



# Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
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## LAND OWNERSHIP IN NIGERIA: TOWARDS A LEGAL FRAMEWORK FOR CONDOMINIUM

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## **Abstract**

Our population keeps on expanding exponentially but our lands keep on shrinking retrogressively. Sadly, there is no adequate arrangement put in place to address this issue. It is a common thread among the comity of nations that it is an inalienable right of every human being to own an immoveable property anywhere he deems fit provided he has complied with all the necessary legal requirements. Unfortunately, there are landmines all over the place militating against enjoyment of this right. This is more evident especially condominium owners where they have a mirage ownership of their units. In some instances, absence of proper legal framework regulating condominium renders nugatory the existence of such right. So also does the private estate developers hope of investing hugely in real estate sector is also severely undermined. The paper will reflect on mechanisms being developed in Kano State to support improvements in individual land ownership to support a more formal land market as a spur for economic growth. It is against this background that this paper argues for the need to have a legal framework in Nigeria to enable condominium owners enjoy their fundamental human rights to own and acquire property without much fuss.

**Key Words: Certificate of Occupancy, Condominium, Economic Growth, Real Property, Freedom to Own Immoveable Property.**



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## 1. Background

Land regularization in Nigeria over recent years has highlighted flaws in existing registration systems that have a deleterious impact on attempts at reform. The most fundamental issue facing the major cities is the inability of existing legal framework to record floor levels commonly deemed strata or condominium registration. Increasing urbanization, significant population growth and more stringent application of planning rules renders it essential that a legal framework be put in place to accommodate modern styles of occupation.

Kano state is under growing pressure to modernize its land administration systems. The recent progress instituted under the “Systematic Land Title Registration” (SLTR) scheme has highlighted the fact that some 8% of urban occupation is either as apartments, flats or even single rooms yet occupants are unable to gain individual title to land. In the short term a purely administrative solution has been developed which affords land owners better protection that was formerly available. Ultimately, however, a manipulation or exploitation in the over-arching Land Use Act (LUA) legislation must be utilised to fully enshrine the ability of flat or apartments owners’ access to legal title. On the surface, it appears impossible under the LUA for the individual unit owners under condominium arrangement to get a certificate of occupancy over their respective units. It is a well-settled principle of law that a holder of right of occupancy owns all the improvements on the land.<sup>1</sup> This makes it quite difficult to assign a title through a legal assignment, which would eventually culminate into the issuance of certificate of occupancy to the respective unit owner. This restriction in condominium arrangement in Nigeria infringes on the fundamental right of unit owners. As citizens of Nigeria, the Constitution granted them the right to own immovable property anywhere in Nigeria. Thus unit owners are no exception. They should be able to assign the title in their units and use the title documents as collateral.

The essence of having a legal framework for condominium is strategic for Nigerian housing industry. It provides for uniformity in the creation, management and use of condominium housing, which come under the purview of the Act. Further, it helps to mitigate the risk of construction of sub-standard condominiums by usurious developers seeking to maximize profit.

Given the likely three-fold increase in Nigeria’s population over the coming 35 years the need to improve and regulate land ownership is essential if the potential economic dividend is to be fully realized. It follows therefore, creating a legal framework for condominium in the country will not only stimulate investors appetite in the real estate and construction sector but will go along way in supporting a more efficient land utilization system that encourages multi-level superstructure developments in both the commercial and residential real estate sectors. Equally, it will also assuage the fears of lenders who are reluctant to grant mortgage facilities to holders of sub-leases under condominium arrangement. Furthermore, the legal

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<sup>1</sup> This is expressed in a latin maxim to wit: *quid quid plantato solo solo cedit.*” See Garner, B. A. (2004).

<sup>2</sup> Available at <https://www.thebalance.com/condominium-2866377> accessed on 25 October 2016



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framework will provide local and foreign investors with a higher sense of security of investment and could lead to improved foreign investment in the Nigerian Real Estate Industry.

## 2. The Concept of Condominium

The concept of condominium in the Nigerian real estate sector is not fully developed. Condominium system was developed in the early 1960s as means of ameliorating the difficulty of severing individual interests within the existing forms of co-ownership structures, which would typically limit the ability of unit owners to transfer or leverage their interest in the unit on account of not having a clearly distinguishable interest separate from the common title held collectively.

Frequently shortened as “condo” and in some other jurisdictions such as Australia, New Zealand and the Canadian province of the British Columbia it is referred to as “strata title.” Condo is a collection of individual home units and normally built vertically in common or shared areas along with the land upon which they sit.<sup>2</sup> In other words, it refers to a building or complex of buildings containing a number of individually owned units. Each unit is deemed land with each unit owner having the full title to the apartment and a collective right of use of the common facilities on the property such as the parking area, lobby, stairway, elevators, swimming pool, gym, etc.

In Nigeria, several buildings in many cities may be considered as condo in terms of individual units that form the building structure and the mode of quite enjoyment of possession exercise by the owners. However, owners of the various units of the building exercise have restricted right of ownership as a result of the type of title document evidencing their ownership. In most cases, they could only lease out the unit to a tenant. The title document in their possession is not the type that confers recognizable title for the purpose of exercising absolute right of ownership in real estate in Nigeria. In other words, owners of units in condominium in Nigeria cannot use their title document to apply for certificate of occupancy (CofO) or use it as collateral to obtain loan or mortgage the unit. This lacuna has created a huge dilemma for the condo owners where it is impossible for them to acquire a legal interest over their respective units. It has further exacerbated the existing complex and cumbersome bureaucratic bottlenecks of registering a property even for the legal owners. As reported by World Bank in its Ease of Doing Business report titled, “Doing Business 2017: Equal Opportunity for All,” that Nigeria moved up by one point from 170th position on the 2016 ranking to 169th position for the 2017 ranking. Details of the report reveal among other things that Nigeria ranked 182<sup>nd</sup> position in terms of Registering Property.<sup>3</sup>

## 3. Is there any Specific Legislation Regulating Condominium in Nigeria?

Due to the dire need of bridging the huge housing deficits in Nigeria and accommodate the surging population in some big urban areas, the concept of condo gained prominence especially in the early 90s. According to the United Nation Report,

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<sup>2</sup> Available at <https://www.thebalance.com/condominium-2866377> accessed on 25 October 2016

<sup>3</sup> Read more at: <http://www.vanguardngr.com/2016/10/nigeria-ranks-169th-position-world-bank-ease-business/> Accessed on 28<sup>th</sup> October, 2016.



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population of Nigeria will be around 440 Million in 2050. This scary figures means that additional of 25,000 people every day, which obviously put enormous pressure on the country's surface area of 923,768 square metre.<sup>4</sup>

Condo is gradually creeping into the major metropolitan cities such as Lagos, Abuja and few others in Kano. Despite this development, the condominium has not been specifically regulated by any extant legislation in the country. This exposes the unit/condo owners at the mercy of individual developers who determine nature/structure of the developments, the amenities to be provided, the body of rules to govern the unit holders, and the nature of title to be transferred to the unit holders.<sup>5</sup>

Apparently, there is no specific legal framework regulating condos in Nigeria, and the Land Use Act (LUA) being the principal legislation regulating Lands is also silent on it. The LUA provides the framework of land ownership, use and management and does not distinguish between a right or interest in or over land as separate from the interest in the improvements on the land as both go hand in hand.

According to the LUA, the system of land holding in Nigeria is that of State ownership which is vested in the Governor of that state with individuals merely having a right of occupancy over the land, which is in principle, a leasehold interest over the property for a period, typically ninety-nine (99) years.<sup>6</sup> Sequel to the provision of the Act, individuals could no longer hold freehold interest in land in Nigerian.

For purposes of clarification, it is significant to state the difference between leasehold and freehold interests in land. On one hand, leasehold is a form of land ownership where a person purchases the right to occupy land or a building for a given period of time. As lease is a legal estate, leasehold estate can be bought and sold. On the other hand, freehold is the outright ownership of a property, which is held for an indeterminate period of time. In essence, leasehold interest in a property reverts back to the owner of the land after the expiration of the lease period, unlike freehold interest, which is outright ownership of

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<sup>4</sup> Nigeria is one of the six countries whose population will exceed the 300 million mark in less than two decades, the United Nations (UN) has said in a report. The other countries are: China, India, Indonesia, Pakistan and United States (U.S.) Listed as one of the 10 largest countries in the world, the Nigeria is said to have a population believed to be growing the most rapid. Going by the UN report, Nigeria has the potential of dislodging the U.S. as the world's third largest in another 35 years. See <http://thenationonline.net/nigeria-is-seventh-largest-in-the-world-says-un-report/> Viewed on 28<sup>th</sup> October, 2016; <http://data.un.org/CountryProfile.aspx?crName=NIGERIA> Viewed on 28<sup>th</sup> October, 2016.

<sup>5</sup> Odujirin, *et al*, "Is there a need for a Condominium Housing Law in Nigeria? Available at <http://odujirinadefulu.com/is-there-a-need-for-a-condominium-housing-law-in-nigeria/> accessed on 25 October 2016. The description of the units, its common areas and any restrictions on their use is captured in a document known as a "Master Deed" or "Condominium Document". It also establishes the association of owners of the units popularly referred to as Home Owners Association (HOA), which is a corporate entity responsible for enforcing its provisions through a board of directors.

<sup>6</sup> When the LUA came into effect on 29<sup>th</sup> March 1978, land ownership under freehold was extinguished and became vested in the Governor of the state. Freehold interest obtained pre-LUA era became converted to leasehold, the Governor becoming the lessor. A lease granted by the Governor is usually for 99 years, subject to review upon expiration. The terms of the lease are, under the Land Use Act, contained in a Certificate of Occupancy (C of O) granted by the Governor. The C of O, which is the document of title provided for under the LUA, confers a right of occupancy for the leasehold term stipulated therein. See Section 1 of the LUA, and also *Savannah Ban v Ajilo* (1987) S.C. 188/1987.



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land in perpetuity.<sup>7</sup>

In this context, the Governor of a state holds the land in trust for the people with freehold interest in the land, while individual people or corporate bodies hold leasehold interest in the land upon grant of right of occupancy by the Governor. The grant of right of occupancy allows the holder to use the land or occupy it for certain length of time to the exclusion of all other persons except the Governor. However, the LUA prohibits the alienation by either 'assignment, mortgage, transfer or possession, sub-lease or otherwise, of customary right of occupancy without the consent of either the Governor or the Local Government as the case may be. It also prohibits the alienation of statutory right of occupancy without the due consent of the Governor.<sup>8</sup>

Section 26 of the Act states that any transaction in land which purports to confer on, or vest in any persons, any right or interest over land other than as stated in the Act, shall be 'null and void.' The Act empowers the Governor to revoke rights of occupancy for reasons of overriding public interest: such as alienation of the land by the occupier without due approval, requirement of the land by Federal, State or Local Government for public purposes. In such cases, compensation may be paid but only for 'unexhausted improvements' on land and not for the land itself since with the Act, land no longer has an economic value.

Furthermore, a breach of any of the provisions of the Act or a refusal or neglect to accept and pay for a certificate issued as evidence of a right of occupancy could lead to one's land being expropriated.<sup>9</sup> It is important to note that the provisions of the LUA have been enshrined in the constitution of the Federal Republic of Nigeria.<sup>10</sup> This implies that the provisions of the Act cannot be amended or expunged, altered or repealed except as provided by the stringent conditions stated in the constitution for the alteration of its provisions. The constitution requires any proposal for an Act to amend the constitution to be supported by not less two third majority of each House of the National Assembly. The proposal for the amendment must also be approved by resolution of the Houses of Assembly of not less than two third of the states of the federation.<sup>11</sup>

It is thus impossible under the LUA for the individual unit owners under condominium arrangement to get a certificate of occupancy over their respective units. According to the law, a holder of right of occupancy owns all the improvements on the

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<sup>7</sup> The term leasehold interest connotes A leasehold estate is an ownership of a temporary right to hold land or property in which a lessee or a tenant holds rights of real property by some form of title from a lessor or landlord. Therefore, leasehold is a form of land tenure or property tenure where one party buys the right to occupy land or a building for a given length of time. In contradistinction to the leasehold, a freehold interest is a situation in which the property reverts to the owner of the land after the lease period has expired. If you own the freehold, it means that you own the building and the land it stands on outright, in perpetuity. It is your name in the land registry as “freeholder”, owning the “title absolute.” See Section 1, Land Use Act, Cap L5, Laws of the Federation of Nigeria 2004. See also Oluyede, P. (1989). *Modern Nigerian Land Law*. Evans Brothers (Nigeria Publishers) Ltd.

<sup>8</sup> Section 21(a)(b), Land Use Act

<sup>9</sup> Section 28, (1), (2) (a) and (b), 3 (d) and 5 (a), (b) (c), Land Use Act

<sup>10</sup> Section 315(5) the Constitution of the Federal Republic of Nigeria, 1999 (as amended)(hereinafter “the Constitution”)

<sup>11</sup>Section 9, the Constitution



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land.<sup>12</sup> Thus whatever is affixed to the land belongs to the land.<sup>13</sup> All improvements or anything permanently attached to a land, forms part of the land. The law does not distinguish between a land and the improvement thereof. This position of law was given judicial recognition by the Supreme Court in the cases of *Otogbolu v OkehuwI*<sup>14</sup> and *Adamu v Ikharo*.<sup>15</sup> This makes it quite difficult to assign a title through a legal assignment, which would eventually culminate into the issuance of certificate of occupancy to the respective unit owner. This restriction in condominium arrangement in Nigeria infringes on the fundamental right of unit owners. As citizens of Nigeria, the Constitution granted them the right to own immovable property anywhere in Nigeria. Thus unit owners are no exception. They should be able to assign the title in their units and use the title documents as collateral.<sup>16</sup>

It is instructive to note that since the advent of the LUA, Certificate of Occupancy has become the thrust and main title document that most landowners in Nigeria hold or seek to hold. Prior to the enactment of the Land Use Act, title documents like Land Certificate, Purchase Receipt and Registered Conveyance were in use. While all these conferred on its holders freehold interest in the landed properties in question, Certificate of Occupancy only confers leasehold of a specific term on its holder. Thus while holders of a Registered Conveyance, for example, own the land absolutely, holder of a Certificate of Occupancy only holds the land for a period of time maximum of 99 years in this case.

Nevertheless, Certificate of Occupancy has become the most popular piece of evidence of title. Reason for its prominence is not far-fetched. It is statutorily provided for as evidence of title, since the Land Use Act now vests all land in a given state in Nigeria in the governor of such state. It then follows that whoever lays claim to any land must do so with the consent of its owner – the governor.<sup>17</sup> Today, the right of occupancy granted by a governor seems to be the highest right to land in Nigeria.<sup>18</sup> Accordingly, a statutory right of occupancy granted over a land automatically extinguishes all existing rights in respect of the parcel of land. In the case of *Olagunju v Adeseye*<sup>19</sup> it was held that holder of a statutory right of occupancy is in all respect the proprietor of the land during the subsistence of the right. For this reason, financial institutions, which still regard landed property as the most reliable form of collateral for its facilities, do have preference for Certificate of Occupancy over other land documents.<sup>20</sup> This has obviously placed unit owners under condominium arrangement in a catch 22 situation for they cannot afford to have a distinct and separate certificate of occupancy over their respective units.

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<sup>12</sup> Section 15, Land Use Act

<sup>13</sup> This is a latin maxim *Quicquid plantatur solo, solo cedit* (whatever is affixed to the land belongs to the land")

<sup>14</sup> (1981) 68 SC 99 at 146

<sup>15</sup> (1988) NWLR pt 89 p 471

<sup>16</sup> Section 43, the Constitution. See Section 44 of the Constitution for the exceptional cases where ownership in immovable property may be compulsorily acquire.

<sup>17</sup> See the combine effect of Sections 1 and 21 of the Land Use Act.

<sup>18</sup> However, it is important to note that a person does not become the titleholder of a land by mere acquiring certificate of occupancy. See the case of *Nigerian Engineering Work Ltd v Denap Ltd* (2001) 18 NWLR pt746, p726.

<sup>19</sup> (2009) 9 NWLR pt1146, p225

<sup>20</sup> Aluko, O. E. (2011). Sustainable housing, population growth and poverty: The implications on Lagos mega city. *Journal of sustainable development*, 4(4), 138.



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The Supreme Court confirmed this position when it held in the case of *Grace Madu vs Dr. Betram Madu*<sup>21</sup> that-

“The settled law in grant of C of O is that once a person is granted a C of O over a parcel of land, he is entitled to hold that parcel of land to the exclusion of any other person unless the C of O is for good reasons, revoked by the same authority that granted it...”<sup>22</sup>

Accordingly, private developers who are into real estate development such as condominium have resorted to the sublease system, as a means for transferring rights to the units, but for a period less one day of the lease term granted by the Governor, thereby retaining the reversionary rights to the Unit. However, this arrangement may have an adverse effect on a unit owner. Most importantly, as a lease or a sub-lease agreement presupposes that reversionary interest in the subject matter of the lease lies with the lessor or sub-lessor as the case may be. In other words, this is counter productive to the condo arrangement the very essence of unit ownership, as the unit holder is not at any time the true owner of the rights to the unit and therefore not entitled to get the certificate of occupancy.

Another dilemma also being faced by condo owners especially in Kano State is satisfying the requirements of Land Registration Law, and Survey Law. For it is a condition precedent before any land instrument is registered within Ministry of Lands and Physical Planning (MoLPP), the following provisions must be complied with to wit:

## **Land Registration Law, Cap. 77, Laws of Kano State, 1991**

S.9 provides that:

1. (a) No instrument executed after the commencement of this Law, other than a power of attorney, shall be registered unless it contains a proper and sufficient description, and, subject to the regulations, a plan of the land affected by such instrument;
2. (b) The decision of the registrar as to the adequacy of the description and plan of any land in any instrument for the purpose of identification shall be final, subject to any order of High Court.
3. No state grant executed after the 1<sup>st</sup> day of June, 1918, and no instrument executed after the said date affecting land the subject of a state grant executed after the said date shall be registered unless the plan of the land affected by such state grant or instrument is signed by a surveyor or is a copy of a plan so signed.

## **Survey Law, Cap. 142, Laws of Kano State, 1991**

Section 3 provides that:

1. No map, plan or diagram of land: -

<sup>21</sup> [2008] 2-3 S. C. (PT. II) 109

<sup>22</sup> Ibid.



2. if prepared after the 1<sup>st</sup> day of June, 1918, shall be accepted for registration with any registrable instrument which is required by any written law to contain a map, plan or diagram; and
3. if prepared after the 16<sup>th</sup> day of May, 1918, shall save for good cause shewn to the court, be admitted in evidence in any court, unless the map, plan or diagram has been prepared and signed by a surveyor or is a copy of a map, plan or diagram so prepared and signed and certified by a surveyor as being a true copy.

Furthermore, section 4 provides that:

(1) where a licensed surveyor prepares any map, plan or diagram, which is to be annexed to, or form part of, any registrable instrument, he shall –

- (a) insert the date of completion of the preparation of the map, plan or diagram at the foot or other conspicuous part thereof; and
- (b) within one month of the date of completion, submit a copy of the map, plan or diagram to the State Surveyor General.

(2) The Surveyor-General shall, on receipt of any of the documents provided for under subsection (1) above, issue a certificate of deposit to the licensed surveyor on payment of a fee of fifty kobo.

It is pertinent to note at this juncture that registered surveyors cannot prepare a detailed survey plan for the condo owners over their respective units because they have no CofO evidencing their titles.

In light of the foregoing, there is a need for a legislative framework to address a myriad of issues relating to the setting up, operation and use of condominium housing such as, the requirements for plans and paperwork to start a condominium, ownership and management of the units, mode and process of transfer of the title to the units, rights of unit owners, etc. The legislative framework will ensure guarantee of the title of each unit. This has been the practice in many jurisdictions including both developed and developing countries around the globe.

#### **4. Legal Framework for Condominium as a Way Forward**

Nigeria being the most populous black nation on earth is the fastest investment hub in Sub-Saharan Africa where lots of foreign investors are looking to expand their investments. The country is also bedevilled with the largest housing infrastructure deficit.<sup>23</sup> It can be asserted that the aspiration of people to live in a city centre in Nigeria is quite alarming. Several reasons have been credited to an increasing sentiment for urban living, which include employment opportunity, urban amenities and utilities consumption opportunities. These reasons have consequently led to housing shortage in the urban centre.<sup>24</sup> Perhaps, the increase in population in most Nigerian cities has been responsible for the rapid rise in the demand for urban land for housing. This rising demand for urban land tends to be mirrored mostly in the congestion of the central areas

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<sup>23</sup> The deficit is currently placed at about 20 million with the housing and construction sector accounting for a meager 3.1% of the rebased GDP. See <http://www.urbanpropertyfinder.com/nigerian-housing-deficit-at-15-million-housing-units/>

<sup>24</sup> Akinyode, B. F., Khan, T. H., & Ahmad, A. S. B. H. (2015). Socio-Economic Factors in Measuring the Demand for Residential Neighbourhood in Nigeria. *Asian Social Science*, 11(12), 235.



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of cities.<sup>25</sup> In essence, the impact of urban growth on housing and infrastructure is enormous. Demographic expansion of cities has created and will continue to create serious challenges in terms of affordable housing in the cities. According to Opeyemi and others, this kind circumstance is usually “serious in the developing countries where population growth and urbanization are increasing very rapidly and where the gap between housing need and supply is greatest.”<sup>26</sup> The Nigerian government has over the years recognized this problem and it has put in place several policies and programmes to address the housing challenges, but with little or no success.

It follows therefore, creating a legal framework for Condominium in the country will not only stimulate investors’ appetite in the real estate and construction sector but will go along way in supporting a more efficient land utilization system that encourages multi-level superstructure developments in both the commercial and residential real estate sectors. Equally, it will also assuage the fears of lenders who are reluctant to grant mortgage facilities to holders of sub-leases under condo arrangement. Furthermore, the legal framework will provide local and foreign investors with a higher sense of security of investment and could lead to improved foreign investment in the Nigerian Real Estate Industry.

Having highlighted some of the plights of the unit owners in Nigeria, it is imperative to mention the *modus operandi* of the needed legal framework. The proposed legal framework is to provide an interested estate developer with either freehold interest (the government) or leasehold interest (private investors) in a piece of land registers a declaration and description for a condominium divided into units. Once registered, the Law treats each unit as real property and the unit owner’s title to it along with the common facilities is recognized and guaranteed under the Law. In essence, the framework is to provide individual unit owners the right to apply for certificate of occupancy for each condo they hold. With respect to other common facilities such as stairways, packing space, swimming pool, etc in the condominium, each unit holder has equal right in the facilities. In case of transfer or assignment of a unit, the right to usage of common facilities goes together with the title in the unit. A unit owner is granted the right to mortgage or pledge his unit. The law creates a clearly severable and recognisable interest of the unit owner, which is capable of being a security interest over its title.

In addition, the law will provide a detailed extent of right of the unit owners in the unit they hold and the joint interest they have in the common facilities. In line with the practice in other jurisdictions, the framework will provide for the establishment of Corporation. The Corporation is to hold legal title in and over the common facilities for and on behalf of the unit owners who have joint interest. The Corporation carries out the daily maintenance, management and administration of the common facilities. Its exhaustive functions will be categorically spelt out in its instrument of incorporation and each individual unit owners is automatic shareholder in the corporation. The Corporation is empowered to make regulations for effective maintenance, management and administration of the condominium. In this respect, Nigeria may borrow from other jurisdictions with necessary amendments to suit its peculiarities.

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<sup>25</sup> Ibid.

<sup>26</sup> Morakinyo, K. O., Okunola, A. S., & Ogunrayewa, M. A Review Of Private Sectors’ Involvement in Urban Housing Provision in Nigeria.



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The essence of having a legal framework for condominium is strategic for Nigerian housing industry. It provides for uniformity in the creation, management and use of condominium housing, which come under the purview of the Act. Further, it helps to mitigate the risk of construction of sub-standard condominiums by unscrupulous developers seeking to maximize profit. Some other advantages worthy of mention are: protecting constitutional principles as it affects the rights of unit owners are upheld; and unit owners are given the freedom to access loan or mortgage their title as security for value.

Giving the great advantages of having a legislative framework in place to regulate multi-unit property developments in Nigeria, it is recommended that a Condominium Law, similar to that applicable in the jurisdictions earlier mentioned, is enacted and made alongside the provisions of the Land Use Act. This would result in each unit owner having a distinct title guaranteed by the state without being subject to the developer's title. Also, it dispenses with reversionary interest of the developer in the property at the expiration of the sub-lease. An additional advantage is that a Condominium Law would stipulate standards to be adopted for every multi-unit development in the country, thereby providing uniformity of standards and regulating the development and management of these units.

In addition to the above-proposed solution, an administrative solution without necessarily enacting any law is also feasible to nip in the bud this issue. This is made possible considering the mountain task of amending the LUA. Land administration and management is vested on the State and the fact that the LUA is silent couple with non-existence of any legislative enactment in the country on condo, provides a viable option for an administrative solution. This option is based upon the premise of the general principle of law that all things are presumed to have been done regularly and legitimately until the contrary is proved. This is embodied in the following latin maxims to wit: *omnia praesumuntur rite et solemniter esse act* (all acts are presumed to have been done rightly and regularly); and *omnia praesumuntur legitimi facta done probetur is contrarium* (all things are presumed to have been legitimately done, until the contrary is proved).<sup>27</sup> Sequel to this State Governments across the Federation can exploit this legal opening to come up with an executive feat or administrative approval regulating condominium in their respective states.

## 5. Conclusion

Condominium is a form of housing system comprises of several units structure with individual ownership of the units. The title of unit owners in each unit is severable and is treated as real property while the common areas and shared facilities are jointly owned by the unit owners in common interest. This system of housing is gaining popularity across the major cities of Nigeria. However, the mode of ownership and the extent of right of unit owners seem to differ in Nigerian context. Right of unit owners to sever their title by way of assignment, mortgage or access loan using the title document has become a mirage. The current situation in Nigeria imposes restriction and lack of leverage for unit owners to treat their title as real property. It is evident that the promulgators of the Land Use Act did not envisage the condo living situation. As such, there is a dire need

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<sup>27</sup> See section 168(1) of the Evidence Act, 2011, Cap. EL5, Laws of the Federation of Nigeria; *Federal Republic of Nigeria v Ya'u Muhd* (2014) LER SEC. 128/2012; *State v Gwanto & Ors* (1985) NSCC.



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for the necessary legislative intervention to protect the interests of the present and prospective unit owners under condo arrangement. To this end, it is suggested that the Nigerian government should enact a legislation to be known as “Condominium Act” which shall spell out a detailed regulation concerning ownership and operation of condominium in Nigeria in such a way that unit owners will have leverage to deal with their title freely as a real property. In the alternative, an administration solution is available for the State Governments to pursue.

## 6. References

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