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INVESTING IN REAL ESTATE IN NIGERIA

LAND ACQUISITION PROCEDURES A LAGOS EXAMPLE

WITH
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LAND ACQUISITION PROCEDURES - THE LAGOS EXAMPLE

1. Background

1.1. This write up shall attempt to address the current practices in the Real Estate sector of Nigeria and provide an insight into various aspects of interest for would be investors in the sector and shall be using as a focal point, Nigeria's commercial capital - Lagos State. It should be noted however that save for minor differences the same practices apply in most other states of the Nigerian Federation.

2. LEGAL FRAMEWORK OF LAND ACQUISITION

2.1. The basic legal framework for the acquisition of land in Nigeria is the *Land Use Act, Laws of the Federation of Nigeria 1990*. This Act vests all land comprised in the territory of each state (except land vested in the Federal Government or its Agencies) solely in the Governor of the state, as trustee of the people.

2.2. The state is responsible for allocation of land in urban areas to individual's resident in the state and to organizations for Residential, Agricultural, Commercial and other purpose. Similar powers with respect to non- urban areas are conferred on Local Governments.

2.3. By virtue of this Act, ownership vests in the Governor while only a statutory or customary right to occupy land is given to a person for a maximum of 99years. The control and management of land is administered through the Land Use and Allocation Committee acting as an advisory committee in transactions affecting land.

2.4. It is therefore a requirement of law to obtain the consent of the Governor for any assignment of title to land in accordance with the Act. Section 22 which provides as follows:

***"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."**[Boldness & Italics mine]*

- 2.5. This provision does not make an agreement to alienate unlawful, but makes such an agreement conditional upon necessary consent being obtained. Therefore, a clause to cater for obtaining the Governor's consent is usually inserted into the agreement, for instance as follows:

"this agreement is conditional upon the vendor securing the Governor's consent under the Land Use Act, 1978. The Purchaser shall solely be responsible for all expenses in obtaining the Governor's consent to the transaction"

- 2.6. The legal consequence of default in obtaining consent is that rights of the parties will remain inchoate and the parties cannot hold themselves to the bargain as the purported sale or transfer is void and of no effect.

3. BEFORE YOU PURCHASE THAT LAGOS PROPERTY.....

- 3.1. Acquisition of land and its documentation involves a number of procedures that call for due diligence and caution on the part of the purchaser. Retaining the services of a good professional could help get through these procedures in the best interest of the Purchaser.

- 3.2. The Purchaser's lawyer will usually carry out the investigations of title of the Vendor and all other processes prior to the purchase of the land (payment of the purchase sum).

- 3.3. The primary objective at this stage is to ascertain that the Vendor has a **good root of title**. A good root of title in this context means the following:

- 3.3.1. that the Vendor is the rightful (beneficial) owner of the land.
- 3.3.2. that the land is free from any encumbrance or pending litigation.
- 3.3.3. that the land is not the subject of any Government acquisition.
- 3.3.4. that the land is not subject to any of the overriding interests in land (e.g. short leases, easements, licenses, road or right of way).
- 3.3.5. that the Vendors are acting in good faith (for instance where the land is family owned land)

- 3.4 Investigation of title is carried out at the Lands Registry or New Towns Development Authority (whichever is applicable) by the Purchaser's Solicitor shortly after inspection and expression of interest in the land using copies of the key title documents, evidence of payment of levies,

approved building plans, survey plans, excision plans, etc. Sometimes investigations may include visiting the neighbours to the property and making direct enquiries in respect of the land in question.

3.5 If the property falls within the Excision Area (i.e. areas exempted from Government acquisition such as Ajah and its environs), the investigation will include the verification of the red copy of the "Excision Plan of the Layout" where property is situated. The Excision Plan itself is a vital document and a prerequisite for Registration of Title to property at the Lands Registry. Very often, an area covered by an excision plan will also be published in the Government Gazette for the avoidance of doubt.

3.6 It is always prudent to verify the Excision Plan by re-confirming the survey beacons around the land. Where there is no Excision Plan, an application for the approval and registration of one will have to be made to the State Government in the prescribed form by the original title holder/ beneficiary of the Government Excision. The process is usually an expensive procedure depending on the size of the property and the valuation of the property.

4. THE ACQUISITION/PURCHASE TRANSACTION PROPER

4.1. Where the Purchaser's Solicitor is satisfied with the title, and a sale price agreed upon by the parties, he will draft the necessary documents of sale which include the following:

4.1.1. An Agreement for Sale of Land (preceding the actual sale).

4.1.2. A Deed of Assignment of title to Land.

4.1.3. A Power of Attorney to deal with the land.

4.1.4. A Purchase Receipt.

4.1.5. Form for application for Governor's consent (Form 1C)

4.2 These documents (especially the Sale Agreement and the Deed of Assignment) must contain the names and descriptions of the parties, proper description of the property, the agreed purchase price, the acknowledgement of receipt of that amount, the capacity in which Vendor is selling, a Warranty that he has a right to sell in that capacity, condition that the contract shall be conditional on the obtaining of any requisite consents to the transaction, etc.

5. THE EXCHANGE OF CONTRACT

5.1. After ascertaining good title and preparing the necessary documents, the contract of sale is exchanged between the parties. The contract is

engrossed in two parts and forwarded to the vendor's solicitor for purposes of certifying the correctness of the contract, its approval and obtaining the vendors signature before sending back to the purchaser's solicitor in exchange on payment of the agreed price.

5.2. The exchange of contract creates a binding agreement between parties to entitle either party to specific performance (i.e. to execute the Deed of Assignment). What is preferable is that signed documents are exchanged for the purchase price (either a transfer or payment by bank certified cheque). Although a common practice today is to have the purchaser credit the account of the vendor prior to any exchange of documents, I strongly advice against this.

5.3. On exchange of contact and after obtaining Governor's consent the Assignor [Vendor] becomes a trustee of the legal estate while purchaser becomes a Beneficial owner and acquires equitable interest. He could deal on the land and becomes entitled to all improvements and increases in the value of property.

6. INTEREST/CONTROL OF LAND (PENDING PERFECTION)

6.1. In view of the time it takes to perfect the documents of title so executed, a **Power of Attorney** in favour of the Purchaser to deal with land as he/it deems fit is a necessary part of a land transaction. It must be made **irrevocable** and coupled to the purchase price.

6.2. An irrevocable Power of Attorney may be issued to accompany the contract empowering the purchaser to assign or procure the assignment of the property to himself or to any other person(s) and to execute all documents relating to it. However, the mere issuance of the power of Attorney is not per se alienation or parting with possession. It is a vehicle by which these acts could be done.

7. PERFECTING TITLE TO LAND

After a successful sale, the next stage will be to secure the investment made on the land by (huge cash outlay) by perfecting the Purchaser's title. This in essence means:

7.1 Taking and exercising effective possession of the land & perhaps fencing it (even with a 2 feet perimeter wall, or corner edge walls i.e. if there are no developments already on the land). A very practical step which is often employed is also to put up a sign board on the property notifying the 3rd parties of the Purchasers interest. While these measures are not full proof

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The aim at all times is to put up something that puts a careful third party on notice (*caveat emptor*). Possession they say is 2/3rds of the law.

7.2 Paying **STAMP DUTIES** on the documents of sale (usually ad valorem 2% of value of land) within 30 days of execution. Any default to stamp outside prescribed period attracts penalties. One way to circumvent this however which has even received judicial approval is to leave such documents undated till such time as one is ready to proceed with perfection.

7.3 Paying **CAPITAL GAINS TAX** (which the Vendor is by law liable to pay, but which by practice is passed on to the Purchaser), usually 15% of assessed value of land.

7.4 Applying for the **GOVERNOR'S CONSENT** and paying the Consent fee (10% of assessed value of land)

7.5 **REGISTERING YOUR TITLE DOCUMENTS** at the Lands registry and paying the Registration fee (usually 6% of assessed value) within 6 months of obtaining the Governor's consent.

8. EFFECT OF NON-REGISTRATION

8.1 Where documents created over a land transaction are not registered it renders such documents inadmissible in a court of law as evidence of the transaction, and a party to a land dispute will not be allowed to rely on it in a dispute over title to land thus negatively impacting his/her case.

8.2 Loss of Priority: The document registered immediately after its first execution subject to Governor's consent takes effect as against other instrument affecting the same land from date of its registration. This essentially reflects the "first in time rule" which is to the effect that where there are competing claims over the title to land whoever registers his interest first takes priority over other claimants.

9. DOCUMENTS REQUIRED FOR PERFECTION

9.1 The documents required for perfection of the purchaser's title at the State Board of Internal Revenue, the Lands Registry, State Ministries of Finance and Justice, Governor's office, etc. are as follows: -

9.1.1 Application for Governor's consent in Land Form 1C

- 9.1.2 Current Income Tax Clearance Certificate of the parties for three (3) years preceding application.
- 9.1.3 Receipts of payment of all Tenement Rate for three (3) years if a developed land
- 9.1.4 Affidavit in lieu of payment of tenement rate if undeveloped land
- 9.1.5 Survey or Building plans whichever is applicable.
- 9.1.6 Duly executed Deed of Assignment (6 copies)
- 9.1.7 Original or Certified True Copies of Assignors Title documents
- 9.1.8 Receipts of payment of all Ground rent.
- 9.1.9 Receipts of payment of Development Levy
- 9.1.10 Receipts of payment of all land charges.
- 9.1.11 Covering letter addressed to Governor through the Lagos State Ministry of Lands and Survey, Alausa, Ikeja, Lagos applying for consent and attaching all documents listed above.

10. FINANCIAL REQUIREMENTS

- 10.1 The various processes in perfecting title to land in Lagos State, requires certain percentage of fees payable to the Lagos State Government in a Bank Certified Cheque as may be assessed as the value of property notwithstanding the consideration on the deed.
- 10.2 The key factors in the valuation exercise are: -
 - 10.2.1 The size of the property usually valued per square meter.
 - 10.2.2 The location of the property (example, if land is within the designated areas called the titled areas such as Ikoyi, Lekki, Victoria Garden City (VGC), Lagos Island, Ebute Metta, etc.) or if Land is within the excised areas and covered by an Excision Plan.
- 10.3.3 Security of property.
- 10.3.4 Structural design of building.

10.3.5 Building layout (total number of rooms and relative size of rooms).

10.3.6 Aesthetics of building and quality of material used.

10.3.7 Relative cost of property.

11. TIME FRAME FOR PERFECTION PROCEDURES

The processes are burdened with a lot of bureaucracies and averagely take between six to twelve months.

12. DOCUMENTS TO EXPECT AFTER THE PERFECTION IS COMPLETED

12.1 Original Letter (for instance No. LU/GC/12345/Assign./12) conveying the Governor's Consent.

12.2 Original Certificate of Occupancy with the Governor's consent endorsed therein.

12.3 Where the land has never been covered by a certificate of occupancy, then the Original Deeds (Deed of Assignment) with the Governor's consent endorsed therein.

12.4 At least one Counterpart of the Deeds (Deed of Assignment) with the Governor's consent endorsed therein

12.5 Approved Layout of the XXX Chieftaincy Family Land Excised at XXX Village or layout

12.6 Original Letter (No. LU/GC/12345/SUB stating the assessed payments due on the property.

12.7 LSG Treasury Receipt for Land Charges & Fees

12.8 LSG Treasury Receipt for Registration Fees.

12.9 LSG Miscellaneous Receipt for Capital Gains Tax.

12.10 LSG current & previous year Income Tax Clearance Certificate for purchaser/assignee (with the assessment form & bank teller slip). Where there are joint or co-owners, e.g. husband and wife, then they should have separate tax clearance certificates.

12.11 LSG Treasury Receipts for stamp duties, oath fees, etc

13. GETTING BY (THE ALTERNATIVES)

13.1 Essentially, after perfection, the purchaser becomes the Legal Title holder of the Land/property having been issued with the Certificate of Occupancy by the Lagos State Governor. This entitles him to deal with the land for his benefits, tender the certificate in evidence and could deposit the title document as collateral in application for loan from the Bank.

13.2 However, the sheer 33% of “assessed value” has been a problem for most purchasers because of the cost (further cash outlay), the bureaucracies, the laxities by the ministry official, incessant official and unofficial tours, Exorbitant unofficial fees demand, Touting by junior workers etc, administrative problems and complacent attitudes of consultants engaged by the state government, labour strike action, etc.

13.3 In order to get by the problems of Governor’s consent, registration, capital gains tax, bureaucracies, etc, it would be best to acquire a land presently held by a company (preferably a shelf company with no liabilities and whose only asset is the land). Where this is the case it means that you can simply acquire that company by means of share transfers and changes in the directors of the company.

13.4 Getting by here means acquiring a company that owns the land, thus changing only the shareholders but not legally speaking a sale of land requiring perfection of title. The only perfection will be the effective transfers and registration of the transfers and changes in the particulars of Directors and shareholding portfolio of the company at the Corporate Affairs Commission. This practice is fast gaining grounds among Real estate speculators and developers.

14. CONCLUSION

- 14.1** An investor is faced with two probable options in real estate in Nigeria. Firstly he may just want to buy landed property in a choice area and want to develop it for his/her /it's private use; Secondly and as is often the case, to buy property, develop it and either sell it off to make a profit or lease it out.
- 14.2** This is infact the current trend in Nigeria now, with numerous property developers coming out with all manners of residential estates. Price range depending on the area involved, is in the range of 30 to 70 Million Naira, one can comparatively state therefore that there is a boom in property development in Nigeria of Today. The more reason where a prospective purchaser of property should seek proper advice from professionals before embarking on any investment in real estate.

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