

Better to Listen than to Lose

Generally speaking, and in the absence of a contractual agreement to the contrary, fixtures remain with the house. Personal items can be removed by the seller. As one can see, it certainly makes a difference if an item is characterized “personal property” or “fixtures.” For example, can a seller take a removable wet bar from the basement, even though the plumbing is hooked up? Does a window air conditioning unit convey with the property? There are no easy answers to any of these questions. The courts have applied a number of tests, including:

- ✿ The manner in which the item is attached to the real estate. If it can be removed without substantial injury to the building, it is generally held to be personal property.
- ✿ The character of the item and its adaptation to the real estate. If, for example, an article was fitted or constructed specially for a particular location or use in a house, one can argue that the article becomes a permanent part of the building, and thus a fixture.
- ✿ Custom and practice in the area. It is customary that refrigerators do not necessarily convey with the property in this area.
- ✿ Gas stoves, for example, are intended to remain in a house permanently, and thus are fixtures. When in doubt, spell it out in the contract. If the seller or the real estate agent verbally informs you that a particular item will convey, make sure this is spelled out in the real estate contract. If you want the refrigerator to convey with the property, put it in the contract to avoid any confrontation in the future.