

FIXTURES

O.C.G.A. § 44-1-6

What is Realty?

- The term REALTY generally refers to the land and its attachments.
- O.C.G.A 44-1-2 defines real property as:
 1. All lands and the buildings thereon;
 2. All things permanently attached to the land or to the buildings thereon;
 3. Any interest existing in, issuing out of, or dependent upon land or the buildings thereon
- As we move on to discuss definitions of personal property, please note the key difference between real and personal property, at least in the context of a purchase and sale agreement:
 - Real property will be included in the transaction, unless otherwise specified;
 - Personal property will NOT be included, unless otherwise specified.

What is Personal Property?

- Personal Property is “all property which is movable in nature, has inherent value ... and is **not otherwise defined as realty.**” *O.C.G.A. 44-1-3(a)*
- Essentially, anything that is moveable and not intended to be permanently affixed.
- There is a lot of overlap and grey area when it comes to defining Real vs. Personal Property
 - For example, garbage disposals or door knobs are personal property when purchased at Home Depot, but become real property upon installation.
 - What about a tree: Personal Property or Real Property?
 - Real property when growing on the land, but personal property once cut down.

Fixtures vs Improvements

- An Improvement is part of the Real Estate
 - For example, if you want to build a deck, you start with boards of wood and boxes of nails, etc.
 - These items are personal property when purchased, much like the garbage disposal, but become part of the real property once they are incorporated into the deck project.
- A Fixture is a particular type of Improvement, which by attachment and intent, becomes part of the Real Property.
 - However, Fixtures are different from Improvements in that they do not lose their individual character by attachment to the real estate.
 - e.g.-a brick wall is an improvement, because the bricks lose their individual character upon incorporation into the brick wall, but a chandelier is a fixture, because it is still a distinct light fixture, though attached to the ceiling.

Fixture/Improvement or Personal Property

4 Tests

1. Ease of Removal: “Wherever [an item in question] can be removed without essential injury to the freehold (i.e. the realty) or the [item] itself, it is chattel (personal property); otherwise it is a fixture. (NOTE: some items become part of the realty without actual attachment, such as paving stones)
2. Loss of Identity: as previously stated, once an item loses its individual character, it is considered part of the realty.
3. Usefulness and Adaptability as Real Estate: Courts will look at ambiguous articles in the context of their usefulness as part of the real estate, and under this test, items such as stage props have been held to be fixtures, and thus part of the real estate.
4. The Intentions of the Parties: Courts will honor the intent of the parties, unless the rights of another are involved

Eliminate the Grey Area

- “Anything detached from the realty becomes personal property instantly upon being detached.” O.C.G.A. 44-1-6(c)
 - If you are listing a house, ask your clients if there is anything that they don't want included in the sale of the home
 - If you are working with buyers, ask them if there is anything in the house they want to be included with the sale of the home.
 - The question of, “Is it a fixture, or is it personal property?” is one that needs to be asked, but, if the sellers are willing to sell or leave behind an item, and the buyer is willing to pay, there is no reason that the issue cannot be resolved before the end of due diligence, or even before the contract is binding

