

# The International Comparative Legal Guide to: **Real Estate 2009**

A practical insight to cross-border Real Estate work



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# Nigeria

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### 1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in Nigeria. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1

- (a) **The Constitution of the Federal Republic of Nigeria 1999** guarantees the right of citizens to own property in any part of Nigeria.
- (b) **The Land Use Act** vests all land within the territory of each State of Nigeria to the Governor to hold in trust for all Nigerians. The Act preserves the right of a holder of land prior to the enactment of the Land Use Act to continue to hold same, subject to the power of the Governor to acquire land compulsorily for the overriding benefit of the public interest.
- (c) **Customary Law of Land Tenure** refers to the various systems of land holding developed by the different ethnic groups constituting Nigeria prior to the introduction of English Law. These laws continue to be applicable as long as they are not incompatible with any statute for the time being in force or repugnant to natural justice, equity and good conscience.
- (d) **The Received English Land Law** comprises English principles of common law and doctrines of equity. It also includes statutes of general application in force in England on 1st January 1900 which became applicable in Nigeria as statutes of general application.
- (e) **Nigerian Statutes** relating to land are the legislations enacted by the various states such as the Land Tenure Law, the Property and Conveyancing Law, the Registration of Titles Law etc.
- (f) **Nigerian Case Law** are judicial decisions on different aspects of land transactions as well as laws and form an important source of land law in Nigeria.

1.2 What is the impact (if any) on real estate of local common law in Nigeria?

Local Common law in Nigeria comprises of Customary Law, English Common Law adopted and applied by Nigerian Courts and Nigerian Case Law. The local customary law is still applicable subject to the provisions of the Land Use Act 1978 (hereinafter referred to as “Land Use Act”) and other enactments relating to land in Nigeria.

1.3 Are international laws relevant to real estate in Nigeria? Please ignore EU legislation enacted locally in EU countries.

The African Charter on Human & Peoples’ Right has been

domesticated by Nigeria. This treaty provides in its Article 14 that the right to property is guaranteed and may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the appropriate laws upon the payment of compensation.

### 2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

There is no restriction on ownership of real estate by any category persons whether resident or non-resident.

### 3 Real Estate Rights

3.1 What are the types of rights over land recognised in Nigeria? Are any of them purely contractual between the parties?

In Nigeria, rights over land can either be legal or equitable. These rights include: right of occupancy (statutory or customary); mortgages; sub-leases; licences; and easements. Any of these rights can be the subject of a contract between parties except the Right of Occupancy which is granted by the Governor. However, for such contracts to be valid, they must comply with the relevant provisions of the Land Use Act.

### 4 System of Registration

4.1 Is all land in Nigeria required to be registered? What land (or rights) are unregistered?

Any interest in land is required to be registered. However, the holder of a deemed Right of Occupancy (owner in possession/ occupation) needs not register his interest except in the event of a transfer in which case the law requires the Governor’s consent to register such interest.

Furthermore, any alienation of interest in land that is less than 5 years is not required to be registered.

4.2 Is there a state guarantee of title? What does it guarantee?

There is no state guarantee of title in Nigeria.

#### 4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

- a) Registration requirements vary from state to state depending on the applicable law. In Lagos state for instance, any transfer of interest in land for a term of 5 years or more is required to be registered.
- b) The consequence of non-registration includes the following:
  - i. Inadmissibility of the instrument of title as evidence in Court.
  - ii. Loss of priority.
  - iii. For certain categories of documents referred to as a state grant, they are void if not registered within the period prescribed by the relevant law.

#### 4.4 What rights in land are not required to be registered?

- Generally, alienation of interest in land which is less than 3 years need not be in writing and as such is not required to be registered.
- Furthermore in Lagos state, leases of a term less than 5 years are not required to be registered.
- A lease for a term limited to take effect more than 21 years from the date of the instrument purporting to create it is not registrable.
- Holders of deemed rights of occupancy are not required to register their rights.

#### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is no probationary period after first registration.

Under the Registration of Titles Law of Lagos (which is applicable to certain parts of Lagos) where an objection to a first registration is received within 2 months from the date of the notice of application for first registration, the registration shall not be effected until the person objecting has been given an opportunity to be heard.

#### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

On the sale of land, legal title is transferred when the Governor of the relevant state has granted consent to the sale and the sale is registered.

#### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

- a. Unregistered interest rank in priority with each other in accordance with their respective dates of creation.
- b. The priority of registered interest depends on the time of registration. The right which is first registered takes precedence over subsequently registered rights.
- c. A legal interest has priority over an equitable interest (a legal interest is one where the consent of a Governor has been obtained and the title duly registered while an equitable interest is one where the consent of the Governor is yet to be obtained).

In all instances a purchaser of any title in land (legal/equitable) would only gain priority over the holder of an earlier interest if he purchased the property for value, in good faith and without notice of the prior equitable interest.

## 5 The Registry / Registries

### 5.1 How many real estate registries operate in Nigeria? If more than one please specify their differing rules and requirements.

There are 38 (thirty-eight) registries operating in Nigeria - one each for the 36 (thirty-six) states of Nigeria and the Abuja Geographic Information System for land within the Federal Capital Territory and the Federal Land Registry for property belonging to the Federal Government.

Interest in land is registrable in the registry of the state where the land is situate, while land vested in the Federal Government regardless of the state in which it is situate is registrable in the Federal Lands Registry. Land in the Federal Capital Territory is registrable in the Federal Capital Territory registry.

### 5.2 Can information on real estate ownership be accessed from the registry on line (electronically)?

Most land registries cannot be accessed on line except that of Lagos and Federal Capital Territory where access is restricted to the officials of the registry who provide information requested for by members of the public.

### 5.3 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Yes, under the Registration of Title Law of Lagos State which is applicable to certain parts of Lagos only, compensation can be claimed from the government by an aggrieved person who has suffered loss because of error(s) in registration by the registry.

However, in other parts of Lagos and under the Land Instrument Registration Laws of other States, no compensation is payable as such mistakes can only be rectified by the registry/ies.

### 5.4 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

There is no restriction on public access to the register. A buyer can obtain information regarding encumbrances and other rights affecting real estate by conducting a search at the Lands Registry of the state where the land is situated.

## 6 Real Estate Market

### 6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Nigeria? Please briefly describe their roles and/or duties.

#### a) Selling and purchasing agents (or realtors)

Yes, they search for prospective buyers and sellers and negotiate a sale with them.

**b) Lawyers**

Their duties include conducting due diligence searches in respect of the subject property and preparation of the relevant title documents for the transfer of ownership as well as registration and perfection of the title documents.

**c) Notaries**

Where the party to the transaction is an illiterate, the services of a notary public may be required to execute an illiterate jurat. A Notary Public is also necessary where a Power of Attorney is executed outside Nigeria for the alienation of any land in Nigeria.

**d) Others**

Estate Valuers and Surveyors also play important roles in real estate transactions in Nigeria.

**6.2 How and on what basis are these persons remunerated?**

- The realtors are remunerated as agreed by the parties.
- Lawyers are remunerated in accordance with the provisions of the Legal Practitioners' Act.
- Estate Valuers and Surveyors are remunerated in accordance with a Schedule of Fees approved by their professional bodies.

However, in practice remuneration is also negotiable by parties.

## 7 Liabilities of Buyers and Sellers in Real Estate Transactions

**7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?**

The minimum formality for the sale and purchase of real estate as provided for in Section 4 of the Statute of Fraud 1677 is that it must be in writing.

In addition, Section 22 of the Land Use Act provides that the consent of the Governor must be obtained for there to be a valid sale or any form of alienation.

**7.2 Is the seller under a duty of disclosure? What matters must be disclosed?**

The seller is not under a duty of disclosure. The governing principle is "*Caveat Emptor*" (Buyers Beware). Buyers have an obligation to conduct due diligence searches before entering into any transaction and confirm from the seller where there are any reservations. The seller will be bound to disclose information specifically requested by the buyer in response to such reservation.

**7.3 Can the seller be liable to the buyer for misrepresentation?**

Yes, if the buyer acted on the misrepresentation and suffered a loss as a result.

**7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?**

In most instances, the seller conveys the property as the beneficial owner. The term "Beneficial Owner" implies certain warranties as follows:

- The seller's right to convey the property.
- The buyer's right to quiet enjoyment.
- The property is free from encumbrances (other than those disclosed).
- All rent and covenant contained in the lease on the part of the seller to be paid, observed and performed have been paid, observed and performed up to the time of the conveyance.
- Further assurances.
- The lease is valid and subsisting.

Where there is a breach of warranty by the seller, the seller will be liable in damages to the buyer for any losses arising there from.

However, warranties will not relieve the buyer of the obligation to carry out his due diligence as the doctrine of "*Caveat Emptor*" remains applicable.

**7.5 Does the seller warrant its ownership in any way? Please give details.**

Yes. The seller warrants his ownership/right to convey the property.

**7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?**

In practice, it is usual for the buyer to pay the requisite fees for obtaining the Governor's Consent, Stamp Duties and Registration of his title documents. The buyer may also be liable to pay legal and agency fees.

## 8 Finance and Banking

**8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?**

There is no specific regulation concerning real estate finance in Nigeria.

**8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?**

The main methods are:

- The creation of a legal mortgage or a charge of the real estate (or any other assets) in favour of the lender.
- A charge on the income accruing from the sale/lease of the Real Estate.

**8.3 What minimum formalities are required for real estate lending?**

The minimum formalities are:

- Evidence of the title of the buyer or the seller as the case may be.
- Verification of title.
- Capacity to apply for the loan and to enter into the necessary contract and in the case of a corporate borrower due authorisation for the representatives of the company.

#### 8.4 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

A real estate lender protects himself by:

- a) Creating and registering a legal mortgage which takes priority over other creditors.
- b) Incorporating a special purpose vehicle (SPV) exclusively for the purpose of holding/owning the real estate asset. The shares and the asset of the SPV will be charged entirely to the lender as security for the loan. Alternatively, the shares of the SPV may be held by the lender or a trustee company with an agreement that it will be transferred to the borrower upon the repayment of the loan.
- c) In the case of a corporate borrower, registration of the lender's interest at the Corporate Affairs Commission (equivalent of the Companies House).

## 9 Tax

#### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

Transfer of real estate is subject to Capital Gains Tax at the rate of 10% of the capital gains made by the seller.

#### 9.2 When is the transfer tax paid?

Capital Gains Tax is paid after execution of the transfer document but prior to obtaining the Governor's consent and registration.

#### 9.3 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

No, they are not. VAT will only be chargeable on services related to the transfer of real estate such as legal services and realtor's services.

#### 9.4 What tax or taxes (if any) are payable by the seller on the disposal of a property?

The following taxes are payable:

- a) Personal Income Tax (in the case of an individual) or Company's Income Tax (in the case of a company) is payable where the individual or company is engaged in the business of purchase/development and sale of real estate.
- b) Capital Gain Tax.
- c) Stamp Duty.

#### 9.5 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Change of ownership of a Company is subject to Capital Gain Tax except where the acquired company loses its identity and its shares are acquired for consideration other than cash.

## 10 Leases of Business Premises

#### 10.1 Please briefly describe the main laws that regulate leases of business premises.

There are no laws that regulate leases of business premises.

#### 10.2 What types of business lease exist?

There is no standard classification of business leases in Nigeria. Like any other lease, it is subject to negotiation and agreement of parties.

#### 10.3 What are the typical provisions for leases of business premises in Nigeria regarding: a) length of term; b) rent increases; c) tenant's right to sell or sub-lease; d) insurance; e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and f) repairs?

##### a) Length of term:

It varies depending on the agreement of parties but typically leases could be short term (3-5 years) or medium/long term (10-15 years).

##### b) Rent Increases:

For Short term leases, they are often renewable at the expiration of the term. At the point of exercising options to renew, the parties renegotiate the rent.

For medium/long term leases, the agreement usually contains a rent review clause that allows the landlord to review rent at agreed intervals during the term of the lease (usually every 5 years).

In either instance, the basis for determining rent is the prevailing rate of similar premises in the same locality. Where the parties fail to agree, the Agreement would generally provide that a registered Estate Valuer would be appointed as an adjudicator to determine the appropriate rent and his decision would be final.

##### c) Tenant's right to sell or sub-lease:

When the Agreement is silent on the issue of subletting, the law presumes that the tenant has a right to sublet. However, generally the Agreement always contains a clause which prohibits subletting without the prior consent of the landlord.

##### d) Insurance:

The obligation to insure is generally that of the landlord.

##### e) i) Change of Control of the Tenant:

Lease Agreements always provide that the successors-in-title of either the landlord or tenant will be bound by the terms of the Agreement as may be applicable.

##### ii) Transfer of Lease as a result of a Corporate Restructuring (e.g. merger):

Same as e) i) above.

##### f) Repairs:

Major repairs and repairs of common areas are the responsibility of the landlord while regular maintenance of the premises is the responsibility of the tenant.

#### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Withholding Tax is payable on rent.

#### 10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.). Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

The circumstances include Effluxion of the term of the Lease; Breach of covenant of the Lease by either party; Frustration of the Lease; and Agreement of the Parties.

In practice, most Lease Agreements give the tenant the option to renew/extend the Lease.

Either Party may be entitled to compensation by agreement or order of the court. For instance, some leases impose penalties for the late payment of rent. Also some leases provide for refundable cautionary charges as security to make good any default by the tenant to take due and proper care of the premises.

**10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?**

The landlord and/or tenant of a business lease cease(s) to be liable for their respective obligations once they have sold their interest. However, either of them may remain liable for pre-sale non compliance.

## 11 Zoning and Environmental Issues

**11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws. Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.**

The main laws are:

- Urban and Regional Planning laws of the various states - These laws regulate the development of property and zoning of real property in each state.
- Environmental Sanitation laws of the various states - These laws require the occupants of the premises to keep their immediate environment in a clean and sanitary condition.
- Environmental Impact Assessment Act - This requires any person undertaking a project to consider at conception the effect of such property on the environment.

Yes, the state can compulsorily acquire land for public interest subject to the payment of compensation to land owners. Where there are buildings, installations or improvement on the land, the compensation to be paid should be an amount capable of replacing the buildings, installations or improvements and may be paid together with interest in the event that there is delay in the payment of compensation.

**11.2 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?**

The controlling bodies are:

- Federal Ministries of Environment, Works, Housing and Urban Development.
- State Ministries of Housing and Environment.
- Urban and Regional Planning Departments.
- State and Federal Environment Protection Agencies.

A Buyer can obtain reliable information by visiting and making enquiries at the offices of the above bodies.

**11.3 What main permits or licences are required for building works and/or the use of real estate?**

Building Permits/Approval obtained from the relevant agencies of the appropriate Federal or State Ministries.

**11.4 Are building/use permits and licences commonly obtained in Nigeria? Can implied permission be obtained in any way (e.g. by long use)?**

Yes, Building/Use Permits are commonly obtained after the satisfaction of the appropriate requirements. There are no implied grants of building permits/approvals in Nigeria.

**11.5 What is the appropriate cost of building/use permits and the time involved in obtaining them?**

The cost of obtaining Building Permits is relative to the location, the size of the land and the proposed development. The cost also varies from state to state. Building Permits can be obtained within a number of weeks from the date of application.

**11.6 In what circumstances (if any) is environmental clean up ever mandatory?**

Environmental Clean up is mandatory during the compulsory environmental sanitation exercise pursuant to the Environmental Sanitation Laws of the various states.

Mandatory Environmental clean-up is also statutorily required where there is a spillage, or discharge of dangerous and harmful waste or hazardous substances.

**11.7 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Nigeria.**

Not Applicable.

## 12 General

**12.1 Are there any current proposals for significant reform of real estate law in Nigeria - please give details.**

Yes. In Nigeria, the primary legislation on land is the Land Use Act. The National Assembly is presently considering a review and possible amendments of the Land Use Act.

**12.2 Date at which law is stated**

This chapter is up to date as of January 2009.



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Maryam has gathered extensive experience over a period of 10 years in various aspects of real estate transactions. She was admitted to the Nigerian Bar in 1998 and is a member of the Nigerian Bar Association.

She has over the years rendered advisory services in the conception, financing, construction and maintenance of various privately developed estates and shopping complexes in Nigeria including one generally regarded as the most successful private city estate in Nigeria as well as the financing and construction of several international hotels including hotels under the Hyatt chain and Intercontinental Group. She has also negotiated and orchestrated the acquisition of land (both developed and undeveloped) and acted as counsel to vendors, purchasers and financiers in several other major real estate projects.



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Kehinde was called to the Nigerian Bar in 2003 and is a member of the Nigerian Bar Association as well as the International Bar Association.

Kehinde is an integral member of the real estate department of the firm and is exceedingly talented in the field of real estate transactions. His experience spans across advisory services bordering on the interpretation of the Land Use Act, Urban and Regional Planning Laws of various states and other statutes relating to land as well as case law ensuing there from. Kehinde also negotiated and advised in the construction of a major international market and integrated commercial complex, a uniquely structured transaction considered a first in many ways.

Kehinde is also a member of the Chartered Institute of Arbitrators (MCIArb) UK Branch with a specialisation in Construction Disputes.

## B&C Babalakin & Co.

LEGAL PRACTITIONERS

Babalakin & Co. was established in July 1988 and has become one of the leading commercial law firms in Nigeria. With over 50 lawyers working from offices in Lagos, Abuja and Port Harcourt, we are readily accessible to most corporate institutions, government regulatory bodies and individual clients.

The firm has developed extensive capacity in Foreign Investments; Joint Ventures; Taxation; Real Property and Construction; Corporate Restructuring; Venture Capital and Project Finance; Banking and Securities; Corporate Governance; Company Secretarial Services; Energy; Oil and Gas; as well as Litigation/Dispute Resolution and Intellectual Property Protection.

Over the years, we have delivered innovative, client-oriented and cost-effective legal solutions in Nigeria thereby building enduring and fulfilling relationships. We have accomplished this by using state of the art business tools, with the highest degree of professionalism and ethical standards, without compromising efficiency and quality service.

As a discerning Commercial law firm that recognises the relationship between Land/Real Estate and Commercial activities, the firm has one of the most extensive legal units dedicated solely to Real Estate and Construction in Nigeria. The firm places much emphasis on the continuous development of its human resources and our Real Estate and Construction Group's vast knowledge and experience in Land Law and Practice has availed us with the expertise of providing first-rate legal support to clients as required.

In an operating environment such as Nigeria where inflation is constant, the firm has devised an effective mechanism to ensure that construction projects are not frustrated by advising on undertakings, guarantees and such other instruments/devices needed to be in place to prevent delay/abandonment in construction works and to ensure that projects are constructed in accordance to specifications.

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