

SLIDE 26 – Real vs. Personal Property

In this section you'll learn the core differences between real property and personal property. We'll discuss fixtures, what they are and how they factor into the definition of real property and also what constitutes trade fixtures.

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Remember we started this lesson by the Florida Statute definition of "Real Property." - F.S. 475.01

In simple terms it means the land, the appurtenances, rights and privileges aggregated together.

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Personal property

Anything not considered real property – the opposite of real property.

It's any right or interest an individual has in movable things, usually items having a limited life.

Personal property is sometimes referred to as chattel (personalty).

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Fixtures

Objects that were personal property but have been permanently attached to or made part of real property.

For example, you go to the store and buy a new air conditioner. Once you pay for it you now have personal property – an air conditioner. As long as it sits in your garage, uninstalled, it remains personal property.

The minute you install it and it becomes affixed to the property in such a way that it is integral to the property it is now a fixture.

There are legal tests to help determine if personal property now meets the definition of *fixture*.

- Intent of the parties
- Method or degree of attachment
- Agreement/Relationship of parties
- Adaptation of the item

We'll look at each test individually...

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Intent of the parties

It is the intention of the individual when the property was attached.

For example, a homeowner purchases shelving components with the intention of permanently attaching shelving to the structure. The shelving becomes a fixture.

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Method or degree of attachment

The method of attachment would dictate whether the item had become a fixture and part of the real estate.

For example, a window unit air conditioner that is not permanently attached it is not a fixture, unlike a central heat and air system that would definitely be a fixture.

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Agreement/Relationship of parties

Also, buyers and sellers may agree something that appears to be a fixture is really personal property of the seller.

For example, a refrigerator may appear to be built-in, but by being unplugged and easily pulled out, it is not permanently attached.

The buyer and seller can agree this is personal property – it is stated as such in the sales contract.

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Adaptability

This is about how the item fits with the property or if the item has become an integral part of the home.

For example, a laminate flooring that floats above a subfloor and clips together is now integrated into the structure and is a fixture.

A portable dishwasher that moves out of the way for storage when not in use would remain personal property.

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Personal property transferred

Listing and sale contracts should clearly specify which items are considered real property in the transaction and any personal property that is to be included.

It's always better if the buyer and seller can come to terms on personal property outside of the real estate sales contract. It could muddy the water for lending purposes and also expose the seller to having to pay sales tax on the item sold.

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Trade fixtures

A piece of equipment on or attached to the real estate which is used in a trade or business.

Trade fixtures may be removed from the property (even if attached) at the end of the business tenancy.

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Trade fixtures

The business tenant must compensate the owner for any damages due to removal of trade fixtures or repair such damage.

Should the tenant fail to remove the trade fixtures by the end of the lease term ownership of the trade fixtures transfer to the property owner.

Trade fixtures are only applicable to commercial tenants.