fees/>. [^ Back to section](#)
- 25** See Section 26(2) of the Land Registration Law 2015 of Lagos State. [^ Back to section](#)
- 26** See *Ndiel et al v. Eze* (2016) LPELR- 42122 (CA). [^ Back to section](#)
- 27** (2021) 12 NWLR, (Pt 1789) at 22. [^ Back to section](#)
- 28** Section 4 of the Tenancy Law of Lagos specifically states that rent in excess of six months must not be paid by a monthly tenant and rent in excess of one year must not be paid by a yearly tenant. [^ Back to section](#)
- 29** Page 16, Leadership newspaper dated 19 October 2023. [^ Back to section](#)

G. ELIAS

Gbolahan Elias

Japhet Eneh

Oluwafunmilayo Mayowa

Moyinoluwa Adegboye

Somtochukwu Anekwe

gbolahan.elias@gelias.com

japhet.eneh@gelias.com

funmi.mayowa@gelias.com

moyinoluwa.adegboye@gelias.com

somtochukwu.anekwe@gelias.com

G Elias

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