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Buyer in a fix over missing fixtures

Stated in her will, which was drawn up by a bank, the deceased gave our reader a 120-day option to purchase her property from her estate.

A named family member of the deceased was to stay in the house until the furniture and all movables were sold. On the day the family member left the house, it was brought to the reader's attention that three antique chandeliers had also been removed.

Our reader – who has since signed the deed of sale – notified the bank, but has had no response in this regard. As there are now no light fittings in the lounge, dining room and passage, she would like to know how to go about getting them replaced.

She also wants to know if she is entitled to an electrical certificate.

Warren Jack from the Warren Jack Property Group in Port Elizabeth says when someone purchases a property, the sale agreement normally stipulates that all fixtures and fittings of a permanent nature are included in the sale. This, according to him, will include standard fixtures and fittings such as fitted carpets, fixed light fittings, curtain rods and blinds.

“The fact of the matter is that a buyer and a seller may however have different views as to which items belong to this category,” he says. Jack says fixtures and fittings could, for example, also include pool equipment, a satellite dish, outdoor pot plants, mirrors and bar stools.

Therefore, he says, what constitutes fixtures and fittings, will depend on the circumstances and facts of each transaction. A movable item, like a remote control, could be seen as a “fixture” and “fitting” if it is integral to the functioning of a permanent structure like a garage door.

“It may happen that a seller wishes to exclude certain fixtures and fittings from the sale, but then it must be specified in the sale agreement,” says Jack. “If not, the purchaser may have grounds on which to insist that the seller must return the items.”

Grant Howard from Kaplan Blumberg attorneys in PE says if the seller has used an item as a selling point, he or she cannot remove it once the deal is concluded. “However, if the seller removes fixtures and fittings on agreement with the buyer, the parties must agree as to whether or not the seller will have to replace the item with a similar one.

“The reader says the deceased gave her an option in her will to purchase the house and assuming that the deceased had not specifically excluded the antique chandeliers from the transaction, the reader would be entitled to purchase the house as it appeared at the time when the option commenced,” says Howard.

“In this case, the reader has the right to insist that the chandeliers be returned. If the original items cannot be located, the executor must replace them with similar fittings at the expense of the deceased estate.”

Regarding the reader's query about the electrical compliance certificate, Howard says the Occupational Health and Safety Act and the Electrical Installation Regulations expressly provides that a Certificate of Compliance needs to be issued when a property on which an electrical installation exists, changes ownership.

"The reader would be entitled to insist that an inspection is done at the expense of the deceased estate and that a certificate be issued prior to the registration of transfer."

If the reader feels frustrated in her attempts to communicate with the executor (who in this case will be the representative of the bank), Howard says she may submit a complaint to the Master of the High Court as well as to the head of the estates department of the relevant bank.

Send your property related questions to coetzee@fullstopcom.com.

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