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<u>THE (POSSIBLE) CLASH: SHOULD I STAY OR SHOULD I GO</u>?

It often happens that fixtures and fittings become a contentious issue between a seller and purchaser when the immoveable property is transferred from one person to another. A deeper dive into this issue will allow us to uncover what problems may arise and more importantly – how to avoid these problems.

The agreement of sale will undoubtedly be the point of departure when ascertaining which fixtures and fittings attached in either a permanent or semi-permanent nature will form part of the sale of the immoveable property.

Our agreement of sale has a specific clause: Fixtures and fittings – which sets out the fixtures and fittings that can be included in the agreement of sale. It is a thorough but nonetheless standard clause.

So what happens when something is not listed in this clause becomes the object (literally) of contention between the parties to the agreement? What happens when the agreement mentions nothing about a Wendy house or a beautifully hand-crafted pergola situated on the property? Upon successful registration of the transfer, does it stay as the now lawful property of the new owner or does it go with the Seller?
As a general rule, any building erected on a land along with all items that are permanently attached to the building are regarded as permanent fixtures and fittings that are deemed to be included in an agreement of sale.

There are three aspects that must be taken into account to determine whether a fixture or fitting is of a permanent nature:

1. Is an item attached to a structure or a structure attached to the land and does it serve the structure or land;
2. Whether the removal of such item or structure will damage the structure or land thereon;
3. Was the intention of the owner to attach the item or structure permanently.

Structures such as Wendy houses and pergolas are mostly pre-fabricated wooden structures that are erected on a property and are universally understood as a temporary structure, however in terms of the National Building Regulations and Building Standards Act 103 of 1977, structures of that nature are defined as a building and requires building plans. Therefore, it can be regarded as a permanent fixture to a property that is included in an agreement of sale.

In conclusion, is best to not leave such issues open for interpretation. In our agreement of sale, we have included a specific clause, namely clause 5.2, where the Seller can state what fixtures and fittings are specifically excluded from the sale. Therefore, take the time to include and/or exclude all possible fixtures and fittings.