



MEMORANDUM SUBMITTED BY THE  
MORTGAGE BANKING ASSOCIATION OF  
NIGERIA (MBAN) TO THE SENATE AD-HOC  
COMMITTEE ON CONSTITUTION REVIEW

AMENDMENT OF THE LAND USE ACT

OCTOBER 14, 2009

## **Introduction**

Mortgage Banking Association of Nigeria (MBAN) was duly incorporated in Nigeria on August 06 1992 under the Companies and Allied Matters Act (CAMA) with Incorporation No 6866

It is the bonafide umbrella body for all Primary Mortgage Institutions (PMIs) duly licensed to operate by the Central Bank of Nigeria (CBN) as catalysts for Mortgage/ Housing Sector Development in Nigeria. Its corporate office/Secretariat is located in Skye Bank Building (4<sup>th</sup> floor), 30, Marina, Lagos.

MBAN, with over 99 PMI members, serves as the voice of and advocate for Mortgage Banking (Savings and Loans/Building Societies) Industry in Nigeria; and serves as channel for communicating the needs and problems of the Industry to the Government and its Agencies as well as other private sector organisations and individuals. As a core objective, MBAN also provides input for the formulation of National policy on mortgage banking (Savings and Loans/Building Societies)) and housing Finance by contributing to national debate and policy formulation.

The Scope of Mortgage Business as contained in the Revised Guidelines for Primary Mortgage Institutions (PMIs) issued by the Central Bank of Nigeria (CBN) includes

1. Granting of loans or advances to any person for the building, improvement or extension of a dwelling/commercial house.
2. Granting loans and advances to any person for the purchase or construction of a dwelling /commercial house
3. Acceptance of savings and deposits from the public and payment of interest thereon;
4. Management of pension funds/schemes;
5. Offering of technical advisory services for the purchase or construction of a dwelling house;
6. Performing estate management duties;
7. Offering of project consultancy services for estate development;
8. Engaging in estate development through loan syndication, subject to the restriction imposed by the shareholders' funds unimpaired by losses;
9. Engaging in property trading including land acquisition and disposal;
10. Engaging in other activities which the Bank may approve from time to time.

## **PART A**

### **Imperative of the Land Use Act (1978)**

The Land Use Act (Hereinafter called “the Act”) was promulgated in 1978 as Land Use Decree. It was incorporated into the 1979 Constitution and retained in the 1999 Constitution. The then Head of State, General Olusegun Obasanjo in a broadcast which introduced the Act to the Nation stated *inter alia*: “the main purpose of this decree is to make land for development available to all including individuals, corporate bodies, institution and governments...fast economic and social development at all levels and in all parts of the country is our main consideration”<sup>1</sup>

### **The Land Use Act (1978) and its effect on the Mortgage Sector in Nigeria**

Notwithstanding the noble intentions of the Act, the environment for mortgage lending in Nigeria has been affected negatively because of the absence of clear property rights, the requirement to obtain Governor’s consent to each transaction (as contained in Sections of 5, 7, 15, 21, 22, and 23 of the Act), inefficient land management systems and high cost of property transactions.

The World Bank scores Nigeria very badly on property Rights and land registration arrangements<sup>2</sup>. The World Bank Study puts Nigeria at number 173 (out of 178) in the country ranking of registering property with 14 procedures, a duration of 82 days and costs of 22.2 per cent of the property value. This situation has made land to be undesirable by financial institutions as a form of security because the cost of obtaining consent to the mortgage cannot be transferred to the mortgagor. The ability of a mortgage lender to realize its security is important in the development of an effective mortgage market. It is the security of the property that allows a lower rate of interest to be charged than for unsecured loans. Until recently, when it was reduced to 15 percent of the value of property, the total cost of perfection (Consent fees, capital gains tax, stamp duties and registration fees)

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<sup>1</sup> Amending the Land Use Act: The time for Reform – Kunle Omotola. The Guardian, Tuesday, August 4, 2009

<sup>2</sup> NIGERIA: Financial Systems Strategy 2020 (Housing Finance), March 2008 – World Bank FIRST project Initiative

was high as 40 percent to register title in Lagos State. It is still very high in many states of the Federation.

There is a rapidly growing mortgage market comprising loans made by banks at variable interest rates. However, there is no ability to underwrite borrowers and accordingly lenders require the borrower to make mortgage payments through salary deductions. At the moment, the total outstanding Mortgage loans are around N100 billion (\$850m) granted by universal Banks and Primary Mortgage Institutions (PMIs).

### **The Proposed Amendments and Attendant effects on the Mortgage Sector**

A review of the Land Use Act will assist with respect to certain areas around the acquisition of land title. It would reduce institutional delays in secondary transactions in rights of occupancy such as mortgage transactions. When there is a well established property right (as would happen when afore mentioned sections of the Act have been amended), Primary mortgage institutions (PMIs) can make more mortgage loans available on reasonable terms thereby ensuring more Nigerians access their services.

However, a series of nine other pieces of legislation that would completely transform the Industry equally require review and these are Bills already before the House. They include:

1. The Federal Mortgage Bank of Nigeria Act 2005
2. The Insurance (Amendment) Act 2005
3. The Investment and Securities (Amendment) Act 2005
4. The Mortgage Institutions Act 2005
5. The National Housing Trust Fund Act 2005
6. The Nigeria Social Insurance Trust Fund (Amendment) Act 2005
7. The trustee Investment (Amendment) Act 2005
8. Securitization Bill
9. Foreclosure Laws Bill

## **PART B**

### **MBANs Position on the proposed Amendments**

MBAN has no particular objections to the provisions of the draft Bill *except to emphasize the need to have the Act expunged from the constitution* so as to effect the required amendment to the Act as well fast track future Amendments when necessary, without going through the rigours of constitutional Amendments.

#### **Areas of concurrence with the Proposed Bill**

<b>Land Use Act 1978</b>	<b>Land Use Act (Amendment) Act 2009</b>	<b>MBAN Position</b>
Section 5 (1) (f)	Delete all the words immediately after “sale”	We concur
Section 7	Deleting the word ‘ or Subletting’	We concur
Section 15	Delete the word ‘Mortgage’	We concur
Section 21	Deleting all the words immediately after ‘assignment’ and making the holder of a customary right of occupancy to alienate such right by mortgage	We concur
Section 22	Deleting the words ‘mortgage or sublease’ from subsection 1 and creating a subsection 3 that explicitly states that government consent is not required for creation of mortgage.	We concur
Section 23	Completely substituting the provisions of the sections	We concur

#### **Proposed Areas of Amendment by MBAN**

<b>Land Use Act 1978</b>	<b>Land Use (Amendment) Act 2009</b>	<b>MBAN Position</b>
Section 28	Amend by substituting paragraph (a) with “alienation of the occupier by assignment or sublease...”	The word ‘sublease’ should also be removed from this paragraph along with

		'mortgage' proposed for removal.
Section 28 (5)	Not proposed	Reduce the power of the governor with respect to revocation of rights of occupancy with a view to improving security of tenure for holders of right of occupancy.
Section 30 and section 2 (2) (c) and section 47 (2)	Not Proposed	The right of anyone dissatisfied with the act of the governor to apply to the High court should not be abrogated.
Section 29	Not proposed	Make for adequate compensation for acquisition of land by allowing market forces to determine land value and improvements thereon.
Section 34 (5), (6), (7), (8), and (9), Section 38 and Parts of Section 43	Not Proposed	Stop further expropriation of undeveloped land without any iota of compensation.
Section 47	Not proposed	Expunge this in order to bring the Act under subjugation by the supreme Law of the Land, the Constitution of the Federal Republic of Nigeria.

Aside from the above, administrative provisions may be made to provide a flat administrative charge for the processing of Governor's consent to assign only and the procedure for obtaining the consent simplified.

## Conclusion

At the moment, Nigeria has a housing deficit burden of 17 million units which would require about N35 trillion (about \$27 billion) to fund. According to World Bank estimates, Nigeria needs to produce about 720,000 housing units annually for the next 20 years to be able to close the housing gap in the country. Available statistics show that since its inception in 1973 up to 2006, the Federal Housing Authority (FHA) has built only 30,000 housing units. When this housing output in the last 33 years is juxtaposed with the present huge housing need, a gloomy picture of the critical housing condition in the country is apparent<sup>3</sup>. It is now generally accepted that the best way to help the poor in respect of housing (made possible by long term financing) is to give them security of tenure of land they occupy<sup>4</sup>.

If the proposed amendments are implemented, home ownership by the majority of Nigerians would be more feasible and the potential of land as veritable resources for food, security, poverty reduction, capital accumulation, economic growth and national development would be realized.

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<sup>3</sup> Thisday Editorial – ‘As Land Use Act undergoes Amendment’. April 26 2009.

<sup>4</sup> Ibid