



TRAINING TIP OF THE WEEK

IS IT A FIXTURE???

Here's the scenario. Buyer and Seller are under contract. The transaction closes. When the buyer gets the keys and begins moving into her new home she discovers that the hot tub on the back deck has been unbolted and removed. She is upset and wants the seller to return the hot tub. The Real Estate Purchase Contract is silent on whether the hot tub is included or excluded. The buyer's agent calls the listing agent and argues that the hot tub was a "fixture" and that the seller should not have taken it.

Should the seller have taken the hot tub? Was the hot tub a fixture? How can this be avoided?

From a legal standpoint, if something is considered a fixture, then it becomes part of the real estate and should not be removed. But how does one determine if something is a fixture? This is where it gets difficult. Lawyers can argue about this sort of thing, but it really comes down to 2 things:



1. IS THE ITEM ATTACHED?
2. WAS IT INTENDED TO BE PERMANENT?

If the item attached to the property looks like it was intended for it to be permanent, then it likely is a fixture. The method in which the item is attached to the property is also one factor to consider. If when the item is removed, damage to the home would result, then it might be considered a fixture.

TRY TO AVOID THE FIXTURE DISCUSSION ALTOGETHER. Instead, live by this simple rule - "if in doubt, write it out."

In other words, if there is a question as to whether something is or is not a fixture, either include it in section 1.2 of the REPC or exclude it in section 1.3. Doing it this way avoids any debate as to whether something is a fixture or not and better protects your clients.

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