



Article

THE NEW REAL ESTATE

INTRODUCTION

Real Estate, sometimes referred to as real property, is technically land plus any other tangible improvements that might rest upon it or be installed in it. The improvements might be a building that is erected on the land, or a roadway. It can be something that is inserted into the ground, such as septic system. Land with any of these structures is said to be improved. It is unimproved when it lacks them.

Any improvement on the land that might cause injury to the land when removed is part of the real estate. Likewise, a vacant land with natural minerals or natural improvements is also regarded as real estate. Real estate does not cover any improvement on the land which can be removed without any injury to the land.

Real Estate could also be seen as a very big business covering the following and more:

- It is composed of a wide variety of professionals (and professional opportunities).
- It involves many different kinds of properties, each with its own special characteristics and issues.

The real estate professional understands the big picture. He or She knows that each individual transaction, no matter how big or small, has an economic effect that ripples far beyond the parties gathered around the table.

Real estate transactions are common around us. They cut across leasing or renting out an apartment or a building to a private person or a corporate body for business or residence purposes, expert opinions of appraisers of value of farm land to banks' lending money to corporation to purchase buildings. The most common of all is the buying and selling of homes. Parties to a real estate transaction include buyers and sellers of homes, tenants and landlords, investors and developers. All these add up to the complexity of real estate.

SPECIALIZATIONS IN REAL ESTATE

The complexity of real estate has necessitated the need for specialization. The industry involves the businesses of appraisal, property management, financing, subdivision and development, counseling, and education. Every real estate professional must therefore have basic knowledge of these specialties.

- *Brokerage*: A broker is a person or company licensed to buy, sell, exchange, or lease real property for others and to charge a fee for these services. A broker can be the agent of either of the parties to the transaction or both of them.
- *Appraisal*: Appraisal is the process of estimating the market value of a property based on methods and appraiser's professional judgement. Appraisers must have detailed knowledge of methods of valuation.

- *Property Management*: The maintenance and management of a property on behalf of the owner is in the hands of a property manager hired by the owner. This relieves the owner from the onerous task of day-to-day management of the property.
- *Financing*: Finance is the soul of real estate. Financing is simply the business of providing funds that makes real estate transactions possible. Most transactions are financed by means of mortgage loans or trust deed loans secured by the property.
- *Subdivision and Development*: This is the splitting of a single property into smaller parcels. Development involves the construction of improvements on the land. Improvements may be either on site or off site. Off-site improvements are improvements made on public lands to serve the public while on-site improvements are made for the owner's benefit.
- *Home Inspection*: This is the visual survey of a property's structure, systems, and site conditions and prepare an analytical report that is valuable to the real parties to a real estate transaction.
- *Counseling*: This involves providing clients with competent independent advice based on sound professional judgement. A counselor furnishes a client with information needed to make informed decisions. They must have high degree of industry expertise.
- Education and other areas.

TYPES OF REAL PROPERTY

Real Estate can be classified into:

- *Residential Real Estate*: Property involved here are used for residence purposes, whether in the urban, suburban or rural areas;
- *Commercial Real Estate*: Business property, including office space, shopping centers, stores, theaters, hotels and parking facilities;
- *Industrial Real Estate*: warehouses, factories, land in industrial areas and power plants;
- *Agricultural Real Estate*: Farmlands, timberland, ranches and orchards; or
- *Special-Purpose Real Estate*: Churches, schools, cemeteries, and government-held lands.

Market for each type of property can be subdivided into the sales market and the rental market.

REAL ESTATE TODAY

The real estate industry is experiencing rapid changes due to new technology and influx of capital. The capital increase is a signal that the real estate industry is preparing to undergo rapid changes with the creation of digital resources. Investors should be prepared for the ways online property listing platforms, smartphone apps, and virtual reality impact all aspects of real estate transactions.

Why People go into Real Estate

1. Real estate has historically been a way for many people where they have built their initial financial wealth. It usually remains as part of a successful investor's portfolio way into the future as well, even after diversification.
2. Over the last 8 years or so, there was an explosion in creative ways (and thus an equivalent expectation for market hype) to basically buy and sell properties, outside of the traditional methods of buying or selling real estate. There are so many names of active persons in the market, providing insight. The internet has really helped to do wonders here in evolving the industry such as with virtual deals.
3. Rent-out companies have also brought innovation to how people view travel, making money, and ultimately real estate potential.
4. Again more creativity in the space of Real Estate Investment Trusts have awed many for the potential of investing relatively small amounts, and be a shareholder of a multi-unit and the potential of earning monthly or otherwise arranged.
5. The housing bubble of 2008 aka the subprime mortgage crisis, coupled with the rate of incidents such divorces, movements, economic challenges, inflation, force majeure, and life itself have caused a lot of people in distress, or living in distressed properties to seek out ways to buy a new property they can call home, or sell a property at discount for cash and use the money for very important reasons, or personal reasons, or use their houses/properties as assets to leverage and grow wealth.
6. The laws are not anti-investor friendly, and is flexible enough to actually allow entry into the industry as an investor, or early real estate participants.
7. The state of the global contemporary money making movement, supported by many sides predominantly comprising millennials, investors, and entrepreneurs, and coupled with the internet has enabled radical change, allowing all the points above to ultimately coalesce in the growing interest and involvement in the real estate industry today.

REAL ESTATE DEVELOPMENT IN NIGERIA

This seems to be the new oil in the Nigerian economy as investing in the industry and influx of capital into the industry is on the high side in the last few years. Real estate

development is the improvement and construction of land to create value. The term can be used to refer to real estate development projects and growth in the built environment or the real estate development industry. Real estate development can be a very lucrative business, but also very risky. Nevertheless, real estate development has driven economic growth and reinvented many cities.

However, being at its teething stage, it has a number of practices and procedures drawn from the Property law practice in Nigeria. These encapsulate all notable property law transactions from sale of land, to mortgages, to leases and the likes. It is such that parties to a property transaction will go through the rigorous procedures of deduction of title, due diligence, application for C of O, governor's consent and the registration of title documents.

This has created an overwhelming burden on the real estate developer as he is required to engage professionals in ensuring that there are no defect in the transaction. The role of a legal practitioner in this instance cannot be overemphasized. A legal practitioner must be engaged to ensure that all legal requirements pertaining to the real estate, particularly that of the state where it is located, are met.

A real estate could be acquired either through purchase or governor's allocation. In either case, a Certificate of Occupancy must be obtained as a prima facie evidence of ownership. Where it is purchased from a holder of Certificate of Occupancy, the consent of the governor must be sought and obtained for the perfection of the title documents. This is in accordance with the provision of the Land Use Act 1978.

It has become a popular practice that before an estate is purchased, a purchaser is required to do a background check on the estate hence the maxim "caveat emptor". He must satisfy that the one who claims ownership is truly the owner. He must also be conscious of the location of the property: is it a residential area or an industrial area? This is to ensure that it is fit for purpose. The town planning laws of the state must also be duly regarded as state development might on the long run necessitate the compulsory acquisition of the estate.

After purchase or allocation, there is need for finance. Since real estate development is capital intensive, it is inevitable that developers would need external support to finance their project. Loans could be taken from commercial banks, mortgage banks or federal government to finance this project.

Real Estate Development Process

Real estate development is a process through which real estate developers create or recreate the built environment. The process begins with identifying a real estate need not satisfied by existing property. If it looks like a concept pencils out, further investigation ensues to determine the feasibility of the development project. After this hurdle, more resources can be applied to design, obtaining approvals, and construction. The process continues with sales and fulfilling commitments to the project stakeholders.

Given the scope of the process, real estate development brings together a multitude of disciplines to accomplish the task of creating or improving the built environment. Some of these disciplines and professionals brought together by the real estate development process includes land use planners, architects, engineers, construction contractors, lawyers, consultants, salespersons and brokerage companies, financial institutions, and investment professionals.

HOW TO CONDUCT DUE DELIGENCE/INVESTIGATION OF TITLE

As stated above, it is important for the purchaser to carry out due diligence over the estate. After the vendor have deduced his title, it behooves on the purchaser through his solicitor to carry out due diligence over the estate. This is to ascertain that the vendor has a good title to sell the property. Also, it is to discover patent defects on the estate which the vendor is not under any obligation to reveal.

Procedure for carrying out investigation

- Collection of epitome or abstract of title from the vendor or his solicitor
- Examination of the abstracted documents of title and raise possible requisitions
- Search to be conducted in the following places:
 1. Land Registry
 2. Court Registry
 3. Probate Registry
 4. Corporate Affairs Commission (when a company is involved) to know whether the company has corporate personality, has registered any charge or mortgage relating to the property. Person dealing with purchaser are authorized persons - look at the particulars of directors (constructive notice and indoor management rule) The power of directors or company is restricted with respect to the transaction - look at Memorandum and Articles of Association of the Company (restrictive clause)
- Physical inspection of the property to discover if there is any patent defect (as vendor is not under obligation to disclose them), physical condition of the property, easement, boundaries of the property, whether other person is in possession (tenant)

- Traditional history investigation where necessary: This investigation is important in sale of family or community property to determine whether consent has been obtained from relevant persons.
- Raise requisitions where necessary
- Prepare a search report

Procedure for conducting search in Abuja under Abuja Geographic Information System (AGIS)

- Written application to conduct search is made at AGIS stating the particulars of the property
- Application accompanied with a letter of consent from the owner of the property
- Show evidence of payment of search fees
- Officer of AGIS would conduct the search and complete the search report which is the report that contains the findings of the property investigated
- The search report is handed over to the purchaser's solicitor
- The purchaser's solicitor thereafter hands the search report over to the purchaser

Procedure for conducting a search in Lagos under the Land Information Management System

It must be noted that only accredited persons or organizations may log on to the LIMS to conduct searches or to download information. They are issued a letter of accreditation after the payment of prescribed fees. The following persons or organizations may:

- Law Firms;
- Financial Institutions;
- Corporate Organizations; and
- Registered Estate Surveyors & Valuers

The following documents are required to conduct a search:

- Copy of the instrument
- Application letter
- Consent letter from the owner of the property, which authorises the search
- Application for search in Form 3

The application is submitted in the prescribed form to the Registrar of Titles (it can be submitted online after the applicant has made the relevant payments), Consideration of application and conduct of search by or on the order of the Registrar, then the Registrar shall issue an official Search report.

CERTIFICATE OF OCCUPANCY

Generally, Certificate of Occupancy is given to evince that the holder is the owner of the property and the document cannot stand on its own. However there are instances where it can be a good root of title e.g.

- Where the Certificate of Occupancy was issued in respect of state grant, see sections 5, 6, 34, and 36 of the Land

Use Act 1978. See also OGUNLEYE v. ONI.

- When a Governor gives a person land or body in his official capacity as the Governor. It is usually given based on land schemes to parastatals.

When is a Certificate of Occupancy needed?

- Property Development: In order to get building approval for new construction projects, a Certificate of Occupancy is one of the title documents needed.
- Converting a Property: A Certificate of Occupancy is also usually required to change the use of a property.
- Change of Ownership: A new Certificate of Occupancy is sometimes required as long as there is change of ownership.

How to obtain Certificate of Occupancy

Along with managing existing Certificates of Occupancy, land administration departments also deal with fresh government land applications- ultimately leading to the issuance of Certificates of Occupancy. Government land applications involve a number of administrative fees that need to be paid before the issuance of Certificate of Occupancy.

The other way to obtain Certificate of Occupancy is purchasing genuine property from someone who has such. One can then proceed to change the ownership at the land registry.

Notables

Where several buildings are covered by a Certificate of Occupancy, it has been the current practice to insert “an acknowledgement for production and undertaking for safe custody clause” in the transfer document. The Vendor undertakes for the safe custody of the document and acknowledges that he will always produce it to the purchaser whenever the need arises.

REGISTRATION OF INTEREST

There are Land Registry Offices in all states of Nigeria where the registers and records of all real property in urban areas are registered and updated as further real estate transactions occur.

The interest of a registered holder shall be indefeasible. Registration of interest is at the perfection of title stage. After a successful transfer of good title to the purchaser, steps must be taken to have his interest registered at the land registry.

The law requires that every document of interest of title to land in the state be registered. Documents under the law includes Certificate of Occupancy. Where a person is

registered as a holder of a property, such registration is evidence of holding of the land with all rights, privileges and appurtenances. A registered owner may dispose the land, create interest in it or deal with it as desired, subject however to the Governor’s consent.

In practice, a letter is address to the Registrar of Titles requesting registration of the land instrument in favour of the purchaser. Upon payment of the prescribed fees, the Registrar of Titles will register the instrument in favour of the holder.

Real estate title records are duly documented in the Register of Deeds securely kept at the respective Lands Registry Offices in the respective states in Nigeria. The register is an authoritative record of the interests in specific properties. All subsequent transfer of interests in real property are registered in the respective files as a charge and record of the transfer of the title to the purchaser.

PLANNING LAWS AND DEVELOPMENT APPROVALS

Using Lagos State as a case study, it is a herculean task to get requisite approvals before an estate developer begins construction on the estate. This is traceable to the administrative bottlenecks associated with the physical movement files from one department to another, bureaucracies & red tape, missing files/documents, absence of senior officials required to process applications who have been assigned to agency or state functions/duties, change/removal of officers etcetera. This is also what is obtainable in other parts of the country.

The Lagos State government passed into law the Lagos State Urban and Regional Planning and Development Law 2010 (“Planning Law”) which established 3 (three) physical planning and development agencies under the Ministry of Physical Planning and Urban Development (the “Ministry”) namely: –

1. The Lagos State Physical Planning Permit Authority (**LASPPPA**) which is saddled with the task of processing and issuing planning permits in the state;
2. The Lagos Building Control Agency (**LASBCA**) which is vested with the responsibility of monitoring and enforcing building control regulations; and
3. The Lagos State Urban Renewal Agency (**LASURA**) which bears the responsibility of implementing the state policy on urban renewal and the upgrade of slums in Lagos.

The Ministry also introduced some reforms to ease the process of obtaining a building plan approval in the Lagos State Physical Planning Permit Regulation 2019. Notable amongst the reforms is the devolution of powers to grant

building permits across several ranking officers of LASPPA depending on nature of the project.

District officers are now empowered to grant and dispose with applications in respect of projects not exceeding 2 floors. Projects of 3 to 5 floors are approved by supervising directors, while projects of 6 to 7 floors are approved by general managers. Any project of 8 floors and above can only be approved by the commissioner for urban and regional planning.

Furthermore, where the applicant's title document is being processed at the Lands Bureau, the applicant after making payments of all assessed taxes can apply for a letter to be directed to the Ministry requesting that a Building Plan Permit be processed on the applicant's behalf. However, the problem of unnecessary delay is still much pronounced making many estate developers to go on with construction without approvals.

The establishment of LASPPA and LASBCA is counterproductive to real estate investments and the ease of doing business policies in Lagos because unnecessary administrative bottlenecks associated with the process of obtaining building plan permits and approval are not critically examined. Real estate investors are not motivated to leave construction capital idle for months merely because a building plan approval is being processed.

FINANCING OF REAL ESTATE PROJECT

There are different methods of financing property development, and some of them will be discussed.

Investors know that real estate is a safe and reliable investment, but because developing a property and investing in real estate requires significant amounts of money compared to other forms of investment a lot of people are often at a loss when it comes to getting finance. Following are a number of ways to finance property development.

Self-finance

Self-finance is one way of financing property development. In this instance, one uses his personal money to start the building from scratch to completion. It could be a long process if the money is not available at once. It begins with the buying land in the location of one's choice, getting the building plans and structural design prepared, followed by laying of the foundation, building the walls, roofing, etc. It might take months or some years before you complete such building.

Getting a Mortgage

A mortgage is used either by purchasers of real property to raise funds to buy real estate, or alternatively by existing

property owners to raise funds for any purpose while putting a hold on the property being mortgaged.

There are different types of Mortgages. Basically, the borrower pays interest on the amount borrowed. It could be a fixed rate mortgage where monthly principal and interest payment never change from the first mortgage payment to the last or it could be a variable rate mortgage. There are many institutions in Nigeria that offer mortgage loan, National Housing Fund (NHF), commercial banks, mortgage banks, Federal mortgage bank.

Joint Venture Partnerships

A joint venture is a strategic alliance in which different parties draw their resources together to complement one another in order to achieve more than what would have been achieved singly.

In a real estate transaction, it could be a synergy with the agreement that the financier would own the building for a stated period (within which he is supposed to recover his investment with a profit). After this period, ownership reverts to the landowner. This is called build operate and transfer model. Another instance is when the real estate development is shared by the partners for life (in a percentage commensurate with the value of their individual contributions).

CHALLENGES IN REAL ESTATE DEVELOPMENT IN NIGERIA

It is not without notice that despite the promising nature of Real Estate Development in our economy, challenges facing the sector have hampered it from realizing its true potentials.

The bureaucratic process of allocation and registration of charges on land is an impediment to real estate development. The lackadaisical attitude to work is the major cause of undue delay at the land registry. Oftentimes, a developer's application would pass from office to office over several weeks and by the time the necessary approval is obtained, he may have lost his source of funding or incurred huge interest on loan obtained for development. This may disrupt the developer's business plan and result in exorbitant cost of construction and high price for the developments.

Bribery and corruption is the order of the day. There are instances where developers who have not satisfied the preconditions for allocation of land are granted allocation while those who are qualified are denied. Low compliance to regulatory and environmental laws is the cause of the incessant reports of collapsed buildings and other ecological problems. Some staff of regulatory bodies prefers to take bribe rather than ensure that developers obtain the requisite permits and conform to statutory construction standard.



Furthermore, the volatile devaluation of the naira is a cause for concern to developers. Some foreign developers peg the cost of construction and the value for selling developments on land in United States dollars ("US dollars") while they charge their clients the naira equivalent. These developers would encounter no hassles if the purchase price of the developments paid in naira can be converted to the anticipated equivalent in US dollars. But the unstable price of crude oil and the continuous fall in the naira often results in a loss for the developer.

Also, there is a limited source of funding for developers in Nigeria. Since real estate development is capital intensive, it is inevitable that developers would need external support to finance their project. But the huge interest rate of commercial banks is a turn-off to most developers. The long list of developers on the waiting list for Federal Mortgage Bank loans and other Federal Government loans is discouraging. There is little awareness on alternative source of funding and procedure for obtaining foreign loans for real estate development.

The duplication of roles between state and federal regulatory bodies is a stumbling block in the smooth running of the real estate development. For instance in the Federal Capital Territory, a developer within the territory may apply to the Federal Capital Territory Fire Service ("FCT Fire Service") for a Fire Service Design Permit and still be accosted by the Federal Fire Service for the same permit. In the same vein, a developer may obtain an Environmental Impact Assessment Report ("EIA Report") from Abuja Environment Protection Board ("AEPB") yet the National Environmental and Regulations Enforcement Agency ("NESREA") may still approach the developer on the same subject matter.

In addition, the current insecurity in the Northern part of Nigeria is a bane to real estate development. The activities of the notorious boko haram religious sect have slowed down construction work in that region. This is because developers are reluctant to invest in states which they are uncertain of returns on investments. Purchasers and investors are also wary of investing in states that are not economically viable and likely to be deserted.

Similarly, in some states, there are no clear procedures for legal incidents associated with real estate development. For instance, in the Federal Capital Territory, there is no procedure for registration of easements on an allocated land. This may create problems for a purchaser who may not know the nature of encumbrances on a piece of land before acquiring it. Again, in some states, there is no procedure for exercise of government's power of eminent domain over a portion of land allocated to a developer.

One of the problems of real estate sector in the country is also absence of regulation. People without requisite training had taken over the industry. This has created lot of misconception about the sector as people did not know what real estate is all about. There has not been enough collaboration among relevant professionals in the sector and failure to bring professionals to play their roles as required by quality professional service delivery is part of the reasons most estates are not functional. There is nobody harmonising this. The Land Use Act, poor policy, dearth of infrastructure, lack of access to government's subsidised housing development, poor financial support are challenges associated with real estate.

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