
REAL vs. PERSONAL PROPERTY

Generally, real property consists of the rights to use, possess, encumber, and dispose of land and appurtenances thereto. Personal property is all property other than real property. The classification of property as real or personal is important for purposes of conveyancing, taxation (income, property, and conveyance taxes), perfecting and enforcing security interests, judgment liens, community property law, inheritance, condemnation, landlord-tenant law, statute of frauds, and many other areas of the law.

Most disputes over whether an item is real or personal property involve fixtures.

"The law relating to fixtures has slowly and gradually changed as times have changed. Various household appliances, not formerly held to be fixtures, have become so in this 'built-in' era. But the major changes are probably the result of an awareness of the fact that the luxuries of a given generation become the necessities of the next." *Strain v. Green*, 25 Wn.2d 692, 697 (1946).

Whether an item is a fixture or personal property depends upon (1) actual annexation to the realty, or something appurtenant thereto; (2) application to the use or purposes to which that part of the realty with which it is connected is appropriated; and (3) the intention of the party making the annexation to make a permanent accession to the freehold. *Western Ag Land Partners v. Department of Revenue*, 43 Wn. App. 167, 171 (1986).

Annexation is considered in light of the actual relationship of the object to the realty. The article need not be physically affixed to the realty to be a fixture; it may be constructively annexed because it is specially fabricated for installation, because it is a necessary functioning part of or accessory to an object which is a fixture, or because it is in use as an essential part of the overall use of the property (e.g. keys, garage door opener transmitters, spare parts to a fixture).

Intention is the most important factor, and is determined from the circumstances surrounding the annexation, including the nature of the article affixed, the annexor's situation in relation to the freehold, the manner of annexation, and the purpose for which it was made. The test is objective rather than subjective intent. When a property owner attaches the article to the realty, there is a rebuttable presumption that the owner intended to enrich the freehold. But when a tenant makes the annexation, the presumption is the opposite.

The issue of whether an item is a fixture frequently arises in determining whether the seller is obligated to leave the item when the property is sold. In the absence of a provision to the contrary in the earnest money agreement, if an item is a fixture, then it is included in the sale; otherwise, it is not included. Therefore, if an item is even arguably personal property and is intended to be included in the sale, then the item should specifically be identified in the earnest money agreement as being included in the sale. Conversely, if an item is even arguably a fixture and the seller wants to remove the item, then the earnest money agreement should specifically exclude the item from the sale. It is not enough that the item is mentioned in the listing agreement, since the purchaser is not a party to the listing agreement.

This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.