

An aerial photograph of Lagos, Nigeria, showing a dense urban landscape with numerous high-rise buildings and residential areas. The sky is clear and blue.

**PUBLIC
SECTOR**
NEWSLETTER

MAY 2022

A REVIEW OF THE LAGOS STATE ESTATE REGULATORY AUTHORITY LAW, 2021



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Introduction

The concept of land ownership and/or management has remained an important conversation for a long period of time. Critical factors that drive the need for the ownership and/or control of land and investment in real estate is the potential for value appreciation and the ability to wield economic power through the total or short-term ownership of real estate.

Considering the rise in the population of Nigeria, most especially in Lagos State, with an estimated population of over 20 million people, the need for the regulation of real estate sector to achieve a balance between private and public interests has never been more important.

It is in view of this that the Lagos State House of Assembly in 2021 passed the

Lagos State Estate Regulatory Authority Law, 2021 (Law) with the aim to regulate real estate transactions in Lagos State and for connected purposes. Prior to this Law, there was the Lagos State Estate Agency Regulatory Authority Law 2015 (LSERAL 2015), which was expressly repealed by the Law. This article reviews the Law, discusses the novel provisions and the impact on relevant stakeholders - individuals, corporate organisations, and potential investors in the real estate industry in Lagos, Nigeria.

Widened Scope of Application

Prior to the enactment of this Law, the LSERAL 2015 limited its operation to “estate agent(s)” thereby focusing on only a limited part of the real estate sector. However, by the provision of the Law, the scope of application has been widened to cover not only real estate agents but also mortgage transactions, the financiers, the facility managers, and all other players in the real estate sector like legal practitioners, registered architects, registered engineers, social scientists, registered town planners etc.

By the combined reading of section 1 of the Law, it defines “real estate transaction” to mean “any service, mortgage or financial exchange between a person or an organization and the public with respect to matters pertaining to real estate in the State...” and section 27 which extends the application of the Law to property developers, facility managers and property management company, there is more to the impact of the law on real estate transactions in the State.

Increased Requirement for Registrations under the Law

When compared to the LSERAL 2015, the new legislation imposes additional obligations on individuals and corporations seeking to play in the real estate sector. Notably is the amendment of the requirement for individuals to be a member of at least one professional body.

By the provision of section 26 (2) of LSERAL 2021, an individual who now proposes to deal in real estate must amongst other things possess Lagos State Residents Registration Agency (LASRRA) number, have proper records of transactions and operate a client account, have a minimum educational qualification of WASC, GCE or NECO, have three years Tax Clearance Certificate preceding the date of registration and register at least a business name with the Corporate Affairs Commission. The Law, however, failed to define what constitutes “proper records of transaction” and therefore

may be ambiguous in interpretation, most especially for new entrants in the real estate market. Common usage may be a fall-back position, which defeats the aim of setting out a definition section in the law, as compared to the old law, which has no definition section.

Another innovation is the requirement for 3 years of tax clearance for corporate organisations without qualification to favour newly incorporated entities as “dealers” in the real estate sector. The purposive interpretation will be that where the company can exhibit evidence of being newly incorporated, the requirement for 3 years of tax clearance will be dispensed with.



Registration of Real Estate Transactions

The Lagos State Real Estate Regulatory Authority (The Authority) is now empowered to maintain a register of operations relating to transactions having such details of persons or organisations dealing in the real estate sector. This register is to be opened to the public for inspection and as a resource. Also, stakeholders operating in the real estate sector as a property developer, facility manager or property management company, whether as an individual or an organisation must register with the Authority and specify any project it is undertaking as at the time of registration before it can be issued the necessary permits to engage in real estate transactions in the State.

This provision will allow the Authority to monitor all transactions and have an available register of transactions along with details of all parties involved. The registry being open to public will act as an invaluable resource in tracking real estate transactions and open up the sector for verification, while also adding authenticity to the sector.

Foreign Participation in the Real Estate Sector

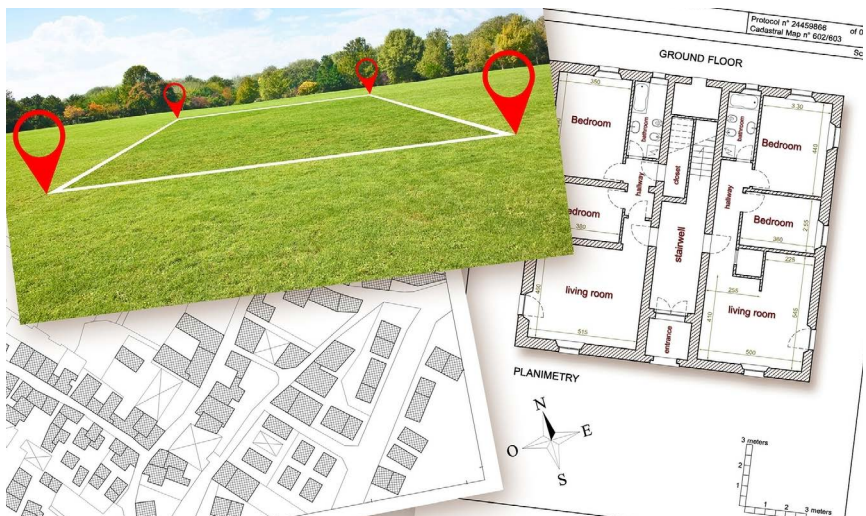
The Law, like the Acquisition of Lands by Aliens Law 2015 (ALAL), now restricts the ownership of land by foreigner or foreign company and subjects same to the grant by the Governor through the Authority. Where a foreigner seeks to invest in real estate in a land in Lagos, such a tenure of land ownership is limited to 25 years, though with an option to

renew. It need be noted that the Law has now amended the provision of the ALAL in that it now revokes the provision of section 1(b) of the ALAL which excludes the acquisition of interest by an alien where its tenure is less than 3 years from seeking and obtaining approval from the Governor.

Issuance and Renewal of Permits

Section 29 of the Law has provided for the issuance of permits to persons or organisations who deal in real estate. Such a permit, subject to periodic review, is only valid for a year and must be renewed at least two weeks before the expiration of the permit. While the Law did not provide the types of permits applicable under the Law, it however gives the Authority the room to determine the types of permits under the Law and transfers such obligation to the Authority.





Penalties for Non-Registration and Non-Compliance

The Law requires that persons or corporate organisations who seek to deal in real estate must be registered with the Authority, failing which such a person or entity will be criminally liable. For an individual, such a person will be liable for a fine of N250,000 and N1,000,000 for a corporate organisation.

However, where the persons or organisations (registered under this Law or not) fail to comply with the provisions of the Law, such will be liable to various amounts of fine and a daily penalty for every day of non-compliance.

Applicable Fees in Real Estate Transactions

Another laudable introduction of the law is the provision of the maximum fees that a person or organisation

dealing in real estate can demand from clients. The law provides that for lease transactions, the chargeable fees should not be more than ten (10) percent of the total rent collected on any transaction, while for sale or purchases of interests in building, particularly where more than one holder of permits are retained by the owner of the property, the fees should not be more than fifteen (15) percent of the total proceeds of sale or tenancy.

Interestingly, the Section goes further to limit property developers to considerations based on 'fair market value' and at a rate as may have been determined by an estate surveyor and valuer. These are clear indices to assist stakeholders in arriving at a reasonable commission for services, even though what is considered as 'fair market value' has not been defined under the law.



Another notable innovation is as indicated in Sub-Section (4) of Section 32, where the law tried to put more regulations around non-completion of projects by clearly stating that where off-plan arrangements are made, a person or organisation dealing in real estate should draw up a contract with the client and insert an indemnity clause to indemnify the prospective client in the event of non-completion of a project or any breach of contract by the person or the organisation.

Abandoned or Uncompleted Buildings and Structures

One of the significant provisions of the Law is the definition of what constitutes an abandoned building or structure. According to section 1, an “abandoned building or structure” includes an existing unoccupied building in a state of disrepair that is left in such condition for a period of up to five years or a building that is under construction but on which work has ceased for up to five

years. However, in the same breath, section 38(1) of the Law further defines an abandoned building/structure to be such that has not been developed due to lack of funds, constitutes a nuisance, constitutes a safety risk, contributes to environmental degradation, and used as a preparation for the perpetuation of criminal activities.

From the combined reading of sections 38 – 43 of the Law, it appears the definition contained in section 1 of the Law has been ‘abandoned’. Similarly, the delimitation of the grounds for notice under section 38(2) of the Law, out of which subsequent section in the law flows does not create any liability or obligation of the owners of an abandoned building where such has been abandoned due to lack of funds.

Pre-Action Notice

Considering the corporate status of the Authority as vested under section 2 of the Law, such an Authority can sue and be sued. Where an aggrieved person



seeks a criminal or civil remedy against the Authority, such an action must be preceded by the service of a pre-action notice, served on the General Manager, the Adviser or any other senior officer of the Authority or by way of post or substituted means as ordered by the Court. Failure to comply with this will rob the court of the jurisdiction to hear the matters, except where the Authority waives such right,

Investigative Power and Dispute Resolution of the Authority

One of the innovations to the law deals with the introduction of a dispute resolution mechanism, coupled with the enhanced investigative powers of the Authority. The law clearly establishes Mediation as a dispute resolution mechanism for the Authority. The Authority is empowered to investigate petitions submitted to it by the public on misconduct, complaints or petition

against persons or organisations registered with the Authority. Any decision of the Authority can be appealed by such aggrieved party before a court of competent jurisdiction. Where the matter is with respect to civil complaints from the public, the Authority can mediate into the dispute, invite parties concerned, and where the matter is founded on fraud, section 35 gives the Authority the power to forward such to the Police for investigation and prosecution by the Directorate of Public Prosecution. Decisions reached by the Authority through mediation can be reduced into a Memorandum of Understanding, executed by the parties and registered as consent judgment by a Magistrate or Judge, thereby making it enforceable.

Conclusion

From the above, the Law will no doubt have an impact in the regulation of real estate in Nigeria. Regulatory concerns have been institutionalized by expanding the powers of the Authority, which is now all encompassing, including the creation of a dispute resolution mechanism. The law also builds upon previous legislation by making provisions that consolidates on the existing laws, including the medium for the application for land ownership by an alien. However, the players in the real estate industry must be abreast with the new positions and implications of the Law in order to comply with the requisite requirements to effectively participate in the industry within Lagos State.

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