



DF NEWSLETTER

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AN APPRIASAL OF THE LAGOS STATE REAL ESTATE REGULATORY LAW, 2021

INTRODUCTION

On 7 February 2022, the Governor of Lagos State signed the Real Estate Regulatory Authority Bill into law (the “Law”), which repealed the Lagos State Estate Agency Regulatory Authority Law, 2015 (the “Erstwhile Law”). The Law seeks to regulate real estate transactions in Lagos State; make real estate transactions in Lagos State conform with global best practices; sanitise and monitor activities of real estate practitioners through the Lagos State Real Estate Regulatory Authority (“the Authority”) and protect individuals from illegal real estate transactions and fraudulent persons/organisations in the real estate sector.

The objective of this newsletter is to highlight some of the key provisions and innovations the Law has introduced to the real estate sector in Lagos State. It also compares the Law with provisions of the Erstwhile Law.

Establishment of the Lagos State Real Estate Regulatory Authority and the Governing Board

The Law provides for the establishment of the Lagos State Real Estate Regulatory Authority (the “Authority”), which is saddled with various responsibilities such as maintaining a comprehensive and updated register of permits for real estate service professionals, recommending policies to the Lagos State Government that will enhance real estate transactions in Lagos State, receiving and investigating petitions and complaints from members of the public, investigating complaints and petitions against registered persons or organisations dealing in real estate in Lagos State, collating data on property transactions in accordance with the provisions of the Law, and ensuring the protection of citizens from illegal real estate transactions¹.

The Law further establishes a Governing Board² (the “Board”) for the Authority which consists of a Chairman and members.³ Some of the powers of the Board include advising the Governor on any matter relating to real estate activities in Lagos State or any other matter, on which the Governor requires the advice of the Board, reviewing existing policies of the Authority, coordinating inter-governmental affairs in relation to real estate matters, adoption of a national code of ethics and responsibilities to be strictly observed by all licensed real estate service practitioners in Lagos State and ensuring all real estate activities are conducted with propriety and in accordance with the law and regulations made under it⁴. While the Law has outlined the powers of the Board, it should be noted that the Erstwhile Law did not.

Register of Transactions and Registration of Stakeholders Dealing in the Real Estate Sector

The Law empowers the Authority to maintain a register of operations relating to real estate transactions. The register of transactions shall contain details of persons or organisations dealing in the real estate sector. The Authority shall grant access to members of the public to inspect the register. The Authority is further required to update the register with the list of all realtors and transactions forwarded to it by persons or organisations dealing in the real estate sector⁵. While the Law has made provisions for a register of transactions, it should be noted that this was not provided for in the Erstwhile Law.

Furthermore, stakeholders in the real estate sector acting either as property developers, facility managers, or project management companies, whether as individuals or companies are now mandated to register with the Authority, with specifications of any project being carried out at the time of registration. It is pertinent to note that these stakeholders are expected to register before the necessary permits to engage in real estate transactions are issued to them.⁶ The Erstwhile Law only provided for the registration of estate agents and the categories of persons and organisations that can qualify as estate agents.

Restriction of Foreign Investment in Real Estate

A foreigner cannot acquire title to real property in Nigeria. This position has been upheld by the Supreme Court in various cases including *Chief S. O. Ogunla & Ors v Hoda Eiyekole & Ors*⁷ and more recently in *Gerhard Huebner v Aeronautical Industrial Engineering and Project Management Company Ltd.*⁸

However, a company wholly or partially owned by foreigners can acquire and hold interests in title to land in Nigeria, such company having been incorporated under the provisions of the Companies and Allied Matters Act, 2020.⁹

Under this Law, foreigners and foreign companies that intend to invest in real estate in Lagos State are now required to obtain the permission of the Governor of Lagos State through the Authority. The Law further provides that, investment in land by foreigners shall not exceed 25 (twenty-five) years, including any option to renew, this is however subject to the provisions of the Acquisition of Land by Aliens Law and other laws relevant to real estate in Lagos State.¹⁰

It appears this provision targets foreigners who hold securities and other financial assets in Nigeria (Foreign Portfolio Investment). In view of this, further clarification needs to be made to avoid conflicting interpretations. While the recognition of foreign investment in this Law is a step in the right direction, the cap placed on the number of years not exceeding 25 (twenty-five) years may discourage investors looking to embark on long term investments.



Issuance and renewal of Permits

The Law provides for the issuance of permits to persons or organisations in the real estate sector for a prescribed fee. The issued permit shall be valid for 1 (one) year, and may be renewed upon satisfactory performance of conditions for renewal.¹¹ Furthermore, a permit is deemed to be invalid if the Authority revokes it, it lapses, the holder voluntarily surrenders it, or a court of competent jurisdiction declares it invalid or revokes it.¹² Where the holder of a permit dies, becomes incapacitated, declared bankrupt or goes into liquidation in the case of a company, the permit shall be deemed invalid.¹³

Furthermore, the holder of a permit shall renew her permit no later than 2 (two) weeks before the expiration of the current permit. The new permit shall take effect from the date the current permit expires. It should be noted that the new permit is subject to the terms prescribed under the grant of the previous permit upon payment of the renewal fees.¹⁴

Establishment of Committee of Inquiry and Alternative Dispute Resolution

The Law establishes a committee of inquiry (the “Committee”) charged with the duty of hearing and determining reports of misconduct, complaints or petitions from members of the public against persons or organisations in the real estate sector. Where a person or an organisation is found guilty of any misconduct, complaint or petition, the Committee shall invite the concerned person or organisation to make her oral or written representation. Where such person or organisation is found guilty, the Committee shall have the option of either recommending suspension or revocation of her permit to the Board.¹⁵ Where a party is aggrieved with the decision of the Board, such party may appeal to a court of competent jurisdiction.¹⁶

Furthermore, the Law also provides for the use of mediation to resolve disputes. Where a petition is submitted to the Authority, the Authority shall investigate the petition and issue letters of invitation to all concerned parties. Where a petition is about fraud or obtaining by false pretence, such petition shall be forwarded to the appropriate authority or Police for detailed investigation. Any party found culpable shall be prosecuted by the Directorate of Public Prosecution in the Ministry of Justice.¹⁷ The Erstwhile Law was silent on the use of mediation to resolve disputes.

Compilation of Abandoned Buildings/Structures

The Law makes provision for the Authority to compile records of all identified abandoned buildings/structures within Lagos State and forward same to the relevant Ministries, Department and Agencies (“MDAs”) for necessary action, the MDAs shall revert to the Authority within the period specified in the notice served. Where an owner or occupier of the abandoned building/structure fails to complete the building/structure or do certain remedial works recommended by the relevant MDAs within the specified period in the notice, the Authority shall give a final reminder to the relevant MDAs to “render” identified abandoned buildings or structures to the Authority within 3 (three) months of service of the relevant statutory notices¹⁸. Under the Law, a building/structure may be considered abandoned if it has not been developed due to lack of funds, it



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constitutes a nuisance, it is a safety risk, it contributes to environmental degradation, or used as a ground for perpetuation of criminal activities.¹⁹

Conclusion and Recommendation

The Law provides for a more standardised structure and framework for carrying out the business of real estate in Lagos State, as compared to the Erstwhile Law, however, for the core purpose of the law, which is elimination of fraud in the real estate sector, to be achieved, Authority needs to step up public education on basics of real estate transactions, the rules, risks and necessary safeguards to be applied. Proper implementation of this Law, will curb fraud and improve investor's confidence in the real estate market in Lagos State.

REFERENCES

- 1 Section 6 of LASRERA
- 2 Section 3 of LASRERA
- 3 Section 4 (1) of LASRERA
- 4 Section 5 of LASRERA
- 5 Section 25 of LASRERA
- 6 Section 27 of LASRERA
- 7 Chief S. O. Ogunla & Ors V Hoda Eiyekole & Ors 1990 14 NWLR (Pt 146) 632
- 8 Gerhard Huebner V Aeronautical Industrial Engineering and Project Management Company Ltd (2017) 14 NWLR (pt1586) 397
- 9 Section 43 of the Companies and Allied Matters Act 2020
- 10 Section 28 of LASRERA
- 11 Section 29 of LASRERA
- 12 Section 30 (1) of LASRERA
- 13 Section 30(2) of LASRERA
- 14 Section 31 of LASRERA

15 Section 33 of LASRERA

16 Section 34 of LASRERA

17 Section 35 of LASRERA

18 Section 37 of LASRERA

19 Section 38 (1) of LASRERA

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