

# **REAL ESTATE IN NIGERIA.**

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## **WHAT IS REAL ESTATE:**

Real estate is defined as the land and any permanent structures, like a home, or improvements attached to the land, whether natural or man-made. Real estate is a form of real property. It differs from personal property, which is not permanently attached to the land, such as vehicles, boats, jewelry, furniture, and farm equipment.<sup>1</sup>

## **WHAT IS LAND?**

At common law, land covers the earth surface (i.e the top soil), subsoil, things attached to the land e.g structures, crops, e.t.c and other incorporeal hereditament enjoyed on land.<sup>2</sup>

Where a land transaction is regulated by statute for example, the Property and Conveyancing Law,<sup>3</sup> the definition of land, is that adopted in the interpretation section of the statute in question where land is defined, or in the Interpretation Act or Law of a state, where land is not defined in the applicable statute.<sup>4</sup>

According to the Interpretation Act of Nigeria, “*Land includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals*”<sup>5</sup>

## **LAWS APPLICABLE TO REAL ESTATE IN NIGERIA**

The laws applicable to real estate in Nigeria may be categorized under the following:

1. Customary law/Islamic Law
2. Case law
3. Received English Law
4. Nigerian Legislation

## **CUSTOMARY LAW/ISLAMIC LAW:**

The customs, native laws and religious laws of indigenous people in Nigeria often shapen their transactions and dealings in land. Customary law is a set of rules of conduct applicable

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<sup>1</sup> James Chen, “Real Estate: Definition, Types, How to Invest in It.” (2023) Investopedia <https://www.investopedia.com/terms/r/realestate.asp>

<sup>2</sup> Prof I.O. Smith, SAN, *Practical Approach to Law of Real Property in Nigeria* (Rev Edn, Ecowatch Publications 2013) 8

<sup>3</sup> Cap 100 Laws of Western Nigeria, 1959

<sup>4</sup> (n 2)

<sup>5</sup> CAP 123, LFN 2004

to persons and things in a particular locality which exist at the relevant and material time, and is recognized and adhered to by the inhabitants of the community as binding on them.<sup>6</sup> Islamic Law on the other hand is one of the sources of laws applied by the courts in Nigeria to regulate legal relationships among adherents of the Islamic faith when they consent to the application of Islamic law to regulate their relationships<sup>7</sup>.

Certain customs have laws in relation to the disposal of land, for instance, under the Benin customary law of inheritance, the 'Igiogbe', that is the principal house where a Benin man lived and died devolves on the first son of the deceased irrespective of any instruction, disposition in a will or family arrangement to the contrary.<sup>8</sup> Also under the Islamic law transactions relating to property such as succession, wills, gifts, rights, obligations, and interests in land are regulated by Islamic law and applied by the courts in Nigeria. E.g the distribution of the estate of the deceased Muslim is set by Islamic law and compliance is mandatory.<sup>9</sup>

#### **CASE LAW:**

Case law is an important source of Real Estate practice as it is to Nigerian Law as a whole. This is premised on the legal doctrine of "stare decisis" (to stand by things decided), whereby the decisions of superior courts are binding on lower courts and the latter is bound to follow such decision so long as the facts of the cases before both courts are similar. The decisions of courts in Nigeria are binding because the judicial powers of the Federation are vested in courts.<sup>10</sup>

#### **RECEIVED ENGLISH LAW:**

These are laws that applied directly to Nigeria by virtue of her colonial ties to Britain. They comprise the Principles of Common Law, Doctrines of Equity, and the Statutes of General Application that were in existence in England as at 1900.<sup>11</sup> Examples of such laws are:

- **The Statute of Frauds Act OF 1677:**  
This act provides that every sale and transaction in land must be in writing and signed by the party to be charged or his authorized representative.<sup>12</sup>
- **Conveyancing Act of 1881:**  
This Act applies to states in Nigeria that are yet to enact their property laws, notably some states of the former Northern and Eastern Regions of Nigeria. Some of the

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<sup>6</sup> Y.Y Dadem, Property Law Practice in Nigeria (4<sup>th</sup> Edn Jos University Press Ltd 2018) 8-9

<sup>7</sup> *ibid*

<sup>8</sup> *Agioigbi v Agidigbi* (1996) 6 NWLR (pt .454) 300

<sup>9</sup> *Abdulsamad v. Abdulahi* (2015) AFWLR, Pt 798, P. 916

<sup>10</sup> Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

<sup>11</sup> Dadem (n 6) at 12

<sup>12</sup> Section 4 , Statute of Frauds Act , 1677

states in these regions have however enacted their property laws now, for instance Abia state and Rivers state and the Conveyancing Act therefore ceases to apply in those states.<sup>13</sup>

- **Wills Act of 1837:**

This Act applies to states in Nigeria that have not yet enacted their wills laws.<sup>14</sup>

**N.B:** It should be noted that the principles of Common Law and doctrines of equity together with these statutes only apply to transactions relating to land where there is no comparable local legislation or customary law that applies to such transaction.<sup>15</sup>

### **NIGERIAN LEGISLATION:**

These are laws enacted either by federal or state legislature to regulate property practice and they include:

1. **Constitution of the Federal Republic of Nigeria 1999 as amended:**

Section 43 of the constitution guarantees the right of every citizen of Nigeria to acquire and own immovable property anywhere in Nigeria. A citizen of Nigeria has the right to own property in any state in the federation and could apply to the governor of such state for the grant of a right of occupancy even if he is not from that particular state.

2. **Land Use Act of 1978:**

This act makes all lands within a state tenured; it enhances the principles of Leasehold by vesting all lands in the state in the Governor of the state to hold in trust for the benefits of Nigerians within the state.<sup>16</sup>

3. **Property and Conveyancing Law:<sup>17</sup>**

This law regulates property transactions in most of the states of the former western region of Nigeria.

4. **Illiterates Protection Laws:**

The illiterate protection laws of the various states are made to protect illiterate persons involved in property transactions generally.<sup>18</sup>

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<sup>13</sup> Dadem (n 6) at 15

<sup>14</sup> ibid

<sup>15</sup> Ude v. Nwara (2007) ALL FWLR, PT 359. P. 1321

<sup>16</sup> Dadem (n 6 ) at 17

<sup>17</sup> CAP 100 Laws of Western Region of Nigeria

<sup>18</sup> Dadem (n 19)

**5. Land Instruments Preparation Laws:**

These laws require that the preparation of instruments and documents on sale or transfer of land should be done by Legal Practitioners only.<sup>19</sup>

**6. Land Instrument Registration Laws:**

The Land Instrument Registration Laws of various states in Nigeria require that instruments used in land transactions be registered. And these laws also provide that where a registrable instrument is not registered, it cannot be pleaded in court, it is inadmissible in evidence as proof of title and the court cannot give evidence to it to transfer interest in land.<sup>20</sup> However the provisions in these laws have been defeated by virtue of the Supreme Court's decision in *Benjamin v. Kalio*<sup>21</sup> as admissibility of documents in evidence before a court of law is no longer determined by the registration or non-registration of it under state laws, but by the principles of admissibility of documents under the **Evidence Act**.<sup>22</sup>

**7. Stamp Duties Act<sup>23</sup>:**

Stamp duties are a form of taxation that is paid to the Federal or State Government on documents such as Conveyances on sale, Agreements, Contracts, Bills of Exchange, Promissory notes, and Instruments (Letters and Certificates of Admission, Instruments of Apprenticeship, Insurance Policies). The Act requires that the above instruments be stamped.<sup>24</sup>

**8. Companies and Allied Matters Act, (CAMA) 2020:**

Under this Act by virtue of section 191, a registered company may borrow money for the purpose of its business or objects and may mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party.<sup>25</sup>

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<sup>19</sup> Ibid at 22

<sup>20</sup> Dadem(n 6) at 24

<sup>21</sup> (2018) AFWLR PT 920 P.1

<sup>22</sup> Dadem (n 6) at 26

<sup>23</sup> Cap S8 LFN 2010

<sup>24</sup> Dadem (n 6) at 28

<sup>25</sup> Section 191, CAMA 2020

#### **9. Wills Laws of States in Nigeria:**

The wills laws of various states displace the Wills Act of 1837 in states where those laws exist. The Wills Law of a state regulates the disposition of property (real and personal) of individuals (testators) who made a valid will before their demise, for example the Wills Law of Lagos State.<sup>26</sup>

#### **10. Administration of Estate Laws of States:**

The Administration of Estate laws of states in Nigeria for example the Administration of Estates Law of Lagos State<sup>27</sup> regulates the devolution of estate on personal representatives, rights, duties and obligations of personal representatives, process of obtaining probate and administration of the estate of deceased persons in the state.<sup>28</sup>

#### **11. Lagos State Tenancy Law:<sup>29</sup>**

This law applies to business and residential premises in most parts in Lagos state except premises in Apapa, Ikeja GRA, Ikoyi, and Victoria Island<sup>30</sup>. However, the law does not apply to certain residential premises such as:

1. Residential premises owned or operated by an educational institution for its staff and students.
2. Residential premises provided for emergency shelter.
3. Residential premises in a care or hospice facility
4. Residential premises in a public or private hospital or mental health facility and
5. Residential premises made available in the course of providing rehabilitative or therapeutic treatment.<sup>31</sup>

#### **12. Mortgage and Property Law of Lagos State, 2010:**

The law regulates the creation of mortgages on real property, the rights of parties and recovery of loans.

#### **13. Land Registration Law of Lagos State, 2014:**

This law consolidates several laws on land registration in Lagos state and repeals others like the Land Instruments Registration Law, 2003, Registration of Titles Law

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<sup>26</sup> Cap W2, Laws of Lagos State, 2003.

<sup>27</sup> Cap A3 Laws of Lagos State, 2003

<sup>28</sup> Dadem (n 6) at 30

<sup>29</sup> No 11 of 2011

<sup>30</sup> Dadem (n 6 ) at 30

<sup>31</sup> Section 1(2) of the Lagos State Tenancy Law

and Registration of Titles (Appeals) Rules, 2003, Registered Land Law of Lagos State, 2003 and the Electronic Documents Management System, 2007.<sup>32</sup>

The law requires that transactions and documents evidencing the transactions should be registered. The law created the Land Information Management System (LIMS) and processes for conducting searches under the LIMS are also provided.<sup>33</sup>

#### **14. Lagos State Properties Protection Law, 2016:**

This law prohibits forceful entry, illegal occupation of lands and any fraudulent conduct over lands or properties on land by persons or groups of persons in Lagos state.<sup>34</sup>

### **TRANSACTIONS AFFECTING LAND IN NIGERIA**

#### **1. Pledge of Land:**

This exists where a person referred to generally as the ‘Pledgor’ gives or deposits any land or interest in land to another party, referred to as the ‘Pledgee’ in which the person depositing the property binds himself to do or forbear from doing a particular thing. In this case, only possession is given as the title or the legal interest in the land is not transferred. In a pledge, land is usually put as a security to get something from the Pledgee.<sup>35</sup>

#### **2. Gift of Land:**

A gift is a voluntary transfer of property to another without compensation. This is achieved through the instrument of a deed of gift. A deed of gift is a gratuitous arrangement that voluntarily transfers and delivers the legal ownership, with the physical control over an existing real or personal property, by its owner (‘the Donor’) to another person (‘the Donee’) without any compensation, consideration or payment emanating from the Donee to the Donor, for the gift.<sup>36</sup>

#### **3. Sale of Land:**

This is a process whereby interest in land is transferred from a party to another. Land can be sold and title validly transferred following a sale either through customary

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<sup>32</sup> Section 122 of the Land Registration Law of Lagos State, 2014

<sup>33</sup> Dadem (n 6) at 31

<sup>34</sup> *ibid*

<sup>35</sup> Chaman Law Firm, “Types Of Transactions In Land” (2022) <https://www.chamanlawfirm.com/types-of-transactions-in-land->

<sup>36</sup> The Firm Advisory, “Creation of a Deed of Gift in Nigeria” (2020) <https://thefirmaadvisory.com/new-blog/2020/1/13/creation-of-a-deed-of-gift-in-nigeria>

law or received English Law/Statute.<sup>37</sup> There are broadly two stages in the process of transfer of interest in land in Nigeria as affirmed by the Supreme Court in the case of *International Textile Industries Nigeria Limited v. Aderemi*.<sup>38</sup> They are:

- a. The contract stage, ending with the formation of binding contract for sale and
- b. The conveyance stage culminating in the legal title vesting in the purchaser by means of the appropriate instrument under seal.<sup>39</sup>

**Legal Restrictions That Exist in the Alienation of Land in Nigeria Includes<sup>40</sup>:**

- a. A communal or family land cannot be validly sold without the consent of the principal members and heads of the community or family first obtained. <sup>41</sup>
- b. By virtue of section 22 and 26 of the Land Use Act, the consent of the Governor of a state is required before any alienation of land which is subject to a statutory right of occupancy.
- c. Section 7 of the Land Use Act provides that it is unlawful for the Governor of a state to grant a statutory right of occupancy or consent to the assignment or subletting of a statutory right of occupancy to a person under the age of 21 years. However, where a guardian or trustee of a person under the age of 21 years has been duly appointed for such purpose, the Governor may grant or consent to the assignment or subletting of a statutory right of occupancy to such guardian or trustee on behalf of such person under age. Also, a person under the age of 21 years upon whom a statutory right of occupancy devolves on the death of the holder, shall have the same liabilities and obligations under and in respect of his right of occupancy as if he were of full age, notwithstanding the fact that no guardian or trustee has been appointed for him.
- d. **Restrictions on foreigners:**  
Section 46 of the Land Use Act provides that only the National Council of States can make regulation for the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians.
- e. Covenants in leases may also restrict the sale and transfer of land, for example leases with covenants against “assignment”, “sub-letting” or

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<sup>37</sup> Dadem (N 6) At 201

<sup>38</sup> (1999) 8 NWLR Part 614, P 268

<sup>39</sup> Dadem ( n 6) at 204

<sup>40</sup> Ibid at 201-202

<sup>41</sup> Adeleke v. Iyanda (2001)6 SCNJ p 101

otherwise parting possession of the premises. Where such covenants are present, the Lessee cannot sell the property.

**f. Town planning laws and regulations:**

These laws may restrict the alienation of certain lands where the purposes for which they are intended to be used are contrary to the purposes of town and planning laws.

**g. Doctrine of Lis Pendens:**

Lis Pendens translates as “Pending Law suit” in English. This doctrine is intended to preserve the subject matter of litigation during the pendency of an action in court so that there can be no transfer of interest in land that is subject of litigation.<sup>42</sup>

Any person who purchases property for valuable consideration while proceedings are pending, even though without actual notice, cannot sustain the purchase.<sup>43</sup>

The doctrine applies if it can be shown that at the time of such sale or purchase, there is:

- a. A pending suit in respect of the property
- b. The action or the Lis was in respect of real property
- c. The object of the action was to recover or assert title to a specific real property and
- d. The party concerned was aware or ought to be aware of the pending suit.<sup>44</sup>

Lagos State established the *Lis Pendis Electronic System*; an electronic Information System by which lands in the State that are subject of litigation before various courts are registered. This system can be accessed through the website of the Lagos State Government Lands Bureau.<sup>45</sup>

**4. Leases and Tenancies:**

A leasehold relationship or interest exist between two or more parties where one party (Lessor/Landlord) gives out or lets out his property to another person (Lessee/Tenant) to use for a period and usually, though not always, in consideration of payment of rent.<sup>46</sup>

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<sup>42</sup> Dadem (n 6) at 203

<sup>43</sup> Ogudiani v. Araba (1978) 6 & 7 SC. P. 55

<sup>44</sup> Dadem (n 6) at 204

<sup>45</sup> Ibid

<sup>46</sup> Dadem (n 6) at 94



In a lease, the consideration that flows from the lessor/Landlord to the Lessee/Tenant is the demised premises with right to exclusive possession, the consideration paid by the Lessee/Tenant is the rent and the observance of any condition or covenant or condition of the lease. The title to the land is not conveyed, only the use and occupation of the property is in issue, the property reverts back to the Lessor/Landlord after the expiration of the term.<sup>47</sup>

While a lease is a grant of a term above 3 years and must be by deed, in which case it must be signed, sealed and delivered. A tenancy agreement on the other hand, is a grant of term of 3 years and below, it is not required to be by deed, it could be in writing but not necessarily under seal, it is signed in the hands of the parties only.<sup>48</sup>

#### 5. **Licence:**

A Licence is permission given by the owner of a land or by the occupier of the land (licensor), making it lawful for the property to be used by a person who is not the legal owner (licensee) for a definite period of time. The existence of such permission makes lawful what would otherwise be a trespass. But it does not create or grant any interest in the land to the licensee.<sup>49</sup>

#### 6. **Mortgages and Charges:**

A mortgage is an agreement that may be expressed by deed between persons in which a borrower (Mortgagor) of a sum of money puts his property as collateral for the money given with the understanding that the property will be conveyed back to him upon the repayment of the money and any interest on it.<sup>50</sup> Mortgages can be legal or equitable. A legal mortgage transfers legal estate or interest in land or other property for the purpose of securing the repayment of a debt, while an equitable mortgage is one that passes only equitable estate or interest. For instance, the deposit of title deeds with a bank security for a loan creates an equitable mortgage as against a legal mortgage which is created by deed transferring the legal estate to the Mortgagee (Lender).<sup>51</sup>

A charge operates like a mortgage. However, in Charge, neither possession nor ownership nor any interest whatsoever is transferred to the Chargee. The Chargor

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<sup>47</sup> *ibid*

<sup>48</sup> *Ibid* at 97

<sup>49</sup> Ilori & Adebayo, "The Imperative Of Exclusive Possession in Evaluating the Concepts Of Tenancy and License" (IRLJ) 2020 P. 33 [file:///C:/Users/MB\\_2/Downloads/840-1657-1-SM.pdf](file:///C:/Users/MB_2/Downloads/840-1657-1-SM.pdf)

<sup>50</sup> Dadem (n 6) at 141

<sup>51</sup> *Ibid* at 142

retains all the interests, but creates an encumbrance over his title in favour of the Chargee. The Chargee only has an encumbrance.<sup>52</sup>

## **Documents evidencing transactions in Land are:**

### **1. Power of Attorney:**

A power of Attorney is a document which may be under seal which authorizes a person to act for another as his agent. The person who donates the power is called the ‘donor’ (Principal) while the person to whom it is donated is called the ‘donee’ (Attorney).<sup>53</sup>

### **2. Wills and Codicils:**

A will is simply the intentions and wishes of a person to be carried after his death. It is the creation of statute and should be governed by the provisions of the relevant statute.<sup>54</sup>

A will is a testamentary document or instrument voluntarily made and executed according to law by a testator with sound disposing mind wherein he disposes of his properties and gives other directives as he deems fit.<sup>55</sup>

A Codicil is an attachment or addition of a Will. It is dependent on the existence of a Will. Where there is a codicil to a Will, the Will cannot be read in full without the codicil. The codicil does any of the following to a Will<sup>56</sup>:

- 1) Revokes a Will
- 2) It adds to it or alters the Will
- 3) It revives a Will,
- 4) Republishes a Will.

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<sup>52</sup> Chaman Law firm, "Overview of Mortgage Transaction in Nigeria" <https://www.chamanlawfirm.com/overview-of-mortgage-transaction-in-nigeria>

<sup>53</sup> Dadem (n 6) at 50

<sup>54</sup> Ibid at 262

<sup>55</sup> Chaman Law firm, "Overview of Wills and Codicil in Nigeria" (2021) <https://www.chamanlawfirm.com/overview-of-wills-and-codicil-in-nigeria#:~:text=A%20Codicil%20is%20an%20attachment,the%20existence%20of%20a%20Will.>

<sup>56</sup> ibid

## **CONCLUSION:**

The real estate sector in Nigeria has been described as the ultimate investment destination for most Nigerian investors. With the heightened economic activity in the country and the attendant demand for space both for residential and official use, the sector has taken a prime position for those with resources and seeking for avenues to invest.<sup>57</sup>

The impact of real estate in the economic growth of Nigeria is highly remarkable, little wonder the uprising of real estate firms all over the country. It is advisable that investors in Real Estate should always seek legal counsel before investment to know their rights and get adequate legal protection in their dealings.

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<sup>57</sup> Biz Community, "Real estate: New gold mine in Nigeria" (2008)  
<https://www.bizcommunity.com.ng/Article/157/423/31418.html>