

LEGAL ALERT . MAY 2006 . **HOME OWNERSHIP & MORTGAGES IN NIGERIA.**

In this Issue.

1. Business Quote for the Month of May 2006.

2. Legal Alert for the month of May 2006 ?

Home Ownership & Mortgages in Nigeria.

Business Quote of the Month.

"Do not wish it was easier; wish you were better. Do not wish for less problems; wish for more skills. Do not wish for less challenges; wish for more wisdom. ? By Jim John (Courtesy Grace Tabernacle Scroll).

Legal Alert for May 2006 ? Home Ownership & Mortgages in Nigeria.

Home Ownership & Mortgages in Nigeria.

The number of people who own their own Homes is one of the very major indices of measuring economic growth and development of the people of any country; that is after food and clothing. In Nigeria, the ability of a majority of individuals to use their private resources to build their own homes have been hampered by dwindling purchasing power, high interest rates, high inflation, a weak national housing strategy, among others. Resort to alternative sources of funding like accessing Mortgage Loans or commercial loans, etc have left many financially disadvantaged and emotionally scaled.

Mortgage transactions have been entered into by desiring home owners without sufficient information or non disclosure of all the obligations required by the Financial or Mortgage Institution or Co-operative Society from the intending home owner. Allegations of high interest rates - which are usually compounded - wrong and hidden charges and debits to the Mortgage Loan Accounts, non availability of legal documentation securing the Mortgage transaction, short term and astronomical increases in costs of building materials, none delivery or delivery of half completed homes with weak structures, unilateral increase in the value of the Mortgage Loan, etc remains rampant with no visible and timely protection for the desiring home owner, from either the Housing Regulators or the judicial system.

The Housing Regulators are handicapped to discharge their statutory duties by many factors which include insufficient legal, regulatory and budgetary constraints.

This Alert is our further contribution to assist you in making an informed decision when contemplating or entering into a Mortgage arrangement in your quest to own your own Home.

Where you are undertaking an outright purchase of a property, we have on our web site ?

www.oseroghoassociates.com ? a September 2002 Alert/Checklist to assist you also in that

process.

What is a Mortgage?

A Mortgage is a form of security, on land or a completed building or buildings, given by a person for a loan advanced to that person to acquire land or a landed property. The Mortgage naturally gets terminated when the debt is fully repaid. The person taking the Loan is called the Mortgagor while the Lender is called the Mortgagee.

It is essential and much more preferred that you have a Mortgage Agreement that is in writing. This written document enumerates the terms and conditions of the Mortgage, including the repayment plan with interest rates to be charged on the loan, the powers of the Mortgagee Lender to exercise his powers of sale or appoint a Receiver to sell the property without resort to lengthy litigation, insurance, etc.

The absence of a written Mortgage Agreement means that only an equitable interest would be created when the Lender disburses to the Borrower the loan to purchase the property. This is in contrast to a Legal Mortgage.

An equitable interest could arise in the following situations: (a) By a mere deposit of title deeds by the Borrower with the Lender. (b) By an agreement to execute a formal legal mortgage between the Borrower and the Lender. (c) By a mere equitable charge on the property.

The above latter mentioned methods of creating an equitable Mortgage all have the unpleasant handicap of requiring the Mortgagee/Lender go to Court to enforce his rights where there is a default in the repayment of the Mortgage Loan by the Mortgagor/Borrower.

The reliefs open to the Mortgagee with an equitable Mortgage, depending on the wording of the equitable Mortgage or the transactional documents available, include (a) an application to a Court of Law for specific performance of the agreement between the Borrower and Lender to execute a Legal Mortgage (b) A Court Order for foreclosure so that the Lender can recover the amount lent from the sale or otherwise of the property. (c) An Order of Court authorising the Lender to sell the property himself or appoint a Receiver/Auctioneer to sell the property to recover the amount owed.

Checklist for Negotiating a Mortgage.

In considering whether to finance the purchase of your home yourself or resort to a Mortgage arrangement, you may need to consider the following: -

1. Your housing budget and affordability vis-à-vis your other daily needs. Note that the standard housing budget for an income earner is an average of 30% of your current monthly income.
2. The location of your desired home and home prices in that location.
3. Choosing a property and undertaking property visitation. Visit the property at least twice, on different days and times of the day. On at least one occasion, visit the property independent of any

agent, and maybe with a spouse or a friend, for independent decision. Never negotiate these visitation or home prices, etc on the telephone or by email.

4. How much you currently have to finance the home purchase?

5. How much you require to borrow? If you need to borrow, how do you obtain the Loan? If through a Mortgage Institution, which to choose? Ensure you visit all the financial institutions and listen to the substance of their pitch as opposed to the esthetics. Do not be embarrassed to ask many questions on situations that are unclear. Obtain referrals from present Clients where possible.

6. Have disclosed up-front the full terms and conditions of the Mortgage Loan? Have these terms and conditions formalised in a written Agreement. Where not possible, for whatever reason, withdraw from the negotiation.

7. Inquire about any one-off or other major instalmental costs in the Mortgage and compare with your affordability? What happens to all your contributions should you elect to exit from the Mortgage arrangement or choose another Mortgage Institution or financing option?

8. Choose a Solicitor for all your due diligence before you execute any document or write any Cheque or effect any payment. Ensure that he investigates the title to your desired property ? that it is free from all registered encumbrances. He should also review for you the Mortgage Agreement. If there is none, have him prepare one and insist that it is executed.

9. Also choose a registered Estate Surveyor & Valuer to advise and provide independent information about properties, their locations, market prices and funding options including Mortgage Institutions. A fixed retainer as opposed to a commission is suggested to maintain the attention of the Estate Valuer.

10. Where there is a contractor in the mix, request for a copy of the construction contract as the outcome of that contract is your property. If not allowed, do not write a Cheque or execute the Mortgage Agreement.

Mortgagor's Covenants.

Some of the covenants that you as a Mortgagor should expect to find in a Mortgage Agreement include: -

1. Punctual payment of both the principal amount and the interest on the Mortgage Loan with provisions for penalties for late repayments, etc.
2. Insurance on the Mortgaged property with the Mortgagor and the Mortgagee's interest disclosed on the Insurance Policy.
3. Repayment of the Mortgage Loan to be made during a defined and certain period. Exemptions to be indicated.
4. Right of the Mortgagee to consolidate the Mortgagor's Mortgages where there are more than

one Mortgage Loan or property.

5. Power of sale by the Mortgagee and condition precedent to the exercise of that power or similar rights.

6. Mortgagor's right to lease or grant Licenses subject to Mortgagee's consent.

Handicaps to Mortgage Business in Nigeria.

There are many reasons why many Nigerians are unable to own their own homes or access Mortgage facilities to own one. In stating some of these reasons for your appreciation, you would be more vigilant when choosing a Mortgage or other financial Institution. Some of the handicaps include: -

1. Unavailability of long term funds for long term financing of housing projects.

2. High inflation.

3. An inefficient land tenure system which has been described as cumbersome, bureaucratic and one of the most expensive in the world when transferring title. There is also a lot of real estate whose titles are not registered.

4. Similar to 3 above is a cumbersome land registration, titling and conveyance procedures.

5. Low levels of participation by employers and employees in the National Housing Fund Scheme (NHFS), non remittance of deductions by employers under NHFS, reluctance of financial institutions to invest in the NHFS as a result of low interest rate returns from the Scheme, etc.

6. Deviation of Mortgage Banks from their core Mortgage business to more profitable short term business.

7. Insufficient legal and regulatory framework for Mortgage finance.

Conclusion.

Ensure that you are always well informed and calm at all times when negotiating a property transaction. Undertake all due diligence that you can humanly have undertaken. In the short run, it is wiser to pay professionals a token fee than have your interest compromised in the long run. This is especially as the old adage recommends that "prevention is better than cure".

Lastly, remember that once your money leaves your possession and control, it can become very expensive to get it back or have its value delivered, should things go terribly wrong.

References/Acknowledgements.

1. Chief (Dr.) J.O. Sanusi, CON (2003 ? Mortgage Financing in Nigeria).

2. Nigerian Law School Handbook on Legal Drafting & Conveyancing.

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Recipients are advised to seek professional legal counselling to their specific situations when they

arise. Questions, Comments, criticisms, suggestions, ideas, contributions, etc are always welcomed.

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