



REAL ESTATE DOCUMENTATION GUIDE

CONTRACTING GUIDE FOR DEVELOPERS

Introduction

Real estate development in Nigeria is a dynamic and fast-growing sector, attracting various stakeholders, including developers, financiers, regulatory authorities, and end-users. In Nigeria, real estate transactions are governed by a combination of regulatory frameworks, and contractual agreements. Key legislation includes the Land Use Act of 1978 and other state-specific property laws. These legal frameworks provide the foundation for property acquisition, development, and financing arrangements. Despite these structures, the real estate sector faces challenges such as land disputes, unclear property titles, fluctuating interest rates, and limited access to long-term financing, which heighten the need for well-drafted agreements.

Transaction documentation in the Nigerian real estate sector typically involves a range of agreements, including sale agreements, loan agreements, joint venture agreements, off-plan purchase contracts, and lease or tenancy agreements. Each document must balance the diverse interests of the parties involved while addressing critical aspects such as funding terms, timelines, performance, standards, regulatory compliance, and dispute resolution mechanisms. Failure to incorporate comprehensive and well-negotiated clauses can lead to disputes, project delays, or even outright failure, undermining the viability of the investment.

This guide examines the essential clauses in real estate transaction documentation from a Nigerian perspective, highlighting their importance for developers, financiers, and clients. By understanding these clauses, stakeholders can navigate the complexities of Nigeria's real estate market, mitigate risks, and enhance the success of their projects.





Clauses for Real Estate Project Developers

For developers in Nigeria, transaction documents are essential to defining their responsibilities, managing expectations, and safeguarding their financial and legal interests. Below are key clauses and practical considerations for developers, highlighting how these provisions can protect their interests in the Nigerian context:

1. Description of Services

This clause establishes the scope of work the developer agrees to undertake, and specificity is paramount to avoid disputes. Typically, this clause should detail the number of units, architectural design, quality standards, and timelines to be delivered by the developer to the project owner/client. For example, instead of stating, “construct residential units,” a well-drafted clause could specify: “Construct 50 three-bedroom apartments in line with the approved architectural design dated [*insert date*], with construction adhering to the Nigerian Building Code and relevant state regulations.”

For developers, this clause ensures that they are not held liable for expectations beyond the agreed deliverables. It also provides a basis for counterclaims if a client alleges underperformance. Developers should ensure that the description aligns with available resources, regulatory permits, and the project’s timeline to prevent overcommitment. Including provisions for delays caused by third-party approvals or unforeseen regulatory hurdles can further protect developers from liability.





2. Variation Clauses

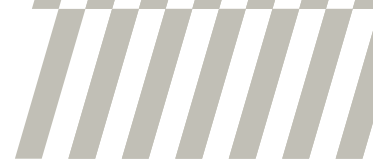
Variation clauses address changes to the scope of work, a common occurrence in Nigerian real estate projects due to factors like client requests, market dynamics, or unforeseen site conditions. This clause should clearly define the process for approving variations, allocate responsibility for associated costs, and address potential timeline adjustments. For example, the clause could state: "Any variation to the scope of work must be agreed upon in writing by the client and developer, with cost implications and revised timelines documented in a signed addendum."

For developers, this clause is crucial to avoid bearing unexpected costs or delays arising from changes requested by the client. In Nigeria, where material prices can fluctuate significantly due to inflation or foreign exchange volatility, a well-drafted variation clause can shield developers from financial losses. For instance, the clause can specify that price adjustments for materials exceeding a certain threshold will trigger a cost review. By ensuring transparency and mutual agreement on variations, developers can mitigate disputes and maintain project viability.

3. Payment Terms

In Nigeria, phased payment structures tied to project milestones are common in real estate financing. This clause should define milestones, payment schedules, and penalties for late payments. For example: "The client shall make a 20% initial deposit upon signing the agreement."





Subsequent payments shall be made as follows: 30% upon completion of the foundation (as certified by an independent engineer), 30% upon completion of the roofing, and 20% upon final handover of the project.”

Developers rely on phased payments to maintain cash flow, particularly in Nigeria’s challenging financing environment where access to affordable credit is limited.

A robust payment clause protects developers by ensuring timely funding to progress the project. Additionally, the clause should outline penalties for late payments, such as interest charges or suspension of work. This protects developers from liquidity challenges that could derail the project. Including provisions for independent certification of milestones can also reduce disputes, ensuring that payments are tied to objectively verifiable progress.

4. Termination Clauses

Termination clauses safeguard developers if unforeseen events prevent project completion. In Nigeria, such events may include regulatory roadblocks, economic downturns, or force majeure occurrences like floods or political unrest. A well-drafted termination clause could state: “In the event of termination due to force majeure, the developer shall be entitled to compensation for work completed, including reimbursement for materials procured as of the termination date.”

This clause protects developers by limiting their liability and ensuring fair compensation for work already performed. It is also essential to address termination fees, which compensate developers for their financial and opportunity costs if the client unilaterally terminates the contract. For instance, the clause can specify: “If the client terminates the agreement without cause, the developer shall be entitled to a termination fee equivalent to 10% of the total project cost.” This provision provides a financial cushion, ensuring developers are not unduly penalized for circumstances beyond their control.

5. Dispute Resolution

Disputes are almost inevitable in complex real estate projects, and a well-crafted dispute resolution clause can save developers time and resources. In Nigeria, where court processes can be lengthy and expensive, developers should advocate for alternative dispute resolution (ADR) mechanisms such as mediation or arbitration. A dispute resolution clause could specify: “Any dispute arising from this agreement shall first be referred for negotiation between the parties within 3 Business Days of the notification of dispute. If the parties fail to resolve by negotiation within 7 Business Days, the matter shall be referred to mediation under the rules of the Lagos Multi-Door Courthouse. If mediation fails, the dispute shall be resolved through arbitration in accordance with the Arbitration and Mediation Act, 2023 with the venue in Lagos and the decision binding on all parties.”

For developers, ADR provides a quicker and less adversarial means of resolving disputes, ensuring that projects can continue with minimal disruption. The clause should also specify the governing law, typically Nigerian law, to avoid jurisdictional conflicts. By preemptively addressing potential disputes and agreeing on resolution mechanisms, developers can avoid protracted legal battles that could stall the project.

6. Regulatory Compliance Clauses

Given the regulatory complexities in Nigeria, developers should include clauses that address compliance with local laws, permits, and approvals. The clause should clearly state which party is responsible for obtaining licenses, permits, consent, and approvals. For instance: "The developer shall ensure that all necessary permits and approvals are obtained from relevant authorities before commencing work. Any delays arising from regulatory processes shall extend the project timeline accordingly."

This clause protects developers by clarifying that they should not be responsible for delays caused by regulatory processes which is not due to developer's negligence or breach. It also reinforces the importance of adherence to legal requirements, reducing the risk of penalties or project shutdowns due to non-compliance.

By incorporating these clauses into transaction documentation, Nigerian developers can protect their interests, manage risks, and enhance the success of their real estate projects. Properly negotiated and drafted agreements provide a solid foundation for navigating the unique challenges of the Nigerian market, ensuring that developers can focus on delivering quality projects without undue legal or financial setbacks.

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