



'Better Safe than Sorry': Issues of Valid Title in Nigerian Real Estate Transactions



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Introduction

Globally, Real Estate (RE) is a most sought after capital resource; acquiring it is also one of the most profitable investments to make. RE includes: bare land (whether or not mineral-rich or having some unique attribute), or developed property which could be one or a mix of residential, commercial or industrial RE. Practically, a property is as good as the title (the legal right to a property), to such property.

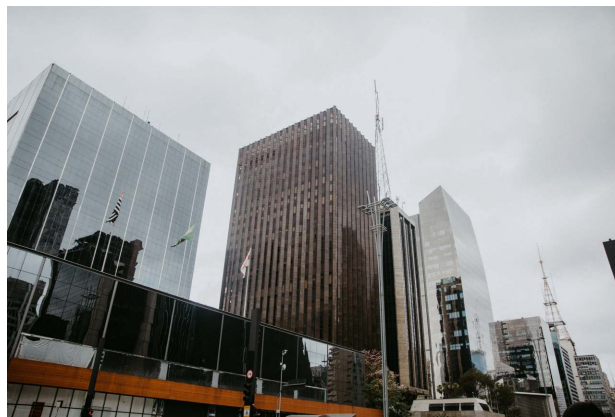
In the famous case of *Idundun & Ors v. Okumagba & Ors*² the Supreme Court (SC) per Fatayi-Williams, JSC laid down the five ways of proving title to, or ownership of land.³ Every time a property changes hands, there is also a change in the title. Somewhere in the chain of transfers and transmissions of the property, certain lacuna could emerge with resultant defect in the title; it is important to avoid such lacunas or ensure that regularisation steps are promptly taken to avoid costly risk exposure.

It is trite that purchase is a common means of acquiring ownership of land in Nigeria, as elsewhere. To be clear, buying real property is not all about finding a vendor willing to sell and agreeing the price for the property. Buying property is 'a big deal', and for many people, it may be one of the most significant one-time transactions, they will ever make. The point of doing it right can never be overemphasised, and as with all major decisions, it is "better to be safe than sorry!"

On the effect of property sale without valid title, the Court of Appeal (CA) stated in *Sanni-Omotoso v. Obidairo*⁴ per Iyizoba, JCA thus: "On the submission ... that the family agreement could not bind third parties

who had acquired legitimate interests in the land without prior notice, the Supreme Court held in the case of *Mohammed v. Klargestor (Nig) Ltd (2002) 14 NWLR (Pt. 335) 787 @ 360 para D-G (sic)* that where the vendor of a property does not possess the authority to sell the property, the maxim *nemo dat quod non habet* will apply to nullify the sale... This Court also held in *Dantata Jnr v. Mohammed (2012) 14 NWLR (Pt. 1319) 122 @ 170 C-F* that "where a seller is shown as not having title vested in him at the time of sale, the contract of sale must be vitiated on application of the maxim *nemo dat quod non habet*, such contract is void *ab initio*."

Using transactions in Lagos State as an example, it is critical to take certain steps prior to, during and after the purchase of land, so as to secure an unimpeachable interest in the property. This also obviates the 'firefighting' that could follow a flawed transaction; for example, having to pay twice or pay double consent fees for the same property; such is a 'loss', if the 'defect' had not been earlier factored by way of 'risk discount' into the purchase price.



The nagging question is: how do prospective purchasers proceed with RE transactions without falling victims to fraudulent and sham vendors? This article focuses on navigating the minefields around the issues of valid title in Nigerian RE transactions; given the centrality of title as a project risk.⁶

¹The authors are grateful for the helpful comments of Yinka Olajuwon, Esq. (Managing Partner, Yinka Olajuwon & Co) to the original version of this article (written by the first two authors), and which was published in March 2019. The 2nd author having exited the Firm, the 3rd author championed the revisions to this article, incorporating more recent developments. Please note that the usual disclaimers apply – the authors are fully responsible for all the views expressed herein.

²(1976) LPELR-1431 (SC).

³See Fatayi-Williams, JSC (as he then was) at 23E-26D: "As for the law involved, we would like to point out that it is now settled that there are five ways in which ownership of land may be proved. We will now proceed to consider each of these five ways in order to see if the findings of the learned trial Judge can be seen to bring the evidence adduced in the case in hand within the ambit of any of them. Firstly, ownership of land may be proved by traditional evidence as has been done in the case in hand. Secondly, ownership of land may be proved by production of documents of title which must, of course be duly authenticated in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract (see Section 129 of the Evidence Act and Johnson v. Lawson (1971) 1 All NLR p.56).

... Thirdly, acts of the person (or persons) claiming the land such as selling, leasing or renting out all or part of the land, or farming on it or on a portion of it, are also evidence of ownership, provided the acts extend over a sufficient length of time and are numerous and positive enough as to warrant the inference that the person is the true owner (see Ekpo v. Ita 11 NLR p.68). Fourthly, acts of long possession and enjoyment of the land may also be prima facie evidence of ownership of the particular piece or quantity of land with reference to which such acts are done (see Section 45 of the Evidence Act, Cap. 62). Such acts of long possession, in a claim of declaration of title (as distinct from a claim for trespass) are really a weapon more of defence than of offence; moreover under Section 145 of the Evidence Act, while possession may raise a presumption of ownership, it does not do more and cannot stand when another proves a good title (see Da Costa v. Ikomi (1968) 1 All NLR 394 at page 398). Finally, proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute, may also rank as a means of proving ownership of the land in dispute (see Section 45 of the Evidence Act, Cap. 62)." Emphases supplied.

⁴(2014) LPELR – 23006 (CA) at 36C-F.

⁵(1978) LPELR – 2251 (SC), at 7C.

⁶It should be noted that most of the considerations also apply to prospective tenants or lessees. This is because RE scams in respect of leases and tenancies are also common; for example when unscrupulous agents will let the same property to many prospective tenants and then vanish into thin air, or when properties that are flood prone are let in the dry season with the unfortunate tenant only discovering the true condition upon the onset of rainy season.



1. Acquiring and Perfecting Title in Lagos State: Buyers' Procedural Steps

1.1 Pre-Contract Inquiries

Things typically start with when the prospective purchaser becomes aware of the availability of the land in question through an agent, personal contacts or via any mode of advertisement. The advertisement medium, whether or not the agent is a registered professional or how well one knows the personal contact who made the introduction (and in turn, how well such person knows the vendor), could impinge on the credibility of the prospective property and its vendor.

Thus, it is only if the signals are positive, that next steps are worth exploring. Accordingly, once interested, the prospective purchaser (or his agent) reaches out to the vendor/agent for preliminary discussions or further inquiries. The vendor/agent could then provide additional information (such as price and other terms/conditions for the sale). Usually, the parties will not 'close the deal' at this point.

The parties can, pursuant to the prospective purchaser's preliminary interest, then proceed to plan a physical inspection of the property; it may also be necessary to further (separately) verify relevant vendor representations and circumstances of the property from occupants of the property and/or owners of neighbouring property. Again, the intended transaction may not materialise if the prospective purchaser is not pleased with the land; for example, if it is swampy,⁷ not fit for proposed use or is bigger/smaller in size than what is actually required. However, if the prospective purchaser is happy with all his findings, they can proceed to the next stage.

An offer letter may subsequently be sent to the purchaser; the offer letter should contain details of the terms and conditions of the transaction, including the roadmap for its consummation. Vendors use it to further measure the interest of the prospective purchaser: acceptance is usually a signal that prospective purchaser (with requisite financial capacity) would be willing to conclude the deal, subject to positive findings from his investigation of title.

The imperative of pre-contract inquiries in property acquisition cannot be overemphasised; it would help determine suitability, and possibly spotlight patent defects,⁸ in the target property. It is noteworthy that the vendor is under duty to disclose latent defects only, being defects that could not be discovered on physical inspection.⁹ Pre-contract inquiries may reveal obvious condition of the property (such as susceptibility to flood), boundaries, interference with other property, easement and profit apendre issues, adverse entry and/or notice, facilities and fixtures (if any), etc.

1.2 Investigation of Title

After signing the offer letter, the purchaser collects copies of title documents¹⁰ or their details from the vendor in order to investigate title at the Lands Registry or within community/family circles, for unregistered land.¹¹ Amongst minefields to avoid are properties subject to litigation, to public acquisition or government owned properties (unless the latter are being disposed pursuant to due process). If the property had been excised (and allegedly no longer subject to acquisition), it is imperative that the solicitor confirms that fact as part of his due diligence (DD) – usually by reviewing the Government Gazette in addition to Lands Registry documentary records.¹²



⁷The prospective purchaser may not like swampy land; or he may be unable or unwilling, to incur the extra spending that sand filling the swampy land entails - especially given the intended use of the land.

⁸Patent defects are those that can be easily discovered by the purchaser by mere inspection of the property. See *'Patent vs. Latent Defects and Caveat Emptor'*, Rabideau Law: <https://www.rabideaulaw.ca/patent-vs-latent-defects-and-caveat-emptor/> (accessed 28.02.2022). Per Uwaijo, JCA (as he then was) in *Onyido v. Ajemba* [1991] 4 NWLR, (Pt. 184) 203, at 228D-H: "it is a general rule in equity founded on principles of honesty and the dictates of good sense, that if a person, generally speaking, offers anything for sale, the vendee, or he who becomes the purchaser, is entitled to see that the vendor has it with the qualifications, and in the way in which he, the vendee, understood that he bought it; that is, so as to afford him an assurance of having bought what he wanted, and meant to buy, or, at least, what was offered or professed to be sold, or he may reject the contract." Similarly, based on the doctrine of "Caveat emptor", the CA held in *Ageh v. Tortya* [2003] 6 NWLR (Pt. 816) 385, at 395B-D that "I think the primary responsibility of a purchaser of land in particular is that he must mount a rigorous search in order to satisfy himself that the land is free from any encumbrance." See also Joel Odili, *'Preliminary Considerations Before Entering into a Contract of Sale of Land in Nigeria'*, Academic Paper 2021, GRIN: <https://www.grin.com/document/1135034> (accessed 07.03.2022).

⁹See Yusufu Yilzum Dadem, *'Property Law in Practice'*, 3rd ed., 2015 (JUPL), p. 225. In *Rockonoh Property and Co. Ltd. v. R.C.C. Nig. Ltd.* [1998] 2 NWLR (Pt. 539) 683, at 696F-H it was held per Ejiwunmi, JCA (as he then was) that: "It is true that a Plaintiff has a duty not to increase the damages recoverable by him by his own voluntary and unnecessary act: See *Admiralty Commissioners v. SS Amerika* [1917] AC 38. It is also true that the law imposes on him a duty to do all in his power to minimise his loss, otherwise anything which must be ascribed to his failure to do so is not recoverable from the defendant: See *British Westinghouse Co. Ltd v. Underground Electric Railways Ltd.* (1912) AC 673. But that duty is to act reasonably."

¹⁰Such documents could be or include Certificate of Occupancy (CofO), Land Certificate/Registered Title, Deed of Assignment (DoA), (with or without Governors' Consent)/Deed of Conveyance, and Survey Plan, court judgments (for example on communal/family land confirming ownership), etc. It is also important to ensure that the land being purchased is not subject to litigation as the doctrine of *lis pendens* works against the purchaser of a property if the litigation is unfavourable to his vendor: *Olori Motors Co. Ltd v U.B.N Plc* (2006) LPELR-2589 (SC). In such situation, he may have to pay a second time to the successful party (and that is assuming such party is willing to sell); also, he may not be able to recover his money on the original transaction especially if the vendor no longer has capacity to repay. If he institutes an action against the vendor for recovery of the purchase consideration, such may suffer delay in the courts as the wheels of justice could grind relatively slowly, not to talk of the vendor frivolously going on appeal to delay realisation of any fruits of judgment against him. During the pendency of litigation between his vendor and competing parties, the purchaser may be unable to progress his plans for the property, for example if the court issues a prohibitive injunction against any development pending the determination of the suit. Disobedience could result in contempt proceedings, and possibly a jail term. See *Bamgboye v. Olusoga* (1996) LPELR- 736 (SC). It is worth emphasising that a purchaser of a litigated property buys same at his own risk. In *Yaro v. Manu & Anor* (2014) LPELR-24181 (CA), at 73C-E, it was opined per Sankey, JCA, that "Caveat Emptor", let the buyer beware, is the Latin maxim for persons dealing in property. The risk of encumbrances is on a purchaser who must satisfy himself by a full investigation of title before completing his purchase. A purchaser would be able to plead absence of notice only if he had made all the usual and proper inquiries and still found nothing to indicate the equitable interest."

¹¹"Investigation is the process of confirming the title of the vendor as deduced by him": Y. Y. Dadem (*supra*), p. 258. Apart from the search(es) at the Lands Registry, there should be a further search at the Corporate Affairs Commission (CAC) to reveal whether or not there is an encumbrance or any charge whatsoever on the property. CAC search is necessary where the current vendor or its predecessor-in-title is a company. CAC search may also provide the opportunity to check the company's audited financial statements which usually accompanies the Annual Returns filed yearly with the CAC. In addition, search should also be done at the office of the Surveyor-General, after which, a certified and independent report from Government stating whether or not the land is free from acquisition, is issued. See *'Mandates and Responsibilities of the Office of the State Surveyor-General'*: <http://surveyorgeneral.lagosstate.gov.ng/responsibilities-2/> (accessed 06.03.2019).

¹²*Atobatele v. Lekki Concession Company Ltd & Anor* (2017) LPELR-43041(CA). LASG recently introduced the "Lagos State Lis Pendens Electronic Information System designed to provide easy access information to anyone who wants to deal in a property with information primarily on whether the property is subject of litigation..." The platform's services include ability to: (a) **conduct searches** whereby subscriber/users "can confirm whether the property they intend to deal with is a subject of a lawsuit. Users can use parameters like location/description of property, Court, Suit Number etc. to make their searches easier to conduct"; (b) **submit cases** – "records of lawsuits in which they are involved. This would be uploaded on the online system subject to proper verification" and (c) **obtain a Certificate of Lis Pendens**: this "is electronically signed and authenticated by the Attorney-General of Lagos State. The Certificate acts as evidence of a law suit and gives actual notice to anyone interested in property of the lawsuit." See generally, *'Lagos State Lis Pendens Electronic Information System: About Us'*: <http://lagoslispendens.com.ng/About-us.php> (accessed 27.03.2019).

This process has however been simplified since 2015 in Lagos State with the introduction of the ‘Land Information Management System’ (LIMS).¹³ Any document extracted from LIMS at the Land Registry is admissible as evidence in court, subject to the provisions of **section 24 Evidence Act**.¹⁴ Satisfactory outcomes of the title verification exercise could then lead to signing a contract of sale.¹⁵

In practice, one aspect of the investigation that is often overlooked is verification at probate registry where the vendor is a beneficiary of the target property under a will. This could help with confirming authenticity of the will, whether the vendor was indeed the beneficiary of the property thereunder, and whether there is any challenge on the bequest. Thus, it is essential to ensure that the Probate (where a will exists) or Letters of Administration (in the absence of a will) was granted following due process and Assent was duly executed by the personal representatives of the deceased to properly vest the legal estate in the vendor.¹⁶ This issue touches on vendor’s capacity to transfer valid title and should not be glossed over by the purchaser.

1.3 Contract of Sale (CoS)

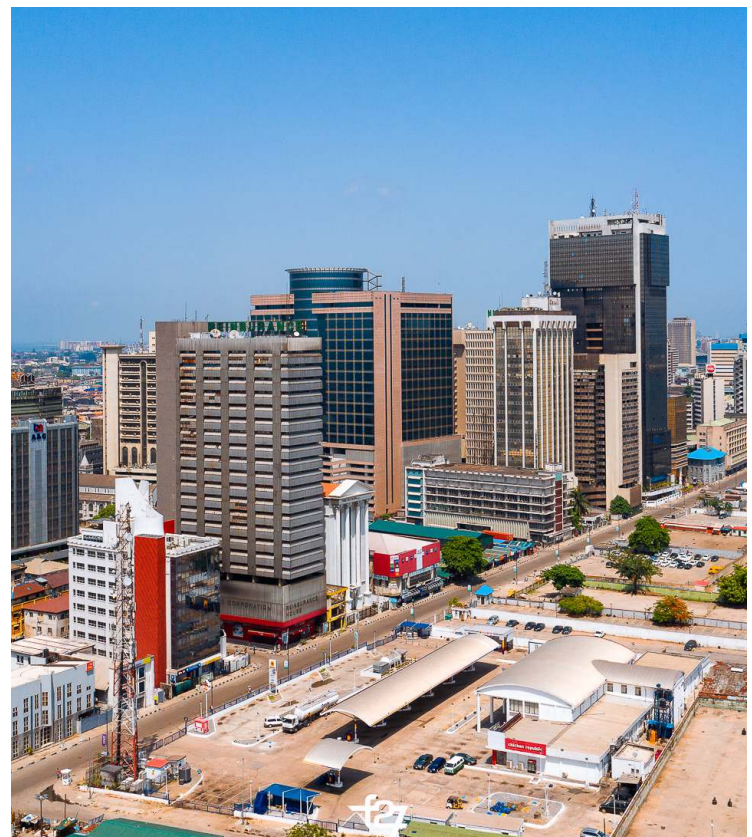
The CoS documents the agreed terms of sale and purchase of the property as well as relevant background information: parties and their description,¹⁷ root of title and nature of vendor’s title, price, mode of payment, deposit (if applicable), etc. A draft CoS may sometimes be sent whilst the purchaser is verifying the vendor’s title to ascertain its ownership and security status (whether subject to any encumbrance, and on what terms, etc). At the point where the signed CoS is exchanged, the vendor effectively holds the land in trust for the prospective purchaser till he pays (fully), and all conditions are fulfilled.¹⁸ Thus, the purchaser acquires an equitable interest in the property while legal interest is acquired at completion.¹⁹

Before parties thereto can enforce the CoS, the written memorandum must exist although it need not exist at the time the contract is being made. The CoS may also include indemnity clauses - to ensure that in case of defective title, the vendor would be liable to refund the entire purchase price, possibly plus interest at a given rate. The essence of such clauses are to adequately protect the purchaser from mischievous vendors.

1.4 Purchase Deposit

A deposit is money paid as security by the purchaser to the vendor as evidence of his intention to complete the purchase of the property pending all actions before ‘completion’, including but not limited to exchange of the executed transfer documentation. Not all vendors require payment of deposit (the purchaser may be able to negotiate such requirement away); however if paid, it may be forfeited if the depositor (the purchaser) fails in his undertaking: **Edosa v. Zaccala**.²⁰

*The rationale for this is the principle of promissory estoppel: that the vendor might have acted or relied upon the purchaser’s intention to purchase the property.*²¹ If the purchaser resiles, the deposit would then serve as compensation to the vendor. However, *it is important to also protect the prospective purchaser’s interest by ensuring there is clarity around the conditions for losing the deposit.* For example, there could be a timeframe within which the prospective purchaser may get his deposit back in full, irrespective of the reasons for his change of mind not to proceed with the transaction.



¹³LIMS is an electronic warehouse of registers and was established pursuant to **section 17 Lagos State Land Registration Law, Cap. 62, Laws of Lagos State 2003**. See also Oluwakemi Mary Adekile, ‘**The Lagos State Land Registration Law 2015: Needs, Principles, Provisions and Potentials**’ in ‘**Workshop: Essays on the Lagos State Lands Registration Law 2015, Department of Private and Property Law, University of Lagos, 2015**’ SSRN, 27.01.2018 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3111203> (accessed 06.03.2019).

¹⁴**Cap. E14, LFN 2004**. It provides that: “Admissions are relevant and may be proved as against the person who makes them or his representative in interest, but they cannot be proved by or on behalf of the person who makes them or by his representative in interest.” See also **Anyia v. Anya & Ors (2014) LPELR-22479 (CA)**.

¹⁵Or if CoS were to be executed prior to completion of investigations of title, it would be made conditional on satisfactory outcome of the title verification searches.

¹⁶Assent is a document that vests ownership of real property in the beneficiary of a will. In **Renner v. Renner (1961) All NLR 244 at 246**, the SC per Unsworth, FJ held that an assent must not only be in writing but must also be signed by the personal representatives of the deceased and made in favour of the beneficiary. According to Y. Y. Dadem (*supra*), at 398, in **Menkiti v. Agina (1965) NMLR 127, at 129**, the Court observed that the properties of a deceased, both real and personal are first vested in the legal representative of the deceased who will then transfer same to the beneficiaries by a vesting assent.

¹⁷It is presumed that the parties have requisite capacity to enter into the CoS as absence of capacity will vitiate the contract: **Goldmark (Nig) Ltd & Ors v. Ibafo Co Ltd & Ors (2012) LPELR-9349 (SC)**.

¹⁸If prospective purchaser does not pay a deposit, any attempted enforcement could face the challenge of absence of consideration. In that wise, it is prudent to have the CoS under seal. See **Bobai v. Achi & Anor (2015) LPELR - 25901 (CA)**.

¹⁹The CoS evinces the vendor’s intention to transfer title and provide support to take the deal to completion. In this light, Uwaifo, JSC in **International Textile Industries Nigeria Limited v. Adereimi [1999] 8 NWLR (Pt. 614) 268, at 293-294H-A**, quoted with approval, Barnsley, ‘**Conveyancing Law and Procedure**’ (1973), p. 4 that: “A transfer on sale of an estate in land is divisible into two distinct stages: (i) the contract stage, ending with the formation of a binding contract of sale, (ii) the conveyance stage, culminating in the legal title vesting in the purchaser by means of the appropriate instrument under seal.” See also **section 52(1) Stamp Duties Act, Cap. S8, LFN 2004** which defines “conveyance on sale” to include “every instrument, and every decree or order of any court whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction.”

²⁰[1990] 4 NWLR (Pt. 147), 657.

²¹See **Lawal v. UBN Plc & Ors (1995) LPELR-1762 (SC)**: where one party has by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his words and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous relations as if no such promise or assurance had been made by him.

Refund may also be graduated on a reducing basis: the longer the period, the lower the refund entitlement, with an absolute time bar for any refund at all. Such timelines could be a function of the transactional realities. A prospective purchaser's solicitor should be mindful of the question what is the exposure if the vendor or purchaser chooses not to proceed? The remedy of specific performance and/or damages should avail the prospective purchaser, albeit the contentious issue would be the measure of damages where specific performance was no longer feasible.²²

Edosa distinguished between deposit and part-payment of the purchase price in that the former does not constitute any actual estate in the purchaser but only shows commitment on part of the purchaser while in the case of part-payment, even though estate may not be vested until when the balance is paid on completion, "the vendor cannot unilaterally revoke the contract and walk away unhurt".²³ However, the deposit may be deemed as part-payment if so negotiated and agreed by the parties.

The balance of purchase price should be paid within the stipulated time on completion; parties may also agree on whether, and what rate, interest is to be charged in the event of delayed payment. It goes without saying that the purchaser is entitled to recover the full consideration, where the CoS is terminated through no fault of the purchaser.²⁴

2. Completion/Documentation Stage

At the completion or conveyance stage, the purchaser pays any balance of the sale consideration and receives original title deeds and other relevant documents together with actual or deemed physical possession of the property from the vendor. Typically, a formal deed of assignment²⁵ is executed in preparedness to perfect the purchaser's title towards his obtaining legal interest thereafter.

2.1 Deed of Assignment (DoA)

The usual practice, as endorsed by the CA in *Ezeigwe v. Awudu*,²⁶ is that after the purchaser has ascertained through his solicitor that the vendor has good title to the property to be sold, the parties prepare and execute the DoA/Conveyance.²⁷ The DoA is usually prepared by the vendor's solicitor and vetted by the purchaser's solicitor. Upon finalisation, several copies would be produced (usually called engrossed copies) for execution by both parties, in compliance with requisite execution formalities.

In *Anuku v. Standard Bank Ltd*,²⁸ it was held that *the DoA or its equivalent must at the minimum, consist of: the names and description of the parties; description of the property; the agreed*



purchase price; the acknowledgement of receipt of that amount, etc. It is compulsory that every DoA (or equivalent)²⁹ contain a consent section for the State Governor where the land/property is situated, in order to signify his consent to the transaction, pursuant to section 22 Land Use Act.³⁰

Other documents such as statutory transfer forms (such as Form 1C), purchase receipt, would be executed by or on behalf of the vendor, as the case may be. Any other original documents relating to the property in the vendor's possession should also be handed over. *The key consideration is to avoid having to revert to the vendor again after deal completion. Careful attention must therefore be paid to ensuring that all documentation requirements are met including signing undated forms and obtaining copies of vendor's tax clearance certificate (TCC) for purposes of applying for Governor's consent.*

Usually, the prospective purchaser will pay the legal fees associated with the transaction; he will pay both his and the vendor's solicitors' fees, in addition to also paying agency fees ('commission' in popular parlance), for the transaction.

3. Perfection Stage

Perfection of title includes obtaining Governor's consent, stamping of the DoA and registration at the Lands Registry. This is a post completion matter and it is the duty of the purchaser to ensure that his title is properly perfected. Many people who are oblivious to the legal requirements have the notion that after executing the DoA or equivalent, they have done all that is required of them and can enjoy their newly acquired property without let or hindrance. The reality however is that such leaves room for issues of competing title to possibly arise in future, or the ability of the purchaser (or his estate) to use the property as security for financing may be constrained.

²²See *Universal Vulcanizing (Nig) Ltd v. Ijehsa United Trading & Transport Co. Ltd & Ors.* (1992) LPELR-3415(SC), at 38G where it was held that: "It is settled law that where a plaintiff claims specific performance, or an injunction, the Court has the power to award damages either in addition to or in lieu of specific performance or injunction, whether damages have also been specifically claimed or not."

²³*Edosa v. Zaccala*, supra. In *Biyo v. Aku* [1996] 1 NWLR (Pt. 422) 1, at 25B-C, Okezie, JCA differentiated between deposit and part-payment in CoS as follows: "In the case of the latter is where part payment as in the instant case is made, the law is clear. It is, that the contract for the purchase has been concluded and is final, leaving the payment of the balance of the purchase price outstanding to be paid. The contract for the sale and purchase as in the instant case ... is absolute, and complete for which each party can be in breach for non-performance and for which action lies for specific performance in breach." See also, *Gege v. Nande* [2006] 10 NWLR (Pt. 988) 256, at 286.

²⁴See I.O Smith, 'Practical Approach to Law of Real Property in Nigeria', (2013 Revised Edition, Ecowatch, at p. 216: "A purchaser who at the end of the exercise discovers a defect in the title of the vendor may rescind the contract before the completion date and collect his deposit of part payment back from the vendor with interest and other expenses incurred in investigating the title."

²⁵While the CoS documents terms agreed by the parties and only protects equitable interest, DoA is required for perfection and vesting of legal interest in the property.

²⁶[2008] 11 NWLR (Pt. 1097), 158 at 176A-C.

²⁷In reiterating the nature of documents that can be used to establish transfer of title, the Court in *Bello v. Birma* (2014) LPELR-23969 (CA) held: "the law is trite that the only document that can prove any passing of title would be a Conveyance or a Deed of Assignment."

²⁸(1972) 2 UILR 106.

²⁹Such as deed of sublease where the lessor retains right of reversion, instead of assigning his entire interest under a DoA.

³⁰For non-urban land, consent of the Local Government Chairman is required.

3.1 Governors Consent (GC)

The **Land Use Act (LUA)**³¹ prohibits alienation of statutory right of occupancy or dealings in respect thereof, without the prior consent of the State Governor, otherwise the transaction shall be void.³² Where the property however is subject to a customary right of occupancy, the consent required is that of the local government where the land is situate: **section 6 LUA**.³³ The legal consequence that arises is that no legal interest in land passes under the agreement until the necessary consent is obtained: it is thus inchoate until consent is obtained. In **Awojogbagbe Light Industries Ltd v. Chinukwe & Anor**,³⁴ the SC stated that **section 22(1) LUA**: “prohibits the alienation of a right of occupancy without the consent of the governor first had and obtained but does not prohibit agreement to alienate or in respect of terms and conditions for the purpose of effecting such alienation if and when the Governor gives his consent to the transaction in issue.”³⁵

The advertised duration for obtaining Governor’s consent in Lagos State is thirty (30) days.³⁶ However in reality, bureaucratic procedures usually extend this time frame for up to twelve months or more. Requirements for the process include: submission of duly completed *Land Form 1C*, together with Certified True Copy (CTC) of root of title, title deed, clear survey plan, site location sketch, site photographs, applicant’s means of identification and passport photographs, letter³⁷ of authority (where application is processed on behalf of the applicant), and covering letter. Additionally, major applicable fees include: consent fee at 1.5% of assessed Fair Market Value (FMV), capital gains tax at 0.5% and stamp duty at 0.5% of assessed value.³⁸

3.2 Stamping

Stamp duties are taxes imposed on certain transactions, one of which is transfers of interest in land. After the government grants consent, the solicitor must ensure that the stamp duties charged on the transaction is paid.³⁹ In order to compel compliance, stampable but unstamped documents are subject to the following: (a) they will not be accepted for registration at the

Lands Registry; (b) non-admissibility as evidence in court (albeit the proceedings may be adjourned in order for the document to be stamped upon payment of penalty, before it would be tendered);⁴⁰ and (c) penalties for late registration, which is usually time based – thus, longer default attracts greater penalty.

3.3 Registration

Every instrument of transfer of interest or ownership in land is a registrable instrument under **section 18, Lagos State Lands Registration Law**⁴¹ and must be registered to have the backing of law and also to have priority over any other competing instrument(s) of transfer. Registration also facilitates investigation of title when searches are carried out at the Land Registry.⁴²

Section 26(1) provides: “Any holder in possession of any registrable document shall register it within sixty (60) days after obtaining the Governor’s consent where applicable.” Registration gives an indication if a property is encumbered and any subsequent purchaser would be duly informed upon carrying out a search at the registry.

However in **Registered Trustees of Obosi Development Union v. Elebor**,⁴³ it was held that a registrable instrument that has not been registered is admissible to prove equitable interest.

Once all the foregoing steps are done and dusted, one can then rest easy and be assured of a solid title to the acquired property.⁴⁴ The above processes could take a long time and one is required to be patient as there are no short cuts to perfection of title to land and real property in general. Again, the credo is to be “better safe than sorry”!

4. Lagos State Government Schemes (LASGSs): Inter-Agency Roles and Responsibilities

There are four primary government Ministry Department and Agencies (MDAs) directly responsible for the management and design of all Lagos State Government Schemes. These agencies are: The New Towns Development Authority (NTDA), Ministry of Physical Planning and Urban Development, Land Use and Allocation Committee (LUAC) and Office of the Surveyor General of Lagos State.

³¹Cap. L5, LFN 2004.

³²Sections 22 and 26 LUA. See also, *Savannah Bank v. Ajilo* (1989) LPELR-3019(SC).

³³Section 6(1) LUA provides: “(1) It shall be lawful for a Local Government in respect of land not in an urban area to grant customary rights of occupancy to any person or organisation for the use of land in the Local Government Area for agricultural, residential and other purposes; (b) grant customary rights of occupancy to any person or organisation for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government Area concerned.”

³⁴(1995) LPELR-650(SC).

³⁵For a historic review, see Afolabi Elebiju, ‘Implications of Judicial Attitudes to the Interpretation of Consent Provisions of the Land Use Act for Secured Credit Transactions in Nigeria’ [1997] 12 ICCLR 431- 436.

³⁶See the Lagos State Lands Bureau website at: <https://landsbureau.lagosstate.gov.ng/2017/06/28/frequently-asked-questions/> (accessed 14.03.2022).

³⁷More details on the above requirements are available at: <http://landsbureau.lagosstate.gov.ng/2017/05/17/governors-consent/> (accessed 21.02.2022). See also, see Afolabi Elebiju and Oluwaseyi James, ‘Factors: A Discussion on Property Tax Delinquency and Allied Issues in Nigeria’, LeLaw Tax Monograph Series No.2, October 2021, p. 10-11 (forthcoming as original publication in JCL, May 2022).

³⁸Ibid.

³⁹According to Dadem (*supra*), at p.272: “It is advised that consent comes before stamp duties since if the Governor refuses consent, the duties paid cannot be recovered.”

⁴⁰Section 22 Stamp Duties Act, Cap. S8, LFN 2004 (SDA). See *Benjamin v. Kalio* [2018] 15 NWLR (Pt. 1641) 38; *Shittu v. Fashawe* [2005] 14 NWLR (Pt. 946), 67. Pursuant to section 23(3) SDA stampable deed of transfer charged with *ad valorem* duty shall be duly stamped before expiration of 30 days after it is first executed or first received in Nigeria, if executed outside Nigeria. See also, Afolabi Elebiju (ed.), ‘Questions and Pathways: Recent Issues in Nigerian Stamp Duties’ Regulatory Framework (‘LeLaw on Stamp Duties’), December 2020: https://lelawlegal.com/add111pdfs/Thought_Leadership_Stamp_Duties_Cover.pdf (abridged version, fuller version available on request).

⁴¹Law No. 1 of 2014.

⁴²With respect to transfer of ownership in real property, registrable documents includes courts’ judgments/orders, certificate of occupancy, letters of probate and of administration respectively and power of attorney created by deed. Section 7, LRL clearly provided that shall not register a Power of Attorney relating to land on which the consent of the Governor has not been endorsed.

⁴³(2018) LPELR-46657 (CA).

⁴⁴It is worth mentioning that in any real property dealing, full legal compliance is essential. Apart from the steps already mentioned and the cost implications thereto, there are other taxes and charges applicable to real property transactions under various statutes. For example, apart from stamp duty, Capital gains Tax (CGT) is also charged on net gains accruing on disposal of capital assets. For full understanding on all taxes and charges applicable in real estate transactions in Nigeria, see Afolabi Elebiju and Oluwaseyi James: ‘Factors: A Discussion on Property Tax Delinquency and Allied Issues in Nigeria’, at fn. 37, *supra*.



4.1 Towns Development Authority (NTDA)

The Agency is responsible for establishment of New Towns and development of Schemes in Lagos State, as well as provision of infrastructure in government estates, monitoring of unauthorised developments within government estates in liaison with the Ministry of Physical Planning Development and site selection for other Government Ministries/Agencies and private developers.

4.2 Ministry of Physical Planning and Urban Development (MPPUD)

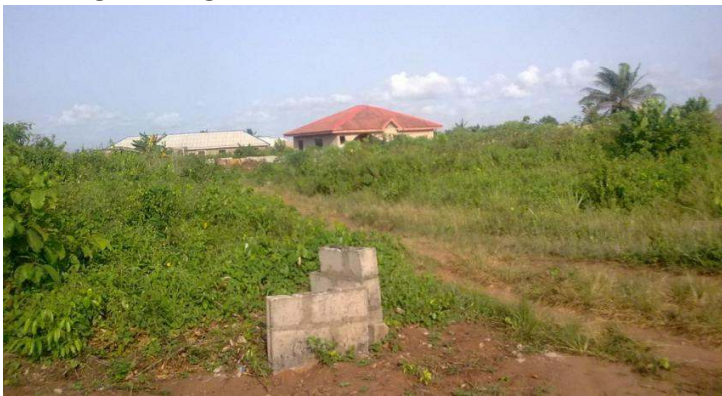
The MPPUD is responsible for the overall control of developments in Lagos State; it also works with the NTDA in preparing the layout plan (consisting of different land use by zoning), for the schemes. In a typical Layout there are residential plots, commercial plots, neighbourhood garden, recreational land use and industrial use.

4.3 Land Use and Allocation Committee (LUAC)

The LUAC advises the Governor on matters connected with the management of all lands in urban areas and the resettlement of persons affected by revocation of rights of occupancy on the ground of overriding public interest. They also treat and coordinate all matters that border on land allocation and management of various existing Schemes in the State to the public; processing and issuance of CofOs and other duties as may be assigned by the Governor.⁴⁵

4.4 Office of the State Surveyor-General

The primary function of the Office of the State Surveyor-General is to provide survey framework to facilitate the registration of CofO under the **LUA**. The Office is charged amongst others with the responsibility of surveying government development schemes in conjunction with the NTDA and MPPUD for the purpose of establishing new towns and development schemes, monitoring unauthorised development within government's estates and selecting sites for government and private development.⁴⁶



5.0 Challenges and Prospects

5.1 Perfection Challenges

According to the World Bank's '**Doing Business in Nigeria 2018**': "Transferring property in Nigeria requires on average 12 procedures and costs more than 15% of the property value, making the process twice as cumbersome and expensive as in the average economy in Sub-Saharan Africa."⁴⁷ Although some progress has been made subsequently, they are not so significant yet, for citizens to say Nigeria has arrived at Eldorado regarding efficiency of RE transactions.

Notably, one of the changes that led to the improvements in Nigeria's ranking on 'Ease of Doing Business' was in the area of easing RE transactions, especially on aspects of property registration.⁴⁸ Such include Lagos State's reforms in making property transfers easier and more transparent by removing the sworn affidavit for certified copies of the land ownership records, introducing a specific and independent complaint mechanism, and by publishing statistics on land transfers.⁴⁹

Although progress have been made over the past decade, they need to go farther and faster too.⁵⁰ The high cost of perfecting property transactions is still a sore issue that oftentimes discourages many parties from perfecting their property transactions.⁵¹

5.2 Land Grabbers

Lagos State took decisive step to deal with the issue of individuals taking possession of land illegally especially via self-help (otherwise known colloquially as 'omo onile' or land grabbers), vide the enactment of the **Lagos Property Protection Law 2016 (LPPL)**. According to its long title, **LPPL** was enacted to "prohibit forceful entry and illegal occupation of landed property, violent and fraudulent conducts in relation to landed property in Lagos State and for connected purposes". The actions of the 'land grabbers' were particularly harmful as they caused prospective purchasers to institute endless actions in court trying to recover lost monies after 'omo oniles' would have sold one property to multiple parties or other nefarious actions. In many cases, land conflicts lead to loss of lives, destruction of properties, and displacement of people. This menace appears to be non-abating, constantly featuring in the news.⁵²

Prior to **LPPL**, forcibly taking over other people's landed property was criminalised under **sections 52 and 53, Lagos State Administration of Criminal Justice (Repeal and Re-Enactment) Law 2011**.⁵³ In 2020, the Lagos State Task Force on Land Grabbers reportedly received 1,000 petitions on forceful takeover of

⁴⁵See **Land (Allocation Committee) Regulations**, Law Nigeria, 21.04.2020: <https://laws.lawnigeria.com/2020/04/21/land-use-allocation-committee-regulations/> (accessed 22.02.2022).

⁴⁶See AOL Consult, '**Processes Involved In Acquiring And Developing Land In Lagos State Government Scheme**', March 2019:< <http://aolmanagementconsult.com.ng/processes-involved-in-acquiring-and-developing-land-in-lagos-state-government-scheme/>> (accessed 10.03.2019). See also '**Mandates and Responsibilities of the Office of the State Surveyor-General**': <https://surveyorgeneral.lagosstate.gov.ng/responsibilities-2/> (accessed 22.02.2022).

⁴⁷According to the Subnational Report overview: "**Doing Business in Nigeria 2018** - the fourth subnational report of the Doing Business series in Nigeria - compares business regulations in 36 states and FCT Abuja and measures progress since 2014 in four regulatory areas: starting a business, dealing with construction permits, registering property and enforcing contracts. It also incorporates measures of regulatory quality in the latter three indicators. The report finds that 29 states implemented 43 reforms across the four areas benchmarked, making it easier for local entrepreneurs to start and operate a business." See Report at: <http://www.doingbusiness.org/en/reports/subnational-reports/nigeria> (accessed 27.03.2019).

⁴⁸The World Bank, '**Doing Business in Nigeria 2018**', (supra), 18.10.2018: <http://www.doingbusiness.org/en/reports/subnational-reports/nigeria> (accessed 23.03.2019). "Over the last four years, eight Nigerian States implemented reforms making it easier to register property." Per Table 5.2 at p. 64, these are: Abia, Anambra, Bayelsa, Delta, Enugu, Gombe, Kaduna, Lagos and Ogun. Other findings include that "the governor's consent is required to register property in Nigeria, a major bottleneck in many places. In States (such as Gombe and Jigawa), "where the power to grant consent has been delegated to the Commissioner of Lands, registering property is almost three weeks faster." Also "landmark reforms have catapulted Kaduna to the top spot in Nigeria for ease of registering property."

⁴⁹In 2015 Lagos reduced several of its fees and removed the requirement to file an affidavit with the high court before being able to conduct a property title search. It also increased transparency by publishing fee schedules online as well as the list of steps an entrepreneur must undergo to transfer a property title. State authorities also introduced an independent mechanism to file complaints." See '**Doing Business in Nigeria - 2018**', p.7 (Overview), available at: http://www.doingbusiness.org/content/dam/doingBusiness/media/Subnational-Reports/DB_in_Nigeria_2018_w-bookmarks.pdf (accessed on 27.03.2019).

⁵⁰On average, an entrepreneur has to go through 12 procedures over 73 days and pay 15.3% of the value of the property to transfer land, making Nigeria one of the most difficult and expensive places to register property in the world." **Doing Business (supra)**, p. 9.

⁵¹In 2013, LASG reduced the fee on registration of properties from 15% to 13%, and currently 3% of the assessed value of the property to register it in the purchaser's name. This was a marked improvement from the 30% rate under the Tinubu administration. On this note, LASG's model is commended. There is also the need to review downward some of the onerous rates and fees payable on land registration as well as the time lag for completing the processes in all the States. Most importantly, there cannot be any real and quantifiable reform unless and until strict adherence to the streamlined process is enforced and stiff sanctions laid down for non-compliance. See '**Schedule of Fees**': <https://landsbureau.lagosstate.gov.ng/schedule-of-fees/> (accessed 27.03.2019).

⁵²There was the recent news of a 75-year-old widow who took ill as a result of futile fight against land grabbers; and invasion of a deceased popular doctor's property Opebi, Ikeja area of Lagos barely a month after his death. Shockingly, the said property was purchased by the deceased in 1975 and duly registered with the Lagos Land Registry. See Samson Folarin, '**Toothless Law: Lagos Land Grabbers Spread Reign of Terror, Defy Government**', Punch, 25.03.2021: <https://punchng.com/toothless-law-lagos-land-grabbers-spread-reign-of-terror-defy-government/> (02.03.2022).

⁵³Law No. 10 of 2011.

property, but only 350 was resolved. One instance involved the Baale (Community Head) of Aboru Town in Iyana Ipaja Lagos State crying out for government to intervene as “thugs were taking over community land and people’s property with impunity.”⁵⁴

Despite existing legal and institutional frameworks, eradicating land grabbing remains a herculean task. While the government on its part has been strategic about fast-tracking the process of title registration and issuance of CofO by launching e-platforms,⁵⁵ it also behooves purchasers to ensure thorough due diligence and investigation of the vendor’s capacity to sell the property, before committing funds to consummate the deal.

5.3 Non-engagement of Solicitors and Other Professionals

Many RE disputes bordering on title/transfer of ownership could have been well avoided had parties hired competent solicitor(s) to support them on their RE transactions. *The need to be ‘precautionary’, rather than reactionary cannot be overemphasised.* It is prudent for transactors to commit their acquisition transactions to the hands of professionals: lawyers, estate surveyors and valuers, etc. Transfer of interest in real property is governed by several laws and thus, requires involvement of a competent legal practitioner to ensure legal compliance and also carry out “due diligence” by conducting searches, inspecting the property with the accompanying documents to verify authenticity and discover any defects that may render the property unfit.⁵⁶

Parties must hire solicitors at the early stage of the deal, especially when the counterparties are not familiar persons; rather than at the

imminence of some ugly development. Whilst issues may still arise where a solicitor is engaged; however, the likelihood of such would not only be minimal, there is also high probability that they would be well managed to the client’s benefit than otherwise.

In addition, apart from the solicitor, a purchaser must ensure that all other key professionals necessary for a hitch free transaction (such as registered RE agents, valuers, estate surveyors, developers, property managers or management companies etc.) are properly engaged. It is becoming increasingly important (if not even mandatory), that professionals comprising a transaction team (especially for large scale deals), are duly registered practitioners, where registration is required by law.⁵⁷ **LASRERA Law** (discussed below), seeks to address some of these issues.

5.4 The Lagos State Real Estate Regulatory Authority Law 2021 (LASRERA Law)

Lagos State has also tried to further regulate RE practitioners *vide* provisions of the **Lagos State Real Estate Regulatory Authority Law 2021 (LASRERA Law)**⁵⁸ to shield investors and RE stakeholders from fraudulent RE transaction practices in the State.⁵⁹ Thus the LASRERA Board is empowered to amongst others: “ensure all [RE] activities are conducted with the propriety and in accordance with the Law and regulations made under it”; “adopt a national (sic) Code of Ethics and Responsibilities to be strictly observed by all licensed [RE] service practitioners in the State”; coordinate intergovernmental affairs in respect of [RE]”; and “assess and fix the rate of reasonable regulatory fees” (section 5(b), (d), (e) and (f)).



⁵⁴ibid

⁵⁵For instance, in 2018, LASG launched an Electronic Real Estate Litigation System (LIS PENDENS ELECTRONIC SYSTEM) designed to provide easy access to relevant information on the legal status of registered property for those who engage in real estate business- See fn. 11 supra. In the following year, LASG also launched a Real Estate Transaction Portal to curb fraudulent practices in RE business- See Oolasunkami, ‘Lagos Launches E-Platform to Stop Fraudulent Practices in Real Estate Business’, 30.10.2019, <https://lagosstate.gov.ng/blog/2019/10/30/lagos-launches-e-platform-to-stop-fraudulent-practices-in-real-estate-business/> (accessed 04.03.2021). Recently, the incumbent Governor Sanwo-Olu made a disclosure at the maiden Real Estate Marketplace Conference and Exhibitions organised by Lagos State Real Estate Regulatory Authority (LASRERA), that “the State’s Department of Lands had built the required capacity for smooth transition to the online platform, stressing that the plan was already in its final stage. When the web-based platform is finally launched, there will be no need for applicants seeking for Certificates of Occupancy (C of O), survey and building plan approvals to physically submit paper documents for authorisation. All documentation and payments will be done by applicants from the comfort of their homes.” - See Godwin Ugbofada, ‘Land Transactions in Lagos to go Fully Digital [in] 2021 - Sanwo-Olu’, PM News, 09.12.2020: <https://pmnewsnigeria.com/2020/12/09/land-transactions-in-lagos-to-go-fully-digital-2021-sanwo-olu/> (accessed 04.03.2022).

⁵⁶Beyond “due diligence”, engaging a lawyer in preparing land and franking land instruments is a requirement of law. **Rule 10 Rules of Professional Conduct for Legal Practitioners, 2007 (as amended) (RPC)** provides that a lawyer must sign and affix his stamp on legal documents; non-compliance with the section will make such document be deemed not properly signed or filed. Similarly, **section 22(d) Legal Practitioners Act, Cap. L11, LFN 2004** provides that if any person other than a legal practitioner prepares any instrument related to immovable property in expectation for reward, he shall be guilty of an offence and liable to either fine or term of imprisonment or both.

⁵⁷This is essential to mitigate fraud arising from unauthorised dealings. Many RE professionals such as architects, builders, engineers, quantity surveyors (QS), estate surveyors must be registered members of their respective professional bodies, such as the Nigerian Institute of Architects (NIA), Council of Registered Engineers of Nigeria (COREN), Nigerian Institute of Estate Surveyors and Valuers (NIESV), etc., as part of their continuing entitlement to practice. They would have also met appropriate statutorily enacted professional requirements prior to such membership. For example, the **Quantity Surveyors (Registration, Etc.) Act, Cap. Q1, LFN 2004 (QSA)** established the QS’ Registration Board of Nigeria to set standards, register and determine eligibility criteria for any person seeking to practice as QS in Nigeria. Thus, any person who not being a registered QS but practices or holds himself out to practice as QS shall be guilty of an offence: **sections 1, 7 and 15**. Similarly, it is provided under **Reg. 7(1) Estate Surveying and Valuation Regulations, 2014** that “Only a registered Estate Surveyor and Valuer shall value and determine the value of property, chattel, plant and machinery, equipment and any other fixed asset and motor vehicle in Nigeria.” (Emphasis supplied).

⁵⁸LASRERA Law 2021 repealed its predecessor, **LASRERA Law, Cap. L28, Laws of Lagos State 2015**. See **section 53 LASRERA Law**.

⁵⁹See Precious Akpos, ‘New Lagos Law Will Protect Real Estate Transactions, Says Official’, *The Guardian*, 14.02.2022: <https://guardian.ng/property/new-lagos-law-will-protect-real-estate-transactions-says-official/>. According to the news report: “During the signing of the bill into law last week, Governor Babajide Sanwo-Olu, said the law would regulate the real estate transactions and protect the citizens; the unsuspecting Lagosians, who fall prey to many real estate professionals, adding that the law would also help players in the real estate sector to know what is expected of them and for government to be able to track who is doing what in the sector. ‘It is really about ease of doing business and ensuring that we can continue to attract private sector investments into the real estate space. We believe this law would be the very first in the country that has taken a deep dive into what is happening in that space and it further strengthens our intervention in housing through the Ministry of Housing.’... Also, ‘Lagos authorities have explained that the recently signed [LASRERA Law] will make real estate transactions in the state conform to global best practices. ... the signing of the law would boost financial transparency in the sales/purchases of properties, adding that investors/investees can now be prosecuted upon discovery of fraudulent practices in transactions in the real estate sector. [Benson-Awoyinka, Special Adviser to the Lagos State Governor on Housing] said that ‘it is now an offence for an individual/organisation to engage in real estate business in Lagos State without being registered with the agency,’ urging real estate practitioners to comply with the provisions of the new law...”

LASRERA's functions as stipulated in **section 6** include, to: "formulate policies for proper dealings in [RE] transactions in the State in line with global best practices"; "recommend policies to the State Government that enhance [RE] transactions in the State"; "maintain a comprehensive and updated register of permits of [RE] service professionals"; "set up monitoring teams and conduct inspections in order to ensure compliance with the Lagos State Tenancy Law, [and] the Criminal Law as it relates to transactions and other applicable legislations on [RE] transactions"; "receive and investigate petitions and complaints from members of the public"; "investigate petitions and complaints against registered persons or organisations dealing in [RE] in the State"; "collate data on property transactions in accordance with the provisions of this Law"; "ensure protection of citizens from illegal [RE] transactions"; "ensure and confirm the payment of fees, taxes and or charges on [RE] transactions as shall be imposed or charged by the Authority or any other government agency"; "periodically update the conditions for renewal or permits for persons or organisations dealing in [RE] in the State; and "do such other things as are necessary and incidental to the discharge of its functions under this Law".

Space constrains a deeper dive into the **LASRERA Law 2021**. Its detailed provisions evince an intention to bring sanity into RE transactions in Lagos State, but same may also be seen as having constitutional implications that may be worthy of closer examination. For example, are the mandatory **LASRERA Law** registration requirements of a professional already regulated under federal statute not surplusage?⁶⁰ Can Lagos State seek to depart from the envisaged uniformity of professional services regulation across Nigeria, under federal legislation?⁶¹ Are these akin to justifiable (additional) sectoral compliance requirements, for example start-up requirements for hospitals in Lagos State? Or will

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cases saying that some RE matters such as urban and regional planning are residual and therefore *ultra vires* the legislative competence of the Federal Government under the **1999 Constitution of the Federal Republic of Nigeria (as amended)** will provide justification for **LASRERA Law**, if challenged:⁶² Doubtless, LASRERA compliance costs will impact transaction costs (for example, developers will pass on such costs to their prospective clients by way of higher pricing of housing units).

Conclusion

This article has tried to highlight how to navigate the minefields involved in purchasing property in Nigeria, using Lagos State as a case study. Given the challenges that could arise from a flawed transaction, it is imperative that the prospective purchaser 'keep his eyes on the ball', otherwise he may find out that he had purchased a lawsuit or paid for non-existent land, or "a castle in the clouds". Time and again it is proven that nothing can be more unwise than to adopt a "penny wise, pound foolish" approach in RE transactions – for example, by not engaging a solicitor.

The **LASRERA Law 2021** is envisaged as, and may be, a helpful addition to helping to sanitise RE transactions in Lagos State given its far-ranging provisions, and indicative intent by the LASG to robustly enforce same. It encourages use of RE professionals in RE transactions within the State. However, there may be questions about the constitutionality of some of its provisions and potential caselaw could spring up in that regard.

Also, it is hoped that the governments across Nigeria will continue RE sector related reforms (including requisite constitutional and legislative changes) – also as a subset of improving ease of doing business in Nigeria – to ensure optimality of property transactions that will enable RE play its deserved role as a key engine of the economy, and catalyst of national development.⁶³ This is moreso that it has been noted that as Africa's largest economy, Nigeria has the potential of becoming one of the world's RE hubs.⁶⁴

⁶⁰This is especially as non-registration is a punishable offence: **section 48** imposes a fine of ₦250,000/₦1 million for failure to register by individuals and organisations. Contravention with other provisions of the **Law** could lead to revocation of the permit or a fine of ₦100,000 and ₦10,000 per day for continuing non-compliance by registered individuals, or ₦100,000 and ₦25,000 per day respectively, for an unregistered individual. Registered and unregistered organisations could be exposed to revocation of permit and fines of ₦500,000 and ₦30,000 per day or ₦500,000/₦50,000 per day, respectively. The registration requirement of **section 27** (Stakeholders dealing in the [RE] sector), being "property developers", "facility managers" and "property management" companies, may be less objectionable than of **section 26(1)** provision that "A person or an organisation dealing in [RE] business in the State shall be eligible for registration upon meeting the conditions prescribed by the Authority." Per **section 1 (Interpretation)**, "Real Estate Transaction" means any service, mortgage or financial exchange between a person or an organisation and the public with respect to matters pertaining to [RE] in which an agent is employed by one or more of the principals to act in the transaction." Emphases supplied.

⁶¹For example, **section 6(c)** tasks with LASRERA with maintaining "a comprehensive and updated register of permits of [RE] professionals." Although "[RE] professionals" were not defined, will it not include already registered architects, estate surveyors, quantity surveyors and the like? Architects are regulated by the Architects Registration Council of Nigeria established by **section 2 Architects (Registration, Etc) Act, Cap. A19, LFN 2004**, whilst the NIA is the professional body. If an analogy is to be drawn with lawyers, any attempt to impose registration requirements on lawyers in order to act professionally on RE transactions in Lagos State would be frowned at because the fact of being an enrolled lawyer and payment of practicing fees to the Nigerian Bar Association already entitles lawyers to act in RE transactions across the country. Extraneous requirements apart from those contained in the **Legal Practitioners Act, Cap. L11, LFN 2004** and subsidiary legislation like the **RPC** that affecting ability to practice the legal profession are arguably *ultra vires* the LASG.

⁶²It appears that LASG intends to enforce the **LASRERA Law** more vigorously than its repealed predecessor, as obviously the **Law** sought to close gaps to more robustly regulate and address RE transaction risks in the State. **Section 32 (Operational Standards)** stipulates "operational standards to be maintained by holders of permits in the course of [RE] transactions in the State" such as: not collecting "money from more than one prospective client in respect of the same premises or building"; prompt remittance (within seven working days) of rents collected on behalf of landlords, unless otherwise directed in writing by the landlord, whilst also receipting such collection; ensuring "that the prospective client takes physical possession of the property paid for within seven (7) working days after payment"; "ensure that clients perform all obligations to the Government under the existing laws, such as the deduction and remittance of Withholding Tax, Value Added Tax or other charges payable on the property handled"; not preparing "any legal document pertaining to any transaction in [RE]" but ensuring same are "prepared by a legal practitioner with the seal affixed and professional charges subject to the Legal Practitioners' scale of fees". Others include that prior consent of principal is requisite to agents' collecting money from any prospective client; seven day refund timeline to prospective clients regarding failed transactions/failure to deliver physical possession; and delayed refund attracts "interest at the Central Bank prevailing rate". These are generally helpful provisions aimed at sanitising the RE transaction landscape. Emphasis supplied.

⁶³See progress reports of Nigeria's RE's reforms in 'Doing Business 2020', p. 114: "✓ Dealing with construction permits Nigeria (Lagos) made dealing with construction permits less costly by eliminating the Infrastructure Development Charge (IDC, the fee for construction permits) for warehouses. Registering property Nigeria (Lagos) improved its land administration system by implementing a geographic information system." See <https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf> (accessed 22.03.2022). Note that the World Bank has in September 2012, discontinued the Doing Business Report: <https://www.worldbank.org/en/programs/business-enabling-environment/doing-business-legacy> (accessed 22.03.2022).

⁶⁴See 'Registering Properties in Nigeria: A Case for Streamlining the Process', Banwo & Ighodalo, Grey Matter, May 2016, p.1: <https://www.banwo-ighodalo.com/assets/grey-matter/276a4a877e250305c4788d83182a72eb.pdf> (accessed 11.11.2018). For further discussions, see related LeLaw RE thought leadership articles: Frank Okeke 'Issues: Leveraging Intellectual Property & Real Estate Options In Franchise Development In Nigeria', LeLaw Thought Leadership Insights, February 2019, p. 3-4: https://lelawlegal.com/add111pdfs/issues_franchise_development_in_nigeria1.pdf; Urobumi Beji, 'Building Blocks: Legal and Commercial Issues in Bridging the Housing Deficit Gap in Nigeria', LeLaw Thought Leadership Insights, May 2019, p. 8: https://lelawlegal.com/add111pdfs/real_estate_by_bumi.pdf; Frank Okeke, 'Digitisation Imperatives for Nigerian Real Estate Registries', LeLaw Thought Leadership, March 2020, pp. 2-3: <https://lelawlegal.com/add111pdfs/frank-digitisation-imperatives.pdf>; Frank Okeke, 'Unlocking Real Estate Value In Nigeria: Legal & Regulatory Issues', LeLaw Thought Leadership Insights, June 2018, p. 7: https://lelawlegal.com/add111pdfs/real_estate.pdf; Chuks Okoriekwe and Oghotomo Omovefe, 'Smart City' Options: Optimising Real Estate Development in Nigeria', LeLaw Thought Leadership reflections, December 2020, p. 7: https://lelawlegal.com/add111pdfs/tlr_smart_city.pdf; Samuel Ngwu, 'Redefinitions: Blockchain Potentials for Real Estate Ecosystem in Nigeria', LeLaw Thought Leadership reflections, December 2020, pp. 5-7: https://lelawlegal.com/add111pdfs/tlr_blockchain_by_sam_ngwu_edited.pdf (All accessed 08.03.2022).