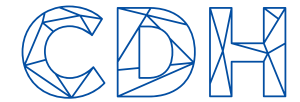


# Real Estate Law



ALERT | 10 December 2024

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KENYA

Flood risk in  
Kenyan real estate



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## Flood risk in Kenyan real estate

As the murky floodwaters swallowed her compound, a lone woman perched on the roof of her bungalow in Athi River, clutching her belongings and waiting to be rescued. This haunting image, splashed across the pages of a local daily newspaper, is a stark reminder of the rising flood risks in Kenyan real estate.

Given that it has been raining again, now is the ideal time to reflect on how flood risks affect real estate investments and due diligence in Kenya, more so with climate change driving increasingly erratic and intense rainfall patterns.

Flood risk in real estate specifically refers to the potential for flooding to affect a property, including its physical condition, usability, insurability and value. Due diligence in real estate is the careful investigation and assessment of all factors that could affect the value, usability and risks associated with a property before making a purchase or investment decision. In Kenya, real estate investors often limit their due diligence to registry searches, ensuring the title is clean and the ownership legitimate. The more diligent ones might go a step further, commissioning structural integrity assessments, carrying

out comprehensive searches, requisitioning environmental audits, or even undertaking soil assessments to evaluate the soil's properties and sustainability for construction. However, almost no one considers flood risk, despite its growing relevance.

### Associated dangers

Ignoring flood risk can expose property buyers to significant dangers, including structural damage, devaluation of property and risk reflective pricing, costly repairs, and health hazards from mould and contaminated water. Environmental, social, and governance (ESG) factors are also increasingly shaping investment decisions, and flooding poses a significant challenge to the environmental pillar. In addition, being flooded can be an extremely traumatic experience.

Due diligence is the cornerstone of every successful real estate deal, and flood risk assessment is designed to uncover potential risks and implement resistance and resilience measures. It can also help to enhance ESG strategies, such as deploying critical infrastructure for flood risk, as we keep pace with ESG.

However, it is difficult to fault property buyers and investors for overlooking flood risk in their due diligence, as Kenya lacks a comprehensive flood risk map or accessible database to guide decision making, unlike in developed countries where such tools are readily available. This leaves investors to rely on their own limited knowledge or anecdotal evidence. In fact, many real estate practitioners in Kenya have never engaged with or sought the expertise



## Flood risk in Kenyan real estate

CONTINUED



of a flood risk specialist, as the practice remains largely uncharted in the local property market. There is no single source of information real estate buyers can turn to when they must make a decision regarding a specific property which is likely to be in a flood zone. For context regarding flood zones, there are various types of flooding, including rivers and coastal, ground water, sewer flooding, reservoirs, flush floods and surface water. The latter affects people the most.

The profile of risk in Kenya's real estate sector has really changed and this inevitably calls for a proactive approach, looking beyond conventional risks like title defects to emerging risks like flooding and climate change impact. Given the increasing frequency and severity of flooding, real estate legal professionals can play a crucial role in addressing this risk by advocating for and driving change in how flood risks are assessed and managed in property transactions. Other than educating clients about the importance of considering flood risk in due diligence and drafting contracts that explicitly address flood risk, they can also engage with policymakers to push for a formal regulatory framework around flood risk management, including the creation of flood risk maps and a risk management plan for the country. Real estate legal experts can also take the initiative to collaborate with flood risk consultants, surveyors and environmental specialists to facilitate an integrated due diligence process.

Overall, property investors must embrace the rising tide of due diligence in real estate, and critically assess whether their investment can tolerate a flood risk. In an industry where location is king, every stakeholder must ask the most crucial question: what lies beneath?

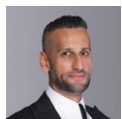
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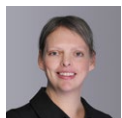


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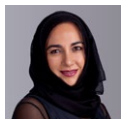
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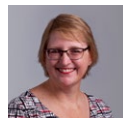
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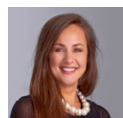
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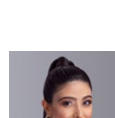
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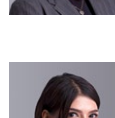
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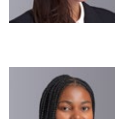
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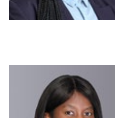
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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