

EKITI STATE MORTGAGES AND FORECLOSURE LAW, 2020.

NO. 17 OF 2020

EKITI STATE OF NIGERIA.

**A LAW TO ESTABLISH THE EKITI STATE MORTGAGE BOARD
AND REGULATE MORTGAGE CREATION, FORECLOSURE AND
ENFORCEMENT OF MORTGAGES IN REAL PROPERTY AND
CONNECTED PURPOSES.**

Arrangement of Sections.

PART 1: APPLICATION AND PRELIMINARY PROVISIONS

1. Application.
2. Establishment of the Mortgage Board.
3. Composition of the Board.
4. Chairman of the Board.
5. Remuneration of members of the Board.
6. Tenure of office of members of the Board.
7. Meetings and quorum.
8. Decisions of the Board.
9. Functions of the Board.
10. Powers of the Board.
11. Staff of the Board.
12. Pensions.
13. Funding of the Board.
14. Protection Law.
15. Lis pendens.
16. Annual Report.
17. Establishment of a Mortgage Registry.
18. Appointments of Mortgage-Registrar and Assistants.
19. Duties and Functions of the Mortgage Registry.
20. Registration of Mortgages.
21. Minimum information to be provided.
22. Searches.
23. Consent to Mortgages.
24. Double consent regime for Mortgage Finance Applications.
25. Interconnectivity with the Land Registry.
26. Consent fee and Registration charges.

PART II: CREATION OF MORTGAGES.

27. Registrable interests.
28. Power to create Mortgages.
29. Duty to act in good faith and disclose information.
30. Creation of Legal Mortgage.

31. Creation of Equitable Mortgages.
32. Enforcement of equitable mortgagors.
33. Implied covenants of the Mortgagor.
34. Rights of the Mortgagor.
35. Right of redemption.
36. Duties of the Mortgagor.

PART III: JUDICIAL AND NON-JUDICIAL INTERVENTION WITH RESPECT TO MORTGAGES.

37. Grant of injunction in relation to Mortgaged Property.
38. Prohibition against damage to Mortgaged Property.
39. Deposit of mortgage money in court in lieu of redemption (where mortgagee is unavailable).
40. Power of Chief Judge in respect of mortgage matters.
41. Action by Mortgagor/Mortgagee.
42. Alternative Dispute Resolution in mortgage matters.

PART IV: STRATA TITLE.

43. Scope of this provision.
44. Property capable of being Sub divided.
45. Nature of Strata Plan.
46. Nature of Strata Title.
47. Application for Strata Title.
48. Compulsory application.
49. Requirements for application.
50. Conditions for approval.
51. Liability of the State.
52. Withdrawal of applications.
53. Registration of Strata Plan and issue of Strata Title.
54. Division and Amalgamation.
55. Effect of registration of Strata Plan.
56. Establishment of a management entity.
57. Ownership of common property.
58. Transfer of common property.
59. Duties of Management entity.
60. Powers of the Management entity.
61. Management Fund.

PART V: ENFORCEMENT OF MORTGAGES.

62. Default of Mortgages.

63. Notice of default.
64. Remedies available to mortgagee.
65. Transfer of title in lieu of redemption.
66. Right to sue for principal and interest.
67. Right of possession.
68. Withdrawal from Possession.
69. Appointment of a Receiver.
70. Powers and duties of a Receiver.
71. Use of proceeds from receivership.
72. Receivers dealing with third parties.
73. Power of Sale.
74. Sale by Auction.
75. Negotiated Sale.
76. Title of Purchaser.
77. Persons restricted from purchasing mortgaged property.
78. Remedy against wrongful sale.
79. Proceeds of sale.
80. Judicial action for orders or relief.
81. Foreclosure order by Court.
82. Deed in lieu of foreclosure.
83. Discharge of Mortgages.
84. Release of Mortgages.
85. Prohibition against grafts.
86. Prohibition against collateral contracts.
87. Negative Amortisations.
88. Further Advances and Tacking.
89. Priority of Mortgages.
90. Right of party in possession to lease the Mortgaged Property.
91. Insurance of Mortgaged Property.
92. Consolidation and Marshalling of Mortgages.
93. Transfer of Mortgage rights.
94. Legal Representation.
95. Offences and Penalties.
96. Power to make regulations.
97. Repeals and savings.
98. Interpretation.
99. Citation.

SCHEDULE 1 - FORM MR 01- Application to Mortgage Registrar for search.

SCHEDULE 1 - FORM 02- Form of Statutory Mortgage.

**A LAW TO ESTABLISH THE EKITI STATE MORTGAGE BOARD
AND REGULATE MORTGAGE CREATION, FORECLOSURE AND
ENFORCEMENT OF MORTGAGES IN REAL PROPERTY AND
CONNECTED PURPOSES.**

NO. 17 OF 2020.

EKITI STATE OF NIGERIA

Commencement

/

/

ENACTED BY THE EKITI STATE HOUSE OF ASSEMBLY *as follows:*

PART I: APPLICATION AND PRELIMINARY PROVISIONS.

Application.

1. This Law shall apply to Mortgages of all Registrable interests in land within Ekiti State.

Establishment of the Mortgage Board.

2. (1) There is hereby established under this Law, a Board to be known as the Ekiti State Mortgage Board (referred to in this Law as “the Board”).
(2) The Board shall be:
 - (a) a body corporate with perpetual succession and a common seal;
 - (b) capable of suing and being sued in its corporate name; and
 - (c) capable of acquiring, holding or disposing of any property whether movable or immovable.

Composition of the Board.

3. (1) The Board shall consist of the following eight (8) members to be appointed by the Governor:
 - (a) the Attorney General of the State;
 - (b) the Commissioner for the time being charged with the responsibility for matters relating to finance in the State;
 - (c) the Commissioner for the time being charged with the responsibility for matters relating to lands and housing in the State;
 - (d) the Registrar of Titles of the Land Registry;
 - (e) a non-official member with a minimum of fifteen (15) years cognate experience in estate surveying and valuation (Registered Estate Surveyor and Valuer);

- (f) two (2) non-official members with a minimum of fifteen (15) years cognate experience in mortgage finance or law of real property; and
- (g) the Executive Secretary of the Board, who shall be the Commissioner for Mortgages and shall:
 - (i) have a minimum of ten (10) years cognate experience in mortgage finance or law of real property;
 - (ii) be appointed by the Governor and hold office on such terms as the Governor may approve; and
 - (iii) be responsible for the day-to-day management of the Board.

Chairman of the Board.

- 4. (1) The members of the Board shall appoint one of its members to act as Chairman, such person to be responsible for overseeing all proceedings of the Board in line with other relevant Law.
- (2) The person appointed as Chairman pursuant to subsection 1 of this Section shall be knowledgeable and competent on mortgage matters.
- (3) The Board shall determine the period for which the chairman is to hold office and where the Chairman is not present within fifteen minutes of commencement of any meeting, the members of the Board present may by simple majority vote choose any member present to act as chairman of that particular meeting.

Remuneration of Members of the Board.

- 5. (1) The ex-officio and non-official members of the Board shall not be entitled to any salary.
- (2) An allowance for the attendance of meetings shall be paid to the non-official members of the Board, at a rate to be prescribed by the Executive Council and payable from the funds of the Board.

Tenure of Office of Members of the Board.

- 6. (1) An ex-officio member of the Board shall hold office for such period as he remains in the office that qualifies him for appointment on the Board.
- (2) A non-official member shall hold office for a single term of five (5) years.

- (3) The Governor may at any time remove any member of the Board from office if he is of the considered opinion that it is not in the interest of the Board for the member to continue in office, and shall then notify such member in writing to that effect.
- (4) Any vacancy shall be filled in the same manner as the original appointment for the remainder of the term.

Meetings and quorum.

7. (1) Meetings of the Board shall be subject to the following rules:
 - (a) the Board shall meet at least once in a month and meetings shall be called by the Executive Secretary upon the request of the Chairman.
 - (b) where the Chairman is unable or refuses to call a meeting for any reason, the Executive Secretary shall have the power to call a meeting on the directive of a simple majority of members of the Board.
 - (c) the Executive Secretary shall be responsible for issuing notices of meetings to all members.
 - (d) the quorum for a meeting of the Board shall be at least three (3) members of the Board with at least one ex-officio member and one non-official member present.
 - (e) if after half an hour from the time appointed for a Board meeting, a quorum is not present, the meeting shall be adjourned to the same day of the next week at the same time and place. If a quorum is still not present at the adjourned meeting then the Executive Secretary shall notify all members of the day, time and place of the next meeting and that a quorum shall be formed at such reconvened meeting by any two (2) members of the Board.

Decisions of the Board.

8. (1) In all meetings of the Board, each member shall be entitled to one vote.
 - (2) All decisions of the Board shall be by a simple majority vote.
 - (3) In the event of a deadlock, the Chairman shall have the casting vote.

Functions of the Board.

9. (1) The functions of the Board shall be to:

- (a) create a conducive environment for accessible and affordable mortgages for the benefit of residents of the State;
- (b) advise the Governor on the funding, administration and structure of the State mortgage finance program or policy for the benefit of the residents of the State;
- (c) harmonize any mortgage scheme or policy which the State has or may put in place from time to time in connection with the making, processing, placing, registering or administration of mortgages;
- (d) implement and honour on behalf of the State all obligations in any agreement made between the State and other parties with regards to any mortgage scheme for the provision of funds for land ownership or development of real estate in the State;
- (e) report to the State any default or breach on the part of any of the parties to any obligations or requirements in the agreement mentioned in subsection (4) of this Section and recommend and seek the approval of the State on ways of remedying such default or breach by a defaulting party;
- (f) encourage, promote and co-ordinate all forms of research concerned with the mortgage lending industry as it relates to economic well-being of the State and its residents, the stamping and registration system relating to mortgages in the State, the mode of application for Governor's consent or the consent of the appropriate Local Government Area relating to mortgage transactions, and generally to disseminate same to the State government and the public;
- (g) encourage and actively promote the use of modern information and communication technology within the State for purposes connected with the implementation of this Law, including digitization of the interface between the Land Registry and the Mortgage Registry, and the processes leading up to the perfection of mortgages;
- (h) ensure the effective management and operation of the Mortgage Registry;
- (i) advise the State on the adoption of standards and policies under which mortgages should be provided;
- (j) advise the State on the mortgage lending industry;
- (k) advise the State on maintaining a central database of mortgages and transactions secured on real property in the State;

- (l) where applicable, act as an intermediary between the State, its residents and mortgage brokers and lenders; and
- (m) perform such other functions as may from time to time be referred to it by the Governor upon the approval of the Executive Council.

Powers of the Board.

10. The Board shall have the power to:

- (a) borrow, deposit with or accept any money from any person or corporation in respect of its functions under this Law;
- (b) sell, let, dispose off or grant rights over the undertaking or any property of the Board for cash or for shares or any security of any company or for other consideration;
- (c) appoint appropriate skilled personnel to advise the Board on the management and the implementation of any mortgage scheme;
- (d) oversee the management of the Mortgage Registry, and provide supervisory guidelines from time to time on the effective operation of the Mortgage Registry.

Staff of the Board.

11. The Board may:

- (a) employ such persons as members of its staff as it considers necessary; and
- (b) approve conditions of service including the provision for payment of pensions, provided that no pension scheme shall be put into operations without the approval, in writing, of the commissioner responsible for pensions.

Pension.

12. (1) Staff employed by the Board shall in respect of their service on the Board be entitled to such pensions, gratuities and other retirement benefits as prescribed under the Pension Act.
- (2) The period of service of any person on the Board shall be joined to and deemed to be continuous with the period served by that person previously or subsequently in any other pensionable service.
 - (3) Nothing in the foregoing provisions of this section shall prevent the appointment of a person as a member of the Board on terms which

preclude the grant of a pension or gratuity in respect of services rendered.

Funding of the Board.

- 13.** (1) The Board shall establish and maintain a fund (“the Fund”) to cater for any expenditure incurred by the Board.
- (2) The Fund shall be credited with:
- (a) all such monies as may from time to time be allocated, lent or granted to the Board by the State;
 - (b) all monies raised for the benefit of the Board by way of gift, loan, debenture, grant-in-aid, or otherwise; and
 - (c) all fees and charges for services rendered by the Board.
- (3) The Fund shall be managed in accordance with rules made by the Board and without prejudice to the generality of the power to make rules under this subsection, the rules shall in particular contain the following provisions:
- (a) the manner in which the Fund is to be held and regulating the payment into and out of the Fund;
 - (b) the keeping of proper accounts and records for the purposes of the Fund in such form as may be specified in the rules;
 - (c) periodic audit of the Fund accounts by an auditor approved by the State Auditor-General; and
 - (d) requiring copies of the accounts and of the auditor’s report thereon to be furnished to the Executive Council through the Commissioner for Mortgages within three (3) months after the end of the period to which the accounts relate.

Protection Law.

- 14.** Notwithstanding anything to the contrary contained in any other enactment the Public Officers Protection Law shall not apply to this Law, provided that no action for damages shall lie against the members or employees of the Board for any act done in pursuance or execution of this Law.

Lis Pendens.

- 15.** The pendency of proceedings in respect of land shall not in themselves invalidate the creation or disposition of a mortgage over the land or the

exercise by a mortgagee of its power of sale in respect of the land provided that the Mortgagee shall at all times give prior written notice of any pending litigation relating to land to a third party purchaser for value.

Annual Report.

16. (1) The Board shall prepare and submit to the Commissioner for Mortgages as soon as possible after the end of each financial year but not later than three (3) months thereafter, a report in such form as the Commissioner for Mortgages may direct on the activities of the Board during the immediate preceding financial year and such report shall include a copy of the financial statements of the Board audited by an auditor as may be approved and appointed by the State Auditor-General.
- (2) The Commissioner for Mortgages shall present a copy of the report submitted to him or her under the provision of this section to the Executive Council.

Establishment of Mortgage Registry.

17. (1) From the commencement of this Law:
- (a) there shall be a Mortgage Registry established by the Board within the State for registration of mortgages on areas designated as urban and rural land in accordance with the Land Use Act; and
 - (b) the Board shall ensure that there is established such number of Mortgage Registries within the State as to ensure accessibility by citizens within the State.
- (2) There shall be a seal common to all Mortgage Registries.

Appointment of Mortgage-Registrar and Assistants.

18. (1) There shall, for the purposes of this Law, be a Mortgage Registrar appointed by the Governor on the recommendation of the Board.
- (2) The Mortgage Registrar may appoint such other grades of assistants as the Mortgage Registrar may consider necessary for the enforcement of the provisions of this Law.

Duties and Functions of the Mortgage Registry.

19. (1) The applicable Mortgage Registry where the land is situated shall:

- (a) receive and process applications for consent of the Governor or the appropriate Local Government Area to mortgage transaction;
- (b) receive and process applications for the registration and release of mortgages;
- (c) keep and maintain a register of mortgages as well as a register of applicants whose mortgages are deemed registered;
- (d) provide a reliable record of information about interests in mortgages in the State to the Board;
- (e) interact with third parties concerned with property and mortgages;
- (f) receive and process applications for mortgage related searches; and
- (g) formulate policies and rules on matters concerning the validation and registration of mortgages in the State.

Registration of Mortgages.

- 20.** (1) As from the commencement of this Law, a mortgage shall be registered at the Mortgage Registry (subject to obtaining the consent of the Governor or the appropriate Local Government in accordance with Section 23 of this Law) on the request of:
- (a) an owner of a Registrable Interest or such person's legal representative; or
 - (b) a mortgagee.
- (2) Upon procuring the consent of the Governor or the appropriate Local Government to the mortgage or Mortgage Finance Application in accordance with Section 23 or 24, the Mortgage Registrar shall issue evidence of registration of the mortgage or Mortgage Finance Application within ten (10) Business Days of receiving a request or application pursuant to subsection 1 of this Section.
- (3) In the event that the mortgage for which consent has been obtained has not been registered after the period specified under subsection (2) of this Section, such mortgage deed shall be deemed registered.
- (4) The Mortgage-Registrar shall pursuant to subsection 3 of this Section cause to be periodically published, a list of applicants whose mortgages are deemed registered including the particulars of the relevant mortgage deed and mortgage property subject to substantial compliance with the provision of this Law and other relevant Applicable Laws, provided that the Mortgage Registrar may request for more information or documents

to complete the process of final registration and shall have a right to revoke or refuse final registration to any mortgage that has been deemed registered where information or documentation provided are incomplete or inaccurate.

- (5) A register of applicants whose mortgages have been deemed registered shall be maintained by the Registry and made readily available at the Mortgage Registry for search and due diligence purposes.
- (6) For the purpose of priority under Section 89 of this Law, where mortgages are deemed registered, the date of priority shall be the date of deemed registration of the mortgage save for where the deemed registration has been revoked or refused final registration by the Mortgage Registrar for reasons stated in subsection 3 of this Section.
- (7) In the event of a refusal or revocation pursuant to subsection 3 of this Section, all rights accruing to such deemed registration shall be surrendered and extinguished.

Minimum information to be provided.

21. All mortgages to be registered at the Mortgage Registry must be stamped in accordance with applicable federal law and include the following information:
 - (a) names and addresses of parties to the transaction;
 - (b) location and full description of the mortgaged property;
 - (c) particulars of the underlying lending transaction backing the mortgage;
 - (d) particulars of the mortgagor's title to the mortgaged property;
 - (e) approved survey plan of the mortgaged property; and
 - (f) such other information that may be deemed necessary from time to time by the Mortgage Registrar.

Searches.

22. The process for the conduct of searches for information kept in any of the files, documents or registers in the Mortgage Registry shall be as follows:
 - (a) application will be made to the Mortgage Registrar using Form MR 01 annexed to this Law under Schedule 1 or any other means of application as prescribed by the Mortgage Registrar from time to time;

- (b) the applicant shall provide evidence of payment of necessary search fees as may be prescribed by the Mortgage Registrar from time to time with the approval of the Commissioner for Mortgages.

Consent on Mortgages.

23. (1) Upon submission by an applicant to the Mortgage Registry of all such documents and information as may be required by the State for the issuance of the consent of the Governor or the appropriate Local Government to a mortgage transaction, the Mortgage-Registrar shall procure that the consent of the Governor or the appropriate Local Government consent is obtained within forty (40) Business Days.
- (2) The Governor shall upon the commencement of this Law delegate his power and authority to grant and execute applications for consent of the Governor to mortgage transactions in accordance with the relevant provisions of the Land Use Act to all the State Commissioners who are, by virtue of this Law, members of the Board with a view to ensuring that applications for consent of the Governor to mortgage transactions are expeditiously processed.

Double Consent Regime for Mortgage Finance Application.

24. (1) For the purpose of obtaining consent to Mortgage Finance Applications, an applicant shall submit to the Mortgage Registry:
- (a) all documents required for the time being by the Registrar of Titles for obtaining consent to any Registrable Interest; and
 - (b) all documents required under Section 23 (1) of this Law for obtaining consent to mortgages.
- (2) Upon submission by an applicant to the Mortgage Registry of all such documents and information required under subsection (1) of this Section, the Mortgage-Registrar shall procure that the consent of the Governor or the appropriate Local Government is simultaneously processed and obtained for:
- (a) the underlying transfer, alienation, sale and or assignment of the mortgaged property to the mortgagor; and
 - (b) the mortgage transaction between the mortgagor and the mortgagee.

Provided that the Mortgage-Registrar shall procure that the consent of the Governor or the appropriate Local Government Area consent is obtained for the above transactions within sixty (60) Business Days of submission of all such documents and information required under subsection (1) of this Section.

Interconnectivity with the Land Registry.

25. The Registrar of Titles shall deploy such amount of personnel and resources from the Lands Registry to be seconded to the Mortgage Registry for the purpose of ensuring that the consent for Mortgage Finance Applications is obtained in accordance with this Law or any other relevant law of the State and also procuring the registration of the Registrable Interest at the relevant Land Registry.

Consent fees and Registration Charges.

26. Notwithstanding any contrary provision comprised in any other laws of the State, the global fees chargeable for the perfection of any Registrable Interest under this Law including but not limited to obtaining Governor's consent and registration of such Registrable Interest which shall not exceed 5% (five per cent) of the open market value of the land.

PART II: CREATION OF MORTGAGES.

Registrable Interest.

27. The interests in land which are capable of being the subject matter of a mortgage under this Law are:
- (a) a Statutory Right of Occupancy issued in accordance with the Land Use Act.
 - (b) a Customary Right of Occupancy issued in accordance with the Land Use Act.
 - (c) registered ownership of sub divided Units in a Strata Development evidenced by a Strata Title issued in accordance with **Part IV** of this Law.
 - (d) leasehold interest for a term of years validly created.

Power to create Mortgages.

28. (1) A holder of a Registrable Interest may, by an instrument in the prescribed form, mortgage such interest or a part thereof.

- (2) The power conferred under this section includes the power to create third party mortgages, second or subsequent mortgages and sub mortgages.
- (3) The power to create mortgages shall be exercisable subject to:
 - (a) any prohibition or limitation imposed by this Law;
 - (b) any restriction in regulations made under this Law;
 - (c) any restriction made under any written law; or
 - (d) any restriction contained in an instrument creating or affecting an interest in land which is to be the subject of a mortgage.

Duty to act in good faith and disclose information.

29. A mortgagee and mortgagor shall act in good faith with each other and in particular, disclose all relevant information relating to the mortgage or land to be mortgaged that in a reasonable man's opinion may impact the mortgage transaction.

Creation of Legal Mortgage.

30. (1) A legal mortgage of a Registrable Interest may be created under this Law in the following manners:
- (a) by demise subject to a provision for case on redemption;
 - (b) by sub demise subject to a provision for case on redemption;
 - (c) by a charge expressed to be by way of a legal mortgage; or
 - (d) by way of a statutory mortgage created by execution of Form MR 02 annexed to this Law under Schedule 1.
- (2) Any purported assignment of a Registrable Interest by way of a mortgage made after commencement of this Law shall operate as a demise of the Registrable Interest to the mortgagee for a term of years absolute subject to a right of redemption.

Creation of Equitable Mortgage.

31. An equitable mortgage may be created by deposit of an original copy of a certificate of title, any instrument creating a Registrable Interest or any document evidencing or constituting proprietary interest in land along with a memorandum of deposit evidencing party's intention to create a mortgage.

Enforcement of Equitable Mortgage.

32. (1) To enforce an equitable mortgage created under Section 31 of this Law, a mortgagee may bring an action in court to mandate a mortgagor to execute a Legal Mortgage in its favor.
- (2) Upon the grant of an order of court in sub-section (1) of this Section in favour of the mortgagee, the mortgagor shall have a period of the thirty (30) calendar days from the date of the order to execute the Legal Mortgage on such terms as may be provided by the court.
- (3) Upon the effluxion of the thirty (30) calendar days, a Legal Mortgage shall be deemed to have been created under Section 30 (1) (c) of the Law, evidenced by the order of court.

Implied Covenants of the Mortgagor.

33. There shall be implied in every mortgage deed the following covenants by the mortgagor (save where same is expressly negated under the mortgage deed):
- (a) to pay the principal sum borrowed at the times appointed in the mortgage deed, and, so long as the principal money or any part of it remains unpaid, to pay interest on it or on so much of it as for the time being remains unpaid at the rate and at the times and in the manner specified in the mortgage deed;
 - (b) to pay all rates, charges, rent, taxes and other outgoings which are at all times payable in respect of the mortgaged property;
 - (c) to repair and keep in a reasonable state of repair all buildings and other improvements upon the mortgaged property and to permit the mortgagee or his or her agent at all reasonable times until the mortgage is discharged and after reasonable notice to the mortgagor to enter the mortgaged property to examine its state and condition;
 - (d) to provide adequate insurance to make good any loss or damage caused by fire, tornado, windstorm, flood, earthquake and lightning and such other related risks to all buildings on the mortgaged property, and, where insurance is taken out, it is done in the name of the mortgagor with insurers approved by the mortgagee acting reasonably and to the full replacement value of all the buildings on the mortgaged property. Provided that such insurances shall note the mortgagee as the first loss payee;

- (e) to use the mortgaged property in a sustainable manner and to comply with all written laws, regulations and lawful orders applicable to the use of the land;
- (f) not to transfer or assign on the mortgaged property or any part of it in a manner that would render the subsisting mortgage nugatory;
- (g) in the case of a mortgage of a leasehold interest or rights under a certificate of occupancy, during the continuance of the mortgage, to pay, perform and observe the covenants and conditions contained and implied in the lease or the certificate of occupancy, on the part of the lessee or holder to be performed and observed and to keep the mortgagee indemnified against all proceedings, expenses and claims on account of non-payment of the rent or part of it or the breach or non-observance of the covenants and conditions or any of them, and, if the lessee or holder has an enforceable right to renew the lease or certificate of occupancy, to renew it;
- (h) where the mortgage is a second or subsequent mortgage, to pay the interest from time to time accruing on each prior mortgage (not being a third-party mortgage) when it becomes due and at the due times repay the principal money due on such prior mortgage;
- (i) where the mortgagor fails to comply with any of the covenants implied by this section that the mortgagee may spend such money as is reasonably necessary or desirable to remedy the breach and may add the amount so spent to the principal money and that amount shall be deemed for all purposes to be a part of the principal money secured by the mortgage.

Rights of the Mortgagor.

34. (1) Subject to the occurrence of any default under the mortgage deed, a mortgagor shall have the right to keep the mortgaged property in his or her possession and take the income yielded by the mortgaged property;
- (2) The mortgagor as long as his right to redeem subsists, shall be entitled to request and at his own cost to inspect or make copies or extracts from documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.

Right of Redemption.

35. (1) Subject to the provisions of this Law, before the rights under a mortgage were assigned or transferred in the exercise of the mortgagee's power of sale or before the making of a foreclosure order or appointment of a

Receiver, where a mortgagor pays all monies due under the mortgage, the mortgagor shall be entitled to redeem the interest mortgaged, and any agreement or provision which purports to deprive the mortgagor of the right of redemption shall be void.

Duties of the Mortgagor.

36. The mortgagor shall:

- (a) maintain the mortgaged property as expected of a diligent title holder and in a manner such that his acts or omissions will not diminish the value of the mortgaged property;
- (b) insure the mortgaged property against damages through negligence, willful acts, fire, tornado, windstorm, flood, earthquake and lightning, and all such other related risks;
- (c) provide the mortgagee with access to inspect the mortgaged property, provided that the mortgagee gives reasonable prior notice thereof.

PART III: JUDICIAL AND NON-JUDICIAL INTERVENTION WITH RESPECT TO MORTGAGES.

Grant of injunction in relation to mortgaged property

37. (1) Notwithstanding the provisions of any law, the Court shall, in granting an application for an injunction order, stay of execution order or any such court orders seeking to restrain the exercise of any of the powers conferred on the mortgagee by this Law, require the mortgagor as a condition precedent to such an application to deposit a bond in favor of the mortgagee from a licensed financial institution to the Court for the value of the lower amount between:

- (a) 25% of the principal loan sum under the mortgage transaction; and
- (b) the outstanding sum owed under the mortgage transaction.

Provided that in the event that the outstanding sum owed is in any manner under dispute, the provisions of sub-section (1) (a) of this Section shall apply.

(2) The provision of sub-section (1) above shall apply notwithstanding any challenge to the materiality of the mortgage transaction, either to its existence, validity, enforceability or in any other form or manner whatsoever.

Prohibition against damage to Mortgaged property.

38. (1) The mortgagee shall have the right to apply to Court for an order of injunction restraining or prohibiting a mortgagor or the person in possession of a mortgaged property from taking or continuing to take certain actions that:
- (a) diminish the value of the mortgaged property; or
 - (b) may likely diminish or adversely affect the value of the mortgaged property.

Deposit of Mortgage money in court in lieu of redemption (where mortgage is unavailable)

39. Where at any time, a mortgagor desires to repay the money secured by a mortgage in favor of a mortgagee who cannot be found, the mortgagor may, pursuant to an order of the Court, pay the amount due under the mortgage to the official of the Court designated for such purpose under the Court order for the credit of the mortgagee, and upon application in writing signed by the mortgagor and production of a certified true copy of the relevant Court order and a valid receipt for payment into Court of the total money due, the mortgage shall be discharged and released and the Mortgage Registrar shall record the facts of such release and discharge in the mortgage register.

Power of the Chief Judge in respect of Mortgage matters.

40. The Chief Judge shall:
- (a) designate judges of the Court to expeditiously hear and determine matters relating to mortgages and other matters arising from the provisions of this Law to the exclusion of any other matter.
 - (b) make such rules of court as are necessary to give effect to this Law and expedite the hearing of matters arising from the provisions or enforcement of this Law such that all matters are initiated and determined within a period of 180 days. Provided that any matter whose hearing and determination exceeds 180 days shall remain valid where it does not occasion a miscarriage of justice.

Action by Mortgagor/Mortgagee.

41. (1) It shall be an implied contractual term in every mortgage contract that a mortgagor intending to commence or defend an action in a court in respect of the mortgaged property against any third party shall by notice

in writing notify the mortgagee(s) of its intention to do so and the nature of the action as soon as reasonably practicable but in any event not later than seven (7) days after filing same in court.

- (2) A mortgagee may, on receipt of the notice referred to in subsection (1) of this Section, either:
 - (a) require the mortgagor at his expense, to join the mortgagee in the action; or
 - (b) take no action.
- (3) Where as a result of any agreement or order of a court arising out of any action taken by the mortgagor under this Section, any sum of money becomes payable to the mortgagor by way of damages on account of some damage or injury caused to the mortgaged property by the defendant.
- (4) A mortgagee may apply to Court for an order that such sum or such proportion of it as the Court thinks fit be paid to the mortgagee in reduction or discharge of the mortgage.

Alternative Dispute Resolution in Mortgage matters.

42. (1) All matters arising from or connected with a mortgage transaction are capable of being resolved by arbitration or any other alternative dispute resolution mechanism provided parties consent in writing or otherwise to resolve such dispute by arbitration or any other alternative dispute resolution mechanism.
- (2) Where there is no agreement between parties to resolve the dispute by means of any alternative dispute resolution mechanism, the parties shall resolve all or part of the dispute as it relates to mortgages under this Law in good faith within fifteen (15) business days.
- (3) Where the parties cannot resolve the dispute pursuant to sub-section (2) of this Section, the Court may with the consent of the parties refer all or part of the issues arising for determination in a proceeding before it relating to mortgages under this Law to the Board for resolution by arbitration or other alternative dispute resolution mechanisms in place.
- (4) All arbitration proceedings conducted pursuant to the provisions of this Law shall be concluded within a period not exceeding (30) Business Days by which time the arbitration panel must deliver an award.

- (5) The arbitration provisions under this Law shall be read in conjunction with the (Arbitration Laws of Ekiti State, No. 2 of 2014 or Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria). Where the Arbitration Law of the State or the Arbitration Act is inconsistent with this Law, the latter shall prevail and the former shall to the extent of the inconsistency be invalid.
- (6) Subject to the foregoing provisions, the Board shall with the approval of the Governor have the power to make Arbitration Rules to guide the procedural conduct of arbitration and mediation matters referred to it by the Courts.
- (7) However, where the Board has not made any Arbitration Rules, the rules provided under the Arbitration Laws of the Ekiti State, No. 2 of 2014 or the Arbitration and Conciliation Act, Cap A18 LFN 2010 (as Revised) or any statutory re-enactment or modification thereof shall apply.

PART IV: STRATA TITLE.

Scope of this provision.

43. This part of the Law is to:
 - (a) provide for the registration of the vertical division of property or buildings into units and common property;
 - (b) provide for the acquisition of separate titles in the Units; and
 - (c) provide for the establishment of a Management Entity to control and manage the Common Property

Property capable of being sub-divided.

44. Any Strata Development shall be capable of being subdivided into Units and common Property to be held under Strata Titles.

Nature of Strata Plan.

45. (1) All property developments to be held under Strata Titles must have a Strata Plan.
- (2) The Strata Plan:
 - (a) must define the Units to be created by the Plan in a manner that allows the boundaries of each Unit to be ascertained;

- (b) must assign to each Unit distinguishing alphanumeric identification;
- (c) may relate to one or more properties, whether of buildings or structures or a combination of any of them situate, to be erected or being erected on the same parcel of land, or on two or more contiguous parcels of land registered or legally owned (under the Land Use Act);
- (d) must have annexed to it a schedule of Unit entitlements in relation to the Units;
- (e) show the floor area of each Unit correct to the nearest square metre, and the total floor areas of all the Units;
- (f) must stipulate rules, terms and conditions for the use, operation, enjoyment, enforcement, maintenance, upkeep and improvement of the Units and Common Property, and for the revision of those rules, terms and conditions from time to time;
- (g) must comply with any other requirements as may be stipulated by the Registrar of Titles from time to time.

Nature of Strata Title.

- 46.**
- (1) The Board may issue Strata Titles specific to each Unit covered by a Strata Plan.
 - (2) A Strata Title must not reference more than one Unit of the subdivided property.
 - (3) Every Strata Title that is issued pursuant to this Law is for an estate in a Statutory Right of Occupancy or Customary Right of Occupancy in the Unit to which the title refers.
 - (4) After a Strata Title is issued pursuant to this Part, the title may be assigned, sold, mortgaged, leased, let, encumbered, transferred by way of gift or disposed of by any other means.
 - (5) Provided that nothing done pursuant to this Part shall be interpreted to detract from or add to the provisions of the Land Use Act in relation to interests in land in a manner that contravenes the Land Use Act or otherwise include, confer or affect any interest in mines and minerals within, on or under the Unit included in the Strata Plan.

Application for Strata Title.

47. Developer who holds a Statutory Right of Occupancy or Customary Right of Occupancy and who intends to establish a Strata Development shall make an application in accordance with the provisions of Section 49 of this Law.

Compulsory Application.

48. (1) The holder of a Statutory Right of Occupancy or Customary Right of Occupancy on any land on which there is a Strata Development shall, within six (6) months from completion of such Strata Development, apply in accordance with this Law for the subdivision of the Strata Development in accordance with Section 49.
- (2) The provisions of this section shall only apply to vertical developments for which the title holder has sold or agreed to sell 10 Units of the total Units within the Strata Development to any person or persons.

Requirements for Application.

49. (1) Any application for the approval of the subdivision of any property, registrations of a Strata Plan and issuance of Strata Titles shall be made in writing to the Governor or such authority as may be designated by the Governor and shall be accompanied by:
- (a) such fee as may be prescribed by the Governor or a designated authority as may be appointed by the Governor;
 - (b) the building plans approved by the planning authority;
 - (c) a proposed Strata Plan;
 - (d) the existing certificate of occupancy or any other instrument evidencing title covering the areas comprised in the Strata Plan;
 - (e) any mortgage to which the land may be subject, together with the consent of the mortgagee to make the application for Strata Title; and
 - (f) such other documents and particulars as may be prescribed.
- (2) The Registrar of Titles shall not be responsible for investigating the correctness or accuracy of any document submitted for registration.

Conditions for Approval.

50. (1) The Governor shall not approve the subdivision of any Strata Development in accordance with this Law unless the following conditions are satisfied:
- (a) that it has been certified by a land surveyor that the Strata Development is situated wholly within the boundaries of the property of the applicant;
 - (b) that, it has been certified by a duly **registered structural** engineer that the Strata Development was constructed in accordance with the approved building plans issued by the planning authority;
 - (c) that the subdivision would not contravene any interest to which the land is for the time being subject;
 - (d) that the subdivision would not be contrary to the provisions of any planning and zoning laws, the building control laws and any regulations made thereon for the time being in force;
 - (e) that no land revenue is outstanding in respect of the land or a waiver of such land revenue has been granted by the appropriate authority;
 - (f) that consent in writing to the making of the application has been obtained from every person who at the time when approval was applied for, was entitled to the benefit of:
 - (i) a lease of the whole or any part thereof; or
 - (ii) a charge or lien over any part thereof.
 - (g) that each of the proposed Units has adequate means of access not passing through another Unit;

Liability of the State.

51. A State or any officer or employee in the service of the State shall not be liable for any defective measurement or work performed by any land surveyor, architect or engineer notwithstanding the fact that the Strata Plan relating to such measurement or work has been registered by the Registrar of Titles

Withdrawal of Applications.

52. An application for registration of a Strata Plan and issuance of Strata Titles may be withdrawn only where the withdrawal is not, or will not be, detrimental to the interests of any person who has purchased or agreed to purchase any Unit of the property in question in reliance on the application having been made.

Registration of Strata Plan and issue of Strata Title.

53. (1) Upon approval of an application for registration of a Strata Plan and issuance of Strata Titles in accordance with this Part and any other relevant regulation, the Registrar of Titles shall:
- (a) open a Strata Title register in respect of the Strata Development;
 - (b) keep by means of a computer or in any other electronic means registers containing particulars which are necessary for the purpose of complying with the provisions of this Part and for maintaining an efficient system of registration to ensure security of title and easy reference to any title;
 - (c) issue to an applicant a certificate of registered Strata Title in respect of each Unit and the certificate in respect of the Common Property to the management entity; and
 - (d) make the necessary endorsements on the title deed, any mortgage bond or other document in his records.
- (2) The developer shall be the title holder of any Units in respect of which the title is not held by any other person, and the quota of such Units shall determine the share of the developer in the Common Property.

Division and Amalgamation.

54. A Unit owner may, with the approval of the Governor:
- (a) divide his Unit into two or more new Units, each to be held by him under a separate Strata Title; or
 - (b) where he holds two or more contiguous Units, amalgamate them to form one Unit to be held by him under a single Strata Title.

Effect of registration of Strata Plan.

55. (1) Upon the registration of a Strata Plan, the property, whether of buildings or structures or a combination of any of them and the land shown thereon shall, subject to the provisions of this Part, be deemed to be divided into Units and Common Property as shown on the Strata Plan.
- (2) A Strata Plan shall upon registration be deemed to be part of the certificate evidencing the Strata Title.
- (3) A holder of a Strata Title shall be subject to all rights or conditions which burden or benefit the land within which the Strata exists.
- (4) A Unit owner shall have:

- (a) in relation to his Unit, the powers to assign, sell, mortgage, lease, let, encumber, transfer by way of gift or will or on intestacy or dispose of by any other means, his Strata Title in relation to his Unit;
 - (b) in relation to the Common Property, the right of user which he would have if he and the other Unit Owners were joint tenants thereof and
 - (c) in relation to either his unit or the Common Property the right to enforce the rules, terms and conditions propounded pursuant to Section 45(2)(f) where the management entity fails or delays to do so under Section 60 (1)(a).
- (5) No rights in the Common Property shall be disposed of by a Unit Owner except as rights appurtenant to a Unit; and any disposition of a Unit by a Unit Owner shall without express reference include a like disposition of the rights in the Common Property which are appurtenant to the Unit.
- (6) In a Strata Development, both negative and positive covenants that are reasonably necessary or reasonably desirable for the enjoyment of the Units by the Unit Owners shall run with each Strata Unit Title notwithstanding the absence of privity of contract among any two or more Unit Owners *interse* or with the management entity.

Establishment of a management entity.

56. (1) Prior to the opening of the Strata Title register in respect of a subdivided property, a management entity shall be established as:
- (a) An entity duly incorporated under the provisions of the Companies and Allied Matters Act with terms that:
 - (i) empower every Unit Owner to be a member or shareholder of the management entity where same is incorporated as limited liability company or company limited by guarantee with restrictions on its capacity to conduct business;
 - (ii) empower the Incorporated trustees to represent all the Unit Owners where the entity is an Incorporated Trustee.
- (2) A legal entity with the capacity to act as a trustee and hold legal title to the common property on behalf of all Unit Owners via a deed of trust.

Ownership of common property.

57. The management entity shall, on coming into existence, become the owner of the Common Property and be the custodian of the title document to the land on which the Units have been developed pursuant to a transfer instrument which shall be entered into between the holder of a certificate of occupancy over the land or its assignee and the management entity.

Transfer of common property.

58. Without the consent of 80% of the Unit Owners, the management entity shall not have the power to transfer any portion of the Common Property which forms part of the Strata Development.

Duties of the Management Entity.

59. The duties of the management entity include the following:
- (a) to manage and properly maintain the Common Property and keep it in a state of good and serviceable repair;
 - (b) to insure in its name and keep insured the subdivided building to the replacement value thereof against fire, flood, earthquakes and other related risks;
 - (c) to apply insurance monies received by it in respect of damage to the subdivided building in rebuilding and reinstating it in so far as it may be lawful to do so;
 - (d) to pay premiums on any insurance effected by it;
 - (e) to comply with any notices or orders given or made by any competent public or statutory authorities requiring the abatement of any nuisance on the Common Property, or ordering repairs or other work to be done in respect of the Common Property or any building or other improvements on the land;
 - (f) to comply with any such notices or orders as are referred to in subsection (e) of this Section given or made in respect to any of the Units, if the Unit Owner fails to do so within a reasonable time;
 - (g) to enter into contracts for the general maintenance and servicing of the Common Property;
 - (h) defend or take out court action to ensure compliance with or enforce any of the rules, directives and resolutions made by its members against an erring Unit Owner or a service provider or further to any contract to which it is a party;

- (i) to pay any rent payable on the land within which the Strata Development is located;
- (j) levy facility management fees on Unit Owners for the purpose of managing the subdivided property and for carrying out its duties hereunder and other duties that may be agreed by the Unit Owners from time to time: and
- (k) to do all things incidental to or required to be done to enable it effectively carry-out any of the above duties.

Powers of the Management Entity.

60. The powers of the management entity which shall be exercisable upon the approval of a simple majority of the Unit Owners shall include the following:

- (a) to recover from any Unit Owner any sum expended by the management entity in respect of that Unit Owner's unit in complying with any such notices or orders as are referred to in Sub-Section 59 (f) and otherwise to enforce the rules, terms and conditions set out in Section 45 (2) (f);
- (b) to purchase, hire or otherwise acquire movable or immovable properties for use by the Unit Owners in connection with their enjoyment of the Common Property;
- (c) to borrow monies or obtain maintenance or other services from third parties on credit as long as same is required by it in the exercise of its powers or the performance of its duties;
- (d) to secure the repayment of monies borrowed by it and the payment of interest thereon by negotiable instrument or by a charge on unpaid contributions to the management fund, (whether already levied or not) by a charge of any property vested in it or by a combination of any of those means; and
- (e) to do all things reasonably necessary for the performance of its duties under this Part.

Management Fund.

61. (1) The management entity shall establish a management fund sufficient to meet administrative expenses incurred by it for the purposes of maintaining, managing and administering the Common Property, paying rent, rates and premiums of insurance and discharging any other obligation as may be imposed on it.

- (2) Such management fund as established under subsection (1) above, shall be funded by way of levies in the form of service charge levied on each unit owner.
- (3) For the purpose of establishing and maintaining the management fund, the management entity may determine from time to time the amount to be raised and increase the amounts so determined by levying contributions on the Unit Owners in proportion to their Unit holding.
- (4) The failure by a Unit Owner to pay the service charges levied by the management entity within a period of 90 days from when such levy is imposed will amount to an event of default of the grant for such Strata Title and the management entity shall be entitled to apply to the court for an order of foreclosure on such Unit Owners in accordance with this Law.

PART V: ENFORCEMENT OF MORTGAGES.

Default of Mortgages.

- 62.** Unless otherwise stated in the mortgage deed or any underlying contract thereof, a mortgagor shall be in default under a mortgage after a period of ninety (90) business days has elapsed subsequent to the mortgagor failing to meet any obligations under a mortgage deed or fulfill any covenant or condition, express or implied in any mortgage deed or any underlying contracts. Provided that the mortgagee shall at all times, be obligated to notify the mortgagor of such failure in writing within thirty (30) business days of such failure.

Notice of Default.

- 63.** (1) Where the mortgagor is in default in accordance with Section 62, the mortgagee shall be entitled to serve on the mortgagor a notice in writing of the default and require the mortgagor to rectify the default within thirty (30) business days.
- (2) The notice required under this Section shall adequately inform the mortgagor of:
- (a) the nature and extent of the mortgagor's default under the mortgage deed;
 - (b) where the default consists of the non-payment of any monies due under the mortgage deed, the amount that must be paid to rectify the default;

- (c) where the default consists of the failure to perform or observe any covenant, express or implied, in the mortgage, the action the mortgagor must take or desist from taking so as to rectify the default;
- (d) that if the default is not rectified within the time specified in the notice, the mortgagee will proceed to exercise any of the remedies referred to in Section 64 in accordance with the procedures provided for in this Part.

Remedies available to Mortgagee.

- 64.** (1) Where the mortgagor is in default and does not comply with the notice served on him or her under Section 63 of this Law, the mortgagee may:
- (a) sue the mortgagor to pay all monies owing on the mortgage;
 - (b) appoint a Receiver of the income of the mortgaged property only in cases where the mortgagor's default comprises nonpayment of the monies due under any mortgage deed;
 - (c) enter into possession of the mortgaged property;
 - (d) exercise its power to sell the mortgaged property only in cases where the mortgagor's default comprises nonpayment of the monies due under the mortgage; or
 - (e) exercise its power to foreclose the mortgagor's interest in the mortgaged property only in cases where the mortgagor's default comprises nonpayment of any monies due under the mortgage.
- (2) Provided that the mortgagee's powers of enforcement pursuant to this Section shall be exercised subject to the mortgagor's right to arbitration in accordance with this Law and any enforcement processes may only be instituted by the mortgagee upon the determination of such arbitration proceedings.

Transfer of Title in Lieu of Redemption.

- 65.** Where the mortgagor's right of redemption is existing (and subject to the terms upon which such right of redemption may be exercised) the mortgagor shall subject to the consent of the mortgagee be entitled to have the mortgage debt and the mortgaged property assigned to any third party the mortgagor nominates.

Right to sue for principal and interest.

66. (1) The mortgagee has a right to sue for the amount secured by the mortgage deed where:
- (a) the mortgagor binds himself to repay the such amounts; or
 - (b) the mortgagee is deprived of the whole or a part of his or her security or the security is rendered insufficient through or in consequence of the wrongful act or default of the mortgagor.
- (2) An action shall not be commenced under subsection (1) of this Section until the time for complying with a notice served under Section 63 has expired.

Right of possession.

67. (1) A mortgagee may, after the end of the period specified in Section 63, and after serving a notice of not less than ten (10) business days of his intention to do so, enter into possession of the whole or a part of the mortgaged property.
- (2) A mortgagee may exercise the power of entering into possession of the mortgaged property by:
- (a) asserting management or control over the land by serving a notice requiring any lessee of the mortgagor or any other occupier of the mortgaged property to pay to the mortgagee any rent or profits which would otherwise be payable to the mortgagor; or
 - (b) an order of court.
- (3) The mortgagee shall be regarded as being in possession on the date:
- (a) on which he or she enters into possession in accordance with subsection (2) (a) or (b) of this Section; or
 - (b) on which he or she first receives any rent or profit in respect of the mortgaged property.
- (4) A mortgagee who has entered into possession may remain in possession, without prejudice to his or her right to withdraw from possession, so long as the mortgaged property continues to be subject to any liability under the mortgage.
- (5) A mortgagee in possession of any mortgaged property:
- (a) by occupation, shall be entitled to manage the mortgaged property and take all the profits there on, but is liable to the mortgagor for any act or omission by which the value of the mortgaged property, or other permanent improvement or

appurtenances thereto is impaired or the mortgagor otherwise suffers loss;

(b) whether by occupation or by receipt of rents and profits shall be accountable to the mortgagor not only for the sums actually received by him, but also for any additional sums which he might reasonably have been expected to receive by the prudent exercise of his powers;

(c) where the mortgaged property is leased, is liable to the mortgagor to observe and perform all the covenants and conditions contained or implied by any rule of law or custom or any lease subject to which the mortgaged property is leased.

(6) A mortgagee in possession shall apply all the monies received in the same order as a Receiver and as set out in Section 71 of this Law; except that a mortgagee in possession is not entitled to receive any remuneration.

Withdrawal from possession.

68. (1) A mortgagee in possession shall be taken to have withdrawn from possession of all or a part of the mortgaged property:
- (a) when the Court makes an order to that effect;
 - (b) when a receiver has been appointed in accordance with Section 69;
 - (c) when the mortgagee serves a notice of withdrawal on all persons served with a notice under Section 63, subsection (2) (b);
 - (d) when the purchaser of the mortgaged property enters into occupation of that land pursuant to an exercise of the mortgagees' power of sale under this Law; or
 - (e) when the mortgagor obtains a discharge of the mortgage.
- (2) A mortgagee who has withdrawn from possession of mortgaged property may not again enter into possession of that property, otherwise than by complying with Section 67.

Appointment of a Receiver.

69. (1) It is an implied condition in every mortgage that the mortgagee has the power to appoint a Receiver of the income of the mortgaged property.
- (2) The appointment of a Receiver shall be in writing signed by the mortgagee.

- (3) A Receiver may be removed at any time and a new Receiver appointed in writing signed by the mortgagee.

Powers and Duties of a Receiver.

70. (1) Subject to the provisions of the mortgage deed, a Receiver appointed under Section 69 shall be deemed to be the agent of the mortgagee for the purposes for which he is appointed, and the mortgagee shall accordingly be solely responsible for the acts and defaults of the Receiver.
- (2) The Receiver shall have the power to demand and recover all the income in respect to which he or she is appointed Receiver, by action or otherwise, in the name of the mortgagor, and to give valid receipts for it.
- (3) Subject to Section 64 of this Law, the Receiver is entitled to retain out of any money received by him, all costs, charges and expenses reasonably incurred by him as Receiver, and, for his remuneration, such amounts as is specified in its terms of engagement.
- (4) The Receiver must at all times exercise a duty of care in exercising its powers under this Law.

Use of proceeds from receivership.

71. The Receiver shall apply all monies received by him or her in the following order of priority:
 - (a) in the payment of all rents, rates, charges, taxes and other outgoings required to be paid in respect of the mortgaged property;
 - (b) in paying down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in respect of which he or she is the Receiver;
 - (c) in payment of his or her remuneration and expenses;
 - (d) in payment of all reasonable expenses incurred in the doing of such things which a Receiver is required or entitled to do in respect of the mortgaged property;
 - (e) in payment of the interest accruing and due in respect of any principal sum secured by the mortgage in respect of which he or she is the Receiver;
 - (f) in and towards the discharge of the principal sum secured by the mortgage in respect of which he or she is the Receiver, and

(g) shall pay the residue, if any, to the mortgagor or other person entitled to receive the income from the mortgaged property.

Receivers dealings with third parties.

72. Any third party dealing in good faith with a Receiver who has been provided with prima facie evidence of such Receiver's due appointment shall not be concerned to inquire as to whether any incident has occurred to warrant the Receiver exercising its powers.

Power of Sale.

73. (1) Where a mortgagor is in default of a repayment obligation under a mortgage and remains in default at the expiry of the time provided for the rectification of that default in the notice served on him under Section 63 (1), a mortgagee may exercise its power to sell the mortgaged property. Provided that the mortgagee, its agents, contractors, employees or representatives must at all times exercise a duty of care in enforcing such power of sale and ensure that the sale is made at the prevailing market price and in accordance with this Law.
- (2) Notwithstanding the provision of this Law or any other law in relation to auctions, before exercising the power to sell the mortgaged property, the mortgagee shall serve a notice to sell on the mortgagor and shall not proceed to complete any contract for the sale of the mortgaged property until fifteen (15) business days have lapsed from the date of the service of the notice to sell.
- (3) A copy of the notice to sell, served in accordance with subsection (2) of this Section shall be served on the mortgagor or one of two or more mortgagors or any surety for the mortgage.
- (4) A mortgagee exercising the power of sale shall have power to assign the mortgaged property subject only to such interests and rights which have priority over the mortgaged property.
- (5) At any time after the power of sale conferred by this Law has become exercisable, the mortgagee may demand and recover from any person (other than a person having an interest in priority to the mortgage) all the deeds and documents relating to the mortgaged property which a purchaser would ordinarily seek and get.
- (6) The mortgagee shall not be liable for any loss which occurs as a result of the exercise of the power of sale conferred by this Law.

- (7) Where a mortgagee becomes entitled to exercise the power of sale, that sale may be:
- (a) of the whole or a part of the mortgaged property;
 - (b) subject to any mortgage or other encumbrance having priority to the mortgagee's mortgage;
 - (c) by way of subdivision or otherwise;
 - (d) by auction in accordance with Section 74 or negotiated sale in accordance with Section 75;
 - (e) with or without reserve; and
 - (f) subject to such other conditions as the mortgagee may determine acting reasonably and in good faith.
- (8) At any time before an agreement is reached between the mortgagee and any purchaser for the sale to that purchaser of the mortgaged property, the mortgagor or any other person who is entitled to discharge the mortgage may discharge the mortgage in whole or in part by paying to the mortgagee all monies secured by the mortgaged property at the time of discharge.
- (9) Where payment is made under subsection (8) of this Section, the mortgagee shall deliver to the mortgagor:
- (a) a deed of release and discharge of the mortgage in the prescribed form over the whole or that part of the mortgaged property to which the payment relates; and
 - (b) all instruments and documents of title held by the mortgagee in connection with the mortgaged property.

Sale by Auction.

74. (1) A mortgagee that elects to exercise his power of sale by auction sale shall obtain evidence of title to the mortgaged property and make it available upon request to the bidders at the sale.
- (2) The auction sale shall be conducted by a person professionally engaged in these matters and provided that such person shall at all times exercise duty of care in conducting the auction.
- (3) In addition to the notices issued under Section 73 and subject to the laws governing auctions within the State, the mortgagee shall advertise (at least once per week for three (3) weeks, with the last publication not less than seven (7) days prior to the date of auction by placing an advertisement in at least two (2) newspapers having general circulation

in the area where the mortgaged property is located. The announcement shall include the following:

- (a) description of the mortgaged property;
 - (b) mortgagee's name and surname or registered name;
 - (c) mode of communication with the mortgagee;
 - (d) opening price at auction;
 - (e) time and place of auction; and
 - (f) any other information that the mortgagee might deem important.
- (4) The mortgagee shall also send to the mortgagor, the mortgaged property owner and third parties having rights to the mortgaged property, the information about the announcement covering the following:
- (a) all elements of the announcement; and
 - (b) a statement indicating the terms on which the whole debt may be paid in order to avoid the sale.
- (5) The opening price at auction may not be less than seventy-five per cent (75%) of the open market value of the mortgaged property valued by a Professional Valuer.
- (6) If the first auction fails, the opening price at the second auction may not be less than sixty percent (60%) of the estimated value of the mortgaged property.
- (7) Notwithstanding the provisions of subsections 5 and 6 of this Section, the mortgagee and the owner or mortgagor may enter into a written agreement to make arrangements for the staging of auction, whereby the mortgaged property involved may be sold for less than seventy-five percent (75%) and sixty percent (60%) of the estimated value as the case may be.
- (8) Immediately after the sale is completed, the successful bidder must pay a deposit of at least thirty percent (30 %) of the amount of the bid or such lower amount as the advertisement for sale allows to a bank account designated by the person conducting the sale.
- (9) The successful bidder shall pay the remainder of the bid within thirty (30) business days after the date of auction.
- (10) If payment of the balance of the bid is not timely made, the mortgagee may cancel the sale and reschedule the auction or terminate the process.

- (11) Upon a cancellation, the deposit of a bidder who declines to complete the sale and purchase as stated above may be forfeited and distributed in the same manner as the proceeds of sale under Section 79.
- (12) Upon payment by the successful bidder of the full balance of the bid, the mortgagee shall record and deliver a deed and such other documents as may be necessary to transfer the mortgaged property to or as may be directed by the successful bidder.
- (13) Where any professional appointed under this Section conducts the auction in contravention of this Law or where it may be proven that the professional or any such persons acting on its behalf have colluded or conducted the auction in a negligent or fraudulent manner, the sale shall be voidable at the option of the mortgagor.

Negotiated Sales.

75. (1) The mortgagee may sell by way of negotiated sale directly to a third party at the open market value of the mortgaged property valued by a Professional Valuer.
- (2) The mortgagee shall sell the mortgaged property with the aid of a professional real estate agent. Where the sale is made by a professional, the usual commission or fee of the professional for the services rendered may be included in the sales price.
- (3) At least fifteen (15) days before closing the mortgaged property sales contract, the mortgagee shall give notice of the sale to the mortgagor or the owner of the mortgaged property which notification shall include the following:
- (a) amount of the whole debt;
 - (b) estimated value of the mortgaged property;
 - (c) The purchase price which must not be less than sixty percent (60%) of the estimated value of the property unless otherwise agreed in writing between the Mortgagee and the owner;
 - (d) expected date of conclusion of the sales contract;
 - (e) mode of distribution of the sales proceeds of sale;
 - (f) date on which the mortgaged property is to be vacated; and
 - (g) a statement concerning the terms on which the whole debt can be paid in order to avoid the sale of the mortgaged property involved.

- (4) Upon payment by the purchaser and compliance with any contract for sale, the mortgagee shall execute and deliver a deed and such other documents as may be necessary to transfer the mortgaged property to or as directed by the purchaser.

Title of Purchaser.

76. (1) A purchaser in a sale effected by a mortgagee acquires good title except in a case of fraud, misrepresentation or other dishonest conduct on the part of the mortgagee of which the purchaser has actual knowledge or had no actual knowledge of owing only to its willful default or gross negligence.
- (2) A purchaser is not:
- (a) answerable for the loss, misapplication or non-application of the purchase price paid for the mortgaged property;
 - (b) obliged to see to the adequacy or application of the purchase price; or
 - (c) obliged to inquire whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

Persons restricted from purchasing mortgaged property.

77. The following person(s) and or entities shall not be permitted to purchase the mortgaged property without the leave of Court:
- (a) a mortgagee;
 - (b) an employee, director, officer or representative of the mortgagee or an immediate member of his or her family;
 - (c) an affiliate, associate or related person or company to the mortgagee;
 - (d) an agent of the mortgagee or an immediate member of his or her family;
 - (e) any person in a position to influence the purchase directly or indirectly; or
 - (f) a person in position of any other privileged information with regard to the transaction.

Remedy against wrongful sale.

78. (1) Where the mortgagee or any persons acting on its behalf sells the mortgaged property in contravention of this Law or where it may be proven that mortgagee and such persons acting on its behalf have colluded or enforced the mortgagee's power of sale in a negligent or fraudulent manner, the sale shall be voidable at the option of the mortgagor.
- (2) A purchaser or mortgagor prejudiced by unauthorized, improper or irregular exercise of the power of sale shall have a remedy in damages against the mortgagee exercising that power.

Proceeds of sale.

79. (1) The purchase price received by a mortgagee who has exercised his or her power of sale shall be applied in the following order of priority:
- (a) in payment of any rates, rents, taxes, charges or other sums owing on the mortgaged property;
 - (b) in discharge of any prior mortgage or other encumbrance subject to which the sale was made;
 - (c) in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale;
 - (d) in discharge of the principal sum advanced under the mortgage pursuant to which a power of sale was exercised or so much of it as remains outstanding, accrued interest, costs and all other monies due under the said mortgage;
 - (e) in payment of any subsequent mortgages in order of their priority; and
 - (f) the residue, if any, of the purchase price received shall be paid to any person who, immediately before the sale, was entitled to the discharge of the mortgage.
- (2) Where a mortgagee holding the proceeds of sale in trust under this Section is in doubt as to the proper distribution of all or part of those proceeds, he or she may apply to the Court for directions and may, if the Court so orders, deposit the proceeds as may be directed by the Court; and the costs of any such proceedings shall rank in priority as if they were part of the expenses of the sale.

Judicial action for orders or reliefs.

- 80.** (1) Where any party seeks to enforce any rights or obtain any order or relief from the Court arising from the operation of this Law, the Court shall ensure that the proceedings are heard and disputes determined within a period of 180 days.
- (2) Any party who is found by the Court to have deliberately delayed any proceedings to enforce a mortgage transaction under this Law shall indemnify the other party or parties for any losses suffered as a result of such delay. Provided that any matter whose hearing and determination exceeds 180 days shall remain valid where it does not occasion a miscarriage of justice.

Foreclosure Order of Court.

- 81.** (1) Subject to the provisions of this Law, where the mortgagor is in default and does not comply with the notice served on him under Section 63, the mortgagee may make an application to the Court requesting an order for foreclosure.
- (2) An application under this Section shall state that:
- (a) the mortgagor has been in default for the period stated under Section 63;
 - (b) the nature of the default;
 - (c) notice in writing of the intention of the mortgagee to make the application has been served on:
 - (i) the mortgagor,
 - (ii) all other registered mortgagees which have less priority than that of the applicant.
- (3) Where an application is made in accordance with this Section for an order for foreclosure, the Court may:
- (a) issue an interim order for foreclosure which will subsist for a period of 6 months within which the mortgagor is permitted to rectify any existing default under the mortgage.
 - (b) upon expiry of the above period, grant an order absolute for foreclosure to the applicant where the mortgagor has not rectified such default;
 - (c) order the sale of the mortgaged property in accordance with this Law;
 - (d) refuse the order; or

- (e) make such order or further orders as may be required in the circumstances of the case.
- (4) An order for foreclosure issued by the Court shall vest in the mortgagee all the estate and interest of the mortgagor in the mortgaged property, such interest being:
 - (a) free from any right of a mortgagee under a registered mortgage which has less priority than that of the applicant; and
 - (b) free from any right and equity of redemption of the mortgagor or any person claiming through or under the mortgagor.
- (5) Notwithstanding sub-sections (3) (a) and (b) of this Section, a mortgagor may have the right to re-open the foreclosure proceedings within a period of six (6) months from the grant of an absolute order, provided that:
 - (a) the mortgaged property has not been sold or transferred to a third party; and
 - (b) the mortgagor must have deposited the full outstanding sum including the principal and interest being claimed by the mortgagee under the mortgage into an account as may be designated by the court upon the application of the mortgagor.

Deed in lieu of foreclosure.

- 82.** (1) Where there has been a default, the mortgagor may voluntarily surrender the mortgaged property by signing a deed in lieu of foreclosure in favor of the mortgagee.
- (2) By this instrument, the mortgagor shall convey all interest in the mortgaged property to the mortgagee in order to fully satisfy and discharge the loan that is in default and avoid foreclosure proceedings

PART VI: GENERAL AND MISCELLANEOUS PROVISIONS.

Discharge of Mortgages.

- 83.** Subject to the payment of all monies and the performance of all other conditions and obligations secured by a mortgage, and for the payment of any costs and expenses incurred by the mortgagee in exercising any of his rights under the mortgage, the mortgagee shall promptly take steps to release and discharge any Registered Interest from the register and any agreement or provision in the mortgage deed or otherwise which:

- (a) seeks to fetter the exercise of that right;
- (b) purports to deprive the mortgagor of that right; or
- (c) stipulates for a collateral advantage which is unfair and unconscionable and inconsistent with the right to discharge

shall be void.

Release of Mortgages.

- 84.** (1) Upon the presentation for registration of a form or deed for the release and discharge of a mortgage signed by the mortgagee and discharging wholly or in part the land or any portion of the land from the mortgage, the Registrar shall and upon payment of the prescribed fees, make an entry of the release upon the original and duplicate certificate of title or any other instrument constituting proprietary interest in the mortgaged property evidencing the time and date of the registration.
- (2) Upon the entry being made under subsection (1) of this Section, the land affected by the release shall cease to be subject to the mortgage to the extent stated in the release.

Prohibition against graft.

- 85.** (1) Without prejudice to general statutes on bribery and corruption no person shall give and no person shall accept any fee, gifts, kickback, or any gratification of like nature pursuant to any agreement or understanding, oral or otherwise, in respect of any referral or a part of a mortgage settlement service involving the State or Federal Government of Nigeria related mortgage loan.
- (2) No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of any mortgage settlement service in connection with a transaction involving a State or Federal Government of Nigeria related mortgage loan other than for services actually performed.
- (3) Nothing in this Section shall be construed as prohibiting:
- (a) The payment of a fee –
 - (i) to all professionals for services rendered;
 - (ii) by a mortgage institution to its duly appointed agent for services actually performed in the issuance of a policy of property insurance;

- (iii) by a mortgage institution to its duly appointed agents or brokers for services actually performed in the creation of a loan;
- (b) The payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.
- (c) Payments pursuant to brokerage and referral arrangements or agreements between real estate agents and brokers.

Prohibition against collateral contracts.

- 86.** No mortgage deed shall contain a requirement imposing an obligation on a mortgagor to purchase other financial products including insurance from the same mortgage lender or other lenders.

Negative Amortizations.

- 87.** (1) No mortgage deed may contain a payment schedule with regular periodic payments that cause or may cause the principal balance to increase.
- (2) A loan is considered to have such a schedule if the mortgagor is given the option to make regular periodic payments that cause the principal balance to increase, even if the borrower is also given the option to make regular periodic payments that does not cause the principal balance to increase.
- (3) This Section shall not prohibit negative amortization as a result of a temporary forbearance sought by a mortgagor.

Further Advances and Tacking.

- 88.** (1) Subject to this Section, a mortgagee may make provision in the mortgage deed to give further advances or give credit to the mortgagor on a current or continuing basis.
- (2) A further advance referred to in subsection (1) of this Section shall not rank in priority to any subsequent mortgage unless:
- (a) the provision for further advances is specifically noted in the register in which the mortgage is registered; or
 - (b) the subsequent mortgagee has consented in writing to the priority of the further advance.

- (3) Except as provided for in this Section, there is no right to tack.
- (4) Where a mortgage deed provides for the payment of a principal sum by way of installments, the payment of those installments shall not be taken to be a further advance and such payment shall rank in priority to all subsequent mortgages.

Priority of mortgages.

- 89.** Every mortgage affecting a legal interest in land made after the commencement of this Law whether legal or equitable shall rank according to its date of registration.

Right of party in possession to lease the Mortgaged Property.

- 90.**
- (1) A mortgagor of land while in possession shall as against every encumbrancer, have power to lease out the mortgaged property.
 - (2) A mortgagee of land while in possession pursuant to a default in accordance with Section 62 shall, as against all prior encumbrances, if any, and as against the mortgagor, have power to make from time to time any such lease as aforesaid.
 - (3) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.
 - (4) Every such lease shall be made to take effect in possession not later than twelve (12) months after its date.
 - (5) Every such lease shall reserve the best rent that can reasonably be obtained, with regard to the circumstances of the case, but without any fine being taken.
 - (6) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty (30) days.
 - (7) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.
 - (8) This Section applies only if and as far as a contrary intention is not expressed in the mortgage deed, or otherwise in writing by the parties to the mortgage transaction, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions contained in this Law.

- (9) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Law, and with all the like incidents, effects and consequence:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

- (10) Nothing in this Law shall be considered to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the encumbrancers, if this Law had not been passed:

Provided that, in the case of a mortgage of leasehold land, a lease granted under this Section shall reserve a reversion of not less than one day.

- (11) The provisions of this section referring to a lease shall be construed to extend and apply as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.
- (12) The powers of leasing conferred by this section shall, after a Receiver of the income of the mortgaged property or any part of it has been appointed by a mortgagee under his statutory power, and so long as the Receiver acts, be exercisable by such mortgagee instead of the mortgagor, with respect to any land affected by the relationship, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the Receiver.

Insurance of Mortgaged Property.

91. (1) The mortgagor has the duty to insure, at his own expense and at full cost, the mortgaged property.
- (2) Subject to the agreement of the parties, should the mortgagor fail to insure within twenty (20) business days following the execution of the mortgage deed or any other time reasonably agreed between the parties,

the mortgagee shall have the power to insure and keep insured the mortgaged property against loss or damage or any event of an insurable nature; and the premiums paid for any insurance shall be charged on the mortgaged property in addition to the mortgage debt and with the same priority and interest at the same rate as the mortgage debt.

- (3) Where an event of claim takes place, the mortgagee will have priority over the mortgagor for reimbursement of claims from the sum of insurance compensation.
- (4) All proceeds received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Law, or any enactment replaced by this Law, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received except in the case of insurance compensation received in respect of a mortgaged property subject to Strata Title under Part IV of this Law.
- (5) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all monies received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Law, or any enactment replaced by this Law, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage debt except in the case of insurance compensation received in respect of a mortgaged property subject to Strata Title under Part IV of this Law.

Consolidated and Marshalling of Mortgages.

- 92.** (1) Unless there is an express provision to the contrary in the mortgage deed:
- (a) where a mortgagor has more than one mortgage from a single mortgagee; or
 - (b) where the mortgagee has lent money or money's worth to a single mortgagor on two or more securities, the mortgagor may discharge any or some of the mortgages or securities without having to redeem all the mortgages or securities.
- (2) Save as aforesaid, nothing in this Section in reference to mortgages shall affect or operate to displace the marshaling right of a subsequent

mortgagee or any right of consolidation or renders inoperative any stipulation in relation to any mortgage made before or after the commencement of this Law, reserving a right to consolidate.

Transfer of Mortgage rights.

93. (1) The mortgagee may at any time transfer the mortgage and/or the beneficial interest in the cash flow therefrom with or without notice of the transfer to the mortgagor.
- (2) The mortgagee will transfer to the transferee:
- (a) the right to demand, sue for, recover and give receipts for the mortgage money or the unpaid part of it, and the interest then due, if any, and subsequently to become due on it;
 - (b) the benefit of all securities for the same and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and
 - (c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or caser but as to such estate and interest subject to the right of redemption then subsisting.

Legal Representation.

94. A mortgagor shall at all times have the right to engage a solicitor duly licensed to practice as a lawyer within Nigeria for the following purposes:
- (a) preparing deeds, mortgages, notes and other legal instruments related to mortgage transactions in accordance with this Law;
 - (b) providing advice on the effect of all instruments relating to the mortgage transaction;
 - (c) recording the mortgage in the applicable Mortgage Registry; and
 - (d) any other ancillary matters relating to a mortgage transaction

Provided always that the provisions of this Section may be waived in writing by the party concerned.

Offences and Penalties.

95. Any person or persons who violate any of the provisions of the Sections of this Law commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand naira (₦100,000:00) or term of imprisonment for not more than one (1) year or both.

Power to make regulations.

96. The Board with the approval of the Commissioner for Mortgages may make Regulations for the purpose of implementing the provisions of this Law subject to the approval of the House of Assembly.

Repeals and Savings.

97. (1) The provisions of the Applicable Mortgage Laws with respect to mortgages are hereby repealed and shall be invalid to the extent of any inconsistencies with this Law.
- (2) Nothing in this Law shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, proceedings taken, instrument issued or thing done under such provisions of the Applicable Mortgage Laws have become invalid by virtue of this Law; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing if in force, and so far as it could have been made, given, taken, issued, or done under this Law shall have effect as if so made, given, taken, issued or done.
- (3) In this Section, provisions of the Applicable Mortgage Laws are hereby repealed including any enactment repealed or replaced by the relevant Applicable Mortgage Law.

Interpretation.

98. In this Law unless the context otherwise requires:

“**Arbitration and Conciliation Act**” means Arbitration and Conciliation Act, CAP A18, LFN 2010 (as revised) and any amendments thereof.

“**Applicable Mortgage Laws or Applicable Laws**” means all Laws applicable to home mortgage within the State.

“**Auditor General**” means the Auditor General of Ekiti State.

“**Board**” means the Ekiti State Mortgage Board.

“**Business Days**” means a day, other than a Saturday, Sunday or a public holiday for which banks are opened for business in the State.

“**Chief Judge**” means the Chief Judge of the State High Court.

“**Commissioner**” means a Commissioner of the State duly appointed by the Governor.

“Commissioner for Mortgages” means a Commissioner of the State duly appointed by the Governor pursuant to Section 192 (1) of the Constitution with the power to deal with all matters relating to mortgages within Ekiti State.

“Common Property” unless the Strata Plan provides otherwise includes:

- (a) a wall, floor or other partition that constitutes a boundary of a Unit,
- (b) any structural member or load bearing part of a building not being a wall of a building,
- (c) any pipes, wires, cables or ducts that are not for the exclusive enjoyment of one Unit and a structure enclosing any such pipes, wires, cables or ducts,
- (d) the land upon which the building is constructed including the common areas (easements) leading up to the respective Units as well as the common areas available for use by all Unit Owners therein shall, except for its surface within a section, be part of the common property.

“Companies and Allied Matters Act” means the Companies and Allied Matters Act, CAP C20, LFN 2010 (as Revised) and any amendments thereof.

“Constitution” means the Constitution of the Federal Republic of Nigeria, 1999 and any amendments thereof.

“Court” includes the High Court of Ekiti State.

“Customary Right of Occupancy” means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a local government under the Land Use Act and all deemed rights granted in accordance with Section 36 of the Land Use Act.

“Demise” means a mortgage of the unexpired term of interest held by the mortgagor in land.

“Equitable Mortgage” means a mortgage created under Section 31 of this Law.

“Encumbrance” means any claim or lien on a Registrable Interest.

“Encumbrancer” means any person with a claim or lien on a Registrable Interest.

“Executive Secretary” means the Executive Secretary of the Board.

“Executive Council” means the Executive Council of the State government, comprising the Governor, the Deputy Governor, the Commissioners appointed

by the Governor and such other officials as are invited into the council by the Governor

“Governor” means the Governor of the State.

“House of Assembly” means Ekiti State House of Assembly.

“Income” includes rents and profits.

“Land” means real property which may include improvements to such land.

“Land Registry” means the applicable registry within the State for registration of a Registrable Interest.

“Land Use Act” means the Land Use Act, CAP L5, LFN 2010 (as Revised) and any amendments thereof.

“Lease” means an agreement that involves one party letting out his property to another person to use for a period and usually, but not always, in consideration of payment of rent.

“Legal Mortgage” means a mortgage created under Section 30 of this Law.

“Lender’s Appraised Value” means an evaluation of the mortgaged property’s value performed by a professional appraiser engaged by the Lender.

“Local Government or Local Government Area” means each of the local administrative government or government areas of the State established pursuant to the Constitution.

“Management Entity” means any legal entity established or appointed in accordance with Section 56 of this Law.

“Market price” means the usual price that can be realized in good faith for that mortgaged property at the time of sale.

“Mortgage or Mortgage Deed” means the transfer of or charge or an instrument evidencing the transfer or charge on an interest in specific immovable property as security for the payment of money or discharge of existing or future obligations subject to annulment of the interest transferred or charged upon the repayment of the loan or the discharge of the obligations.

“Mortgage debt” means the amount owed on a mortgage.

“Mortgage Finance Application” means an application for the financing of the acquisition of a Registrable Interest in property through a mortgage.

Mortgagee” means an entity or person that lends money to a mortgagor in a mortgage transaction.

“Mortgagor” means a person or entity who has borrowed money and pledged his real property as security to the mortgagee for a mortgage loan.

“Mortgage Registrar” means the registrar of the Mortgage Registry.

“Mortgage Registry” means the mortgage registry of the State and Local Government Areas within the State.

“Plan” means a set of the drawings, rules, regulations, contracts and other documentation describing a Strata Development.

“Pension Act” means the Pension Reform Act 2014 and any amendments thereof.

“Professional Valuer” means a licensed valuer duly registered and in good standing as a member of the Nigerian Institute of Estate Surveyors & Valuers.

“Public Officers Protection Law” means the Public Officers Protection Law, and any amendments thereof.

” Receiver” shall have the meaning given to it under the Companies and Allied Matter **Act Cap C20 LFN 2010 (as Revised)** or any statutory re-enactment or modification thereof.

“Registrar of Titles” means an official charged with the authority of establishing ownership of real property through the issuance of an official certificate indicating the name of the individual in whom such ownership is vested within the State.

“Registrable Interests” means Registrable Interests as defined under Section 27 of this Law.

“Rent” includes an annual or periodical payment in money or money’s worth, reserved or issuing out of land, but does not include interest on a mortgage.

“State” means Ekiti State of Nigeria.

“Statutory Right of Occupancy” means a right of occupancy granted by the Governor under the Land Use Act and all deemed rights granted in accordance with Section 34 of the Land Use Act.

“Strata Development” includes any scheme for the development or operation of multiple-unit dwellings on landed property, whether the property be divided vertically into units, terrace townhouses or standalone buildings or otherwise

“Strata Title” means a certificate issued pursuant to this Law for an estate in a right of occupancy in a Unit.

“Surveyor General” means the Surveyor General of the State.

“Sub-Demise” means a mortgage of the unexpired term of interest held by the mortgagor in land less an agreed period.

“Tacking” includes the attachment of a junior charge to a first or other prior charge to acquire priority over an intermediate charge.

“Title holder” includes a registered holder of title to land and any person who has a deemed grant under the Land Use Act.

“Unit Owners” means any holder of a Strata Title.

“Unit” means every subdivision of a Strata Development such that the Strata development contemplates as being a subdivision to be occupied by the same owner.

Citation.

99. This Law may be cited as Ekiti State Mortgages and Foreclosure Law, 2020.

SCHEDULE 1-FORM MR 01- Application to Mortgage Registrar for search.

APPLICATION TO MORTGAGE REGISTRAR FOR SEARCH	
SECTION A - LEGAL DESCRIPTION OF PROPERTY	
REGISTRATION NUMBER:	
ANY ADDITIONAL INFORMATION:	
SECTION B - DETAILS OF ENQUIRER	
NAME:	[PASSPORT]
ADDRESS:	
PHONE NUMBER:	
EMAIL ADDRESS:	
DATE OF ENQUIRY:	
ANY ADDITIONAL INFORMATION:	
SECTION C – STATUS OF APPLICATION <i>(for official use only)</i>	
<input type="checkbox"/> Approved <i>Prescribed fee:</i>	<input type="checkbox"/> Disapproved <i>Reason:</i>
SECTION D – PAYMENT METHOD	
<input type="checkbox"/> DIRECT BANK TRANSFER	
<input type="checkbox"/> POINT OF SALE MACHINE	
<input type="checkbox"/> BANK PAYMENT	
<i>Please pay the prescribed fee upon approval of this application and attach evidence of payment</i>	

SCHEDULE 1-FORM MR 02- Form of statutory Mortgage.

- [.....] (**Mortgagee**) provides to [.....] (**Mortgagor**), the sum of, (**Mortgage Sum**) at the interest rate of [.....] per annum and on the terms and subject to the conditions of this Statutory Mortgage.
- The Mortgagor shall repay the Mortgage Sum on the [.....day of(year)] or by repaying the amounts set out below on the dates specified:

Repayment Date	Amount
[INSERT DATE]	NGN[INSERT AMOUNT]
[INSERT DATE]	NGN[INSERT AMOUNT]
[INSERT DATE]	NGN[INSERT AMOUNT]
[INSERT DATE]	NGN[INSERT AMOUNT]
[INSERT DATE]	NGN[INSERT AMOUNT]
[INSERT DATE]	NGN[INSERT AMOUNT]
[INSERT DATE]	NGN[INSERT AMOUNT]
[INSERT DATE]	NGN[INSERT AMOUNT]

- As a continuing security for the payment of the Mortgage Sum and such other monies owing from the Mortgagor to the Mortgagee, the Mortgagor as beneficial owner charges all that property located at [.....] with full guarantee, to the Mortgagee by way of [*first / second / third*] legal mortgage.
- The Mortgagor consents to the submission of this Form of Statutory Mortgage by the Mortgagee to the Mortgage Registry to be registered against the title of the property described above.
- This Statutory Mortgage and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Nigerian Law.

Signed as a deed by [NAME OF MORTGAGOR] in the presence of:

OR

Executed as a deed.....
by [NAME OF Director MORTGAGOR]

.....
[SIGNATURE OF MORTGAGOR]

.....
Director/Secretary

.....
[SIGNATURE OF WITNESS]

NAME:

ADDRESS:

OCCUPATION:

Signed as a deed by [NAME OF MORTGAGEE] in the presence of:

OR

Executed as a deed.....
by [NAME OF Director MORTGAGEE]

.....
[SIGNATURE OF MORTGAGEE]

.....
Director/Secretary

.....
[SIGNATURE OF WITNESS]
NAME:
ADDRESS:
OCCUPATION:

EKITI STATE MORTGAGES AND FORECLOSURE LAW, 2020.

This printed impression has been carefully compared by me with the Bill, which has been passed by the Ekiti State House of Assembly and found by me to be a true copy of the said Bill.

.....

MR. TOLA ESAN
Clerk of the House of Assembly

.....

RT. HON. FUNMINIYI AFUYE
Speaker of the House

Governor's Assent

I hereby signify my assent to this Bill

DR. JOHN KAYODE FAYEMI
Executive Governor of Ekiti State

MADE AT ADO EKITI THIS DAY OF2020