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UNDERSTANDING FIXTURES AND FITTINGS

The assumption is that any item attached or fixed to the property constitutes a fixture or fitting and that all loose items are moveables and therefore not included in the sale of the property unless otherwise agreed.

Generally this is true but there is a distinction in law that defines fixtures and it is essential to be aware of this as there are some exceptions.

The threefold-test was set out as follows in *MacDonald Ltd v Radin NO and Potchestroom Dairies & Industries Co. Ltd 1915 AD 466-467*:

- The nature of the particular article;
- The degree and manner of its annexation; and
- The intention of the person annexing it.

The object must, by nature, be capable of becoming part of the property itself and have the character of belonging essentially to immovable property. There must be an effective attachment, either by sheer weight or physical connection, and there must be an intention that it be a permanent feature of the property. The key question here to ask is whether it is intended to be permanently annexed to the specific property or not. This is the fundamental principle to apply in each case to determine if something is a fixture or fitting or not. Fixtures and fittings are a category of fixed assets.

By definition, a fixture is something that is affixed to the walls, floor or ceiling of a property. It is movable "personal" property that by means of bolts, nails, screws, cement, glue or other method of attachment has been converted to "real" or immovable property. The difference is clear if one considers curtains hanging by hooks from rails or rods that are screwed into the wall. The actual curtains can be easily removed and as such are usually considered "personal" property. However the rails and rod should be left in place given their permanent nature. A fitting is something that is a free standing item or something that is temporarily secured to the walls or ceiling by a screw, hook or nail or other means of affixing it.

Since the inception of the Consumer Protection Act (CPA) it has become more important for home sellers and estate agents to be specific, clear and honest about what they are selling. That does not only apply to the condition of property, but to all the fixtures and fittings as well. The CPA provides that there should be no ambiguity or deception when goods or services are advertised for sale or promoted in any way. Therefore, the seller should always be aware that his action may be creating an expectation as to whether an item is included in the sale.

The issue of fixtures and fittings can be very contentious, primarily because there is no law that specifies what should be left in the house and what should be removed. Different buyers and sellers have different expectations and it is wise to clarify what will be included with the property in the early stages of the sale proceedings. Usually conflict is avoided by the formulation of an inventory which is attached to the Agreement of Sale stating what is included with the purchase price of the house and what will be removed when the seller vacates the property. If an inventory is not made, it is generally assumed that the fixtures will be left and the fittings will be removed.

Thereafter if a fixture is removed without the buyers consent the seller could face a claim and be liable for the cost of replacing the contentious fixture.

The contract between the seller and purchaser must cover all aspects of the transaction and must include reference to fixtures and fittings to ensure that nothing is left open to interpretation of by either party. The parties should not rely on verbal communications in order to avoid any dispute that may arise.

Some estate agents advise the sellers to remove any fixture that will not be included in the sale before putting the property on show.

Examples of moveable items that become permanent fixtures are:

- bar stools
- curtail rails
- swimming pool nets
- fitted carpets

Examples of moveable items that are required to make an immovable item function properly and therefore are included in the sale are:

- keys
- water features
- light fittings

An example of an immovable item that is not permanent and therefore not customarily part of the sale is an M-Net Aerial: It is affixed to a normal TV aerial and so becomes a fixture or fitting. However it can be comfortably removed without the structure of the property or the TV aerial itself being damaged. It is not intended to be a permanent feature as the owner would usually remove it with his Decoder when he moves. In this case the movable item (decoder) cannot function without the accessory (the aerial).

The reverse of this would be keys, where the moveable object (the keys) must remain in order for the immovable object (a door) to function.

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Updated May 2017