

## **FIXTURES AND FITTINGS OR MOVABLES**

A dispute often arises between the Seller and the Purchaser of immovable property (e.g. a house) regarding the articles the Seller wants to remove from the property when vacating the property.

Most Deeds of Sale specify that the erf is sold together with all fixtures and fittings of a permanent nature. Fixtures and fittings of a permanent nature are articles which acceded to the immovable property. Those articles form part of the property purchased and may not be removed by the Seller. An easy example of a fixture is the house that may not be removed by the Seller from the erf.

In determining whether an article has become a fixture, three factors are relevant:

1. the nature of the thing;
2. the manner of its annexation to the immovable property and;
3. the intention of the owner of the annexed thing at the time of the annexation.

Whether an article has become a fixture is not always easy to determine. In the case of *Unimark Distributors (Pty) Ltd vs Erf 94 Silvertondale (Pty) Ltd 1992 (2 SA 986 TPD)* it was said that every case has to be decided on its own facts and that common sense and reasonableness have to play a prominent role. Because annexation involves conscious human conduct, the starting point and most important factor has to be the intention of the owner of the annexed property which intention has to be determined within the context of all relevant facts. An element of reasonableness or common sense and the prevailing standards of society have to be involved. How other people are likely to interpret the situation on the basis of factual evidence is a factor to be taken into account. In this context the impression created with others including a prospective buyer is also relevant.

Articles that often form the subject of a dispute include partitionings, alarm systems, electrical systems, airconditioners, fire extinguishers, cupboards, television dishes, stoves, etc.

In order to prevent a dispute and possible lengthy and costly litigation estate agents and prospective purchasers are urged to ensure that articles that might fall into a grey area of uncertainty be specified in the Deed of Sale as to whether they are movable or immovable.