Legal and Regulatory Framework for the Mortgage Industry in Nigeria

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> *"It is hard to argue that housing is not a fundamental human need. Decent, affordable housing should be a basic right for everybody in this country. The reason is simple: without stable shelter, everything else falls apart"*
>
> \- Matthew Desmond

The importance of housing to a society cannot be overemphasised, and shelter has long been identified as one of the basic needs of man, alongside other needs like food and clothing. A lack of adequate housing has far reaching implications on a society's development and constitutes a threat from the myriad of social ills that arise from homelessness, including violence and increased crime rates, substance abuse, and alcoholism. Homelessness also encourages the emergence and rapid spread of diseases, both of the body and of the mind.

I. Housing: A Global Need

It is important to note that across the globe, housing continues to gain relevance as a human rights issue. In this regard, Portugal's parliament passed a law recognising the citizen's right to housing on July 5, 2019. Under this new law, the Portuguese government assumes legal responsibility for ensuring adequate housing for all citizens as the guarantor of the right to housing.

Prior to this, the United Nations International Covenant on Economic, Social and Cultural Rights, to which Nigeria is a signatory, recognised the right of everyone to an adequate standard of living for self and family, including the right to housing. Although not immediately bound to provide this, member states are required to take appropriate steps to ensure the realisation of this right for its citizens. It is on this basis that the right to housing is included in Chapter II of the Constitution of the Federal Republic of Nigeria (1999), as amended, as a non-justiciable right of the citizen.

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The importance of mortgage to housing finance has taken centre stage in the conversations around the issue of bridging the housing deficit across the globe. As a case study, it is instructive to consider the evolution of homeownership in (the former) West Germany and the United Kingdom. While German banks remained quite conservative in mortgage lending, regulations in the United Kingdom strongly discouraged private rentals. The result was that between 1950 and 1990, West German homeownership rates barely increased from 39 to 42 per cent, whereas United Kingdom homeownership rates rose from 30 to 60 per cent.[1] This in our view, buttresses the position that there is a direct link between the governmental policy and legal framework and homeownership.

II. Overview of the Nigerian Housing Market

With a population of 183 million people and increasing rapidly, Nigeria has a huge housing deficit with the need for housing rising rapidly by about 20 per cent a year in cities like Lagos, Ibadan, Kano, and Abuja. Indeed, a survey conducted by the World Bank revealed that because of the current urbanisation trends in Nigeria, at least 700,000 housing units across different segments were needed annually to keep up with demand, whereas, production was around 100,000 units, resulting in an accumulated deficit of around 17 million units.[2]

However, rather than increasing in the face of these rather bleak statistics, the rate of homeownership over the years in Nigeria has suffered a massive decline, dropping from 51 per cent in 1991 to 24 per cent in 2016. This is not unconnected to the fast-rising house prices without a correlative increase in average earnings. To put this in perspective, the Guardian Newspapers reported that in 1999, the average annual salary was equivalent to 23 per cent of the average house price. This has dropped to 11 per cent from 2012 to 2017. Therefore, to close the gap on the homeownership deficit, a legal regime that encourages housing finance and mortgages is necessary.

It is against this backdrop that we will proceed to examine the regulatory framework for the mortgage industry in Nigeria.

II.1 The Regulatory Framework for Mortgages in Nigeria

Today, the general law regulating interest in land in Nigeria is the Land Use Act, 1978. The Land Use Act confers all land in each State in the State government.

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[1] Laurie S. Goodman and Christopher Mayer, *Homeownership and the American Dream*, Journal of Economic Perspectives – Volume 32, Number 1 – Winter 2018 – Pages 31 - 58

[2] World Bank Group and UKaid publication on Developing Housing Finance: Nigeria

The Land Use Act requires that every transfer of interest in land must receive the consent of the Governor. This is the basis for the requirement for Governor's consent for the transfer of any interest in land, such as assignment and mortgage. It is interesting to note that the Land Use Act enjoys constitutional protection thus, requiring the same steep conditions for an amendment as the Constitution itself.

Mortgages created in states in the North East, North West (except Kaduna state), North Central, as well as, the Eastern regions are regulated by the Conveyancing Act of 1881, originally an English legislation and one of the relics of our colonial history. However, mortgages created in Delta, Edo, Ekiti, Osun, Ondo, Ogun, and Oyo states are regulated by the Property and Conveyancing Law, 1959, as passed by the respective State legislatures. In Lagos, the mortgage landscape is regulated by the Mortgage and Property Law of Lagos State, 2010.
Mortgage transactions in Kaduna State are regulated by the Model Mortgage and Foreclosure Law, 2017. This will be discussed in greater detail within the course of this paper.

In addition to the above, other laws and regulations which apply to mortgages in Nigeria include:

- The Mortgage Institutions Act, 1989
- The Banks and Other Financial Institutions Act, 1991

The Central Bank of Nigeria Act, 2007, pursuant to which the CBN makes rules, regulations and Guidelines touching on the Nigerian mortgage industry from time to time. The key players in the Nigerian mortgage market include:

a) Primary mortgage banks
b) Commercial banks
c) Regulators of the mortgage industry- the CBN
d) Federal Mortgage Bank of Nigeria
e) Nigeria Mortgage Refinance Company PLC
f) Estate developers
g) Surveyors
h) Estate Valuers
i) Homeowners, acquirers, dwellers, among others.

As we have seen in the preceding paragraphs, the merits of mortgages to individuals and the nation at large cannot be overemphasised. What is clear is that the level of mortgage penetration in Nigeria is still very low. The Nigerian housing finance market remains at its infancy level and this is evidenced by the ratio of residential mortgage debt to GDP which is 0.5 per cent. This is negligible especially as compared with the 77 per cent for the United States of America, 80 per cent for the United Kingdom, 50 per cent for Hong Kong, 33 per cent for Malaysia, 61 per cent for Singapore and 17.4 per cent for South Africa. Several factors are responsible for this and we will consider these factors presently.

II.2 Factors Responsible for Low Mortgage Penetration in Nigeria

A plethora of factors, both from the supply and demand sides, are responsible for the low mortgage penetration so far recorded in Nigeria. These include:

II.2.1 On the Supply Side

a) **Maturity Mismatch**: Banks mostly depend on their short-term deposits or short-term capital raises (from the capital markets or lending) for the origination of mortgages. This leads to an apparent maturity mismatch as mortgages, by their nature are expected to be mid- to long-term loans. What tends to happen therefore is that such mortgage loans are structured as term loans with a maturity of 5 – 7 years. The unintended consequence is that the monthly instalments in respect of these mortgages becomes quite high and therefore unaffordable to many. This has been attributed as a major reason for the low rate of mortgage penetration in Nigeria.

b) **Limited Capacity by Primary Mortgage Banks**: The primary mortgage banks do not have adequate capacity to address the burgeoning housing deficits in Nigeria.

c) **High interest rates**: This is due to several factors, including the risk-rating allocated to mortgages, inflation and the MPR, amongst others.

d) **Tedious enforcement procedures**: Where there is a default and the mortgage lender is unable to get a buyer for the mortgaged property, the lender may have to resort to the remedy of foreclosure. While this remedy appears plausible in theory, the reality is a different matter entirely. The lengthy process associated with obtaining a foreclosure order from the court discourages lenders from granting mortgage loans. This may take up to two or three years.

e) **The Land Use Act, 1978**: As earlier stated, the Land Use Act requires the consent of the Governor to be sought prior to the transfer of any interest in land. The Supreme Court has held that a mortgage transaction concluded without the consent of the Governor was an inchoate transaction (meaning, an incomplete transaction, though not necessarily invalid). In practice, the timelines and costs associated with obtaining the consent of the Governor is discouraging to lenders and constitutes an impediment to mortgage business. While talks are ongoing to amend the Land Use Act, the constitutional colouration earlier discussed poses an additional clog in the wheel of the amendment process.

An indication of the average timelines for registration relative to other jurisdictions is set out in Table 2 below.

Table 2: Registration Timelines

COUNTRY	TIMELINE
Nigeria	2.5 years
Thailand	1 day
United Arab Emirates	2 days
United Kingdom	2 months
United States of America	2 months

It is commendable that the CBN has introduced policies which have the potential of improving the attractiveness of mortgage lending to commercial and primary mortgage banks. For instance, the CBN's letter of July 3, 2019 addressed to all banks which assigns a weighting of 150 per cent in computing the Loan to Deposit Ratio to mortgages, amongst sectors. In addition to this, the CBN is also in the process of finalising a revised regulatory framework for the mortgage industry in Nigeria. If the exposure draft released by the CBN is anything to go by, the new framework will increase the capital base of mortgage banks in Nigeria, as well as, expand the scope of their permissible activities.

II.2.2 On the Demand Side

a) **Exorbitant registration costs**: The costs of perfection of mortgages in Nigeria are quite high. In a World Bank's FIRST project report released by the World Bank in 2008, the charges associated with the transfer of land in Nigeria was described as the "highest in the world".

b) **High rate of unregistered titles**: This is an offshoot of the first point. About 95 per cent of home equity in Nigerian residential developments are dead assets and cannot be unlocked for the satisfaction of other financial needs, since non-registration of their titles implies that such property cannot be used to secure a credit facility.

c) **The challenge of "Double perfection**": Under the present regime, a mortgagor is expected to undergo two layers of perfection i.e. at the stage of assignment of the property, then at the stage of the mortgage itself. This leads to the expenditure of double perfection costs beside the excessive length of time for processing.

d) **Low mortgage literacy**: The levels of mortgage literacy in Nigeria are very low. In a bid to address this, the NMRC, partnering with various stakeholders, regularly engages in several mortgage literacy campaigns from time to time.

e) **Shrinking disposable income for housing**: In many cases, prospective mortgagors are unable to raise the equity contribution required by the mortgage banks prior to the disbursement of mortgage financing.

III. Towards Mitigating these Challenges

III.1 What the NMRC is Doing?

The Nigeria Mortgage Refinance Company PLC ("**NMRC**") is a private sector-driven mortgage refinancing company with the public purpose of promoting home ownership for Nigerians while deepening the primary and secondary mortgage markets. The NMRC seeks to break down barriers to home ownership by providing liquidity, affordability, accessibility and stability to the housing market in Nigeria.

The NMRC had refinanced mortgage loans valued at about ₦18billion at end-December 2018. This is in line with the Company's mandate to promote affordable home ownership in the country by leveraging funding from the capital market to deepen liquidity in the primary and secondary mortgage markets. The deployment of the ₦18billion to refinance mortgage loan portfolios of member lending institutions has helped to boost liquidity in the Nigerian housing market, thus enabling mortgage lenders to provide more housing loans and encouraging long-term mortgage loan creation, of up to 20 years (NMRC, 2019).

The NMRC is also very active in driving policy changes to deepen mortgage penetration in Nigeria. One of such policy interventions is the Model Mortgage and Foreclosure Model Law ("**the Model Law**"). The Model Law was passed by the Kaduna State House of Assembly in 2017. At present, states like Edo, Akwa Ibom, Cross River, Kogi, Benue, Plateau, Kebbi and Gombe are at various stages of passing the Model Law. It is useful at this point to examine the key provisions of the Model Law, as well as, its potential for heralding the much-needed development in the Nigerian mortgage industry.

III.2 The Model Mortgage and Foreclosure Model Law

The Model Law is aimed at exposing the Nigerian housing market to global opportunities by bringing the applicable mortgage and foreclosure laws across states at par with global trends (CBN, 2018). The Model Law introduces a number of market-leading and practical innovations to tackle the age-long problem of difficulty in transferring interest in land and the ability of the state to generate revenue from land.
Some of the objectives of the Model Law are:

a) To ensure a sound legal framework for judicial enforcement of mortgages;
b) For ease of mortgage transactions through innovative, simple and clear rules;
c) To create a non-judicial foreclosure regime
d) Establish a strong foundation and framework for secondary mortgage market in Nigeria
e) To expand capital flows to the State and cashflow into the government coffers by increasing the database of registered property-owners, as well as, the underlying commercial transactions funded by investment in real estate;

Key provisions of the Model Law are:

a) **Establishment of a Mortgage Registry**: Under the Model Law, each State will have a separate registry for the registration of mortgages. This is in contrast with the current situation where there is a central registry in each State for all land matters. Having separate registries will assist to reduce the timeline and associated administrative bottlenecks in the mortgage perfection process.
b) **Empowers mortgagee to register mortgages**: Under the current legal framework for the registration of mortgages, a mortgagor is required to execute the Land Form 1C. This has led to situations where a mortgage could not be registered because the mortgagor was unavailable, leaving the mortgagee with an unperfected mortgage. However, under the Model Law, the mortgagee will be entitled to register a mortgage without the mortgagor.

c) **Significantly shortens perfection period**: The Model Law prescribes defined timelines for the registration of a mortgage.

d) **Introduces the Concept of Deemed Registration**: Under the Model Law, where the mortgage has not been registered within a definite period after obtaining the Governor's consent, such a mortgage shall be deemed registered.

e) **Eliminates requirement for "double consent"**: Unlike in the present situation where a mortgagor is first required to register his interest in the land under the Deed of Assignment before proceeding to mortgage registration stage, the Model Law provides a framework under which both registrations are done simultaneously. This would have the effect of reducing the timeline for perfection.

f) **Pegs Perfection Costs**: The Model Law seeks to peg the costs of consent, registration, stamping and associated costs for perfection at a certain per centage of the value of the transaction. This will significantly reduce the cost of perfection and the risk of arbitrary charges.

g) **Introduces Alternative Dispute Resolution for Mortgage Matters**: As a measure for achieving speedy resolution of mortgage disputes, the law sets up a framework for resolving disputes through any alternative dispute resolution mode selected by the transaction counterparties.

h) **Introduces the concept of "Strata Title"**: This will help to address the current challenge associated with the inability to provide title document by the vendor or the mortgagor in the case of a "global title document".

i) **Non-Judicial Foreclosure**: While preserving the remedies of entry into possession, appointment of a receiver, power of sale and judicial foreclosure, in the case of mortgagor default, the Model Law introduces the additional remedy of non-judicial foreclosure. Under this remedy, the mortgagor may sign a deed in lieu of foreclosure conveying all interest in the mortgaged property to the mortgagee. This eliminates the difficulty associated with going to court to obtain a foreclosure order.

IV. Need for Legislative and Administrative Reforms

The significant strides being taken by regulators and other stakeholders, some of which have been discussed within this paper, in a bid to bridge the housing deficit in Nigeria are laudable. It is notable that in 2012, the Lagos State Government issued Guidelines on the 30-Day Governor's Consent to

Subsequent Transaction on Land. Although its application appears slow, this is a step in the right direction and should serve as the basis for further administrative reforms in various states of the federation.

In this regard, the following are recommendations for strengthening the mortgage market in Nigeria:

a) States should push for passing of Model Mortgage and Foreclosure Model Law: This will enable states to take advantage of the benefits of the law earlier discussed;
b) Land registries should be digitised: This will make for increased efficiency in land administration in Nigeria;
c) CBN should push more mortgage-friendly regulations and policies: Regulations which encourage primary mortgage banks and commercial banks to engage in mortgage lending will help to strengthen the mortgage industry in Nigeria;
d) Land registries across states should drastically reduce the timeline for perfection: This is an administrative measure that can be put in place immediately as a useful stop-gap pending the enactment of the Model Mortgage Foreclosure Laws in the various states. This will ensure that the process of title perfection is faster and more efficient in the intervening period between now and when the law is enacted;
e) The Land Use Act should be amended: As earlier discussed, the National Assembly should consider amending the Land Use Act to further simplify the process of title transfer in Nigeria.

V. Conclusion

The identified challenges in the Nigeria's legal regime notwithstanding, with concerted efforts from all stakeholders, the consistent provision of liquidity by MRCs such as the NMRC and widespread adoption of the Model Mortgage and Foreclosure Model Law, the mortgage industry will soon witness the long-awaited boom.

References

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