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Don't be rattled by fixtures vs. chattels

Cottage buyer thought docks were part of deal

An interesting e-mail received from a reader last week highlights one of the perils of buying cottage property. At the same time, it underlines the important difference between fixtures and chattels when it comes to buying and selling real estate.

Last fall, Henry retained a well-known local agent to find a lakefront cottage in Eastern Ontario. An ideal property was located and both vendor and purchaser signed the offer in October.

Henry viewed the property twice before signing the offer and again during a pre-closing home inspection.

Both the vendor and the agent were present during the detailed and extensive inspections. At each showing, the docks, which had been removed from the water, were being stored for the winter on the sea wall at the water's edge.

Neither the vendor nor the real estate agent ever said that the docks were not included in the sale of the property. The docks were not excluded on the offer to purchase, nor were they excluded on the original feature sheet Henry received from his agent. Henry assumed that they came with the cottage.

On closing day, with the vendor's approval, Henry took pictures of the property and docks on the seawall.

After closing, Henry was surprised to learn the vendors had removed the docks from the property. His lawyer complained to the vendor's solicitor, who replied that the docks were not included in the sale.

The vendor's position is that the docks were chattels, and Henry's position is that they were fixtures.

Law students are taught in first-year property courses that chattels are items of moveable or transferable property, unlike land and buildings that are fixed and immovable. If the items are neither land, nor permanently attached to land or a building, they are, by definition, chattels. (The word chattel dates back to feudal times when cattle were the most valuable item of property — except for land.)

Typically, if an item is attached to land only by its own weight, it is not usually considered part of the land unless the surrounding circumstances make it clear that they were intended to be part of the land.

By the same token, a fixture is a piece of equipment which has been attached to real estate in such a way as to become part of the premises, and its removal would do harm to the building or land.

Using these definitions, a mirror that is hanging on a hook is a chattel and can be removed by the seller.

The same mirror becomes a fixture if it is permanently attached or mounted to a wall in the house.

A furnace delivered to a house, for example, is a chattel or item of moveable personal property when it leaves the store. When it is installed in the owner's house, and permanently connected to the ductwork, floor, electrical and plumbing systems, it becomes a fixture that remains with the building when the owner moves out.

Over the years, courts have attempted in many cases to determine whether an object is a chattel or fixture. Judges will often examine the purpose of the attachment or annexation of the item to the property, and the actual degree or extent of the attachment.

Buyers and sellers of land — and their agents — should always direct their minds to the question of chattels and fixtures before the agreement of purchase and sale becomes firm.

In the cottage dock scenario, Henry is looking at a bill of more than \$2,000 to replace the docks he thought he was buying.

He says he would never have purchased the property at the price he paid if he believed the docks were not included.

He blames not only the vendor from whom he purchased the property, but also the real estate agent whom he relied on for his expertise and experience.

Henry says the agent had a responsibility to ensure he did not lose the docks in this matter.

The vendors, he says, should have made certain that the feature sheet for the property made clear that they were taking the docks.

Were Henry's docks fixtures or chattels? Ultimately, that question will have to be decided by a Small Claims Court.

Followup: On this fact situation, the Court later ruled that the docks were chattels and could be removed from the property.