APPRAISAL OF THE EFFECTS OF COLLATERALIZATION OF LOANS ON ACCESS TO BANK CREDITS: MORTGAGE IN PERSPECTIVE*

Abstract
One of the functions of commercial banks is to provide credit facilities like loans to customers. Access to bank loans is extensively predicated on the borrower's capacity to furnish the required collaterals to secure the loan. Mortgage is a major form of collateral security for bank loans. For the lending banks, mortgage security is designed to safeguard them from suffering loss resulting from non-repayment of loans, while the borrowers are expected to furnish the mortgage property. The question now is: to what extent has mortgage security affected access to bank loans? This article, inter alia examines the effects of mortgage on access to bank loans. It recommends viable ways of enhancing and accelerating mortgage secured access to bank credits. This work will be beneficial to corporate entities and individuals who may be interested in accessing bank loans. The research adopts doctrinal approach with primary and secondary sources of data including statutes, judicial precedents, textbooks, journals and internet sourced materials. It is recommended that a charge by way of mortgage should be placed on business capitals and assets acquired with bank loans, in the event of the borrower's inability to afford a collateral for mortgage security prior to the lending.

Keywords: Collateralization of Loans, Access to Bank Credits, Mortgages, Security, Effects

1. Introduction
Money is the primary medium of exchange utilized for several purposes including business investment and capital projects financing. However, money is a scarce resource that is hardly adequate, hence the resort to funds raising through loans and other means. Banks are frequently approached for loans because as a financial institution, banks usually possess the capacity to provide the required finances especially when a huge amount is involved. Most persons at one point or the other desire to undertake capital intensive projects that requires a huge sum of money which they neither have nor will be able to afford in the nearest future or even in their life time. Such circumstances naturally necessitate the need to approach financial institutions like commercial banks for credit facilities. Bank loans are viable facilities for the growth and sustainability of businesses. They can operate as a valuable means of raising capital to finance an undertaking when properly utilized.[1] Businesses may require loans to meet their working capital needs and to purchase equipment.[2] However and quite unfortunately, due to the requirement of collateral securities like mortgage, most persons desirous of borrowing from banks are unable to achieve this purpose. The reason is not unconnected with the difficulty of affording collaterals and the rigors associated with mortgage. Consequently, it is our interest to examine the reasons for the requirement of collateral security for bank loans, the preference for mortgage collaterals and the reasons why the procurement of mortgages should not be stringent, but orchestrated to facilitate easy access to bank loans.

2. Meaning of Bank Loans
A bank is a financial institution that accepts deposit, advance loans and transmit funds.[3] By virtue of Section 2(1) of the Banks and other Financial Institutions Act (BOFIA)[4], in order to carry out banking business in Nigeria, the entity must be incorporated as a company in Nigeria and must hold a valid license issued under the Act. Section 65 defines a bank as a bank licensed under the Act.[5] A loan is money lent, often for specified period and repayable with interest.[6] It refers to money lent at interest.[7] Loan is defined under Section 23 of the Failed Banks (Recovery of Debts) And Financial Malpractices in Banks Act[8] to include an advance and any other credit facility. A loan is a form of credit facility in which certain sum of money is advanced by a lender to a borrower. Loan transactions usually involve certain conditions[9] such as repayment of the capital with interest to be paid on a certain agreed date.[10] In return the borrower agrees to a certain set of terms including any financial charges, interest, repayment date and other conditions. In many cases, the lender will require collateral such as mortgage to secure the loan to ensure repayment[11].

3. The Characteristics of a Bank Loan
Bank loans are short-, medium- and long-term sources of credit facility usually repayable on a fixed date and may either be secured by collateral or may be unsecured. They are usually repayable with interest and the interest charged on bank loan may be either fixed or variable interest.[12] The lending bank also makes profit from loan advancement through interest

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* **By Agbor Itu BASSEY, PhD (Law), LLM, LLB, BL,** Lecturer, Faculty of Law, University of Calabar, Calabar, Nigeria, Email: dragborbassey@gmail.com, Tel: 08035819883

[1] A. Adebanjo, *Nigeria: Bank Loans in Nigeria: Types of Collateral and Loan Documentation.* 29th October 2021. *www.modaq.com*
[2] J. Team, *Collateral-What it is, Types and examples.* 6th January 2022. *www.jupiter.money*
[3] B.A. Garner (Ed. In-Chief) *Black's law dictionary* (7th Ed.) Minn: West Group Publishers, 1999, 139
[4] Chapter B3, Volume 2, Laws of the Federation of Nigeria, 2004.
[5] *BOFIA*
[6] M.Agnes, *Webster's Newworld College Dictionary*. (4th Ed). Foster City: IDG Books Worldwide Inc.2001. 841
[7] B.A.Garner, o*p.cit*. 947
[8] Chapter F2, Volume 6, Laws of the Federation of Nigeria, 2004.
[9] M.T. Otu & Bassey A.I, *An appraisal of the Essential Principles of Bank Loans and the Elements of a Good Collateral Security.* [2021] Port Harcourt Journal of Business Law. Vol. 8, No. 2. Faculty of Law, Rivers State University, Port Harcourt, Nigeria. p.62
[10] J. Kagan. *Loan definition.* 19th April, 2021. *www.investopedia.com*
[11] *Ibid*
[12] Trisha. *Bank loans: meaning, features, advantages and disadvantages. 27th May 2021.* www.yourarticlelibrary.com

charged on the loan and sale of collaterals used to secure the loan in the event of default in repayment of the loan by the borrower. They are mostly used to finance capital intensive projects, investment in business or personal undertaking etc., especially when a huge sum of money is involved.

4. Meaning of Collateral Security

Collateral is a property which is pledged as security for the satisfaction of a debt. It is a property that is subject to security interest.[13] Collateral is an asset that a lender accepts as security for a loan. It may take the form of real estate or other kinds of asset. It is an item of value that is used to secure a loan[14] A security is a collateral given or pledged to guarantee the fulfillment of an obligation, especially, the assurance that a debtor will pay (usually with interest) any money or credit extended to him.[15] The term is usually applied to an obligation, pledge, mortgage, deposit, lien, etc, given by a debtor in order to assure the payment or performance of his debt by furnishing the creditor with resources to be used in case of failure in the principal obligation.[16]

5. Legal Bases for the Requirement of Collaterals for Bank Lending in Nigeria

The legal basis for the requirement of real property as collateral security by banks in Nigeria is embedded in Section 20(3) of BOFIA[17] which stipulates that: 'A bank may secure debt on any real or other property and in default of repayment, may acquire such property and exercise any power of sale as may be provided for in any instrument or by law prescribed immediately upon such default or as soon thereafter as may be deemed proper'. Also, Micro-Finance Banks are required to have credit policy which shall indicate the type of collateral requirements including the type of collateral and the collateral coverage for different classes/types of credit facilities.[18] The acceptable collateral instruments include: Cash, treasury bills and other government securities, quoted equities and other traded securities, bank guarantees and receivables of blue chip companies, residential legal mortgage and commercial legal mortgage.[19] Loans that require collaterals are referred to as secured loans.[20] Secured loans, otherwise called asset based loans use collateral assets as security.[21]

6. Mortgage of Land as Collateral Security for Bank Lending

A mortgage is the transfer of interest in an asset by way of security from a borrower (mortgagor) to the lender (mortgagee) upon the express or implied condition that it will be re-transferred to the mortgagor upon the discharge of the secured obligations. The security is redeemable upon the discharge or payment of debt, notwithstanding any provision to the contrary.[22] The most essential nature of a mortgage is that it is a conveyance of a legal or equitable interest in a property with a provision for redemption. That is, upon repayment of the loan, the conveyance shall become void or the interest shall be reconveyed.[23] Land may be described as a portion of the earth surface comprising of the space above and below the earth surface and everything growing on or permanently affixed to it.[24] It is an immovable or real property that is a subject-matter of an estate or interest. For the purpose of mortgages, the word 'land' entails the surface of the ground together with any building or structure attached to, affixed in, erected or constructed on the land. Thus, where a piece of land is pledged by way of mortgage as security for bank lending, in the absence of any intention or agreement to the contrary, whatever is found under the land, built on the land, affixed, erected or growing on the land forms part of the land. This is predicated on the English land law principle of *Quic quid plantatur solo solo cedit* (whatever is affixed to the soil forms part of the soil).[25] Commenting on the above English law principle, Megarry and Wade said:

> The meaning of 'real property' in law extends to a great deal more than land in every day speech. It comprises, for instance, incorporeal hereditaments and it also includes fixtures. The general rule as to fixtures is *quic quid plantatur solo solo cedit* (whatever is attached to the soil forms part of it). Thus, if a building is erected on land and objects are permanently attached to the building, then the soil, the building and the objects affixed to it are all in law 'land', that is, they are real property not chattels. They will become the property of the owner of the land, unless otherwise granted or conveyed. But if there is an intention to the contrary, merger of ownership will not take place.[26]

The desirability of land as collateral property for loans is largely due to its indestructibility[27] and the fact that it has the tendency to appreciate in value.[28] When a lender is offered land as security for money advancement, the first thing he is usually interested in ascertaining is its value. If he is satisfied with the monetary value of the land, he will further wish to

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[13] H. C. Black, *Black's law dictionary* (6th ed.). Minn: West Group Publishing co. 1990. 261
[14] J. Kagan. *Collateral definition.* 27th December 2020. *www.investopedia.com*
[15] B. A. Garner, *Op. cit.* 1358
[16] H. C. Black, *op.cit.*1355
[17] Chapter B3, Volume 2, Laws of the Federation of Nigeria, 2004
[18] Regulation 1:1(c), Central Bank of Nigeria, Presidential Guidelines for Microfinance Banks in Nigeria (August 2019).
[19] *Ibid Regulation 3:3(e)*
[20] J. Camberato, *7 Types of Collateral You Use to Secure a Small Business Loan.* 17th February 2021. *www.nationalbusinesscapital.com*
[21] P. Dushey, *What Type of Assets Might You Use for a Collateral Based Loan?* 27th December 2022. *www.forbes.com*
[22] *Suberu* v. *A.I.S. & L. Ltd* (2007) ALL FWLR (pt.380)1512 at 1526 paras. B-C (CA)
[23] *Bank of the North v. Chief David A. Akintoye CA*/IL/17/99
[24] Garner B.A. o*p. cit.* p.881
[25] *Ibid* p.1680
[26] R. Megarry & H.W. Wade, *The Law of Real Property* (5th ed.) London: Stevens & Sons Ltd. 1984. P.781
[27] T. Reeday, *Op. cit.* p.203
[28] J.O. Enyia, *The Law of Banking in Nigeria. Principles, Statutes and Guidelines. Lagos: Malthouse Press Limited.* 2018. p.126

satisfy himself that the borrower has a good title in the land before deciding to take the land as a mortgage security. Where the land is accepted for mortgage security, the mortgage agreement will be drawn up, executed and registered.[29]

7. Why Mortgage of Land is Preferred to Secure Bank Loans

Firstly, land is a valued asset that borrowers do not want to lose and the stigma attached to having a person's property sold to repay debt together with the fact that it is sometimes regarded as a taboo to have a person's landed property sold to repay debt induces borrowers to do their utmost to repay loans. Secondly the title to the land pledged as security for loan can easily be traced by conducting a search at the land registry to establish the title and uncover any incumbrances and adverse interest affecting the land. Thirdly, mortgage of land usually involves the transfer (conveyance) of title to the land, which gives the lender (mortgagee) a form of ownership over the land. Fourthly, landed properties are relatively easier to value and this enables the lender to ascertain the value of the property which in turn enables him to determine whether to accept the property as security for the loan or not. The fifth reason is that land, especially when situated in a prime location can easily be sold through a competitive bidding to the highest bidder thereby ensuring the realization of good value from the sale to cover the debt where the mortgagor defaults in repaying the loan.[30] The sixth reason is that the mortgaged land is usually higher in value than the amount advanced as load thereby creating a form of assurance that the loan will be recovered from the sale of the land where necessary.

However, mortgage of land as security for bank loans may be affected by several adverse circumstances and factors. For example, the value of the land may depreciate as a result of economic recession which is capable of destroying the value of the property and prevent it from realizing the amount advanced as loan. Also, where the land is developed, if the design or structure of the building is obsolete, the value of the property may drop as the demand for such property may become very low. Furthermore, where the property is located in an unattractive environment or an area challenged by difficulty of terrain, inaccessibility or natural disaster like flood or gully erosion, etc. the value of the property will be undermined. In addition, the value of the landed property may deplete due to wear and tear arising from its use, especially where the bank (mortgagee) did not take possession and the property is left in the possession of the borrower (mortgagor) who abandons it in a state of disrepair.[31]

8. The Purpose of Collateral Security for Bank Loans

Collateral securities are pledged to guaranty the fulfillment or performance of outstanding principal obligations. They create the assurance that a debtor will repay a debt or any money or credit extended to him usually with interest.[32] It involves a property that is made subject to security interest.[33] Collateral securities are required, among other thing, as means of compelling or inducing borrowers who will be unwilling to lose their properties, to repay the loan and to afford the lender an opportunity to recover the loan by possibly selling the collateral property in the event of failure by the borrower to repay the loan.[34] Collateral security is meant to safeguard money lent to a borrower. It prevents the lender from losing his money if not repaid by the borrower. It also creates a psychological coercion in the borrower to compel him to discharge his debt obligation by subjecting him to the fear of losing his valuable property. In *Thor ltd. v. First City Merchant Bank ltd*.[35] it was held *inter alia* that the purpose of a collateral security is to provide something to fall back on if the borrower defaults in the payment of the loan. The fundamental reason why lenders require security is to reduce credit risk in the event of the borrower becoming bankrupt (if an individual) or becomes insolvent (if a company).[36]

Collateral securities serve as a protection for the lender.[37] If the borrower cannot repay, the pledge of collateral gives the lender the right to seize and sell those assets designated as loan collateral and the proceeds of the sale used to cover what the borrower did not pay back. Also, the collaterization of a loan gives the lender a mental advantage over the borrower, because valuable asset would be at stake which compels the borrower to work hard to repay the loan to avoid losing such valuable asset.[38] The goal of banks taking collateral security is to precisely define which borrower's assets are subject to seizure and sale and to document for all other creditors to know that the bank has a legal claim to those assets in the event of non-repayment of the loan.[39] Collateral reduces banks' risk when loans are advanced.[40] Before a lender issues a loan, the bank wants to be convinced that the borrower has the capacity to repay the loan. This is why security is usually required in most cases. It helps to keep up with the borrower's financial obligation. In the event that the borrower defaults, the lender can alienate the collateral and apply the proceeds to defray the unpaid portion of the loan.[41]

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[29] J.M. Holden, *Op. cit* p.25
[30] L. Afolabi o*p. cit.* p.301
[31] *Ibid.* p.301
[32] B.A. Garner., *Op. cit.* p.1358
[33] H.C. Black., *Black's law Dictionary* (6th ed.). Minn: West Group Publishing co. 1990. P.261
[34] S. Fernandes, *What is the Difference between Mortgage and Pledge?* Friday December 11, 2015. *www.goodreturns.inclassroom*
[35] (2000)4NWLR (PT.65)274 CA
[36] O.O. Seun *Nigeria: Taking Security: A Review of Mortgage Creation under Nigerian Law.* 15th June, 2020. https://www.mondaq.com
[37] J. Kagan. *Collateral definition.* 27th December 2020. *www.Investopedia.com*
[38] P. S. Rose *Commercial Bank Management (*4th ed*).* Singapore: McGraw-Hill Book Co. 1999. 532
[39] *Ibid*
[40] B. E Gup & J.W. Kolar. *Commercial Banking- The management of Risk. (3rd ed).* Singapore*:* John Whiley & Sons Ltd. 2005. 260
[41] J. Kagan. *Collateral definition.* 27th December 2020. *www.investopedia.com*

9. The Challenges of Mortgage Collateral and its Impact on Access to Bank Lending

Under this heading, those factors that tend to frustrate access to bank loans secured by mortgage of land will be examined. The heading seeks to examine those impediments that make it onerous to access mortgage secured bank loans. Without security, financial institutions and lending banks would likely not engage in the business of loan advancement. The function of security is to prevent the lending banks from suffering the consequences of borrower's insolvency.[42] Mortgage as security for loan was created to enhance the advancement of bank lending as banks would be reluctant to lend without a form of security. The important question now is: to what extent has mortgage achieved its aim of promoting access to bank loans? This question arises from the fact that as stated earlier, the purpose of collateral security is not only to safeguard the lending banks against the loss of their money, but also to encourage access to or the advancement of bank loans to borrowers as lending banks will be more disposed to advance loans when such loans are secured. In other words, from the perspective of the lenders (mortgagees), the provision of a guarantee against loss is the main reason for requiring securities. However, from the perspective of the borrowers (mortgagors), the essence of affording landed property is to facilitate access to bank loans without which financial institutions like banks will be reluctant to advance credit facilities like loans. Unfortunately, there are factors that hinder access to bank loans that are required to be secured by mortgage. They include the following:

The Problem of Proving the Required Property for Mortgage Collateral

The capacity of borrowers to afford the required property to secure a mortgage is a major issue. Mortgage is a security or insurance against unforeseen eventualities.[43] The provision or affordability of real property is a major pre-condition for the procurement of mortgage. In order to access loan secured by mortgage from the banks, the borrower will be required to convey good title in real property to the lender and the required property must be higher in value than the amount desired as loan.[44] These are some of the basic conditions a borrower must satisfy in terms of the collateral property for bank lending. While these conditions are favourable to the lending bank, how convenient will borrowers find it to satisfy these requirements? For a property to be higher in monetary value than the loan sum, such property will normally be very expensive. Real properties are commonly owned by wealthy individuals who in most cases, are hardly in need of loan facilities from banks. Those usually desirous of accessing loans from banks in most cases can hardly afford any real property in respect of which they have good title, let alone when the property is required to be higher in value than the loan sought. This situation has adversely impacted on borrowers' capacity to access mortgage secured credit facilities from banks. This has equally produced negative effects on the banks which have lost the opportunity to generate profits from interests on loans. This is because the number of those who eventually succeed in securing loans is rather low as compared to those who actually desire loans or those who have genuine need for it. Moreover, most Nigerians who are desirous of accessing credit facility from banks are the poor and low income earners, who have little or no capacity to acquire real property that is capable of being pledged as mortgage collateral to secure loans from banks. This condition is further exacerbated by the very high cost of landed properties which has extensively limited its affordability to the rich. This development has in recent times discouraged some banks from maintaining the strict requirements of mortgage as collateral security for their loans. Consequently, some banks have unlawfully advanced loans without the requisite collateral security. Some years ago, the Central Bank of Nigeria (CBN) discovered that some commercial banks granted loans not backed by adequate security. This led to the CBN sacking the managing directors of the defunct Oceanic Bank and Intercontinental Bank, Cecillia Ibru and Erastus Akingbola respectively.[45]

Defects in the Titles to Landed Properties

Sometimes, the problem is not that of inability to provide the required collateral property. Rather, it is the issue of encumbrances or defects in the title to the property. In most cases, mortgagees do inspect the land registry before taking the mortgage property, in order to ascertain if there are prior mortgages or other encumbrances as they must protect their own interest through entries in the register.[46] However, inaccurate and unreliable entries in some land registry caused by the use of obsolete machines, dysfunctional equipment and fraudulent practices have contributed to the entry of incorrect data and inaccurate information pertaining to properties thereby injuring the validity of the title to such properties. This incident has adversely affected the creation of valid mortgage collaterals as such defective titles to property cannot be relied on to access mortgage secured loans from banks. Where such properties are inadvertently used to secure a mortgage, selling them to recover loans in appropriate circumstances becomes a problem. Such problems have led to the accumulation of bad debts by banks (mortgagees) where the affected properties could not be sold to recover the loans. Many banks are now circumspect to advance loans to borrowers with proven integrity and verified titles to property free from legal defects. Since many persons who desire bank loans can hardly furnish this, access to loans secured by mortgage has drastically reduced, and the lending banks' opportunity to earn profits from interest on loan is also diminished.

Procuring a Valid Legal Mortgage to Secure Bank Loans

The first stage of the procurement of mortgage deed is the execution of a mortgage agreement by the mortgagor and the mortgagee. This is followed by payment of stamp duties for the stamping of the mortgage instrument. The duties paid on the mortgage deed are *ad valorem* (based on the value of the property).[47] The provision of money for stamping may pose a

[42] D. Palfreman, *Law Relating to Banking Services.* London: Pearson Education Limited. 1993. P.274
[43] *Ibid*
[44] D. Olarinwaju & S. Oke, *Appraisal of Mortgage as a Security for Bank Lending in Nigeria.* 8th July, 2021. *www.academia.edu*
[45] *Ibid*
[46] G.A. Penn., *et.at. Law Relating to Domestic Banking*. *London:* Sweet and Maxwell. 1987. p.394
[47] Y.Y. Daddem, *Property Law Practice in Nigeria.* Jos: Jos University Press. 2009 p.137

challenge if a huge sum of money is involved, in which case, it becomes a hindrance to the perfection of a mortgage conveyance. This is followed by another fundamental requirement which is securing the governor's consent, without which a legal mortgage cannot be consummated. Mortgage is a form of alienation of right of occupancy which cannot be validly achieved without the consent of the governor pursuant to Sections 21 and 22 of the Land Use Act[48]. The onus is on the mortgagor as the holder of the right of occupancy to seek and obtain the consent of the governor for a mortgage transaction. The indispensability of obtaining governor's consent for a valid legal mortgage can also be appreciated from the consequences of failure to obtain the consent under the Act. The first is contained in Section 26 of the Act[49] which provides that, 'Any transaction or any instrument which purports to confer or vest in any person any interests over land other than in accordance with the provisions of the Act shall be null and void'.

In *Savannah Bank v. Ajilo*[50] the Plaintiff (Respondent) had executed a deed of mortgage dated 5th September 1980 in favour of the first Defendant (Appellant). Upon default by the plaintiff the first defendant sought to sell the property involved by advertising the auction sale. The plaintiff sued for declaration *inter alia,* that the deed of mortgage was void on the ground that by Section 22 of the Land Use Act the consent of the governor of Lagos State ought to be first sought and as no consent was obtained, both the deed of mortgage and the auction sale were void. The Supreme Court held *inter alia,* that holders of statutory right of occupancy granted by the military governor include the implied (deemed) grantees under Section 34(2) and 36(2) of the Act and any failure by a holder under Section 34(2) or 36(2) of the Act to comply with the provisions of Section 22 would attract the full rigors of Section 26 of the Act and renders a transaction or any instrument arising therefrom null and void. Where consent for legal mortgage over property is not obtained, any purported transfer of interest or right over land is null and void.[51]

The second consequence of failure to secure the governor's consent is that since mortgage is a form of alienation of right of occupancy in property, failure to obtain the governor's consent to perfect a mortgage conveyance will constitute a bases for revocation of the mortgagor's right of occupancy on the ground of overriding public interest pursuant to Section 28 of the Land Use Act. Section 28 of the Act stipulates that '(1) it shall be lawful for the governor to revoke a right of occupancy for overriding public interest' (2) overriding public interest in the case of a statutory right of occupancy means- (a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereof'.

The court has affirmed that by Section 28 of the Land Use Act, the governor has the right or power to revoke a right of occupancy granted to anybody but the revocation has to be for overriding public interest.[52] However, where the governor's consent had been obtained in respect of a mortgage deed, an increase in the amount of loan would not call for a fresh governor's consent. There will be no need to seek another consent where further loans have been obtained in respect of the same mortgage collateral. The governor's consent has nothing to do with the amount of loan or increase on the loan which both parties have already agreed to. Rather, the consent is for the alienation of the title to the mortgage property in compliance with Section 22 and 26 of the Land Use Act 1978 for the period of the mortgage transaction.[53] Thus, a fresh approval from the governor is not required under the Act for the enhancement of the naira value of a mortgage transaction in respect of which the approval of the governor had been sought and obtained.[54] Where consent is required in a deed of legal mortgage and such consent had been obtained when the mortgage was originally created, no consent is required for the up-stamping of the mortgage if additional facility is granted.[55]

Unfortunately, practical experience has revealed that one of the most challenging aspects in the process of procuring a mortgage is the process of obtaining the governor's consent. Several fruitless attempts to secure the governor's consent have frustrated efforts to perfect mortgage. This challenge has resulted in the creation of equitable mortgage in certain cases contrary to the intention of the parties and in cases where banks insisted on a legal mortgage to secure loans, the transaction was frustrated. While some governors as a matter of policy deliberately refrain from granting consent to mortgages or other forms of alienation of right of occupancy, others unduly delay the process, thereby creating unnecessary bottleneck to the creation of valid mortgage.

The final stage of perfecting a mortgage is the registration of the mortgage deed in the land registry. Just like in the case of obtaining the governor's consent, the process of registration of mortgage conveyance in many states is also difficult and cumbersome. This has equally truncated many attempts to register mortgage deeds. The major problem here lies in the implications of failure to register the transaction. This is because a deed of legal mortgage is a registerable instrument. This challenge in many states is further complicated by the reliance on analogue and obsolete land administration systems[56] which has led to inaccurate and incorrect entries of information and data pertaining to interests in land.

[48] Cap L5, Vol. 8, LFN 2004
[49] *Ibid*
[50] (1989) 1 NWLR (pt.97) 305
[51] *Co-op Bank Ltd. v. Lawal* (2007) 1 NWLR (pt. 1015) 287 C.A. Holding 8
[52] *Governor of Kwara State v. Nicon Plc* (2017) ALL FWLR (pt. 890) 600-783 Holding 2
[53] *Owoniboys Technical Services Ltd. v. Union Bank of Nigeria Ltd (Supra)* Holding 7
[54] *Adepate v. Babatunde* (2002) 4 NWLR (pt. 756) 99 C.A. Holding 6
[55] *Bank of the North v. Babatunde* (2002) FWLR (pt. 119) 1452 C.A. Holding 9
[56] B. Oluba, *Mortgage Services in Nigeria and the Challenges with Collateralization.* 11th January 2020. *www.linkendin.com*

Quite unfortunately, many land registries are still grappling with manual filling and recording systems with no form of internet or digital presence, thereby occasioning inaccuracy and undue delay in the registration of land transactions like mortgage. Access to information relating to service provision is limited. Technologies like Electronic Data Management System (EDMS) and Geographic Information System (GIS) are yet to find effective space in some land registries in Nigeria. Such technologies are poised to eliminate gross inefficiency associated with paper based data management system which is becoming obsolete and highly prone to fraud, corruption, loss of vital information, alterations, distortion of records, errors and other incidence of inefficiency. This has produced enormous challenges to registration of mortgage transactions. As one of its functions, the GIS for example, promotes data availability, reliability, speedy data processing and timely registration of titles to property and mortgage transactions.[57]

As in the case of failure to obtain governor's consent, there are also consequences for non-registration of a deed of mortgages, a registrable instrument. The consequences include the following: (i) it makes the instrument void; (ii) it renders it inadmissible in evidence as a valid mortgage transaction, and (iii) it makes the property, the subject matter of mortgage to loss priority. Section 12 of the Land Instrument Registration Law[58] stipulates that every instrument affecting land the subject of a state grant shall be void unless the same is registered within six months from its date. By section 14 of the same law[59] no instrument shall be pleaded or given in evidence in any court as affecting any land unless the instrument has been duly registered. Section 15[60] stipulates that every instrument registered under this law shall, so far as it affects any land, take effect as against other instruments affecting the same land from the date of its registration.

These are some of the reasons why mortgagees insist on the registration of the mortgage deeds because in addition to the fact that they usually want the mortgage deed to enjoy priority over any other adverse interest that may exist in the property, the deed of mortgage may equally be pleaded and relied on in the court as evidence of the existence of a valid mortgage transaction and any document affecting land that qualifies as an instrument must be registered to enjoy validity. Any registerable instrument affecting land which is unregistered cannot be pleaded and tendered as proof of title in evidence, and if pleaded, it would be inadmissible and liable to be expunged or ignored.[61] However, the non-registration of a registerable land instrument affects only the legal or statutory title but not the equitable interest. Thus, the legal title may be imperfect but the equitable interest of the owner remains available.[62] Unfortunately, the challenge of registration has inhibited access to bank credit facilities secured by mortgage as most banks prefer legal mortgage to secure their loans.

10. Conclusion and Recommendations

The foregoing analyzed facts goes to buttress the point that the intricacies and circumstances surrounding mortgage as security for bank loans has hindered mortgage from effectively promoting access to bank loans. If one of the major functions of banks is to make credit facilities like loans available to borrowers, then the procedure for the procurement of mortgages as loan securities should not be cumbersome. Mortgage as loan securities would facilitate more access to bank loans if its limitations as examined above are eliminated or addressed. Some pragmatic and effective steps to address or change this unfortunate situation in order to promote greater access to mortgage secured bank loans will constitute part of the bases for our recommendations. The relevant statutes mandating the collateralization of bank loans like the BOFIA should be amended to include a provision to the effect that where loan is desired for investment in a business and the intending borrower cannot afford or furnish the required collateral asset to procure a mortgage secured loan, the loan should be advanced to the borrower and a charge should be created on the assets and capital of the business by way of mortgage in favour of the lending bank such that the loan can be recovered from the charged assets and capital where the borrower defaults in repaying the loan.

Furthermore, where a loan is desired for commercial purposes such as the building of estates for lease and the intending borrower cannot afford the real asset required for mortgage secured loan, the loan should however be advanced to him and the property developed from the loan should be used to create a mortgage security for the loan. Here, the estate developer hired to execute the building project should be made a party to the loan advancement and the loan sum should be transferred directly to him to facilitate unhindered appropriation of the money for the project since the loan is still unsecured and will only become secured when the developed property is used to create a mortgage security over the loan. However, in this situation, the borrower should be required to furnish additional collateral. For example, he should be required to provide a guarantor or furnish a mortgage of an insurance policy or a mortgage of company shares in favour of the mortgagee as additional security for the loan. This is to ensure that ultimately, the security created for the loan has a higher value than the amount advanced as loan, to reduce the lender's (mortgagee's) chances of running at a loss.

A clause should be inserted in the Land Use Act creating a limit to the period within which governor's consent should be given to mortgage transactions, which should not be later than 30 days from the date of the application. Finally, automated and digital property registration systems should be deployed to promote accuracy, efficiency and reliability in title registration by land registries.

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[57] *Ibid*

[58] Cap L2, Vol4, Laws of Cross River State, 2004

[59] Land Instrument Registration Law, (LIRL) Cap L2, Vol4, Laws of Cross River State, 2004

[60] LIRL, Cap L2, Vol4, Laws of Cross River State, 2004

[61] *Co-op Bank Ltd. v. Lawal (Supra)* Holding 9

[62] *Monkom v. Odili* (2010) 2 NWLR (pt. 1179) 419 C.A. Holding 12