



## The Hot Water Heater Stays

Confusion often arises over what is real property. A basic definition is that real property is land. But the land encompasses so much more. Real property consists of physical components, including surface rights, subsurface rights and air rights and also includes water components including riparian rights, littoral rights and accretion and erosion.

The greatest distinction between real property and personal property is that real property is land and personal property is not. The definition of real property extends to improvements made to land such as a house, garage, barn or other out buildings. The definition also includes fixtures that were once personal property but whose characterization was changed because of some action.

When you purchase a hot water heater at the hardware store it is personal property, but once you affix it to real property it becomes an improvement to that real property, thus a part of the real property.

Personal property, also known as “chattel” or “personalty”, may be thought of as items having a limited lifespan, and which are moveable from one place to another. Personal property is also thought of as any property that is not real property. Personal property that is defined as fixtures that legally become real property, are things such as fences, air conditioners, stoves, refrigerators, built-in furniture or things like the hot water heater. Personal property re-characterized as real property legally becomes a part of its host real property.

To determine if personal property is properly characterized as real property a legal test is performed that asks:

1. What is the intent of the parties?
2. What is the method of attachment of the personal property at the subject real property?
3. What are the agreements of the parties?
4. Has the item of personal property been adapted to the subject real property?

When you write up a Real Estate Listing and Sales Contract clearly specify the items of the subject sale property that are considered real property, as well as a listing of any personal property that will be included in the transaction. You don't want the seller hauling off the water heater or other appliances that the buyer believed had become fixtures to the real property.