

REQUIREMENTS AND PRACTICAL STEPS FOR PERFECTION OF TITLE TO LAND IN LAGOS STATE

Introduction

Generally, ownership and use of land in Nigeria are governed by the Land Use Act (the “Act”)¹.

By virtue of section 1 of the Act, all lands within the urban territory of each State (with the exception of land vested in the Federal Government or any Agency of the Federal Government) are vested in the Governor of the relevant state.

The Act vests title in land on the Governor only to the extent that the Governor holds the land in trust for the common use and benefit of all Nigerians and as such, must administer same for their benefit. This responsibility of the Governor cuts across the allocation of the lands to individuals and organizations for residential, commercial, agricultural, and other purposes as well as collecting rents in relation thereto.

This being the case, individuals or companies are entitled to only leasehold interests embodied by “Rights of Occupancy” which may be statutory or customary.

While the Governor of a State is empowered to grant statutory rights of occupancy to any person in respect of land, evidenced by the issuance of certificate of occupancy (“C of O”)², whether or not in an urban area³, the Local Governments only grant customary

rights of occupancy over land in non-urban areas⁴.

The Act also makes provision for lands vested in any person prior to the commencement of the Act. Section 34(2) provides that where a particular land is vested in any person immediately before the commencement of the Act, the land shall continue to vest in the person as though the holder of the land was the holder of a statutory right of occupancy issued by the Governor under the Act⁵. This is known as Deemed Grant. The Governor can also issue a C of O to such a person, upon application, if the Governor is satisfied that the land was vested in that person before the commencement of the Act⁶.

Alienation of Interest in Land

Section 22 of the Act provides that “it shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained”.

The above provision notwithstanding, a transfer of interest in land without the

¹ Cap. L5, Laws of the Federation of Nigeria, 2004.

² Section 9(1) of the Act gives the Governor the power to issue a certificate of occupancy in evidence of grant of a right of occupancy.

³ See sections 5(1) and 51 of the Act.

⁴ See section 6 of the Act.

⁵ See section for 36(2) for similar provision in respect of lands held under a customary right of occupancy.

⁶ Section 34(3) of the Act.

consent of the Governor is merely inchoate and not void⁷.

Consent of the Governor and Perfection of Title to Land in Lagos State

Perfection of title to land in Lagos State is primarily governed by the Act and the Lagos State Lands Registration Law, Cap L41, Laws of Lagos State, 2015 (“LRL”).

Section 2 of the LRL provides that every document of interest or title to land in Lagos State must be registered in accordance with the provisions of the LRL.

By Section 32 of the LRL, a registered holder of title to land has power to dispose or deal with it and create any interest or right over it, subject to obtaining the required Governor’s consent. The mode of transfer of interests in land, sub-lease or mortgage must be by deed. Such transfers shall be deemed to be complete only after the deeds have been registered at the Lagos State Lands Registry (the “Registry”).⁸

By virtue of section 26(1) of the LRL, any holder in possession of any registrable document shall register it within sixty (60) days after obtaining the Governor’s consent where applicable. In practice however, this timeline is often not met due to the bureaucratic bottlenecks that have bedeviled the title perfection system.

All deeds by which sub-leases, mortgages and dealings in land are effected are registrable documents.⁹ However, a sublease below three years is not required to be registered.¹⁰

The LRL provides further that a sublease for a term of five (5) years or a sublease with an option to renew for a total aggregate of five (5) years or more shall be registrable subject to obtaining the Governor’s consent.¹¹

Practical Steps for Perfection of Title

1. Drafting the Deed

The following points should be noted while drafting the deed of transfer (Assignment/Lease/Mortgage):

- a. The deed must be franked by a Legal Practitioner;
- b. The deed must be printed on both sides of each sheet of paper;
- c. The parties must sign at the bottom of each page of the deed except the execution page where the parties are required to sign in the spaces designated for signatures;
- d. The pages must be numbered to reflect the total number of pages.
- e. The deed must include a recital which traces the root of title of the transferor;
- f. Details of the survey plan, the surveyor and the registration details of the root of

requires registration. Relying on the legal maxim, “*expressio unius est exclusio alterius - express mention of a thing excludes the other*”, it is our view that there is no requirement for registration for a sublease of three (3) to four (4) years.

⁷ *Awojugbagbe Light Industries Ltd. V. Chinukwe* (1995) 4 NWLR (pt. 349) 379.

⁸ Section 62(1) of the LRL.

⁹ Section 74(1) of the LRL.

¹⁰ Section 26(2) of the LRL.

¹¹ Section 42 of the LRL. There is no provision as to whether a sublease of three (3) to four (4) years

title must be included in the parcel clause and the schedule;

- g. Where the property is under a Government Scheme, it is required that the office of the Surveyor General undertakes the subdivision and prepares the survey plan if the proposed acquisition is in respect of a portion of the plot covered by the title document;
- h. The portion designated for the consent of the governor should be drafted to indicate:

“Hon. Attorney General and Commissioner for Justice, Lagos State

For: The Executive Governor of Lagos State”

2. Packaging the Application

The second step towards the perfection of title in Lagos State is to gather all the necessary documents to ensure that they conform with the requirements of the Lagos State Lands Bureau.

The following documents are therefore required for the perfection of title:

Perfection of a Deed of Assignment:

- a. An application letter for governor’s consent addressed to the Director of Lands Services, Lagos State Lands Bureau;
- b. Application for Approval of a subsequent Transaction to a Grant of Right of Occupancy (Land Form 1C) duly executed by the Assignor and Assignee;
- c. Certified true copies of all roots of title referred to in the recital of the deed sought to be registered;
- d. Location Sketch of the property;

- e. Photograph of the property, bearing the date and time of capture;
- f. Three (3) counterpart Deeds of Assignment (duly executed);
- g. Three (3) originals of chartable Survey Plan attached to the deeds;
- h. Evidence of lodgment of record copy of the Survey Plan;
- i. Current tax clearance certificates of the Assignor and Assignee (where the parties are individuals) or of two directors of the respective parties where they are corporate bodies;
- j. Receipts of payment of charting and endorsement fees; and
- k. Four (4) passport photographs of the Assignee, size 5x5 with white background (where the Assignee is an individual).

Perfection of a Deed of Legal Mortgage

- a. An application letter for governor’s consent addressed to the Director of Lands Services; Lagos State Lands Bureau.
- b. Application for Approval of a subsequent Transaction to a Grant of Right of Occupancy (Form 1c) duly executed by the Mortgagor and Mortgagee;
- c. Certified true copy of the title document of the mortgage property;
- d. Three (3) counterpart Deeds of Legal Mortgage;
- e. Receipts of payment of charting and endorsement fees.
- f. Copy of Form CAC 7 of the Borrower Company
- g. Current tax clearance certificates of the Mortgagor (where the mortgagor is an

individual) or of two directors of the Mortgagor where it is a corporate body.

Registration of a Deed of Release of Mortgage

A Deed of Release becomes necessary when a Mortgagor has satisfied his obligation under a registered mortgage agreement by repaying the mortgage sum to the Mortgagee. Upon the repayment of the mortgage sum and interests by the mortgagor, the mortgagee will execute a Deed of Release confirming that the mortgagor is no more indebted to the mortgagee. The said deed will be filed at the Registry for registration and endorsement on the title of the mortgage property. This does not require the consent of the Governor¹².

The following are required for the registration of a Deed of Release:

- a. Two counterpart Deeds of Release, duly executed by the mortgagee and stamped by the Commissioner for Stamp Duties;
- b. Certified True Copy of the registered Deed of Legal Mortgage sought to be released;
- c. Letter of Authority (where application is being processed on behalf of title holder);
- d. Letter from the bank addressed to the Registrar of Titles confirming the Deed of Release;
- e. Means of identification of applicant; and
- f. Original and photocopies of payment receipts;¹³

Where the subject title document, used in securing the loan is a Land Certificate, a notice shall be sent to the mortgagor and the

borrower (in the case of a Tripartite Legal Mortgage) by the Registry requesting for the following additional documents:

- a. An affidavit of no objection sworn to by the mortgagor and the borrower. Where the mortgagor or the borrower is a company, the affidavit shall be sworn to by two directors of the company or a director and the secretary of the company.
- b. Means of Identification of the mortgagor and the borrower. Where the mortgagor or the borrower is a company, the means of identification of two directors or a director and a secretary shall suffice.

3. Submission of Application

The applicant is required to submit the necessary documents at the Lands Bureau¹⁴ under the cover of an application for Governor’s Consent. The applicant will be given an acknowledgement form with a temporary number.

Subsequently, a permanent file will be created for the application and assigned to an officer of the Bureau. The said officer will carry out a preliminary review of the file and then transmit same to the Surveyor General’s office for charting.

4. Charting & Endorsement

Charting of the survey is a process of verifying that the property sought to be assigned, leased, or mortgaged exists where the assignor’s, lessor’s, or the mortgagor’s survey plan states that it exists. It is also aimed at confirming that the plans were

¹² There is no alienation of interest.

¹³ Registration fee is N18,750.

¹⁴ The application for registration of deed of release is submitted at the Registry.

prepared in accordance with survey rules and that the land is free from government acquisition. This is done by the office of Surveyor General of Lagos State.

Endorsement on the other hand is merely an administrative advice given by the Director of Land Services to the Commissioner confirming that the land is free from government acquisition and that the coordinates of the survey are accurate, pursuant to which the commissioner may give his consent to the transaction, on behalf of the Governor.

5. Assessment of Fees

Upon the completion of charting by the Office of the Surveyor General (in the absence of any queries), the file will be sent back to the Lands Bureau for assessment of fees payable by the applicant.

The LRL is silent on the parameters for assessing the statutory fees payable for perfection of legal mortgages. However, in practice, the fees are assessed using the mortgage sum. For assignments, Schedule 2 to the LRL provides that the statutory fees shall be 3% of the value of the property. In practice however, the fees are assessed using the consideration stated in the Deed or a sum

considered to be the current market value of the property, whichever is higher.

Mortgage

- Consent fee – 0.25%
- Stamp duties – 0.5%
- Registration fee – 0.5%
- Neighbourhood improvement charges¹⁵
- Newspaper Publication Fee¹⁶

Assignment¹⁷

- Consent fee – 1.5%
- Capital gains tax – 0.5%
- Stamp duties – 0.5%
- Registration fee – 0.5%
- Neighbourhood improvement charges¹⁸
- Business premises charges¹⁹
- Newspaper Publication Fee

Please note that where either party to the transaction is a company, stamp duties is payable to the Federal Inland Revenue Service²⁰ at 1.5% in the case of assignments, 0.375% in the case of mortgages and 0.075% in the case of a deed of release/discharge.

Requirement of Personal Income Tax:

The Personal Income Tax Act provides for the levying of tax on all incomes of an individual employed by a business or

¹⁵ Section 2 of the Neighbourhood Improvement Charge Law, Cap. N2, Laws of Lagos State, 2015.

¹⁶ This is basically a fee charged for the publication of the registration produced on newsprint paper which is published in one or more issues weekly- N20,000

¹⁷ Section 113(1) and Schedule 2 to the LRL.

¹⁸ Payable on estates, developed or undeveloped property or land not owned by the Federal or State Governments or any of its agent by maintained by the state government – see

sections 1 & of the Neighbourhood Improvement Charge Law, Cap. N2, Laws of Lagos State.

¹⁹ It is a tax on property used for the production of income including rental houses, office buildings, factories etc. Business premises amounts to N10,000 for registration and then N5,000 for renewal in subsequent years for urban areas and N2,000 / N1,000 respectively in rural areas.

²⁰ Section 4(1) & (2) of the Stamp Duties Act, Cap S8 Laws of Federation of Nigeria 2004.

organization²¹. While Pay As You Earn (PAYE) applies to employees, Direct Assessment is used to assess tax for self-employed individuals. The self-employed person will without notice or demand, file a return of income earned in the preceding year, upon which his tax will be assessed.

A taxpayer using the Direct Assessment schedule ends up paying more as against an employee earning more. That is because the self-employed person does not get to make the necessary allowable deductions²² from his income prior to taxation. This often comes up when an individual has to interface with the government on certain transactions, like perfection of title to land.

The administration of the Personal Income Tax Act (PITA) is within the powers of the State Governments²³, save for the exceptions stated in section 2(1)(b) of the Act.

An applicant for perfection of title to land is expected to submit the tax clearance certificates of both the assignor/lessor/mortgagor and the assignee/lessee/mortgagee. Where a company is a party to the transaction, two directors of the said company are required to produce their current tax clearance certificates.

In practice however, the Lagos State Inland Revenue Service (“LIRS”) will issue a demand notice (direct assessment) stating the respective sums payable by the Assignor and the Assignee as personal income tax. This is usually charged on the value of the

property. Where a party to the transaction provides a current tax clearance certificate, it is expected that the total sum paid by the said party for the relevant year equals or exceeds the amount assessed by the LIRS. Where the amount paid is below the assessed amount, the said party will be required to pay the difference before the transaction can be cleared.

It is our view that the practice of requesting for additional payments where the PAYE amount exceeds the sum demanded through direct assessment is both unfair and illegal. Section 3(1) of PITA provides that tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year. Apart from the fact that what is ordinarily relevant for the purpose of perfection of titles is the tax for the year of assessment – the essence being to ensure compliance, the assignee, mortgagee, or lessee, as a matter of fact, does not make any income (but incurs expenses) from the transaction to warrant the need to request for compliance with payment of personal income tax. It should be enough that an Assignee (particularly one under the PAYE scheme) presents his tax clearance certificate showing that he pays his taxes as and when due. Any further sum required to be paid by the interest holder to meet the sum contained in the demand notice is unfair and a violation of the PITA.

The requirement of payment of personal income tax only applies to the borrower in a mortgage transaction.

²¹ See sections 1 & 2 of PITA.

²² See section 20 of PITA.

²³ Item 7 of the Concurrent Legislative List of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 2(2) of the PITA.

Submission of Receipts to the Land Bureau

The applicant is required to submit the original receipts alongside two sets of copies of the receipts with a cover letter to the Lands Bureau. Upon submission, the original receipts will be sent to the Account unit of the Bureau for payment verification and clearance; one set of the copies will be sent to the Lagos State Inland Revenue Service for consent clearance while the other set of the copies will be kept in the file for record purposes.

6. Quality Control Clearance

The Quality Control unit of the Lands Bureau has a supervisory role over the land officers. It is saddled with reviewing the work done by the respective land officers and confirming that all the documents conform with the stipulated requirements. Once the receipts of payment have been submitted to the Lands Bureau, the land officer to whom the file is assigned would review the file and if all the documents are in order, the file would be transferred to the Quality Control unit for clearance. The decisions of the Quality Control unit are subject to the authority of the Director of Lands Services (DLS).

7. Office of the Director of Land Services/Office of the Permanent Secretary

The DLS is the administrative head of the Land Bureau and coordinates the perfection processes and other services rendered by the Bureau. No transaction can progress to the

Permanent Secretary and then to the Commissioner without the DLS' approval. The DLS receives files from the Quality Control unit and upon its approval transmits same to the Permanent Secretary for approval.

8. Governor's Consent

Section 22 of the Land Use Act makes it mandatory for the holder of the right of occupancy to seek and obtain the consent of the Governor before alienating his interest in the land, otherwise the transaction is void²⁴. However, in **Awojugbagbe Light Industries v. Chinukwe**²⁵, the Supreme Court reversed its decision in Savannah Bank's case and held that a transfer of interest in land without the consent of the Governor is merely inchoate and not void.

By law²⁶, it is the responsibility of the holder of the right of occupancy to apply for the consent of the Governor, but the practice in Lagos and some other states is that the transferee of the right applies for the consent. This is basically because the transferee is the party that will be at loss if the Governor's consent is not obtained.

The Governor may delegate his power to give consent to any commissioner subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions, or general intendment of the Act, as the Governor may specify.²⁷ This also applies to Lagos State.

Upon being cleared by the office of the Permanent Secretary, the subject file will be

²⁴ Savannah Bank (Nig.) Ltd. V Ajilo (1989) 1 NWLR (pt. 97) 305.

²⁵ *Supra.*

²⁶ Section 22 of Act.

²⁷ Section 45 of the Act.

sent to the designated commissioner of the state for consent to be given to the transaction.

9. Stamping

If the designated commissioner consents to the subject transaction, the deeds will be transmitted to the stamp duties office for stamping. The Stamp Duties Act provides for stamping of documents. Stamping of documents should be within 30 days of execution of the relevant Deed.

The Stamp Duties Act provides that the Federal Government shall be the only competent authority to impose, charge and collect duties upon instruments specified in the schedule to the Act if such instrument relates to matters executed between a company and an individual, group or body of individuals.²⁸ The State Governments on the other hand collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government.²⁹

What are the consequences of failure to stamp a title document?

- a. The document will not be accepted for registration; and
- b. It cannot be tendered in evidence to prove title.

10. Sighting and Confirmation of Root of Title

The deeds upon being stamped at the relevant stamp duties office, is moved to the Registry for registration. Prior to registration, the applicant will be invited by the Registry to produce the original root of title to the subject property for confirmation. This is to ensure that the title document produced by the assignor/lessor/mortgagor is authentic and not forged. It is also done to confirm that the property is not encumbered in any way. Where the applicant purchased a portion of a large expanse of land covered by a title document and is not able to produce the original title document, a letter of "No Objection" from the Seller will be required of the applicant.

11. Registration

If the Registry confirms that the root of title is authentic and that the property is not encumbered, it will go ahead to register the instrument of transfer. The applicant would be given the original registered title document while a counterpart will be kept in the records of the Registry. Once a person has been validly registered as the holder of title to a land, the registration is evidence of holding of title to that land, together with all the rights, privileges and appurtenances, except rights to mineral resources or mineral oils on the land.³⁰

However, registration does not cure any defect in any instrument or confer upon it any validity which it would not otherwise have had.³¹ It does not validate fraudulent

²⁸ Section 4(1) of the Stamp Duties Act.

²⁹ *Ibid.*, section 4(2).

³⁰ Section 27(1) of the LRL.

³¹ *Orumwense v. Amu* (2008) All FWLR (pt. 442) p. 1120, at p. 1141.

instruments or title or a transfer of interest which is patently invalid in law.³²

What are the effects of registration of title to land?

- a. Registration of title is a notice to the public as to where interest in the registered land is vested. The registration of mortgages, charges or caution, may serve as a warning to a prospective buyer, of possible encumbrance on the title of the Seller and to take further steps in finding out the current status of the land.
- b. Prior to the decision of the Supreme Court in *Benjamin v. Kalio*³³, the position of the law was that an unregistered land instrument cannot be pleaded and is inadmissible in evidence³⁴. However, by virtue of *Benjamin v. Kalio*, an unregistered instrument is only inadmissible for the purpose of proving legal title to land. It is admissible to prove payment of money and coupled with possession, it may give rise to an equitable interest enforceable by specific performance.
- c. Where there are rival instruments that are registered, priority is given to the first in time. This is because the benefit of an earlier registration is preserved and ranks in priority over the date of execution.³⁵

³² Kyari v. Alkali (2001) FWLR (pt. 60) p. 1481 at 1506-1507.

³³ (2018) 15 NWLR (pt. 1641).

³⁴ See Akinduro v. Alaya (2007) All FWLR (pt. 381), 1653, section 30 of the LRL.

³⁵ Kachalla v. Banki (2006) 8 NWLR (Pt.982) 364.

³⁶ The Bureau had issued a document in respect of the major reforms they have embarked on, one

12. Why does the perfection process take so much time?

- a. **The manual system of land registration is highly dysfunctional** – it gives room for delays, loss of files and documents, and due to lack of standardised form for the relevant documents, the officers are forced to issue avoidable queries on applications, some of which are often subjective.
- b. Bureaucratic bottlenecks.
- c. **No synergy between the Land Bureau/Registry and the Office of the Surveyor General** – The information recorded by the Land Bureau/Registry and the office of the Surveyor General are not kept in a single database neither are they linked in anyway. There is no electronic database for recording boundaries, checking plans, and providing cadastral information (geographic information system).

13. Recommendations

- a. The land officers need to be well trained.
- b. The entire process needs to be overhauled with a view to reducing the level of bureaucracy embedded in the system.³⁶

of which is the Integrated Land Administration Automation System project. The project, when launched, is expected to “allow for complete modernization and automation of land administration” in Lagos State. We think that this is laudable if it is achieved and will minimize the length of time and cumbersome nature of the current perfection processes in Lagos state.

c. Digitisation.

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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