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RISK AND TRANSFER

South Africa, and indeed the entire world, have experienced many events in the recent past that have had a large impact on the insurance industry ranging from business interruptions due to pandemics and riots, to flooding, fires and other natural disasters. It is for this reason that one should understand how and when insurance should be in place when an immovable property is sold and when it is subsequently transferred.

Contracts for the sale of immovable property should deal with risk and the date upon which risk passes to the Purchaser. Until this date, the Seller is liable for any risks in and damage to the Property and from such date the Purchaser is liable. Home Owner's Insurance can, and should be, taken out to insure against these risks and the cost of damage. Should the damage claim fall within the terms of such insurance policy, the party so insured can claim from their insurance for the cost to repair such damage. For instance, if a rainstorm damages a roof before the date on which the risk passes to the Purchaser, the Seller can claim from its insurance to have the roof repaired and usually the cost of any consequential damage to the immovable property as a result of the roof leaking. Such insurance will however not cover damage to any movable property.

From a practical point of view a contract for sale of immovable property should provide that risk passes on date of registration of transfer as the Banks require insurance to be noted and cancelled on date of registration of the Mortgage Bond which is registered over the immovable property as security for the repayment of the loan granted for the purchase of the property. The Mortgage Bond is registered simultaneously with the registration of transfer of the property and the Banks therefore require that insurance takes effect on that date. Equally so, the Seller's insurance is cancelled by the Bank whose Mortgage Bond is cancelled when the Property is transferred and its loan is settled from the sales proceeds, which Bond Cancellation is also effected simultaneously with the registration of transfer of the property. The insurance therefore follows the registration of the new Bond and the cancellation of the existing Bond. It must be remembered that Mortgage Loan Agreements with Banks require bonded properties to always remain insured during the term of the loan, as the Bank needs to make sure its security for the repayment of the Mortgage Loan, namely the property, stays intact. It is for this reason that Mortgage Loan Agreements entitle the Bank to take up its own insurance should the registered owner fail to do so at inception or cancel their insurance during the term of the Loan. The Bank's interests will be noted on the insurance policy to ensure that it is notified when the insurance is cancelled failing which it will have a claim against the insurance company or the registered owner.

If no bond is registered, it is very important that the purchaser arranges insurance to be registered over the Property from the date of transfer of the Property into the name of the Purchaser.

Should the Deed of Sale stipulate a date other than date of registration of transfer for the passing of risk, for instance the date of occupation prior to transfer, the Bank will require its insurance to remain in place until cancellation of the bond and should damage occur during this period, the relevant insurance company will still have to pay the claim to the Seller but could have a claim against the Purchaser due to the fact that risk contractually passed onto him/her before date of registration of transfer. The Purchaser might be blissfully unaware that he/she had to take out insurance on occupation, and as such it is advisable to always point this out to the Purchaser.

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.

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