



Fittings and Fixtures

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What happened to the refrigerator and stove? I thought they came with the house!

These are words that neither Lawyers nor Real Estate Agents want to hear. Fortunately, they can be avoided if appropriate precautions are taken when negotiating and drafting the listing and sales agreement and both parties have a clear understanding of what constitutes a fixture and what constitutes a fitting.

Simply put, fixtures are items that are attached to and form part of the land. They consist of items such as a garden seat, a green house, window blinds, window seats and built in cabinets. These items are attached to the house or the land and are included as part of the property when it is sold unless the seller expressly reserves the right to remove them. A seller who wants to remove fixtures from the land before completion of the sale should include the appropriate conditions in the sale agreement.

Unless the seller has reserved the right to remove specific fixtures, the buyer can expect to take over ownership of them on completion. This is because they form part of the property, which has been purchased, and their value is included in the purchase price.

Fittings, or chattels as they are commonly known, do not form part of the land they include such items as area rugs, curtains, appliances, and wall hangings. They are treated opposite to fixtures because they are not attached to the land and are not included as part of the property. If the buyer and seller have agreed that particular chattels are to remain on the property following completion, the sales agreement must specifically provide for that.

When there are chattels being included in the sale of the property, there are more things to be considered when negotiating the price and drafting the sales agreement. The provisions that need to be included in the sales agreement are slightly more complex than the condition that will apply when the seller intends to keep certain fixtures.

The above issues clearly emphasize the need for certainty in the sales agreement. A properly negotiated and drafted sales agreement will benefit both the buyer and the seller by reducing surprises and potential disputes over the unexpected removal of fixtures and fittings. These disputes frequently cost more to resolve than the value of the disputed items and virtually always result in late completion. Everyone will benefit from taking the extra time and energy necessary to ensure that the buyer and seller are clear about what fixtures and fittings are to be included in the sale and which ones are not.

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