Home owners should take out additional insurance against natural disasters

Insurance policies on property usually include clauses which reduce the compensation for which they are responsible, if and when a force majeure takes place in the insured property's area. This is understandable because weather catastrophes like the recent Hurricane Sandy on the East Coast of the USA have the potential to bankrupt an insurance group, says Tony Clarke, managing director of the Rawson Property Group.

Flood insurance can be especially tricky if the home is sited in a known 50 or 100 year flood plain - as, for example, many of those washed away in the Laingsburg floods of 1981 were. Today most municipal regulations are stringent about allowing building in flood plains, but, he says, the fact remains that many hundreds of South African homes are in such areas.

Duty of the seller

When this is the case it is the seller's duty to draw the attention of the buyer to this, and almost all insurance policies specifically exclude major flood damage. A special, extra policy will have to be applied for - and this can be expensive. "When the river leading into the Knysna Lagoon flooded, certain of the ground floors of homes were badly wrecked, while others, having allowed for possibility of a flood, were able simply to do clean-up and to move back into their homes within a day or two of the flooding. Such homes would not need the extra insurance," Clarke says.

The relevant legislation here is based on the concept of 'supervening impossibility', which refers to disasters of a type or size that the promisor had no reason to anticipate. If such risks were included in the contracts, their whole basis would become insecure and they are usually deliberately excluded.

"In general, major Acts of God become the responsibility of the state, with the insurance company possibly helping out in a small way. The big question always asked is who is responsible for the repair of a property damaged, i.e. by an incident that could not have been anticipated or allowed for - when this occurs after a sale but before transfer and occupation have taken place," Clarke continues.

Rights of the buyer

If and when a disaster hits an area and the buyer has already signed a legal sales document, South African law indicates that the buyer is not expected to move forward with the sale and to take transfer the property until it has been fully reinstated by the seller to the condition it was in when the sale document was signed. If the seller cannot do this within a satisfactory time period, the courts are obliged to allow the buyer to cancel the sale, provided that up to that point he too has met his obligations.

If the seller has a bond on the property, the banks will probably have insisted that he takes out comprehensive insurance - including structural insurance - on the building. This, it might be thought, would kick in when a flood or similar disaster occurs, but that can by no means be assumed. It is essential that home owners check their policies and take out additional insurance against these disasters.