

## Legal Alert Real Estate Investments & Rent Control Law in Nigeria

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Continuing increase in population especially in the urban areas of Nigeria has lead to astronomical increase in the demand for affordable housing whilst the supply side remains for the most part underdeveloped and unable to meet growing demand. Attempts by the Nigerian government to increase investments in the real estate side of the Nigerian economy have remained unsuccessful as a result of the following factors:

- a. Expensive, cumbersome and complicated land tenure and transfer of legal title in land procedures.
- b. Expensive cost of funds with high interest rates for construction and mortgages in comparison to the long term rentals expected by an investor in the real estate market.
- c. Rent control legalisation for the mass residential rental market.
- d. High rate of Tenants default in paying their rentals on schedule due in some cases to diminishing purchasing power.
- e. Technical, cumbersome and expensive recovery of possession of premises legislations.

The effort of the Federal Government of Nigeria to address this problem by proposing a Rent Control legalisation has met with criticism as a result of the failure of the supply side of the real estate market and also, the failure of prior and subsisting Rent Control legislations and home ownership schemes to address the problems of minimum housing in Nigeria.

This Alert would provide up-to-date legal information on the last two factors of rent control and recovery of possession of premises which have and continue to challenge and inhibit investments in the real estate market.

### Rent Control Law

Rent Control is a residual matter under the 1999 Constitution. As a result, most of the States in Nigeria have their individual Rent Control Laws which for the most part have similar provisions as the Rent Control Law of Lagos State.

In Lagos State of Nigeria, the applicable Law is the Lagos State Rent Control & Recovery of Residential Premises Law, 1997 ("Lagos Rent Control Law").

The Lagos Rent Control Law is intended to mandatorily regulate the rentals that can be charged

for residential apartments in certain areas of Lagos State whose residences were at the time of the enactment of this Law not charging annual rental value in excess of N250,000 (Two Hundred and Fifty Thousand Naira).

This Law prescribes the standard rent for each type of residential accommodation in different locations of the State with the caveat that the standard rent shall only be subject to upward review of not more than 20% every three years or at such other duration as the Governor of Lagos State may prescribe.

The Lagos Rent Control Law makes it unlawful for the Landlord or his agent or the Tenant to demand or pay rent in excess of the standard rent. It is also unlawful for a Landlord to demand or receive the prescribed standard rent for a period in excess of six months from an incoming/new Tenant. Equally unlawful is the action of a sitting Tenant offering to and paying the standard rent in excess of a period of three months in respect of any type of residential accommodation to which the Lagos Rent Control Law applies.

Any person who receives or pays rent in excess of the standard rent that is prescribed by Law is guilty of an offence and liable on conviction to a fine of N50,000.00 (Fifty Thousand Naira) or to a term of six months imprisonment.

#### Agency & Legal Fees

The Lagos Rent Control Law requires that Solicitors and estate agents must not charge more than 5% as Solicitors fees for preparing Tenancy Agreements and 5% as agency fees respectively. Where a higher percentage of fees is charged and received, it shall be unlawful. The penalty on conviction for this unlawful charge is a term of imprisonment for two years.

#### Recovery of Possession of Premises

Cases of abuses by Landlords in unlawfully evicting their Tenants necessitated the Rent Control & Recovery of Residential Premises Law of Lagos State, like prior legislations before it, to seek to protect all tenancies to which this Law applies.

The protection afforded tenancies by this Law is not intended to deprive a land owner of the fruits of his or her or its investment in real estate. The protection only requires that a Tenant should only lose his tenancy after due recovery procedure and processes are complied with by the Landlord. Where there is a default by a Tenant in respect of any aspect of his Tenancy and the Landlord intends to terminate the Tenancy and have possession of his property revert to him the Landlord, a proper notice to quit must be personally served on the Tenant. This is the first and most technical of the procedures for recovering possession of premises.

The length of notice to be given to a Tenant to quit is usually determined by the tenure of the tenancy where no express unequivocal provision is made in a written Tenancy Agreement to such

effect. Thus, where the Tenant pays his rent on a weekly basis, a week's notice to quit would be valid. Similarly, where the rental is paid monthly, quarterly, half-yearly or yearly, a month, quarter or half yearly notice as appropriate would be valid to determine the Tenancy.

It is mandatory that the notice to quit must be issued and served personally on the Tenant. It is also mandatory that the notice to quit must be served to expire at the anniversary or expiration of the Tenancy. Thus, a notice to quit in respect of a tenancy that begins in January of a particular year and expires in December of the same year must be served on the Tenant on or before the end of June of that year so that from 1st July to the end of December of the same year, the mandatory six months notice would have been properly served on the Tenant. This was the holding of the Supreme Court of Nigeria in the matter of *African Petroleum v. Owodunni* (1991) 11-12 SC 56 @ 71 lines 5-15.

The inability of most Landlords to comply with the technical requirement of serving the statutory notice to quit to expire at the same time with the tenancy drew the displeasure of the Supreme Court in the above cited case where for twelve (12) years, the Respondent Tenant could not be evicted because the notice of eviction was not properly served by the Landlord on the Tenant. The view of some Solicitors that a tenancy for a fixed term does not require a notice to quit but only a notice of the owner's intention to recover possession of his premises is too risky a position to implement should the matter be placed before a court of law for adjudication.

#### Unlawful Eviction or Recovery of Premises

The frustration with applying the legal process to evict an unwilling Tenant has led to many Landlords attempting other unlawful procedures to evict such an unwilling Tenant whose tenancy has been properly determined in accordance with the Rent Control & Recovery Premises Law. The Lagos State Rent Control & Recovery of Residential Premises Law prohibits any form of demolition, alteration, modification, harassment or molestation of a Tenant where the principal objective is the forceful ejection of the Tenant. Contravention of this provision by the Landlord or his agents or privies is an offence which on conviction attracts a fine of N20,000.00 (Twenty Thousand Naira) to N50,000.00 (Fifty Thousand Naira) and a term of imprisonment of three months.

#### Business Premises

Up-market residences, that are not listed in the schedule of the Lagos Rent Control Law, with business premises are regulated by the Recovery of Premises Law No. 9 of 1976 ("Recovery of Premises Law").

The provisions of the 1976 Recovery of Premises Law are very similar to those of the 1997 Rent Control Law with the distinct difference being that business premises do not have a mandatory

chap on what the land owner can charge as periodic rentals. Up market residences and business premises also have a higher rental collection history as opposed to downtown residences. Investors would therefore do well to ensure that all the provisions in relation to recovery of possession of premises are adhered to whenever the situation arises.

#### Lagos Mediation Centre

The Lagos State Government has established a Citizens Mediation Centre where disputes including those of Landlord and Tenant disputes are resolved through mediation. Where mediation fails or any of the parties refuses to submit to mediation, the parties would be advised by the Centre to seek redress in Court.

#### Conclusion

The provisions of the rent control and recovery of premises laws in Nigeria have been held more in disobedience than in obedience for many years as a result of the scarcity of new apartments or the maintenance of existing apartments.

The attempt to regulate rental values for properties in Nigeria has reduced the interest to invest in real estate in Nigeria. Research also shows that rent control schemes in other parts of the world that are not indexed against market forces of demand and supply usually do not maintain the minimum acceptable human standards for good housing.

The Nigerian government must review the land tenure system in Nigeria such that the original owners of so-called communal land and private sector investors are able to collectively work towards meeting the developmental goals set for the people of Nigeria.

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