

Legal Alert **Legality of Estate Agency Regulatory Law**

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Estate Agency Regulation

The practice of estate agency in Nigeria was for a long time an all comers affair as it was unregulated. Expatriate estate surveyors and valuers provided the services in this sector during the pre-independence period. In the post independence era, Nigerian trained estate surveyors and valuers provided the services of estate agency in addition to their regularly licenced surveying and valuation services.

However, Continuing increase in population and unemployment while the available housing demand continue to outstrip the housing supply, and wanton criminal abuses became more common in post-independent Nigeria with the result that the housing market is undeveloped due largely to inefficient legislation, short term funding for long term housing investment and gross unprofessional and unregulated estate agency practices.

The Lagos State Government has, in an effort to curb the above mentioned unprofessional practices in the estate agency market, enacted the Lagos State Estate Agency Regulatory Authority Law. This Law came into effect on 18th May 2007.

The quiet reaction to this Law by most real estate practitioners and stakeholders, on becoming aware of the Law, is to question the constitutionality of this Law as some of them have always practiced real estate agency under the belief that their professional training and licence permitted them to undertake estate agency services as an ancillary service.

This Legal Alert is therefore meant to consider the key aspects of the Lagos State Estate Agency Regulatory Authority Law 2007, and to also examine the legality or constitutionality of this Law.

The Estate Agency Regulatory Authority

The Lagos State Estate Agency Regulatory Authority is established by the Lagos State Estate Agency Regulatory Authority Law. Membership of its governing council is required to be drawn from a wide spectrum of experts among whom are: - a registered estate surveyor and valuer, a legal practitioner, a registered Architect, a registered Engineer, a registered Town Planner, a registered Quantity Surveyor, a professional Accountant or economist, a Social Scientist, and a representative from the estate agency community who must be a member of the Estate, Rent &

Commission Agents Association.

The Estate Agency Regulatory Authority has amongst its various functions the preparation of rules and regulations for the practice of estate agency in Lagos State, identification of persons eligible to be licenced as estate agents in Lagos State, issuance and renewal of estate agents practicing licences, maintenance of a register for all licenced estate agents, monitoring, investigating and sanctioning of both licenced and unlicensed estate agents in Lagos State, ensuring compliance with all property or property related taxes, fees or charges, organising continuing educational programmes on best estate agency practices in Lagos State, etc.

The Estate Agency Regulatory Authority has the power to make regulations, from time to time, for the purpose of carrying into effect the provisions of the Estate Agency Regulatory Authority Law.

Licensing Requirements for Estate Agents

The conditions precedent that a prospective or existing estate agent must satisfy before he, or her, or it can be granted a licence to practice estate agency business in Lagos State include:-

- a. He must be a citizen of Nigeria, either by birth or by naturalisation.
- b. Must be at least 18 years old, for an individual.
- c. Must have a minimum educational qualification of secondary school leaving certificate or show proof of sufficient experience in estate agency practice.
- d. Must show evidence of registration of the estate agency business under the Companies & Allied Matters Act. In the case of a corporate body making the application, evidence that one of its Directors is a Nigerian citizen and a member of a recognised professional body is mandatory.
- e. May be a member of the Nigerian Institution of Estate Surveyors & Valuers, or any other professionally recognised body, or any registered association of estate/rent/commission agents.

Estate Agency Registration Fees

The licensing fees for registering an estate agency practice in Lagos State, which also forms a revenue source for the estate agency regulatory authority is/include the sale of estate agency registration application forms at a minimum sum of N5,000 (Five Thousand Naira) for each application form; licensing fees at a minimum of N5,000 (Five Thousand Naira) for each individual or corporate body; renewal of license fees for individuals is the minimum sum of N2,500 (Two Thousand Five Hundred Naira) while for corporate bodies, the renewal licensing fee is a minimum of N5,000 (Five Thousand Naira).

Code of Conduct for Estate Agents

The primary objective of this Law is to provide all estate agents in Lagos State with a regulatory code of conduct that guides and protects the practice of estate agency in Lagos State. The

following code of conduct is therefore prescribed under this Law for all estate agents:-

- i. An estate agent shall not carry on the business of estate agency in Lagos State unless he or she is licenced by the Lagos State Estate Agency & Property Development Monitoring Authority.
- ii. An estate agent must have an ascertainable office or business premises in Lagos State.
- iii. An estate agent must be registered with the Corporate Affairs Commission as a legal entity.
- iv. An estate agent must maintain a separate and dedicated client account in addition to keeping proper records of all his or her estate business transactions.
- v. An estate agent must not act for two principals on opposite sides in the same property transaction.
- vi. An estate agent must be paid his professional agency fees by his principal only; the practice of collecting agency fees from both a prospective tenant and Landlord or a prospective purchaser and seller is now unlawful.
- vii. An estate agent must remit all income collected by him or her to his or her principal within fourteen (14) days of such a collection unless otherwise formally instructed not to do so by his or her principal.
- viii. An estate agent must provide receipts for all moneys collected on behalf of his principal.
- ix. An estate agent must declare any personal interest that he or she may have in a property.
- x. An estate agent must ensure that the prospective tenant or purchaser takes physical possession of the property in question within ten (10) days of the client making payment for the property.
- xi. An estate agent must ensure that his client performs all the client obligations to the government under all existing laws including the deduction and remittance of all real property taxes or charges.
- xii. An estate agent must refund the rent paid by any prospective tenant in the event of a failure to deliver up physical possession of the premises within fourteen (14) days of the payment of the rent for the property. Any delay or non refund after the required 14 days shall attract interest at the prevailing bank rates.

Regulated Agency & Legal Fees

Estate agency abuses are presently more prevalent in the areas of arbitrary, exorbitant and extortational fees charged as agency fees or commission. This Law therefore requires that all estate agents in Lagos State must not charge agency or commission fees in excess of 10% of the total rent collected on any tenancy or lease transaction.

In the case of the sale or purchase of land and buildings, the maximum agency or commission fees permitted is 15% of the total proceeds of the sale.

The total authorised fees or commission, as stated above, must not be exceeded by any estate agent irrespective of whether there are more than one agent acting for the party concerned.

Estate agents are barred from preparing legal documents relating to any real estate transaction undertaken by them on behalf of their clients. All real property agreements must be prepared by a Legal Practitioner whose fees must not exceed 12.5% of the total consideration of the transaction.

Registration of Property Developers

All property developers in Lagos State are required by this Law to be licenced by the Estate Agency Regulatory Authority before they can carry on or continue to carry on business in Lagos State as property developers.

Contravention of Estate Agency Regulatory Law

The failure of an estate agent or property developer to obtain a practising licence as required by this Law is an offence, and where the agent is found guilty of this offence, he is liable to a fine of N10,000 (Ten Thousand Naira) in the case of an individual and N50,000 (Fifty Thousand Naira) in the case of a company.

Other failure or non compliance deterrents under this examined Law attract on conviction a fine of N25,000 (Twenty Five Thousand Naira) only or a term of imprisonment of three (3) months.

Where the offence continues to be committed, a fine of N10,000 (Ten Thousand Naira) for each day that the offence continues to be committed shall be imposed. For corporate bodies, the fine for contravention is N50,000 (Fifty Thousand Naira) for the initial infringement and N25,000 (Twenty Five Thousand Naira) for each day that the offence continues to be committed.

Institution of Legal Actions Against Estate Agency Authority

The provisions of the statutes of limitation are expressly made applicable to any legal action that may be instituted against the Estate Agency Regulatory Authority.

A one month pre-action written notice of intention to commence legal action against the estate agency regulatory authority is mandatory for an intending claimant or his authorised representative before any legal action can be properly instituted against this regulatory agency. The pre-action notice must state the name and place of abode of the intending claimant or his agent, the grievance or complaint and the relief sought if the action is to be deemed to have been properly instituted when it is.

Legality of the Estate Agency Law

Section 4(7)(a)(b) and (c) and Section 5(2)(a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria empowers the government of a State to make laws for the peace, order and good governance of such a State in respect of any matter that is not included in the exclusive legislative list, and on all matters included in the concurrent legislative list.

In Part II, item 18 of the Concurrent Legislative List of the 1999 Constitution, a State House of Assembly is empowered to make laws for that State in respect of the industrial, commercial or

agricultural development of such a State.

The Estate Agency Regulatory Authority Law is therefore a validly and constitutionally enacted legislation to regulate the practice of estate agency which in turn will advance the commercial development of Lagos State.

Estate Surveyors & Valuers, & Legal Practitioners In Estate Agency Practice

Estate Surveyors & Valuers in Nigeria are regulated by the Estate Surveyors & Valuers Registration Board of Nigeria. Section 2 of the Estate Surveyors & Valuers (Registration) Act, Cap E13, Laws of the Federal Republic of Nigeria, 2004 enumerates the functions of this Board. It is however difficult to interpret the functions of estate agency into that of "... estate surveying and valuation" as described in Section 19 of the Estate Surveyors & Valuers (Registration) Act. Based on the legal observation in the last preceding paragraph, it is recommended that Estate Surveyors & Valuers, with Legal Practitioners and other related professionals who also practice as estate agents in Lagos State should seek registration under the Lagos State Estate Agency Regulatory Authority Law, if they intend to continue to lawfully practice estate agency business in Lagos State. Should a contrary intention exist to the latter view, judicial interpretation should be urgently sought by these practitioners to remove any ambiguity that they might claim to exist under this Law.

Soft Comments ? Estate Agency Law

Membership of the Board of Directors of the Estate Agency Regulatory Authority is unwieldy, and subject to abuse through political patronage by an executive Governor who may not share the philosophy of this legislation with the originators of the legislation.

The requirement of Section 27(5) forbidding an estate agent to act for both sides of a transaction may be unenforceable in an undeveloped and under-supplied real property market. The requirement could be amended to require the estate agent to act in the best fiduciary interest of all persons that it represents where it is difficult for him not to represent all the parties.

Provisions requiring an estate agent to ensure that physical possession of a property is delivered within fourteen days of payment for a property or the provision compelling an estate agent to ensure that his principal tenant/landlord or purchaser/seller comply with his tax obligations negates the time honoured principle that an agent, as a representative of a known principal, cannot be held liable for the actions or omissions of his principal. A review and amendment of these and other similar provisions is therefore strongly recommended.

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