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## **PRINCIPLES FOR DETERMINING PROPERTY FIXTURES**

In the process of selling a property, disputes often arise between the parties as to what has to remain in the house. The fact that there is no legislation in this regard makes it difficult to determine whether something is a fixture.

Although there is no legislation on the topic, our Courts have developed a test to determine whether something is a fixture, first laid down in the case of McDonald Ltd v Radin NO and the Potchefstroom Dairies and Industries. In this case, the Court stipulated that there is no general rule to determine whether something is a fixture, and that every case will depend on its own circumstances. The points that should be considered are as follows:

- The nature and structure of the item
- The way in which it is fixed
- The intention of the person attaching it

The object must, by nature, be capable of becoming part of the property itself and have the character of belonging to immovable property. There must be an effective attachment, either by sheer weight or physical connection, and there must be an intention that it be a permanent feature of the property.

By definition, a fixture is something that is affixed to the walls, floor or ceiling of a property. It is movable 'personal' property that, by means of bolts, nails, screws, cement, glue, or other method of attachment has been converted to 'real' or immovable property.

To avoid disputes it is advisable to include a list of all items that the sellers will remove in the agreement of sale.