

## **Real vs. Personal Property**

The last thing you need on moving day is a battle over that wonderful antique mirror in the master bathroom! Yet most buyers take very little time to look at the "extras" in a home before they make an offer. As a result, they may discover that the beautiful fixtures or high-tech stove they thought came with the house have been loaded on the moving van heading to a new home.

Both buyers and sellers should make a detailed list of items to be included in the sale of the property and reach an agreement on disputed items before closing. The most difficult part of a sale, however, can be reaching an agreement on the definition of property. Everyone has a slightly different concept of what should or should not be included. Many items can fall into dispute particularly if they were specially ordered, custom-made, expensive or have some personal significance.

To avoid confusion, general rules of real vs. personal property have been established. Real property refers to all the items which are part of the property and cannot be removed without causing damage, anything which is immovable by law, or anything which is incidental or appurtenant to the land. Personal property is simply anything which belongs to, and leaves with, the homeowner such as tables or sofas.

Legally, the intention inherent in the manner in which an article, fixture, or piece of equipment is attached to the property is used to determine if the item is real or personal property. (You may be familiar with rule of thumb that anything screwed in can be removed but items which are nailed in place cannot.) Since the intention of the owner at the time of installation is almost impossible to determine, it is important that everything is in writing. The easiest way to avoid misunderstandings is for the seller to make a list of their personal property.

Once you have completed the checklist and decided which items will stay and which will go these should be noted in sale documents. Give a list of all personal property items which will remain in the home such as chandeliers, built-in bookshelf, or appliances to the closing agent. The Bill of Sale will then be signed at close of escrow by the seller to avoid confusion.

It's also a good idea for the buyer to make his or her own checklist. House hunters can save time by taking inventory of fixtures and all property which might fall into dispute on second viewing of a home or even at open houses.

Remember that both buyers and sellers can negotiate on property transfer. A seller may be happy to leave an ornate light fixture if the style is unsuitable for their new home. Buyers who have their heart set on item are free to try to work in into the asking price or condition of sale. Now who wants the Elvis lawn ornaments?