**THE LAND USE ACT AND RIGHTS OF OCCUPANCY**

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# FEATURES OF THE LAND USE ACT

1. was enacted as a decree and came into effect on the 29th of March 1978
2. It became an Act by virtue of the Adaptation of Laws (Re-designation of

Decrees, etc.) Order 1980, sections 1 and 13

1. sets out the framework for a national land policy in Nigeria
2. was enacted in order to resolve the difficulties surrounding land distribution and acquisition in Nigeria.
3. is an existing law and is at par with the CFRN 1999 (as amended), see **section 315(5) CFRN 1999.**

# In the case of NIGERIAN INSTITUTE OF MEDICAL RESEARCH V. NATIONAL

**UNION OF ROAD TRANSPORT WORKERS** (2010) 12 NWLR (Pt 1208) 328 at 329, it was held that the Land Use Act is an existing law by virtue of section 315(5) of the 1999 Nigerian Constitution. The Act is a special federal enactment which has been accorded extraordinary status by the Constitution. Though it is not an integral part of the Constitution, it claims special protection under section 9(2) of the Constitution in terms of its amendment.

f. created a tripartite system of land holding in Nigeria – state, federal and private.

**State Land Holding**

1. **Section 1** vests the radical title to land in the State Governor who is considered a trustee of all land in a state for the benefit of all Nigerians.
2. **Section 3** empowers the Governor to designate certain parts of the state as urban areas. The rest is classified as non-urban areas.
3. By **section 2(1)(a)**, land in urban areas are under the management and control of the Governor. All other lands are under the management and control of the Local Government. See **sections 2(1)(b)**.
4. **Section 2(2)** establishes an advisory body called the “Land Use And Allocation Committee” to assist the Governor. A similar body called the “Land Allocation Advisory Committee” is established by **section 2(5)** to assist the Local Government.

**Federal Land Holding**

**Section 49(1)** exempts land vested in the Federal Government and its agencies before the commencement of the Act from land over which title is vested in the Governor.

**Private Land Holding**

Here, all that the individual can exercise is a right of occupancy.

# RIGHT OF OCCUPANCY

# Nature of a right of occupancy

1. a right of occupancy is the maximum interest which a private individual can enjoy over land in Nigeria.
2. a person entitled to it is called a holder.
3. a holder may be a sole or a group.

# Types of right of occupancy

It may be statutory or customary, actual(express) or implied(deemed). **Statutory right of occupancy** - **section 51(1)**: this is a right which could be expressly granted by the Governor or deemed issued by operation of the Act over land in an urban area.

1. Express/Actual Grant – **section 5(1)(a)**

This is when the Governor grants a statutory right of occupancy to any person for any purpose for land in an urban area or elsewhere. Such right of occupancy must be granted for a definite term in accordance with **section 8**.

1. Deemed/Implied Issue –

A statutory right of occupancy is deemed to be issued to a person in whom land in an urban area was vested at the commencement of the Act in respect of developed or undeveloped land.

1. Developed land – land in which there is any physical improvement such as electricity, drainage, building, etc. See **section 34(2); 51(1)**.
2. Undeveloped land – bare land, without any improvements, **section 34(5**).

**Customary right of occupancy – section 51(1)**: right granted by the Local Government over land not in urban area. It may be expressly or impliedly acquired.

1. Express Grant – **section 6(1)**

This is where a Local Government grants a customary right of occupancy to any person or organization over land not in an urban area for agricultural or other purposes ancillary to agriculture.

1. Deemed Issue: this could be for
2. Developed land – **section 36(4**) or
3. Agricultural land – **section 36(1)** and **(2)**

In any case, the holder of the deemed grant could choose to ***register*** such interest with the Local Government to further protect his interest.

See **ABBA & ANOR v. GAIYA** (2016) LPELR-41164(CA) where the court held that:

"By the provisions of Section 36(1) of the Land Use Act, 1978, a Customary title holder of land, is deemed to have been granted right of occupancy over such land, and another person cannot be granted title over same parcel of land." Per BDLIYA, J.C.A. (P. 26, Paras. B-C)

**Incidents of a right of occupancy**

It invests the holder with exclusive possession, imposes on the holder the liability to pay rent, and is transmissible and alienable.

1. Exclusive possession: **section 15(a)**

In the case of **OLALEYE V. TRUSTEES OF ECWA** (2011) 2 NWLR (Pt.1230) 139, DENTON WEST, JCA, stated the effect of grant of Statutory right of Occupancy, thus:

"Once a person is granted a Statutory right of occupancy in and over a parcel of land, he is entitled to hold same to the exclusion of any other person unless and until the certificate of occupancy is set aside. However, Section 5 (2) of the Land Use Act does not preclude the Court from setting aside the grant of the statutory right of occupancy in the appropriate circumstances, such as, for instance, when it was issued in error or obtained by fraud.”

1. Liability to pay rent:
2. the Governor may demand rental for land subject to a statutory right of occupancy. **Section 5(1)(c)**. The Governor may also grant a statutory right of occupancy free of rent or at a reduced rent where he is satisfied that doing so is in the interest of the public. **Section 17(1)**.
3. Penal rent – **sections 5(1)(e) and 19** authorize the Governor to impose a penal rent for breach of any covenant/condition in a certificate of occupancy.

c. Alienability:

1. Statutory right of occupancy – **sections 15 and 22**. Alienation through assignment, mortgage, transfer of possession, sublease, or otherwise must be with the consent of the Governor first had and obtained.
2. Customary right of occupancy – **section 21**. There are two limbs.
* where the alienation is pursuant to a court order, Governor’s consent is needed.
* in other cases, the Local Government must give its approval.

d. Transmissibility – **section 24**.

# EFFECT OF LACK OF CONSENT

1. Revocation of the right of occupancy – **section 28(1),(2)(a) and (3)(a)**
2. Nullity of the transaction – **section 26**
3. Illegality of the transaction – **sections 21 and 22**
4. An offence – **sections 34(8)**

# CERTIFICATE OF OCCUPANCY – Section 9

This is merely evidence that a grantee has a right of occupancy, customary or statutory. It does not confer on a grantee any interest or right which he did not have before.

In **ORLU V. GOGO-ABITE** (2010) (Pt 1196) 307, the court held that a certificate of occupancy is never associated with title. A certificate of statutory or customary right of occupancy issued under the Land Use Act 1978 cannot be said to be conclusive evidence of any right, interest or valid title to land in favour of the grantee.

# Incidents of a certificate of occupancy

* it is a prima facie evidence and raises a rebuttable presumption that the holder is in exclusive possession and has a right of occupancy.
* issuance does not invalidate defects.
* a person cannot improve his title to land by obtaining a certificate of occupancy.
* acceptance of a certificate binds the holder to all the terms and conditions in the certificate by virtue of **sections 9(4), 10(a) and (b)**.

In **TRIMSKAY NIGERIA LTD v. BANKOLE-OKI** (2015) LPELR-24518(CA) His Lordship BAGE JCA at pages 41-42, paras. E-B stated thus:

"Let me add here for the records that throughout the Land Use Act, there is no provision associating the certificate with title. A Certificate of Occupancy only gives the right to use and occupy the Land. It neither confers nor is it necessarily an evidence of title. It is only a prima facie evidence which raises a presumption that the holder is in exclusive possession and has a right of occupancy over the land in dispute. However, like all other presumption, it is always rebuttable and the onus of disproving this right is on the person who asserts the contrary.”

# Determination of a right of occupancy – could be by a. Effluxion of time

1. Surrender – **section 27**
2. Forfeiture – **section 18**
3. Revocation (for overriding public interest) – **section 28**

# Procedure for revocation

1. Governor issues a notice to the holder – **section 28(4)**.
2. Notice must be **personally** served on the holder – **section 44**. This could be in any of the following ways: o personal delivery o delivery on the last known address o delivery through a registered courier
	* delivery to the secretary or clerk of an incorporated body or company at its registered office
	* where personal service is impossible, by affixing or pasting on a conspicuous part of the premises.
3. where the holder receives such notice, his title becomes extinguished on that same date or any other date stated in the notice – section 28(7).

# See BALLANTYNE v. A.G CROSS RIVER STATE & ORS (2017) LPELR-

43527(CA) where the court explained that:

“It must be emphasized clearly here that the Land Use Act, 1978 did not forbid the Governor of a State from revoking any customary or statutory right of occupancy. The only check is that the revocation must be for public purpose and the public purpose must be duly specified and the appropriate notice must

be issued to the holder of the Right of Occupancy.”

# COMPENSATION – section 29(1),(2)

1. where the right of occupancy is revoked for *public purpose* of the federal, state or local government, the holder and occupier shall be entitled to compensation for the value of their unexhausted improvements at the date of the revocation.
2. where the right of occupancy is revoked for mining, oil pipelines or other related purposes, the holder or occupier is entitled to compensation under the Minerals Act or Mineral Oils Act or any Act replacing same.

In **FCDA & ANOR v. KUDA ENGINEERING AND CONSTRUCTION COMPANY LTD & ORS,** (2014) LPELR-22985(CA)the court held thus:

"No one, including the government can deprive a holder or occupier of his land, unless the land is acquired compulsorily in accordance with the provisions of the Land Use Act. By virtue of Section 28(4) of the Land Use Act, payment of compensation is also a condition precedent to the validity of such acquisition.

See again Section 44(1) of the Land use Act which had been reproduced supra." Per SANUSI, J.C.A. (Pp. 47-48, paras. G-C)

# JURISDICTION OF COURT – sections 39, 41 and 42

1. **section 39(1)** gives exclusive original jurisdiction in respect of any land subject of a statutory right of occupancy and other matters connected therewith to the High Court.
2. by **section 41**, an Area court or Customary court or other court of equivalent jurisdiction in a state shall have jurisdiction in respect of a customary right of occupancy
3. by **section 42**, proceedings for the recovery of rent payable in respect of a customary right of occupancy may be taken before a Magistrate court of competent jurisdiction.

In **ADETAYO & ORS VS. ADEMOLA & ORS** (2010) LPELR- 155 (SC) pages 2024, the apex Court held:

“The Courts conferred with jurisdiction to entertain disputes between Nigerians in exercising their right to acquire and use land under the Act are clearly specified therein. The relevant Sections in this respect are Sections 39, 41 and 42 respectively, which state - "JURISDICTION OF HIGH COURTS AND OTHER COURTS.

It is quite clear from the provisions of the above Sections of the Land Use Act that specific powers and jurisdiction in respect of land matters specified therein are conferred on the State High Court, Area Court, Customary Court and Magistrate Court, and that the Federal High Court is not one of the Courts conferred with jurisdiction to entertain any dispute in land matters. As there is nothing in these Sections 39, 41 and 42 of the Land Use Act that conferred any jurisdiction on the Federal High Court to entertain land causes or matters, I entirely agree with the Court below that the Federal High Court has no jurisdiction to hear and determine any dispute on declaration of title to land."