

Legal Alert for March 2010 ? **Housing Laws in Nigeria Part 2**

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LEGAL ALERT?HOUSING LAWS IN NIGERIA ? PART 2 ? NATIONAL HOUSING FUND ACT

The Federal Mortgage Bank of Nigeria's website, www.fmbnigeria.org, reiterates the legal position that the principal funding vehicle for the Federal Mortgage Bank of Nigeria wholesale mortgage lending activities in Nigeria is the National Housing Trust Fund which said Fund is established by the National Housing Fund Act, 1992.

The National Housing Fund ("NHF") was established to, among other things:-

- (a) Facilitate the mobilisation of long-term housing funds for the provision of affordable houses to Nigerians.
- (b) Facilitate the constant supply of long-term credit facilities to Nigerians for the purposes of building, purchasing and improving residential houses in Nigeria.
- (c) Provide incentives to the capital market to invest in the property market in Nigeria.
- (d) Encourage the development of programmes that will ensure the effective financing of housing development in Nigeria.
- (e) Provide proper policy control for the housing sector.
- (f) Provide long term loans to Mortgage Institutions for lending to contributors to the Fund. See Section 2 of the National Housing Fund Act ("NHF Act").

CAPITAL CONTRIBUTIONS TO NATIONAL HOUSING FUND

The resources of the fund are derived primarily from:-

- (a) Contributions of Nigerians, in both the private and public sectors, to NHF.
- (b) Investments in the Fund by Banks and Insurance companies licensed to carry on these kinds of businesses in Nigeria.
- (c) Financial contributions by the Federal Government of Nigeria for long-term housing loans.

MANDATORY CONTRIBUTIONS TO NHF

The NHF Act requires that every Nigerian employee in the public and in the private sector, earning more than N3,000.00 per annum, must contribute 2.5 per cent of his basic monthly salary to the National Housing Fund ("NHF"). An interest rate of 4% is required by this Act to be paid

on all contributions made to this Fund.

All commercial banks in Nigeria are required to invest 10% (ten per cent) of their loans and advances in the NHF at an interest rate of 1% per cent above the interest rate payable on current accounts by commercial banks to their customers.

The Central Bank of Nigeria ("CBN") is authorised to collect from Nigerian licensed Banks, at the end of every financial year and not later than a month thereafter, this statutory housing contribution to NHF. The CBN shall in turn ensure that within two months of making the collection from the Banks, such collections are remitted to the FMBN for investment in National Housing Fund. See Section 11 NHF Act.

Every Insurance company is required to invest 20 per cent of its non-life funds, and 40 per cent of its life funds in real property development of which not less than 50 per cent shall be paid into NHF through the FMBN at an interest rate not exceeding 4 per cent per annum. FMBN is authorised to issue on insurance companies such demand notices for such amounts that it deems as their contribution to the fund after examining their audited accounts. The failure of any insurance company to comply with these provisions is a ground for the cancellation of the business licence of such an insurance company. See Section 12(3) of the NHF Act.

The Federal Government of Nigeria ("FGN") is required to make adequate financial contributions to the NHF for the purpose of granting long term loans and advances for housing development in Nigeria.

ADMINISTRATION OF NHF

Contributions to the National Housing Fund are statutorily required to be managed and administered by the Federal Mortgage Bank of Nigeria.

REMITTANCE OF CONTRIBUTIONS

Employers are required by law to deduct the housing contribution from their employees' monthly wages and ensure that such deductions are remitted to the NHF via the FMBN within one month of making such deduction.

Self-employed individuals are also authorised to make 2.5 percent of their monthly salary as their housing contributions to the Fund provided that such contributions are remitted on a monthly basis.

BENEFICIARIES OF THE FUND

Section 14 of the NHF Act provides that licensed mortgage institutions are the secondary beneficiaries of the Fund as they qualify for loans from the Fund, on such terms and conditions as may be published in the Federal Government of Nigeria in its official Gazette from time to time. The primary beneficiaries of the Fund are the contributors to the Fund who take loans from the

FMBN through the licensed mortgage institutions to build, purchase or renovate their houses in Nigeria. The repayment of these contributors' loans are also statutorily regulated by the Government's published Gazette specifying the mode and manner, with the terms and conditions for the repayment of any loan obtained under the NHF ACT.

SECURITY OF NHF CREDIT FACILITIES

All loans obtained from a mortgage institutions must be secured by a first mortgage while all loans granted by the FMBN to a mortgage institution must be secured by a charge on a block of existing mortgages of the mortgage institution, under the cover of a Sales and Administration Agreement executed between FMBN and the Mortgage Institution. The later Agreement must be registered at the Land Registry along with the Deed of Assignment of the block mortgages to which the said agreement relates.

INTEREST CHARGED ON NHF LOANS

The rate of interest to be charged by the FMBN on loans it grants to primary Mortgage Institutions shall be slightly lower than the prevailing commercial interest rates in Nigeria. Such an interest rate shall be fixed for the duration of the long-term loan with no room for adjustments to suit the variances in the money market.

Mortgage Institutions are statutorily allowed a minimum spread of four percentage points above the rate charged by the FMBN while FBMN is only statutorily allowed not more than one percentage point above its own borrowing rate on loans it grants to Mortgage Institutions in Nigeria.

REFUND OF CONTRIBUTIONS

On the attainment of the age of 60 years old or upon been retired from employment, any contributor to the NHF that becomes incapable of continuing to make contributions to the Fund, shall be eligible to a refund of his contributions within 3 months of his application to the Minister of Housing provided that such a contributor has not obtained a housing loan under the Fund which loan remains unliquidated.

RENDERING OF ACCOUNTS

FMBN is statutorily required to render periodic accounts on the Fund to the CBN. In the like manner, FMBN is also statutorily required to render annual returns to all contributors showing among other things, the total amount contributed, the accrued interests and the balance in the contributor's account as of the date of the making such return.

Mortgage Institutions who have obtained loans from the FMBN must also render statutory quarterly returns to the FMBN in such manner and form as the Minister of Housing may from time to time specify.

OFFENCES AND PENALTIES UNDER NHF

Any employer who fails to make a deduction from the basic salary of his employees as required by this Law, or who deducts any sum from the basic salaries of his employees for the purpose of the Fund and fail to remit the sums so deducted to the FMBN is guilty of an offence which on conviction for corporate bodies attracts a fine of N50,000 and for individuals the fine is N20,000 or imprisonment for a term of five years or to both the fine and the term of imprisonment.

A self-employed person who fails to make the necessary deduction is also guilty of an offence which on conviction carries a fine of N5000 or a term of imprisonment of one year or to both the fine and the term of imprisonment.

Any individual who prevents or obstructs the deduction or remittance of the housing contribution is also liable to the fine and or to the term of imprisonment as those attributable to a self-employed person. The institution of criminal proceedings or the imposition of the appropriate penalty does not relieve any employer or self-employed person from the subsisting liability to pay to the FMBN the sum deducted for the purpose of the FMBN.

False statements, misrepresentation, production of false documents or failure to produce requested documents during inspection attract fines and terms of imprisonment on conviction.

The Federal High Court has the exclusive jurisdiction to try all offences under the National Housing Fund Act.

EXEMPTION FROM INCOME TAX REGIME

Contributions under the NHF and refunds of any such contributions under the NHF Act are exempted from the payment of any form of income tax, on such contribution or refund.

TERMS AND CONDITIONS FOR OBTAINING LOANS FROM NHF BY MORTGAGE INSTITUTIONS AND INDIVIDUAL CONTRIBUTORS

A licensed Mortgage Institution must submit all its application(s) for a loan to the FMBN. Such application must enumerate the applications received for loans from individual contributors against which the loan(s) request shall be disbursed under the NHF scheme.

It is mandatory that no mortgage Institution shall in any given financial year be granted a loan in an amount that is more than 50 per cent of the Mortgage Institution's shareholders' Fund.

SECURITY FOR HOUSING LOAN

These terms and conditions repeats the provisions of substantive law to the effect that a housing loan granted by FMBN to a Mortgage Institution shall be secured by the existing registered Mortgages previously granted by such a Mortgage Institution whether the financing for such previous Mortgages were obtained from FMBN or not .

A Sales and Administration Agreement with a Deed of Assignment in such form as may be

prescribed by the FMBN, from time to time, and duly stamped and registered in the Lands Registry is required. The cost of stamping and registering such an Agreement at the Lands Registry shall be borne by the mortgage institution save where waivers on these costs are granted by the approving authority at the Land Registry. FMBN is also authorised in some instances to require a Mortgage Institution to execute a floating charge over its assets.

DISBURSEMENT CONDITIONS

According to the NHF Regulations, to safeguard the resources of the Fund, and prevent the misallocation or diversion of the mortgage loans given under the Fund, the FMBN shall only make loan disbursements to a mortgage institution on the presentation of the acceptable securities as stated in the above sub-section where a misapplication or diversion is shown or envisaged. FMBN is authorised to demand the immediate repayment of all loans with interest thereon, inclusive of a 200 per cent penalty on the interest differential between the market rate and the Fund rate from a mortgage institution which misallocates or diverts its loans. In addition to the penalties, FMBN is authorised to suspend any erring Mortgage Institution from further borrowing from the NHF for a period of six months and cause such Institution to remain suspended until it complies with the above provisions.

All disbursement from the Fund shall be by cheque or by any other acceptable instrument of settlement. The FMBN is not allowed statutorily to disburse loans in cash or to charge more than 0.25 per cent of the value of a loan as legal, survey and administrative charge fees. But this excludes stamping, registration and other statutory fees.

CONCLUSION

Developed economies encourage their citizens, from adolescence, to join the housing mortgage market. From these young first-time mortgage buyers, a large stock of long term investors is built. The requirement of the NHF and the FMBN for applicants to provide a first charge or collateral before a housing loan will be granted will inhibit the ability of Nigeria to build its mortgage market.

The requirement for the various NHF loan Agreements to be stamped and registered at the Lands Registry attracts very exorbitant statutory fees which will discourage the long term benefits of the NHF and the FMBN.

The rate of return on mandatory housing contributions from licensed Banks and Insurance companies will only encourage these financial institutions to refuse to make their statutory contributory obligations for the larger returns in the money market particularly when the penalties are negligible and the judicial system is expensive and time consuming.

The Nigerian employee is already burdened with many direct and indirect taxes, pension, national

health and housing contributions that the latter will be gladly compromised when evidence do not abound of beneficiaries of housing loans actually residing in their own homes.

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