

LEGAL INITIATIVES TO ACHIEVE THE DELIVERY OF 500,000 HOUSING UNITS BY 2016.

Introduction.

Shelter or housing is one of the most basic of human needs. In fact, world acclaimed American psychologist, Abraham Maslow, ranked shelter as second only to food in his hierarchy of human needs.¹ It is a basic need for human survival and an essential component to the advancement of the quality of life of the citizenry.² Housing is a necessity that provides shelter for man in order for him to actualize his real potentials in life and contributes to the growth of the world economy.³ The provision of housing is therefore sine qua non to the growth of man and development of the nation.

Effective housing delivery involves many actors and segments of the state fabrics and therefore requires effective partnership collaboration and information sharing. To fulfill this need a multi-faceted approach that transcends the legal, social, economics, religious and cultural interfaces and traits must be put in place at any given time. The task of this presentation is to examine the legal initiatives required to facilitate the delivery of 500,000 housing units between now and the year 2016. We start with the concept of housing.

Concept of Housing.

Quoting from the provisions of the new national housing policy document;⁴

‘Housing is defined as the process of providing safe, comfortable, attractive, functional affordable and identifiable shelter in a proper setting within a neighbourhood, supported by continuous maintenance of the built environment for the daily living activities of individuals/families within the community while reflecting their socio-economic, cultural aspirations and preferences.’

From this definition, housing is not only a shelter, but includes safety of the neighborhood; comfortable and functional dwelling, supported by continuous maintenance of the environment; all reflecting the socio-economic, cultural aspirations and preferences of members of the society and affordable. Thus, the legal initiatives for the delivery of such housing as conceptualize above requires not only the legal parameters concerning land, but extends to town planning laws, Tenancy and Rent control law, property tax law, energy law, water law, environmental law, compulsory acquisition and compensation laws amongst others. Each of these laws is now treated seriatim as hereunder.

¹ Maslow A.H.’ [A Theory of Human Motivation](#)’ *Psychological Review* 50(4) (1943):370-96

² National Housing Policy adopted on 15th December 2011. Available at www.socialhousingnigeria.com accessed 22/03/2013

³ Otubu. T. [The Missing Link in Housing Sector Reforms in Nigeria](#) ACTA UNIVERSITATIS DANUBIUS Vol. 4, no. 1/2012 116

⁴ Nigeria National Housing Policy document adopted the 15th December 2011 p. 2

Land law.

Land to housing is what a woman is to a pregnancy. The conception, gestation and delivery of housing can only come to fruition with the availability of secured land and proper land management. Land midwives housing delivery in myriad of ways; Land is the superstructure on which the dreams and aspirations of provision of housing is founded.⁵ Land supports the production and delivery of housing through the provision of the much needed finance for its construction. As one of the main factors of production, land provides capital formation and collateral for bank advances towards the construction of the much needed- houses. It is thus obvious that the dream of a vibrant, efficient and effective mortgage system (financial reforms) will remain a mirage in the absence of a viable and reliable land management system.⁶ The land management policy of a State also impacts directly on the output and supply of some of the basic raw materials in the construction industry including housing.⁷ Such materials as sand, gravel, granite laterite and even cement are subject to the extant land use management policy of the state. Thus, the Land use policy and management of the State has a direct impact and consequences not only on the quantum and quality of the State housing stock, but also fundamentally on the economic wellbeing of the citizen and the state, particularly in developing countries where there is heavy reliance on land and its resources for sustenance.⁸ The question of who owns the land, what tenure operates over the land, security of tenure, compensation for compulsory acquisition of property rights are fundamental questions of enquire in this exercise.

Given the foregoing scenario, an examination of the current law regulating the use and management of land cannot but be a prerequisite to the successive delivery of 500,000 housing units by 2016. The current law on the subject is principally the land Use Act; others are Registration Laws, Registration of Title Laws etc.

To ensure an efficient and effective housing delivery, there is a fundamental need for a secured land title and security of tenure. The land Use Act, as presently constituted does not seem to provide the necessary secured tenure to fast track the delivery of the expected houses; being a policy founded on hybrid recommendation,⁹ the Act undulates between land nationalization and the protection of private property rights.¹⁰ Its wavering posture has given rise to multiple

⁵Otubu, n.3

⁶ Ibid.

⁷ Otubu. T Housing Needs And Land Administration In Nigeria. In *Smith I.O. (ed.) Land and Real Property Rights in Nigeria. Faculty of Law University of Lagos Nigeria (2008)*

⁸ Supra n.3

⁹ The land use act is the outcome of the land use panel set up by government in 1977 to review the land policy administration in Nigeria. The government of the day did not accept the majority report to nationalize all lands in the country but promulgated the Act which reflects an amalgam of Nationalization and protection of private property rights in land.

¹⁰See Sogunle B.A. The Enactment Of The Land Use Act On March 29th 1978: Nationalisation Or Expropriation? in *Smith I.O. (ed.)The Land Use Act: Twenty-Five Years After Faculty of Law University of Lagos Nigeria (2003)* p 49 Otubu. T Land Reforms and the Future of Land Use Act in Nigeria. *Nigerian Current Law Review. (NIALS) 2007 - 2010*

interpretations as to its policy thrust and directives. Questions arise as to what is the quantum of interest obtainable under the Act,¹¹ are there equal property rights in every citizen under the Act,¹² what is the proprietary value of the Certificate of Occupancy issued under the Act,¹³ how secured is private property rights under the Act in view of the Governor's power of revocation¹⁴ and paltry compensation payable thereon?¹⁵ How much protection does the Act offer potential mortgagees in the creation, perfection and realization of the mortgage transactions?¹⁶ How far the Land Use Act has addressed the problems of land speculation, land grabbing and incessant land dispute and urban slum?¹⁷ Apart from these, the over concentration of power of land management in an individual rather than institution; the dichotomy in land rights and land administration under the Act and the oust of courts' jurisdiction in the determination of dispute and compensation issues are areas of concerns. These and many others are impediments to successful delivery of the 500,000 housing unit by 2016.

The Land Use Act should be amended to address these contentious issues bedeviling the smooth delivery of adequate and affordable housing to the masses. The Act should take a categorical stance on who owns the land; state or individual? To many this may seem obvious,¹⁸ but this is not correct when one realizes that while the tenure of some citizen is finite and determinable,¹⁹ others are infinite;²⁰ whilst some pay taxes and rents on their land, others do not.²¹ The Act should declare state ownership of land so that the transition provisions of more than 35 years old in the Act²² can be extinguished and laid to rest and occupiers can be compensated for the revocation of their rights over bare land in as much as they paid to obtain the land from the state. With such categorical posture the issue of inequality in land rights as presently obtainable under the Act will become a thing of the past; every citizen will now have equal determinable interest in land. With state ownership of land the proprietary value of Certificate of Occupancy is enhanced since it will now become a land title document instead of the current position as document evidencing title to land.²³

¹¹ Chkwu. L . O ----- *Twenty-Five Years After Faculty of Law University of Lagos Nigeria* (2003)

¹² Otubu n10

¹³ Smith----- *Twenty-Five Years After Faculty of Law University of Lagos Nigeria* (2003)

¹⁴ Amokaye----- *Twenty-Five Years After Faculty of Law University of Lagos Nigeria* (2003)

¹⁵ Otubu. T Private Property Rights and Compulsory Acquisition Process in Nigeria: the Past, Present and Future *Acta Universitatis Danubius. Juridica*, Vol 8, No 3 (2012)

¹⁶ Amokaye mortgages power of sale jtpl, Banire Leases jtpl

¹⁷ Egute. M. A et. al: Land Rights And Mechanisms For Resolving Land Disputes In Benue State. *Access To Justice Programme, Nigeria available at : <http://www.gsdr.org/docs/open/SSAJ134.pdf>* accessed 22/03/2013

¹⁸ Eso Jsc

¹⁹ Actual Grantee

²⁰ Deemed Grantee

²¹ Otubu n10

²² S.34 and 36 of the Land Use Act.

²³ smith

Still on the Act, the provision relating to consent requirement²⁴ should be removed with respect to mortgages in order to streamline the laborious process of mortgage creation, perfection and realization under the Act. Also, the provision excluding the mortgagee from the definition of a holder/occupier²⁵ for the purpose of payment of compensation should be reviewed to facilitate the enforcement and realization of the mortgage transactions. With the amendment in place, the primary mortgage institutions (PMIs) will be able to take the full benefit of the loan window provided for in the National Housing Fund Act²⁶ to secure their investment with a block of mortgages over the properties being developed. Aside the amendment of the Act to accommodate smooth mortgage transactions, the Act should also provide explicit procedure for revocation of right of occupancy, such as pre-revocation notices, filing of objections and access to the courts for adjudication on quantum of compensation payable upon revocation. The present situation whereby one only reads about revocation in the newspapers; and whereat it is done with military fiat, falls short of international best practices obtainable in more civilized climes.²⁷ To avoid conflict between State grant and a grant made by the local government, the reviewed Act should abolish the dichotomy existing between the State and local government over land administration in the State. This will ensure a uniform source of authority and streamline land administration in the state thus fostering land management reliability and efficiency, all geared towards boosting investor's confidence in the system and seamless production and delivery of housing units.

Mortgage law

Mortgage transaction is a species of secured credit transaction that provides investment funds for business enterprises. With respect to housing the term means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.²⁸ It is the bedrock and the superstructure for housing finance. Its functionality is exhibited when it is appreciated that it

²⁴ S. 21 and 22 of the Land Use Act 1978. See generally the following for a seminal discussion on the consent provision Adeoye & Oguniran "The Socio Economic Implication of the Consent provisions of the Land Use Act; K. Oluwajana The Land Use Act and the Banking Industry; Ladi Taiwo, Practical Implications of the Land Use Act on Mortgages" in *The Land Use Act: Administration and Policy Implications* ed. Olayide Adigun, Unilag press 1991; E. Essien Land Use Act and Security in Real Estate in Nigeria, R.A Omuoha Governor's consent under section 22 of the Land Use Act: The position since Savannah Bank V Ajilo, Tunde Otubu, Land Use Act and Housing in Nigeria: Problems and Prospects in "*The Land Use Act. Twenty five years after*" ed I.O Smith; P.O. Adeoye The Use of A Right of Occupancy as security for Advances – A Caveat", *Journal of Business and Property law* 1989. p. 17. See also the case *Savannah Bank of Nigeria Limited V Ajilo* (1987) 2 NWLR 421.

²⁵ S. 51 Land Use Act.

²⁶ See generally Terms and Conditions for obtaining loans from National Housing Fund by Mortgage Institutions and individual contributors' regulation S.I 15 of 1996 made pursuant to section 14(3) Cap N45 Laws of Federation of Nigeria 2004. These regulations were published in five years of the National Housing Fund 1992-1997. A report on the implementation of the scheme of Federal Mortgage Bank of Nigeria (FMBN). See also supplement to official Gazette Extra Ordinary No. 3 Vol. 79, 4th February 1992 – Part A

²⁷ UK, USA

²⁸ See *Castrillo v. Am. Home Mortg. Servicing, Inc.*, 2009 U.S. Dist. LEXIS 106909 (E.D. La. Nov. 16, 2009)

gives assurance for the repayment of the loan advanced for the construction of houses. Statutorily, the primary mortgage institutions (PMIs) established under the law²⁹ are required to secure the loans obtained from the federal mortgage banks/national housing funds with a first legal mortgage over the block of properties funded by the loan. In the same vein, individuals are expected to execute a first legal mortgage over the property financed by the funds sourced from the PMIs. Mortgage is so fundamental to mass and social housing developments to the extent that without it housing development will suffer from dearth of block of funds and will have to rely on individual savings and financial support from friends and relatives. But what is the state of our law on mortgages?

With few exceptions, our law on mortgages is still founded on the received English laws of the 19th century; which has been discarded in England over 80years ago. Our law on the subject does not reflect the realities of our time. We still convey in fee simple or tail when such proprietary interest does not exist in our statute books. Our mortgage enforcement procedures are still tangled in the webs of the common law and archaic statutory provisions. The rights of the mortgagee to freely realize his investment is hampered by our laws³⁰ and courts.³¹ There is the need to review our laws on the subject of mortgage.

The Property and Conveyancing Act³² needs repealing and a new law on mortgages to reflect the current trend in the area and fast-track mortgage transactions be promulgated. The new law should reflect the quantum of proprietary interest available under our law, streamline the process for the enforcement of mortgagees' powers of sale and foreclosures and do away with the need for a re-conveyance deed in mortgages amongst others. The right of the mortgagor to create successive legal mortgagees over the same property; be protected from negative amortization clauses and collateral mortgage contracts should be explored under the new law. The new law should harmonize the provisions of existing legislations in the areas and harness them to achieve the goal of providing robust financial base to for social housing. The provisions of the Land Use Act, Registration of Title Laws, National Housing Fund Act, Pension Act, Federal Mortgage Bank Act, Nigeria Social Insurance Trust Fund Act, Primary Mortgages Institution Act and other laws relating thereto should be examined in this wise. The provision of the New Lagos State Mortgage and Property Law³³ is also recommended as a template for the review of the old Act.

²⁹ Primary Mortgages Institution Act 1989

³⁰ A mortgagee is not recognized as a holder under the land use act and cannot therefore benefit from the rights of a holder/occupier of the rights of occupancy as to entitle him to compensation in the event of revocation of the right of occupancy secured by a mortgage. Also to create mortgages there is the for Governor's consent so also there is need for consent for the mortgagee to exercise the power of sale effectively since such exercise of power of sale is a subsequent transaction caught by the provisions of sections 21 and 22 of the Land Use Act.

³¹ The same Land Use Act requires the Mortgagor to obtain consent to mortgagees but in reality it is the mortgagee that suffers from the failure of the mortgagor to seek and obtain the consent. See Savannah Bank (Nig.) Ltd. v Ajilo (1989) 1 NWLR (Pt.97), Union **Bank** of Nigeria PLC & Anr v Ayodare & sons (Nig) **Ltd** & Anr

³² 1881-1882 UK Act; applicable in Nigeria as a statute of general application by virtue of our reception laws.

³³ 2010

Land Registration Law.

Land registration can be best described as a species of machinery for assisting a purchaser or mortgagee in his inquiries as to his vendor's or mortgagor's title previously to completing his dealing, and for securing his own position afterwards.³⁴ Documentation and registration of all dealings and transactions involving land is at the heart of ensuring record keeping, facilitating land searches, tracing and priority in land transactions, which go a long way at establishing certainty, predictability and efficiency in land transactions including mortgages. A vibrant storage and retrieval land information system enhances transparency in land dealings and is immeasurable as a factor aiding speedy settlement of land disputes. A good land registration system is therefore core to efficient land administration and consequently the delivery of housing in a state.

Currently in Nigeria, it is the prerogative of the state to determine, design and operate its own land information recording system. This is as a result of the constitutional arrangement which empowers the states to legislate on the subject matter.³⁵ The current regime has given rise to multiplicity of laws and diverse administrative procedures in the process of storing and retrieving land information system in the country to the detriment of investors, mortgagees and real estate developers alike. A times the requirements for land registrations/title registration varies from state to state not because laws are different but simply on issue of practice and procedures to be adopted including charges/levies imposed on the parties.³⁶

In the time past there used to be a uniform land information recording and retrieval system in the country; the Land Instrument Registration Act³⁷ 1924 which later became state laws³⁸ with the coming into effect of the 1954 federal constitution. The law is still extant in most of the states of the federation, but the practice has remained diverse. There is therefore a need to streamline the practice and procedure for recording and registration of land dealings and evolve a uniform system that will not only breed seamless land registration process but also boost investors' confidence in the process. Towards this end, the existing mechanisms and procedure for regularization and registration must be reoriented and reorganized to achieve greater effectiveness, reliability and economy. Since market efficiency depends very much on the availability of reliable information that can be used to check genuineness of titles before purchase and to trace records of land transfers at any point in time, efforts should be geared towards making registration compulsory for all land dealing. Government should compel the conversion of all existing titles on land to a certificate of occupancy within a stipulated time. Such policy would foster the development of a uniform land title in the system, which in turn

³⁴ Land Registration Classic Encyclopedia 1911 available at: http://www.1911encyclopedia.org/Main_Page accessed 23/03/2013

³⁵ See the Schedule to the Constitution of Federal Republic of Nigeria 1999 as amended.

³⁶ In Lagos for example, you must pay a minimum of N15,000.00 for land information request per plot of land which information lapses after 90days. You pay far less for the same service in Oyo State or any State in the Northern part of the country.

³⁷ Land Instrument Registration Act

³⁸ E.g. Land Instrument Registration law 2005 Laws of Lagos State.

would engender certainty, reliability and security of land title deeds.³⁹ Such scheme will also obviate the need to keep dual land title documents over a piece of land⁴⁰ and thus stem the tide of land frauds that are rampant in our urban centres.

Planning Law.

Availability of land does not *ipso facto* guarantee the delivery of housing; the land must be available and suitable for the housing needs. The availability of land for housing needs is a function of the planning policy of the state. The knowledge of the operative planning model, the zoning scheme and the master plan in operation in the state are, amongst others, vital to the successful delivery of housing envisaged under the scheme.

Hitherto, there was a National policy and legislation on the subject matter of planning in the country which sought to set a national agenda and directives for physical planning in Nigeria by setting up a uniform three-tier institutional framework for the operation, implementation and realization of National Planning objectives.⁴¹ The Urban and Regional Planning Decree promulgated in 1992 was the first major national attempt at addressing the haphazard Town Planning law and practice in the country. However the national appeal and potency of the Act has been rendered otiose by the Supreme Court decision in *Ag Lagos State V A.G. Federation*⁴² whereat the law lords held that any matter not mentioned either in the exclusive or concurrent list becomes a residual matter exclusively for the State House of Assembly by virtue of S.4(7)a and a residual matter exclusively for the National Assembly in regard to the Federal Capital Territory by virtue of S.299 of the 1999 Constitution. In effect, the court declared the provisions of the Urban and Regional Planning Decree unconstitutional since such matters are within the legislative competence of states and beyond the federal government legislative purview except with respect to Federal Capital Territory (FTC).

It is thus imperative to appreciate the workings of the various State planning laws and assure oneself of the availability of the land for housing purposes in order to avoid conflict and hiccups in the delivery process.⁴³ In fact one needs to be acquainted with the law and practice of Planning in the state before venturing to build any house in the state; the last experience here in Abuja

³⁹ This policy can be implemented by the Government through the issuance of certificate of occupancy to the parties seeking the consent of the Governor to subsequent transactions where their prior title deeds were not a certificate of occupancy. The same procedure should be employed where the government issues a deed of ratification over land to an applicant. With vigorous implementation of this procedure in the nearest future certificate of occupancy become the uniform title deed over land in the country. See generally Onuoha R. A “**The Problem of Land As Security Under The Nigeria land Use Act 1978**” Unpublished PhD Seminar, Faculty of Law, University of Lagos. 2004

⁴⁰ It is common for persons with registered conveyance prior to the land use act to also obtain a certificate of Occupancy over the same land without surrendering the conveyance to the state in order to perpetuate fraud on the unwary investor/mortgagee.

⁴¹ Urban and Regional Planning Decree (Decree No. 88) of 1992

⁴² 2003 FWLR Pt. 168 P. 909; 2003 111 LRCN; P. 1867.

⁴³ During the 2nd Republic Nigeria, there was a major conflict between the then NPN controlled federal government and the UPN controlled government in Oyo State over the site of the federal housing estates in the state. The State had to demolish the houses simply because they were built in areas zoned for different purpose by the State. The state had to relocate and provide another site in line with its urban renewal plan for the federal housing projects.

during Obasanjo regime is too fresh to be forgotten.⁴⁴ Furthermore knowledge, of the regulations on lot-size, set-backs, zoning, building approval processes⁴⁵ and allied regulations must be studied in order to have a seamless housing delivery process and achieving the set target by the year 2016.

Other laws

Rent Control laws

In addressing the legal initiatives for the delivery of housing, it is imperative to consider the law regulating the relationship of landlord and the tenant, particularly with respect to rent regulations. It is an economic fact that rent is the return on land investment and investors will be happy and willing to invest the more in the industry where returns on investment is high and profitable. Rent control and or rent restriction regulations are therefore a disincentive to investment in the real estate business. The Rent Control law, in fact, is the single most important reason for the proliferation of slums in Nigeria by creating a serious shortage of affordable housing for the low income families. Where there is rent freeze investors are likely to look elsewhere to invest their funds; and this is scenario is aggravated where the rent control laws includes clauses which guarantees security of tenure by disallowing ejection of existing tenants and conversion of existing dwellings.⁴⁶ Where stiff rental regulations prevail, institutional investors will take a view on the side of the law. This means project viability studies will take into consideration the high cost of finance and construction and reduced upfront rental charges (income), likely making investments in new projects less attractive.

Some of the adverse impacts of the Rent Control Act are:

- Negative effect on investment in housing for rental purposes.
- Withdrawal of existing housing stock from the rental market.
- Accelerated deterioration of the physical condition of the housing stock.
- Stagnation of municipal property tax revenue, as it is based on the rent.
- Resultant deterioration in the provision of civic services.
- Increase in litigation between landlords and tenants.

⁴⁴ The general counsel of the Federal Capital Territory Authority (FCTA), Mal-lam Mohammed Alkali told the Senate Committee probing the sale of Federal Government houses and property in Abuja that the el-Rufai administration in the FCT destroyed over 75,000 houses and other public property. Nigeria: 75,000 Houses Demolished in Abuja Under El-Rufai Available at: <http://ndn.nigeriadailynews.com/templates/?a=7634> accessed 21/03/2013

⁴⁵ In Lagos State for example the requirement, process and cost of building approvals is highly prohibitive occasioning the development of slums and unplanned environment. It is safe to assume that over 75% of the construction work going on around the state is illegal, while over 60% of the existing buildings are illegal. By illegal I mean such structures don't have development permit or building plan approval. You require N120,000.00 or more to secure approval for a 3bedroom bungalow building.

⁴⁶ Omirin. M Standardization of Rentals; The economic implications in Uzodike (ed.) *Rent Control and Recovery of Residential Premises. Report of a workshop*. Faculty of Law University of Lagos. 1999 p 23

In view of the foregoing facts, the delivery of projected houses by private investors may be hampered in states where there are pro-tenant rent ceiling laws, for example, Lagos state

Property tax law

The extent and propensity of property taxes and charges is another worthwhile consideration to examine in the quest to deliver the 500,000 housing units envisaged by 2016. The higher the rate of taxes; the more the financial outlay of the project, and the less the impetus to deliver. Our laws should address issues of exorbitant and outlandish land use charges, capital gains tax, stamp duties, registration, capital contributions, neighborhood charges and the like otherwise the current practice of tax evasion, under-value of property and associated property fraud will continue unabated to the detriment of the economy and the real estate sector in particular.

Infrastructure Laws

It has been identified that some of the determinants of property values is infrastructural facilities, the presence of which leads to appreciation in property value.⁴⁷ It has also been observed that about 40-60% of housing construction cost is related to infrastructure provision⁴⁸ and its absence affects neighbourhood properties adversely.⁴⁹ Areas with basic facilities such as access roads, good drainage, electricity, public water supply and telephone would attract high property values.⁵⁰ It is therefore pertinent to know what are government policy directives with respect to the provisions of these infrastructures to complement the construction of the housing units.

Conclusion.

The paper examined the various legal initiatives to address the delivery of 500,000 housing units by the year 2016 and observed that we need to overhaul our laws particularly the Land Use Act, Laws on Mortgages (Conveyancing Act 1881) and Registration of Titles/Instrument laws. The paper also highlighted the need to be acquainted with Rent Control laws, Planning Laws Stamp duties Act etc and advocated for a review and streamlining of these legislation.

Thank you.

⁴⁷ **Adebayo M. A. THE STATE OF URBAN INFRASTRUCTURE AND ITS EFFECTS ON PROPERTY VALUES IN LAGOS, NIGERIA** *Journal of Land Use and Development Studies* Vol. 2, No. 1, 2006

⁴⁸ Housing In Nigeria - UN-HABITAT. Available at: <http://www.unhabitat.org/downloads/docs/ERSO/Mr.%20Adeniyi%20Adeleye.pdf> accessed 22/03/2013

⁴⁹ Briton et al, *Modern Methods of Valuation* (8th ed.) (1988) London. The Estate Gazette Limited.

⁵⁰ **Litchfield, N** *Economics of Planning Development*. (1974) London Estate Gazette Limited.