



## REAL ESTATE LAW

# Fixtures and Chattels – should it stay or should it go?



Jacques Robert  
**REAL ESTATE  
LAW**

The terms fixture and chattel are old terms that continue to be used today in property law. Everyone buying or selling resale residential properties should become familiar with their meaning. In general, fixtures stay with the home and chattels go with the former owners on the sale of the property. But as the definition of fixtures and chattels leaves room for ambiguity that could go either way, often homeowners will find themselves walking around their home staring at their possessions with the tune of The Clash's "Should I Stay or Should I Go" playing in their head.

A fixture is an item that is securely fixed to a certain place and is bound to the property, so cannot be easily moved. For example, interior doors, medicine cabinets, and light fixtures attached to the ceiling or walls are fixtures. A fixture is presumed to go with the property unless it is specifically excluded in the Agreement of Purchase and Sale. Therefore, if a seller wants to keep an item such as a dining room chandelier, the seller must ensure that it is specifically agreed in the Agreement Purchase and Sale that the chandelier is going with the seller and is not a part of the purchase.

A chattel, on the other hand, is an easily moveable object that is not affixed to the property: chairs, couches, coffee tables, and appliances are considered chattels. Even though they are generally heavy, they are not considered to be affixed to the property. If the purchaser wants any of these items included in the purchase, it must be specifically listed in the Agreement of Purchase and Sale as included.

But there are a whole range of items that could be considered either fixtures or chattels, such as wall-mounted televi-

sions, closet organizers, gazebos, and sheds. This grey area may lead a seller to look at an item and question "should it stay or should it go?" Purchasers may also be confused or upset on closing if an item they considered a fixture and expected to be at the property when they moved in, was treated as a chattel by the seller and taken from the property.

When the courts need to determine if an item is a fixture or a chattel, they look at a broad range of criteria to form their decision. The court's decisions have, over time, very much depended on the analysis and not on a hard written set of rules. The case *RBC v. Maple Ridge Farms Ltd.*, while a case from British Columbia, provides a good set of criteria for sellers and buyers to keep in mind when negotiating the purchase and sale of a home.

1. Any item which is unattached to the property, except by its own weight, and can be removed without damage or alterations to the fixtures or land that will need repair, is a chattel.

2. Any item which is plugged in and can be removed without any damage or alteration is a chattel.

3. Any item which is attached even minimally (ie. it cannot be unplugged) is a fixture.

4. If a piece of equipment is attached to a structure, a part of which is removed but which would be useless without the attached part, then the entire piece of equipment is a fixture. In other words, the item will be a fixture if it loses its essential character because it is of no use unless attached to a permanent and substantial improve-

ment to the premises of which is formed a part. For example, consider the central vacuum. The vacuum drum is useless without being attached to the permanent hoses within the walls of the home.

5. Where an item is determined to be a fixture, it may nevertheless be removed if it can be shown that it is a tenant's fixture provided the tenant leaves the premises in exactly the same condition that he or she received them.

6. Finally, if it is still not clear if the item is a fixture or a chattel after applying rules 1-5 and the item is very large or expensive, the purpose test can be applied in exceptional circumstances. The Court will ask, "What was the clear purpose of the object?" For example, a mobile home is not attached to the land but it is established that it is to remain on the land.

Since these rules are a guideline and are open to debate and interpretation, it is best for purchasers and sellers to be very specific about what items are being left with the property and which ones are being taken with the seller in the Agreement of Purchase and Sale. This will help prevent confusion and disappointment on the day of closing and potentially expensive legal costs if the purchasers sue for the loss of an item they thought was included with the purchase.

If you are unsure whether an item is a fixture or a chattel or whether it should be specifically listed in the Agreement of Purchase and Sale, consult with the professionals assisting you in the transaction - your real estate agent and lawyer.

co-authored with Robin Goski, associate lawyer

**Jacques Robert is an Ottawa real estate lawyer.**  
For more information, visit [www.jacquesrobert.com](http://www.jacquesrobert.com)

