

LEGAL CONSIDERATIONS IN REAL ESTATE INVESTMENT AND DEVELOPMENT IN NIGERIA

Introduction:

In Nigeria, real estate investment and development is widely recognized as a profitable and stable venture, offering long-term financial benefits. However, the acquisition and development of real property are subject to complex legal and regulatory frameworks that must be carefully navigated to ensure compliance and mitigate risks. Failure to adhere to these legal requirements may result in financial losses, disputes, or regulatory sanctions.

This article examines some key legal considerations in real estate investment and development in Nigeria, focusing on the legal framework for real estate investment and development, the verification of title, contractual obligations, and conflict resolution mechanisms.

As an investment asset, the **tangible** characteristic of real estate provides a sense of **investment security** unlike stocks and bonds. Regardless of market fluctuations, property **value generally increases over time**, making real estate an attractive long-term investment. Furthermore, the development of commercial and residential properties can provide an **excellent passive income** through lease payments, when properly managed.

In relation to development, a piece of real estate (for example, a bare land) can be developed for residential or commercial use by improving its physical aesthetics or such improvements that may enhance its value¹, or for a future sale.

1. Right to the ownership of real estate in Nigeria:

The Constitution of the Federal Republic of Nigeria, 1999² (as amended) provides that *"...every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria."* This forms the bedrock of the legal rights to the ownership of real estate (as an immovable) property in Nigeria.

Historically, the original ownership of real estate arose by either one of the following - deforestation/first settlement of a virgin land, conquest during inter-tribal wars, etc³. In recent years, the ownership of real estate may devolve by a sale or purchase, or by inheritance through a clear and uncontroverted traditional history, or by gift, or by a customary grant, etc.

In rural areas, Customary right in the ownership of land is still practised in Nigeria wherein only a community, a village, or a family can exercise ownership to land or real estate – not an individual. In order for the sale or purchase of community land to be valid, several requirements must be fulfilled including the payment of a purchase price⁴, the delivery of possession⁵, and the presence of witnesses.⁶

¹ Section 5(1) Land Use Act 1978, CAKASA (NIG) CO. LTD & ANOR V. AINA & ANOR (2016) LPELR-42044 (CA)

² Section 43

³ PIARO V. TENALO (1976) 12 S.C. 31, ODI V. IYALA (2004) 8NWLR (PT. 875) 283, JEGEDE V. AIYEGBUSI (2013) LPELR-21848(CA).

⁴ OKONKWO & ANOR V. OKOLO (1988) LPELR – 248 (SC)

⁵ AKINTERINWA & ANOR V. OLADUNJOYE (2000) LPELR – 358 (SC)

⁶ EGONU V. EGONU (1978) 11-12 SC 111

However, ownership of land in urban areas is subject to the Land Use Act 1978 which provides that “...*all lands in urban areas shall be under the control and management of the Governor of each state...*”⁷.

2. The verification of title:

The verification of an interest or title to a piece of real estate involves practical and procedural steps taken to confirm the legal ownership, validity, and enforceability of the claimed interest or title. This process typically includes:

- a. Reviewing the title documents,
- b. Conducting due diligence,
- c. Verifying encumbrances,
- d. Checking compliance with regulatory requirements, and
- e. Ensuring there are no pre-existing disputes or defects that could affect the property’s marketability or transferability.

In *EFCC & ANOR V. IBRAHIM*⁸, Justice Peter Chudi Obiorah noted that “**it is not in the pages of newspapers that encumbrances on landed properties are registered.**”

Title to a piece of real estate can be verified by traditional history/evidence, by duly authenticated and verified documents, by acts of ownership, by proof of possession of a connected land, and by sufficient acts of possession over a long period of time⁹.

3. Foreign investment restrictions:

In a plethora of decided cases, the Courts have held that the application of the Land Use Act 1978 is wholly for the benefit of Nigerians¹⁰. However, a foreigner seeking to invest in Nigeria may do so subject to the provisions of the Nigerian Investment Promotion Commission Act, the Companies and Allied Matters Act, 2020 and under the close monitoring of the Foreign Exchange (Monitoring & Miscellaneous Provisions) Act amongst other applicable laws.

4. Compliance with zoning regulations:

In Nigeria, land zoning and planning are governed by a combination of federal, state, and local government regulations¹¹.

Zoning involves the systematic division of land into distinct zones based on designated purposes such as residential, agricultural, commercial, industrial, or recreational uses. Land zoning is aimed at optimizing land use, promoting orderly development, ensuring efficient resource allocation, and fostering sustainable and well-structured communities.

⁷ Section 2 of the Land Use Act 1978; *ADISA V. OYINWOLA* (2000) 10 NWLR (PT. 674) 116 SC.

⁸ (2024) LPELR – 62953(CA)

⁹ *IDUNDUN V. OKUMAGBA* (1976) 1NMLR 200; *WAYMAKER PROPERTIES LTD. V. JANYAU & ORS* (2021) LPELR – 54481 (CA).

¹⁰ *CHIEF S.O. OGUNOLA & 6 ORS. V. HODA EIYEKOLE & 9 ORS.* (1990) 4 NWLR (PT. 146), PAGE 632)

¹¹ See the Residual list of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Non-compliance with zoning laws may result in regulatory sanctions, demolition orders, or avoidable legal disputes. In 2024, several buildings were demolished in Lagos State due to non-compliance with the Lagos State Urban and Regional Planning and Development (Amendment) Law 2019.¹²

5. **Taxation:**

It is important to note that investing in real estate attracts several taxes including capital gains tax¹³ charged at a flat rate of 10% on the profit from the sale of a property, stamp duty tax¹⁴ charged ad-valorem on the documents of transfer and varies according to each state law and the document type, others are company income tax¹⁵, and personal income tax.

6. **Conflict resolution mechanisms:**

Conflict may arise at any time within real estate investment and development cycle from land ownership and title disputes, breach of contract, regulatory non-compliance, opposition from the community, the list is endless. Effective conflict resolution mechanisms are crucial to maintaining investor confidence, ensuring project continuity, and a stable real estate market.

In Nigeria, real estate conflicts are governed by the Land Use Act 1978, the Urban and Regional Planning Act, contract law, state laws, the civil procedure rules of each state, other relevant laws, regulations, and policies.

Depending on the nature of the conflict, resolution may be pursued in court through litigation, or through alternatives such as negotiation, mediation, arbitration, or regulatory intervention.

BEST PRACTICES FOR PREVENTING CONFLICT IN REAL ESTATE TRANSACTIONS:

At Roothe-Kharis & Partners, we understand that real estate investment and development require a strategic approach that balances legal compliance, commercial viability, and risk management. With extensive expertise in real estate transactions, Roothe-Kharis provides tailored legal solutions that support clients throughout the entire property lifecycle - from acquisition and financing to development, management, and exit strategies.

Our team is well versed in land title verification, joint venture structuring, project financing, zoning and planning regulations, conflict prevention and resolution mechanisms.

In line with our commitment to delivering end-to-end legal solutions, we highlight below key practices to ensure that stakeholders operate with legal certainty and commercial confidence:

¹² <https://punchng.com/residents-cry-for-help-as-lagos-officials-demolish-homes/>

¹³ Capital Gains Tax Act

¹⁴ Stamp Duty Tax Act

¹⁵ Company Income Tax Act

- a. Early consultation with experts: engaging legal, financial, and technical experts at the outset of a real estate transaction or development project would help identify and mitigate potential risks before they escalate. Early legal intervention ensures proper structuring, regulatory compliance and due diligence.
- b. Comprehensive due diligence: investors and developments must conduct thorough title verification, regulatory compliance checks, and community engagements before acquiring real estate.
- c. Well-structured contracts: whether advising institutional investors, developers, financiers, or private clients, clearly drafted agreements, including dispute resolution clauses, help prevent ambiguities that may lead to conflicts.
- d. Stakeholder engagements: proactive consultation with government agencies, host communities, and regulatory bodies can mitigate disputes.
- e. ADR mechanisms: considering the time and cost implications of litigation, ADR mechanisms should be deployed at the earliest possible signs of a conflict.

CONCLUSION:

Navigating the legal landscape of real estate investment and development in Nigeria requires a thorough understanding of the regulatory framework, compliance requirements, and risk mitigation strategies. From land acquisition and title verification to zoning laws and contractual agreements, investors must be well-informed to avoid legal pitfalls and ensure profitable ventures.

Engaging experienced legal professionals is crucial to safeguarding investments and achieving long-term success in this dynamic sector. Our deep expertise in real estate law, makes us well-versed in providing comprehensive advisory and legal services tailored to the unique needs of our clients. By partnering with Roothe-Kharis, investors can confidently make informed decisions, minimize risks, and maximize the potential of their real estate investments in Nigeria.

Do not hesitate to contact us if you seeking to explore new opportunities or expand your investment portfolios. Roothe-Kharis offers personalized legal solutions and strategic insights to help clients unlock growth and achieve their business objectives in Nigeria's thriving real estate market.