

CONDUCTING PROPERTY DUE DILIGENCE IN LAGOS STATE: WHAT YOU MUST KNOW!

Introduction

Sometimes, people go into business transactions without understanding both the market and the underlying issues which should be considered before proceeding with such transactions. Sadly, such ignorant or negligent steps always attract tears and disappointments, and even worse than any other thing are the strained relationship between business partners and loss of investments. The Nigerian real estate market, particularly Lagos State, is full of complexities. Anyone who intends to invest in it must take all necessary precautions to navigate through those complexities in order not to cry foul when the chips are down. In achieving this, the first step to take is to engage a real estate lawyer who has a good understanding of the industry to conduct proper due diligence on the relevant property.

In this write up, we have highlighted what conducting due diligence entails for specific real estate transactions and why each of these steps should, as a matter of caution, be taken accordingly.

What does Due Diligence Mean?

Due diligence, simply put, is an action that is considered reasonable which one is expected to take in order to keep oneself, others or property safe. From a business perspective, it is the detailed examination of a business before an investment is made with a view to confirming facts or details about the business and mitigating risks from an investment decision.

The essence of conducting due diligence on property transactions cannot be

overemphasized. It is geared towards ensuring, amongst other things, that the property in question is indeed, owned by the person who purports to be the seller; the title document paraded by the seller is authentic and duly registered at the land registry; there is no registered encumbrance on the property; the property is surveyed and the coordinates clearly stated on the survey plan; the property is free from government acquisition; the property does not fall within a committed area; and that the survey plan aligns with the physical location of the property.

Due diligence is required for all real estate transactions (assignment, lease, mortgage, joint development ventures); however, the nature of the transaction will largely determine the type and extent of due diligence to be conducted.

Property due diligence has various components which may include searches and title confirmation at the Land Registry, charting at the Office of the Surveyor General of the state, gazette confirmation, etc. We shall hereunder discuss each of these components.

Inspection of the Property

Physical inspection of the property is at the vanguard of every other due diligence process. Before steps are taken to verify the title documentation of the property in question, it is expected that the investor would have inspected the property with a view to confirming that the property accords with the verbal or written description given by the seller or the seller's agent. Most importantly, it is only through physical

inspection that one can confirm that the property is fit for the desired purpose.

Property Search

In Lagos State, property searches are conducted at the Lands Registry using the registration details of the property. The essence of conducting a search is (a) to confirm that the details of the property as provided by the vendor conform with the records maintained by the Land Registry; (b) to confirm that there are no encumbrances like existing mortgages or caution registered on the property; (c) to confirm the permitted use of the property; (d) to confirm the covenants guiding the use of the property, especially restrictive covenants, etc. The Lagos State Land Registry maintains an electronic data base of title documents which are filed using the registration details as key points. This seemingly makes it easier to identify and conduct searches on properties. However, it must be mentioned that electronic data base of the registry is not 100% accurate. There have been instances where some title documents and or certain encumbrances are not uploaded on the electronic database. The implication of this is that the applicant will have to take further steps to ensure that the title document is uploaded accordingly to ease the due diligence process. The most unfortunate situation though is where a registered encumbrance (mortgage, caution, etc.) is not uploaded to the electronic database. This means that a desktop search will not reveal the encumbrance on the property and as such, any investment made on the subject property may be lost in the long run. In order to avert this risk, it is always better to

double-check with the designated land officers before signing off your search report.

Again, it is important that a prospective buyer or lessee ascertains the tenure and the residue of the assignor's or lessor's interest in the property. This can be done through a careful perusal of the relevant title document and the roots of title. The aim is to avert a situation where the tenure of the buyer's or lessee's interest is unknowingly cut short because the assignor's or lessor's term has been exhausted.

Verification of Original Title Document

Verification is the practical way of ascertaining the authenticity of the original title document being paraded by the landowner. This is done by the designated land officer by comparing the original document provided by the vendor with the counterpart in the Land Registry's file. Sometimes, investors and even lawyers proceed to close transactions once the outcome of the search is positive without taking further steps to verify the authenticity of the title document. While the reason for this omission is unknown, it must be noted that the buyer in that circumstance is at the risk of being given a cloned or fake title document. Upon the completion of the verification exercise, the Land Registry will issue an official letter confirming either that the original title document submitted is authentic and duly issued by the Lagos State Government, or that the title document is fake or cloned. Where the latter is the case, the title document will be impounded or confiscated by the Land Registry.

Another point to note is that sometime in the past, two title documents (an original and a

counterpart) were issued to property owners, a practice that is no longer in vogue. The Registry now issues only the original document and retains the counterpart(s) in the Registry's file. However, some title holders who acquired their properties in the former regime, fraudulently issue the counterpart to a purchaser or lender, whilst retaining the original for separate transactions on the same property. In fact, cases abound of title holders who mortgaged a property to a financial institution with the original title document and at the same time sold the same property to an unsuspecting purchaser, using the counterpart title document. It is therefore important that the title document provided by the title holder is sighted and its authenticity duly verified at the Registry before proceeding with the transaction.

Charting of Survey Plan /Land Information

Usually, every registered title document has a survey plan attached to it or at least, reference is made to the relevant survey plan in the registered title document. The survey plan shows the coordinates of the property with which the physical location of the property can be identified. What this means is that if the coordinates of the survey plan are wrong, identifying the property will be difficult. It may also be that the property is in an area earmarked by the government for compulsory acquisition. To avoid this situation, a prospective investor is advised to engage the office of the Surveyor General of the State to confirm the position of the coordinates of the survey and whether the property is free from government acquisition. Some will say that this is due diligence taken too far considering the cost-

implication, especially for low-scale transactions, but then, one should be more bothered about the implications of not carrying out proper due diligence than the cost of doing same. If you must invest, you should do it properly.

Excised Lands - Gazette Confirmation

Prior to the promulgation of the Land Use Act, 1978 ("Land Use Act"), lands in Nigeria were primarily under the control of indigenous communities and families. By virtue of the Land Use Act, the state governments (through the governors) became the chief custodians of all lands in the respective states. A governor could, therefore, release designated portions of land in the state to the original owners (indigenous communities and families) by way of excision.

Where there is excision of land to a community or family, a publication is made in the government's official gazette as evidence of that excision, thereby giving the grantee the authority to deal with the excised land as it chooses, but subject to the Land Use Act and other applicable property laws in the state. Therefore, family lands that are yet to be excised are regarded as lands that are still under the acquisition of the government and should be dealt on with absolute caution. These could be lands earmarked by the government for specific projects; lands under general acquisition by the state government as the owner of all lands in the state, or lands within the areas designated by the government for agricultural purposes.

Some communities in Lagos State have been granted excision by the Lagos State

Government which are published in the state's official gazette. While it is important to confirm that any claimed excision has been published in the state's official gazette, it is even more important to confirm the extent of such excision with a view to ensuring that one is not deceived into buying a portion of land that is already committed. This verification can be done by applying for and obtaining charting or land information on the subject property from the office of the Surveyor General of Lagos State.

Confirmation of Building Permit & Land Use Zone

Confirmation of building permit is relevant where the subject land has been developed.

Section 27 of the *Urban and Regional Planning and Development Law, Cap. U2, Laws of Lagos State, 2015* ("Planning Law") provides that "the permit of the Planning Permit Authority will be required for any physical development in the State". The Planning Law also prescribes certain measures for ensuring compliance to its provisions and punishment for those who fail to comply. Notable amongst the penalties is the demolition of the property where there is non-compliance to the planning laws and directives of the Planning Permit Authority.

Sadly, confirmation of building permit is often neglected by practitioners, especially for low scale transactions. However, considering the implications of not having the approval in place, it is as critical as the regular property search and should be accorded the same value in all relevant transactions. This is to avoid the risk of the property being demolished by the government for non-compliance with the Planning Law.

In addition, confirmation of the permissible use of the subject property is key in deciding whether to proceed on a property transaction. Of what benefit is it to build a factory in a residential zone only for the factory to be demolished by the planning authority for non-compliance with the Planning Law? Regulation 6 of the *Lagos State Physical Planning Permit Regulations, 2019*, made pursuant to section 99 of the Planning Law, (the "Regulation") stipulates the permissible developments in the approved Land Use Zone as specified in schedule 4 of the Regulation. The zones are classified as follows:

- a. Complimentary Uses
 - i. Residential Zone
 - ii. Commercial Zone
 - iii. Industrial Zone
 - iv. Agricultural Zone
 - v. Recreational Zone
 - vi. Institutional Zone
- b. Mixed Zone
- c. Other Zones

Each class consists of the Use Zone, Minimum Plot Size, Maximum Coverage Per Plot, Parking Requirements, and Recommended Complimentary Uses. It is, therefore, important to ascertain that the proposed use of the property conforms with the government approved use to avoid being penalized and consequently losing your investments.

Payment of Land Use Charge, Ground Rent and Other Related Charges

This is an important aspect of legal due diligence exercise that is often ignored. Understandably, the focus is usually on the authenticity of the owner's title, but then, the owner's title would, in some cases, be subject to revocation if the owner does not observe the covenants and or the obligations

enshrined in the title document, including the obligation to pay statutory charges that may accrue on the property. For a prospective buyer, it will be a bad investment to buy a N50,000,000.00 property that has a N40,000,000.00 accrued charge on it. To avert this situation, a legal due diligence specialist should confirm from the relevant government revenue office whether there is any statutory charge that is yet unpaid on the subject property before the proposed transaction is consummated.

Conclusion

Land is a major factor of production. It is the pivot around which all businesses rotate. Its relevance therefore requires that special attention be paid in transacting any business in which land is involved. It would be counter-productive and a waste of time and money to acquire interest(s) in a property that is not fit for the desired purpose or that is fraught with title errors. The only way to avert this is to engage an experienced real estate lawyer to conduct comprehensive due diligence on the property.

NOTE: *No part of this article should be relied upon as legal advice. It is only intended as a general guide on the subject and as such, we advise that you consult a specialist where legal advice is desired. For further information on the subject and any other real estate related questions, kindly contact us at info@lexsetters.com.*

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