

# The Lagos State Real Estate Regulatory Authority

## Introduction

On 7 February 2022, the Lagos State Real Estate Regulatory Authority Law, 2021 (the ‘Law’), was signed into law by the Governor of Lagos State, His Excellency, Babajide Sanwo-Olu.

The Law aims to, amongst others, regulate real estate transactions, as well as the activities of registered real estate professionals (operating in Lagos), and provide an avenue for the resolution of disputes in the sector within Lagos State, through mediation. For the smooth implementation of its noble objectives, the Law establishes the Lagos State Real Estate Regulatory Authority (“the Authority”)<sup>1</sup>, which is responsible for administering the provisions of the law, including but without limitation, to reducing fraudulent practices in the Real Estate Industry in Lagos State; adopt a national code of ethics and responsibilities to be strictly observed by all licensed real estate service practitioners within the State; coordinate inter-governmental affairs as they affect real estate, as well as settle disputes arising from real estate transactions in Lagos State.

This Newsletter discusses the key provisions of the Law, including the potential implication of the Law on the entire Real Estate ecosystem in Lagos State, in a way that may not only be of interest to real estate practitioners, but also to potential players in the industry.

For convenience, the key provisions of the Law, are set out and explained as follows:

## Establishment of the Authority

Section 2(1) of the Law provides for the establishment of the Authority. The Law further sets out the functions of the Authority which, amongst others, include the formulation of policies for proper dealings in real estate transactions in the State in line with global best practices; maintain a comprehensive and updated register of permits of real estate service professionals; set up monitoring teams and conduct inspections in order to ensure compliance with the Lagos State Tenancy Law and other applicable legislations on real estate transactions in the State; receive and investigate petitions and complaints from members of the public as well as complaints against registered persons or organisations dealing in real estate in the State; collate data on property transactions; register tenancy transactions and agreements above five (5) years; ensure and confirm the payment of fees, taxes or charges on real estate transactions as shall be imposed or charged by the Authority or any other government agency; register and issue permits to persons or organisations who deal in real estate transactions in the State; periodically update the conditions for renewal of permits for persons or organisations dealing in real estate in the State; and to deal with the application for permits.<sup>2</sup>

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<sup>1</sup> Section 2(1) of the Law.

<sup>2</sup> Section 6(a) – (t) of the Law.

The Law also establishes the Lagos State Real Estate Regulatory Authority Governing Board (“the Board”) whose powers and functions, amongst others include: (i) advising the Governor on any matter relating to real estate activities in the State or any other matter on which the Governor requires the advice of the Board; (ii) ensuring all real estate activities are conducted with due propriety and in accordance with the Law and regulations made under it; (iii) adopt a national code of ethics and responsibilities to be strictly observed by all licensed real estate service practitioners in the State; and (iv) assess and fix the rate of reasonable regulatory fees.

## Settling Real Estate Disputes and Issuance of Sanctions

As stated above, one of the functions of the Authority is to receive and investigate petitions and complaints from members of the public, as well as complaints against registered persons or organisations dealing in real estate in the State<sup>3</sup>. In furtherance of this, the Law establishes the Committee of Inquiry (“the Committee”) within the Authority<sup>4</sup> which is charged with the duty of hearing and determining reports of misconduct, complaints or petitions from the public against persons or organisations dealing in real estate in the State.<sup>5</sup> The Committee has the power to recommend the suspension or revocation of the permit of a person or organisation dealing in real estate to the Authority, if after its investigation, the person or organisation is found culpable.<sup>6</sup>

The Authority is also empowered to commence a mediation process which shall be by a petition submitted to the Authority.<sup>7</sup> However, where criminal allegations such as fraud, obtaining by false pretences etc. are alleged in the petition, the petition shall be forwarded to the Police for investigation and any person found culpable, may be prosecuted by the Directorate of Public Prosecution of the Ministry of Justice.<sup>8</sup>

The Authority is also empowered to prepare a Memorandum of Understanding (MOU) which is essentially a mediated settlement agreement between disputing parties.<sup>9</sup> The MOU shall be in writing and signed by the parties and shall be enforceable in a Court of Law. The MOU shall also be recognised as binding upon endorsement by a Magistrate or Judge as appointed by the Chief Judge, as the case may be and may by leave, be enforceable in a Court as a judgment or order of the Court.<sup>10</sup>

This provision is laudable, as it encourages amicable settlement of disputes between contracting real estate parties. It is also likely to provide a quicker route to the resolution of real estate disputes, as parties can through the Authority, enter a mutually beneficial settlement agreement that can be enforced as a judgment of a court, as opposed to recourse to litigation which currently takes an inordinate amount of time for matters to be concluded.

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<sup>3</sup> Section 6(e) and (f) of the Law.

<sup>4</sup> Section 33(1) of the Law.

<sup>5</sup> Section 33(3) of the Law.

<sup>6</sup> Section 33(5) of the Law. A party aggrieved by the decision could appeal same to a court of competent jurisdiction as provided in section 34 of the Law.

<sup>7</sup> Section 35(1) of the Law.

<sup>8</sup> Section 35(4) and (5) of the Law.

<sup>9</sup> Section 36(1) of the Law.

<sup>10</sup> Sections 36(2) and (4) of the Law

## Registration of Real Estate Practitioners and Stakeholders

The Authority is also empowered to maintain a register of operations relating to transactions containing details of persons or organisations dealing or operating in the real estate sector, as the Authority may deem appropriate.<sup>11</sup>

Individual and corporate applicants must however meet certain conditions before being eligible for registration. The Individuals must be a Nigerian or possess a valid work permit if non-Nigerian; be at least eighteen (18) years of age; possess Lagos State Residents Registration Agency (LASRRA) number; have an ascertainable business premises or office within the State; possess a minimum educational qualification of WASC, GCE or NECO; have proper records of transactions and operate a separate client account; have three (3) years Tax Clearance Certificate preceding the date of registration; and must register at least a business name with the Corporate Affairs Commission.<sup>12</sup>

For corporate practitioners to be registered, they must: (i) be registered with the Corporate Affairs Commission; have proper records of transactions and operate a separate client account; (iii) have one of the Directors in the company who possess the conditions stated for individual applicants; (iv) ensure that all non-Nigerian Directors have valid work permits and comply with all laws in respect of foreigners; and (v) have three (3) years Tax Clearance Certificate preceding the date of registration.<sup>13</sup>

Also, a stakeholder operating in the real estate sector as a property developer, facility manager or property management company, whether as an individual or an organisation must register with the Authority and specify any project it is undertaking as at the time of registration before it can be issued the necessary permits to engage in real estate transactions in the State.<sup>14</sup>

The Law provides that an individual or organisation that fails to register in accordance with the provisions of the Law commits an offence and is liable on conviction to a fine of not less than Two Hundred and Fifty Thousand Naira (N250,000.00) in the case of an individual and not less than One Million Naira (N1,000,000.00) in the case of an organisation.<sup>15</sup>

(ii) This provision is commendable, as it allows the Authority to monitor and verify practitioners in the real estate space, by discouraging quacks in the industry, and ensure quality and standards are maintained by participants in the sector. This would boost the confidence and participation of serious-minded investors and other stakeholders in the Lagos State real estate sector.

## Foreigners' involvement in Real Estate Transactions

The Law provides that, a foreigner or foreign company who wishes to invest in real estate shall seek and obtain the permission of the Governor through the Authority and, subject to the provisions of Acquisition of Land by Aliens Law and all relevant laws in respect of real estate in the State, investment in land by a foreigner(s) shall not exceed twenty-five (25) years including any option to renew.<sup>16</sup>

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<sup>11</sup> Section 25(a) of the Law.

<sup>12</sup> Section 26(2) of the Law.

<sup>13</sup> Section 26(3) of the Law.

<sup>14</sup> Section 27 of the Law.

<sup>15</sup> Section 48(a) of the Law.

<sup>16</sup> Section 28 of the Law.

This provision provides some clarity on the thorny issue whether or not non-Nigerians can acquire interest in land and thus, invest directly, in real estate business, notwithstanding the provisions of the Acquisition of Land by Aliens Law of the State. This is in view of the provision of the Land Use Act<sup>17</sup>, (which has been upheld by our superior courts<sup>18</sup>), that Lands in every state of Nigeria though vested in the Governor of the States, are exclusively for the benefit of the Nigerian citizens, so that non-Nigerians may not hold any interest in such lands. Thus, while the recognition given to foreigners to participate in real estate business in Lagos State under this Law, remains to be tested, it is the view of the authors that the recognition is a step in the right direction as it will not only help to open up the real estate space, but will also, very likely, lead to an exponential investment and growth of the real estate sector.

## Operational standards for Real Estate Practitioners

A duly registered person or organisation, dealing in real Estate within the State, shall pay a fee for the issuance of a permit, which shall last for a maximum of one (1) year and may be renewed if the holder has satisfactorily met the conditions for renewal.<sup>19</sup> A permit, once issued shall remain valid unless revoked by the Authority, the permit lapses, the holder voluntarily surrenders the permit, or the permit is declared invalid or revoked by a Court of competent jurisdiction.<sup>20</sup> A permit lapses where the holder of the permit dies or becomes incapable of performing the permit's functions, is declared bankrupt, or goes into liquidation in the case of a company.<sup>21</sup>

## Permits to engage in Real Estate Transactions in the State

The Law stipulates certain operational standards that the holders of Real Estate permits must meet under the Law. These include, amongst other, to:

- (a) ensure the building or structure is fit for habitation and register the Certificate of Completion issued by the Lagos State Building Control Agency, in the case of Property Developer;
- (b) not to represent two (2) principals on the same transaction in the case of an agency; not to collect money from more than one prospective client in respect of the same premises or building and shall remit money collected to the landlord in the case of a tenancy, within seven (7) working days, unless otherwise directed in writing by the landlord and such money collected shall be receipted;
- (c) ensure that the prospective client takes physical possession of the property paid for within seven (7) working days after payment or ensure that the prospective client takes physical possession of the property paid for immediately after conditions relating to possession in the agreement or terms of contract are met in the case of a property developer;
- (d) declare a personal interest to the client in any property which is the subject of any transaction;
- (e) 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;

<sup>17</sup> Section 1 of the Land Use Act, 1978, Cap 202, LFN, 2004.

<sup>18</sup> Ogunola v. Eiyekole (1990) 4 NWLR (Pt. 146) 632, Huebnerv.A.I.E.&P.M.Co.Ltd (2017) 14 NWLR (Pt. 1586).

<sup>19</sup> Section 29(1) and (3) of the Law.

<sup>20</sup> Section 30(1) of the Law.

<sup>21</sup> Section 30(2) of the Law.

- (f) not prepare any legal document pertaining to any transaction in real estate but every Tenancy Agreement or Contract Document shall be prepared by a Legal Practitioner with the seal affixed and professional charges subject to the Legal Practitioners' scale of fees;
- (g) obtain the consent of the principal before collecting money from a prospective client in the case of an agency;
- (h) refund the rent or money paid by any prospective client in case of failure to deliver up physical possession of the premises within seven (7) days of collection of rent, or fulfilment of all conditions relating to possession in the agreement or contract in the case of the property developer; and
- (i) not delay in refunding the money paid beyond the stipulated time and any failure shall attract interest at the Central Bank prevailing rate.<sup>22</sup>

Although the law does not specifically state the consequence of failure to meet these standards, it does stipulate that failure to comply with any provision of the Law constitutes an offence, the penalties of which are as follows:

- i. The revocation of the permit or a fine of Hundred Thousand Naira (N100,000.00) and of Ten Thousand Naira (N10,000.00) for each day of non-compliance in the case of a registered individual.
- ii. A fine of One Hundred Thousand Naira (N100,000.00) and a fine of Twenty-Five Thousand Naira (N25,000.00) for each day of non-compliance in the case of an unregistered individual.
- iii. The revocation of the permit or a fine of Five Hundred Thousand Naira (N500,000.00) and a fine of Thirty Thousand Naira (N30,000.00) for each day of non-compliance in the case of a registered organisation; and
- iv. A fine of Five Hundred Thousand Naira (N500,000.00) and a fine of Fifty Thousand Naira (N50,000.00) for each day of non-compliance in the case of an unregistered organisation.

The Law also sets out the applicable fees a person or organisation dealing in real estate may demand from the prospective clients. The Law states that (i) in a Letting/Lease transaction, not more than ten per cent (10%) of the total rent collected on any transaction; and (ii) in sale or purchase of interests in buildings; where two or more holders of permits are retained by the owner/vendor for the sale/ lease, fees shall not be more than fifteen per cent (15%) of the total proceeds of sale or tenancy.<sup>23</sup> The Law provides that a property developer shall collect consideration based on fair market value and rate as may be determined by an estate surveyor and valuer.<sup>24</sup> In the case of an off-plan arrangement, a person or organisation dealing in real estate in the State shall draw up a contract with the prospective client, inserting a clause to indemnify the prospective client in the event of noncompletion of a project or any breach of contract by the person or organisation.<sup>25</sup>

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<sup>22</sup> Section 32(1) of the Law.

<sup>23</sup> Section 32(2) of the Law.

<sup>24</sup> Section 32(3) of the Law.

<sup>25</sup> Section 32(4) of the Law.

## Power to Compile and Acquire Abandoned or Uncompleted Buildings

The Law defines an Abandoned Building or Structure as including an existing unoccupied building in a state of disrepair which is left in such condition for a period of up to five (5) years or a building which is under construction but on which work has ceased for up to five (5) years.<sup>26</sup> The Law further provides that a building or structure will be deemed abandoned if; (i) it hasn't been developed due to lack of funds; (ii) constitutes a nuisance; (iii) is a safety risk; (iv) contributes to environmental degradation; and (v) is used as a ground for perpetration of criminal activities.<sup>27</sup>

The Authority is empowered to notify the owner of an abandoned building or structure to complete the building within 3 months or make representations to convince the Authority of its ability to complete the Building.<sup>28</sup> However, the Law provides that where after the expiration of the period stated in the final notice, the owner or occupier of an abandoned or uncompleted building or structure fails to comply with the notice, or is unable to convince the Authority of the ability to complete the building or structure, the Authority shall issue recommendations to the appropriate authority that the subsisting right of occupancy in the abandoned or uncompleted building or structure be revoked in accordance with the provisions of the Land Use Act, 1978.<sup>29</sup>

The owner shall however be entitled to compensation for such revocation in accordance with the Land Use Act.<sup>30</sup> The Authority shall also report to the relevant Ministry, Department and Agency MDA(s) of Government that have the power to demolish any abandoned or uncompleted building or structure which, in the opinion of the Authority constitutes a danger to the health and safety of the public.<sup>31</sup>

## Conclusion

Overall, the objectives of the law will, indubitably, revolutionise the real estate sector in Lagos, and ultimately, the country at large. The law also seeks to provide adequate protection to the citizens of the state in their Real Estate Transactions, as it will guard against fraudulent practices and quackery. Also, the recognition of foreigners' participation in the real estate business, will not only open up the real estate space and encourage healthy competition, but will, also, very likely lead to an exponential growth in investment and growth of the sector in Lagos State. Furthermore, we envisage that the Law will greatly curtail corrupt practices that currently bedevil the industry, and this will thus, foster confidence and further help attract both local and foreign investments in the sector.

## Disclaimer

The newsletter provides general information relating to the Law. It is meant for general information only. It is not, and should not be relied upon as, legal advice. If you require any assistance or enquiry relating to the above subject, please contact [info@wisecom.xyz](mailto:info@wisecom.xyz).

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<sup>26</sup> Section 1 of the Law.

<sup>27</sup> Section 38(1) of the Law.

<sup>28</sup> Sections 39 and 40 of the Law.

<sup>29</sup> Section 41 of the Law.

<sup>30</sup> Section 42 of the Law.