

Impact on leased properties and property being purchased

With many people in KwaZulu-Natal having suffered extensive damage to their properties as a result of the severe flooding, TPN Credit Bureau offers guidance to property practitioners, tenants, and landlords in the area.



Source: www.pixabay.com

It is imperative to first distinguish whether the property has been damaged to a point that it is no longer safe to reside in, or if the property is damaged but is still deemed to be safe to reside in, TPN says.

Leased property no longer safe to reside in

If the property leased is no longer structurally sound, it is important to follow all evacuation procedures to guarantee the safety of all parties. In respect of the premises, it is imperative to consider the liability clause in your lease agreement. The TPN Lease Agreement states:

“Should either Party suffer any loss as a result of a natural disaster, or any other incident beyond the control of the other Party, it is hereby agreed that such Party will, in no way be entitled to a claim for damages as a result of such incident from the other Party. In the event that a natural disaster, or any other incident beyond the control of either Party renders performance by either Party impossible, this Lease Agreement shall terminate immediately and neither Party shall have any claim for damages against the other Party.”

Therefore, due to the floods being beyond the control of either party, neither the landlord nor tenant should be entitled to claim for damages as a result of the floods. The lease shall terminate immediately, and any deposit held in trust by the landlord or property practitioner should be released back to the tenant as per the lease agreement, considering the circumstances.



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Leased property is damaged but is still safe to reside in

In instances where the leased property is damaged by natural disaster such as a flood or violent storm, the liability in respect of the repairs to the immovable property, such as structure and permanent fittings, lies with the owner of the premises.

In terms of sectional title schemes, section 37 of the Sectional Title Act explains that the body corporate is responsible to repair damage to the common property. An example in this respect would be any damage to the roof or foundations of a complex as a result of the floods or rain.



Over 500 MTN sites down in KZN due to floods

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Property in the process of being bought

In the case of property being purchased, liability is dependent on when the property was transferred. Most offer to purchase agreements contain a clause which determines when risk transfers to the buyer. In the TPN OTP, the clause on possession and risk explains:

“Legal Possession of the Property shall be given to the Purchaser on the Registration Date, from which date all benefits and risks in respect of the Property, including the liability of all rates, taxes and levies on the Property, shall pass to the Purchaser, subject to anything to the contrary that may be contained in clause 9.2.” (Clause 9.2 refers to Vacant Occupation).

Therefore, only until the property has transferred to the buyer will the buyer be liable for any damage to the property. Until then, the seller will remain liable for any damages that may have resulted due to the flooding.