

# Signed, sealed but not delivered

By [Alicia Heyneke](#)

5 Aug 2021

Excitement is running high as you have just signed an offer to purchase on your dream house. Perhaps it was the quirky water feature which caught your eye as you walked through the lush, well-kept garden or maybe the thought of spending long summer afternoons under the pergola. Whichever it was, you know you certainly made a good choice and now eagerly await the property to be registered in your name.



Alicia Heyneke, senior associate and attorney, notary and conveyancer at Adams and Adams

Move-in day arrives, but, sadly, delight soon plunges into despair as the water feature is nowhere to be seen. And what happened to the pretty pink peonies by the back door? Is it even legal for the seller to have removed these items from the property without your knowledge? The short answer is “no” because, as the purchaser, you are entitled to receive the property with all physical improvements of a permanent nature as well as all items which are permanently attached to the land or to the building.

There is a common law principle which applies in our law which provides that everything attached to the land effectively becomes part of the land itself. Sounds simple enough, but, when considering the countless movable items in and around a house, it is not always easy to determine which items are considered personal movable property belonging to the seller, and which movable items have been attached to the property to the extent that it can be regarded as forming part of the property itself and therefore included in the sale. To add to that, in their own minds, sellers and purchasers might hold different views. The purchaser might have been persuaded to purchase a specific property because of the built-in gas

braai in the backyard which he assumed to be included in the sale, yet, the seller never meant for it to be included and had every intention of taking it along to his next property.



When are electronic signatures binding on sale of property agreements?

Steven Fisher 25 Jun 2021



## Determining whether an item is 'permanently fixed'

There are three well-known criteria to aid in determining whether a movable item is regarded as permanently fixed and therefore part of the property.

Firstly, what is the purpose and nature of the article itself. Judging by its characteristics, is it capable of becoming part of the property? Take an extractor fan for example. It is a movable item intended to be attached above the stove, and it becomes part of the property once it has been bolted to the ceiling.

Secondly, how is it attached to the property and to what degree? A decorative painting, for example, is attached to the property in such a way that it can be easily removed and is not considered to be part of the property. A water fountain on the other hand, by sheer weight does become part of the property, not to mention that it might be physically cemented at its foundation. Another example is curtains which are intended to be easily removed, although the same cannot be said for the rails themselves which are usually attached to the walls with screws; they are considered permanent and should remain.

And lastly, notably most importantly, was it the intention that the particular item be permanently attached to the property?



### Include items in agreement of sale

Unfortunately, the issues around fixtures and fittings can become a contentious one, mainly because there is no law which specifies which items a seller may remove, and which items should stay. The best way to avoid such disputes is to ensure that the agreement of sale clearly specifies which items will stay and which items the seller intends removing when vacating the property. If the agreement does not list the items being excluded from the sale, then the purchaser may rightfully assume that all fixtures of a permanent nature automatically form part of the sale and the purchaser may have a claim against the seller for the wrongful removal of any item.

Unless otherwise agreed between a seller and a purchaser, the following items are usually considered fixtures of a permanent nature, and forms part of the property being sold:

- Security cameras and alarm systems;
- A chandelier and/or lights;
- Irrigation system;
- Water fountains;
- Plants, shrubs, and trees;
- Swimming pool nets, covers and cleaning equipment such as the pool brush and “creepy crawly”;
- Built in bars, bookcases, vanities etc.;
- Wooden blinds;
- Curtain rails/rods;
- Bathroom mirrors;
- Towel racks;
- Fitted carpets;
- Ceiling fans;
- Keys and garage door remotes.

When it comes to satellite dishes, an argument can be made for either side, i.e., that since the satellite dish is bolted to the outside wall, it is considered part of the property, yet, a seller might argue that he never intended for the dish to remain and since it is an accessory to the decoder, and can be easily removed without damaging the property, he should be allowed to take his satellite dish along with him. The latter, and items such as wendy houses or pergolas are but just a few examples of items which could land the parties in a quarrel. It goes without saying that a transparent and clear agreement of sale is fundamental to ensure a smooth, dispute free transaction.

### ABOUT THE AUTHOR

Alicia Heyneke, senior associate and attorney, notary and conveyancer at Adams and Adams