

**LAGOS STATE HOME OWNERSHIP MORTGAGE SCHEME
(Lagos HOMS)**

HOUSING ARBITRATION RULES

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Preamble

The Lagos Home Ownership Mortgage Scheme (Lagos HOMS) is designed to meet the demand for large-scale affordable housing by providing access to affordable mortgage finance for first-time home buyers. As disputes are inevitable in human and commercial relationships, these Housing Arbitration Rules have been passed by the Lagos Court of Arbitration to support its administration of the speedy and effective resolution of disputes that may arise under the Scheme.

Article 1

Objective and Application

1. The objective of these Rules is to provide for the fair, impartial, speedy, cost-effective and binding resolution of disputes arising from mortgage transactions under this Scheme. Each party will have a reasonable opportunity to present its case and to respond to that of the other party. The Arbitrator and the parties are expected to do all things necessary to achieve this objective.
2. These Rules are to be read in conjunction with the Lagos State Arbitration Law, 2009; hereinafter called the "Arbitration Law, 2009" or any other law agreed to, and the Deed of Mortgage entered into by the disputing parties, with common expressions having the same meaning.

(1) Words that are not defined by the Arbitration Law, 2009 and the Deed of Mortgage shall be given their ordinary legal meaning.

3. After the Arbitrator has been appointed under these Rules, the parties may not, without the Arbitrator's agreement, amend the Rules or impose procedures that conflict with them.
4. The Arbitrator shall have the power to resolve all disputes arising from the mortgaged property or the Mortgage Deed in a fair and just manner.
5. Subject to the agreement of the parties, the agreement to arbitrate under these Rules is mandatory and irrevocable.

Article 2

Request For and Commencement of Arbitration

1. A party to a mortgage under this scheme who, in accordance with the Mortgage Deed wishes to have a dispute resolved under these Rules, shall deliver to the Executive Secretary of the Lagos Court of Arbitration, a written request for arbitration ("the Request") setting forth the facts that have given rise to the reference to arbitration.
2. The Request shall contain the following information -

- (a) the full name, description and address of the Claimant(s);
 - (b) a description of the nature and circumstances of the dispute giving rise to the claim(s);
 - (c) a statement of the relief(s) sought, including, to the extent possible, an indication of any amount(s) claimed; and
 - (d) the relevant agreement(s) and, in particular, the Arbitration Agreement.
3. The Executive Secretary of the Lagos Court of Arbitration shall ensure service of the Request on the Respondent(s).

Article 3

Answer to the Request

1. Within 7 days of the receipt of the Request, the Respondent shall forward an answer ("the Answer") to the Claimant. The Answer shall, amongst other things, contain the following information:
 - (a) the Respondent's full name, description and address;
 - (b) Respondent's comments as to the nature and circumstances of the dispute giving rise to the claim(s);
 - (c) Respondent's response to the relief(s) sought;
2. Any counterclaim made by the Respondent shall be filed with the Answer and shall provide:
 - (a) a description of the nature and circumstances of the dispute giving rise to the counterclaim; and
 - (b) a statement of the relief sought, including, to the extent possible, an indication of any amount counterclaimed.

Article 4

Reply

The Claimant shall file a Reply to any counterclaim within 7 days of the date of receiving it. The Arbitrator may grant the Claimant an extension of time for filing the Reply.

Article 5

Appointment of the Sole Arbitrator

Arbitration under these Rules shall be conducted by a single arbitrator who shall be appointed, subject to the agreement of the parties, by the President of the Lagos Court of Arbitration.

Article 6

Conduct of Arbitral Proceedings

1. If the Respondent does not file an Answer, as provided by Article 3(1) and (2) or if any party raises one or more pleas concerning the existence, validity and scope of the Arbitration Agreement, the arbitration shall proceed if there is prima facie evidence of the existence of an Arbitration Agreement under the Rules. In such a case, any question as to the Arbitrator's jurisdiction shall be decided by the Arbitrator.
2. If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure.
3. Unless otherwise agreed, the Arbitrator shall not cease to have jurisdiction because of any claim that the Deed of Mortgage is null and void or any allegation that it is non-existent, provided that the Arbitrator upholds the validity of the Arbitration Agreement.
4. The Arbitrator shall continue to have jurisdiction to determine the respective rights of the parties and to adjudicate over their claims and pleas even though the Deed of Mortgage itself may be non-existent or null and void.
5. The Arbitrator shall have the power to extend the time within which any steps are to be taken.

Article 7

Joinder

1. A notice of arbitration may include two or more disputes if they fall under the same Arbitration Agreement.
2. A party served with a request for arbitration may, at any time before the appointment of the arbitrator, give a request for arbitration in respect of any other dispute(s) that fall(s) under the same Arbitration Agreement, and those other disputes shall be consolidated in the arbitral proceedings.
3. After arbitral proceedings have commenced, either party may give a further request for arbitration to the other and to the Arbitrator, referring any other dispute which falls under the same Arbitration Agreement to the arbitral

- proceedings. If the other party does not consent to the other dispute being so referred, the Arbitrator may, as is considered appropriate, decide whether or not the dispute should be included in the same arbitral proceedings and make the necessary order in that regard.
4. Arbitral proceedings in respect of any other dispute are begun when the request for arbitration for that other dispute is served.

Article 8

Powers of the Arbitrator

1. The Arbitrator shall have the power to rule on its own jurisdiction and on matters that have been submitted to arbitration.
2. The Arbitrator shall have the power to appoint experts, evaluators or assessors to assist him or her on technical matters.
3. The Arbitrator shall have the powers to give directions for:-
 - i. the inspection, photographing, preservation, custody or detention of property that is the subject matter of the dispute;
 - ii. ordering samples to be taken from, or any observation be made of or any experiment conducted on, the property subject matter of the dispute;
 - iii. a party or witness to be examined on oath or affirmation and to administer any necessary oath or take any necessary affirmation;
 - iv. the preservation for the purposes of the proceedings of any evidence in the custody or control of a party.
4. The Arbitrator shall direct the manner in which, by whom and when any test or experiment is to be carried out. The Arbitrator may observe any test or experiment in the absence of one or both parties, provided that they have been given, and have the opportunity to be present.
5. The Arbitrator may order a Claimant to give security for the whole or part of the costs likely to be incurred by the other party in defending a claim, if it is satisfied that the Claimant is unlikely to be able to pay those costs if the claim is unsuccessful. In exercising this power, the Arbitrator shall consider all the circumstances, including the strength of the claim and any defence and the stage at which the application is made.
6. The Arbitrator may, if considered appropriate, give reasons for any decision

- made under sub-rule (5) above if the parties so request.
7. The Arbitrator has the power to order a Claimant to give security for the Arbitrator's fees.
 8. If without showing sufficient cause, a Claimant fails to comply with an order for security for costs under sub- rule (5) above, the Arbitrator may make a peremptory order to the same effect prescribing such time for compliance as is considered appropriate. If the Claimant does not comply with the peremptory order, the Arbitrator may make an order dismissing the claim.
 9. The Arbitrator has the power to make an award dismissing a claim.
 10. The Arbitrator has the power to proceed in the absence of a party or without any written evidence or submission from a party.
 11. The Arbitrator may by any order direct that if a party fails to comply with that order he or she will:-
 - (a) refuse to allow the party in default to rely on any allegation(s) or material(s) which were the subject of the order;
 - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify; and
 - (c) may, if that party fails to comply without showing sufficient cause, refuse to allow such reliance or draw such adverse inferences and may proceed to make an award on the basis of such materials as have been properly provided, and may make any order as to costs in consequence of such non-compliance.
 12. In addition to the powers conferred under sub-rule (11) above, the Arbitrator may dismiss a claim for inordinate and inexcusable delay or failure to comply with a peremptory order to provide security for costs.
 13. An application to dismiss a claim for inordinate and inexcusable delay or failure to comply with a peremptory order to provide security for costs shall be based on proof by evidence.
 14. Where a claim is dismissed on such grounds, the claim shall be barred and may not be re-arbitrated.

Article 9

Procedure and Evidence

1. Subject to these Rules, the Arbitrator shall decide all procedural and evidential matters subject to the right of the parties to agree on any matter. This includes the power to give directions on -
 - (a) when and where the proceedings (or any part thereof) are to be held;
 - (b) the language(s) to be used in the proceedings and whether translations are to be required;
 - (b) the use of written statements and the extent to which they can be amended;
 - (c) which documents or classes of documents should be disclosed between and produced by, the parties and at what stage.
2. Whether or not there are oral proceedings, the Arbitrator may determine the manner in which the parties and their witnesses are to be examined.
3. The Arbitrator is not bound by the strict rules of evidence and shall have the power to determine the admissibility, relevance or weight of any material sought to be tendered on any matter of fact or opinion by any party.
4. The Arbitrator may take the initiative to ascertain the facts and the law.
5. The Arbitrator may fix the time within which any order(s) or direction(s) are to be complied with and may extend or reduce the time at any stage.

Article 10

Short Hearing

1. This procedure is appropriate where the matters in dispute are to be determined principally by the Arbitrator inspecting the property and documents relating to the Deed of Legal Mortgage.
2. The parties shall, either at the same time or in sequence as the Arbitrator may direct, submit written statements of their cases, including any documents and statements of witnesses relied on.
3. There shall be a hearing of not more than one day, at which each party will have a reasonable opportunity to address the issues in dispute.

4. The Arbitrator may form an opinion on the issues in dispute and need not inform the parties of such opinion before delivering the award.
5. Either party may adduce expert evidence but may recover any costs so incurred only if the Arbitrator decides that such evidence was necessary in order to come to a decision.
6. The Arbitrator shall deliver the award within one month of the last of the foregoing steps or within such further time as may be required, and shall notify the parties accordingly.

Article 11

Documents-only Arbitration

1. This procedure is appropriate where there is to be no hearing because, for instance, the issues do not require oral evidence or because the sums in dispute do not warrant the cost of a hearing.
2. The parties shall, either at the same time or in sequence as the Arbitrator may direct, submit written statements of their cases including:
 - (a) an account of the relevant facts or opinions relied on;
 - (b) statements of witnesses concerning those facts or opinions, signed or otherwise confirmed by the witnesses; and
 - (c) the remedy or relief sought, for instance, a sum of money with interest.
3. Each party may submit a statement in reply to that of the other party.
4. After reading the parties' written statements, the Arbitrator may:
 - (a) put questions to or request a further written statement from either party;
 - (b) direct that there be a hearing of not more than one day at which the Arbitrator may put questions to the parties or to any witness(es). The parties shall also have a reasonable opportunity to comment on any additional information submitted to the Arbitrator.
5. The Arbitrator shall deliver the award within one month of the last of the foregoing steps, or within such further time as may be required, and notify the parties accordingly.

Article 12

Provisional Relief

1. The Arbitrator may upon application by a party make an order for provisional relief with respect to any of the issues under reference.
2. An order for provisional relief under this Rule shall be based on proof by evidence.
3. The Arbitrator may order any property or sum of money that is the subject of an order for provisional relief to be delivered to a stakeholder on such terms as is considered appropriate.
4. An order for provisional relief is subject to the final adjudication of the Arbitrator that makes it, or of any arbitrator who subsequently has jurisdiction over the dispute to which it relates.

Article 13

Awards and Remedies

1. The Arbitrator shall have the power to make awards on different issues arising from the dispute including but not limited to the following:
 - (a) Recovery of possession
 - (b) Realisation of the security
 - (c) Disposal of security
2. Where the Arbitrator, directs or the parties agree to, a hearing dealing with part of a dispute; whether or not there is any agreement between the parties as to such matters, the Arbitrator may do any of the following:
 - (a) decide the issues or questions to be determined;
 - (b) decide whether or not to give an award on part of the claims submitted; or
 - (c) make an order for provisional relief.
3. At the conclusion of a hearing, where the Arbitrator is to deliver an award he or she shall inform the parties of the date of its delivery. The Arbitrator shall take all possible steps to deliver the award by that date and inform the parties of any reason that prevents him or her from doing so.

4. The award shall not deal with the allocation of costs and/or interest unless the parties have been given an opportunity to address the Arbitrator on these issues.
5. An award shall be in writing, dated and signed by the Arbitrator and shall contain sufficient reasons to show why the Arbitrator has reached the decisions contained in it, unless the parties otherwise agree or it is a consent award.
6. The Arbitrator shall have the power to correct an award and/or make additional award.

Article 14

Costs

1. Subject to any agreement between the parties, the cost of arbitration shall be pegged at 2% of the value of the purchase price, to be shared in equal part by the parties.
2. Subject to any agreement between the parties, the Arbitrator shall have the discretion to award the proportion of the costs of the arbitration that each party shall bear.
3. In allocating costs, the Arbitrator shall have regard to all material circumstances, including such of the following as may be relevant:-
 - (a) which of the claims has led to the incurring of substantial costs and whether or not it was successful;
 - (b) whether any claim that has succeeded was unreasonably exaggerated;
 - (c) the conduct of the party who succeeded in any claim, and any concession made by the other party;
 - (d) the degree of success of each party.
4. Where an award deals with both a claim and a counterclaim, the Arbitrator shall deal with the recovery of costs in relation to each of them separately, unless it considers them to be so interconnected that they should be dealt with together.
5. The Arbitrator may impose a limit on the recoverable costs of the arbitration or any part of the proceedings. In determining such limit, the Arbitrator shall have regard primarily to the amounts in dispute.
6. Where an Arbitrator is to determine recoverable costs, the costs may be determined on such basis as seems reasonable and just.

7. Where proceedings include claims that are not claims for money, the Arbitrator shall take these into account as is thought appropriate when fixing a limit under sub-rule (5) of this Rule.
8. A direction under sub-rule (5) may be varied at any time.
9. The Arbitrator may require the parties to submit at any time, statements of costs incurred and foreseen.
10. In allocating costs, the Arbitrator shall have regard to any offer of settlement or compromise from either party, in whatever description or form.
11. The general principle which the Arbitrator shall follow is that a party who recovers less overall than was offered to them in settlement or compromise, should recover the costs which that party would otherwise have been entitled to recover only up to the date on which it was reasonable for them to have accepted the offer, and the offeror should recover his or her costs thereafter.

Article 15

Miscellaneous

1. A party may be represented in the proceedings by any one or more persons of their choice and may be represented by different persons at different times.
2. The Arbitrator shall establish and record contact details, including telephone numbers, e-mail addresses, facsimile or telex numbers, by which communication in writing may be effected for the purpose of the arbitration.
3. The parties shall inform the Arbitrator promptly of any settlement.
4. The text of these Rules in the official language of the Lagos Court of Arbitration and any other language that it is translated into shall be equally authentic.
5. These Rules may be cited as the Lagos Court of Arbitration Lagos HOMS Housing Arbitration Rules, 2011.