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WHAT'S INCLUDED IN THE SALE?

It is common in conveyancing transactions for purchasers to inspect a property and then purchase it on the basis of what they have seen at the inspection. For example, at the time the purchaser inspects the property, the property may contain light fittings, kitchen appliances such as a dishwasher, a TV antenna or a garden shed.

Without obtaining proper legal advice, a purchaser may assume that all those items are included in the sale. This is not necessarily the case.

In NSW the standard Contract for Sale of Land (2005 edition) provides for things which are "included" in the sale and things which are "excluded" from the sale. It is therefore important that the Purchaser ensures that, before exchange of contracts, all those items which they believe are included in the sale should be marked specifically on the contract as "inclusions". While the general law does provide that a "fixture" is automatically part of property sold and hence included in the sale, a prudent purchaser will not rely on the general law and an assumption that a particular item of property is a fixture.



For example, take the case of a garden shed. This may or may not be a fixture having regard to general law principles relating to the law of fixtures. If the garden shed simply rests by its own weight on the property, it is arguable that the law would not regard this garden shed as a fixture. In this case, the Vendor would not be under any obligation to leave the garden shed on the property for the Purchaser following settlement, if it has not been marked as an inclusion in the contract.



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