

DON'T LOSE A DEAL BECAUSE OF FIXTURES

WHAT YOU NEED TO KNOW ABOUT
THE ADDENDUM REGARDING FIXTURE LEASES

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KEY POINTS

- What is a Fixture?
- Types of Fixtures
- Transferability of Leased Fixtures
- Removal of Leased Fixtures
- Fixture Liens
- The Take-Away

INTRODUCTION

ADDENDUM REGARDING FIXTURE LEASES

FIXTURE LEASES

A fixture lease is an agreement with a third party who leases personal property to a homeowner that is attached to the real property in some way.

The most common types of fixture leases are:

- Solar Panel Leases (attached to the roof)
- Security System Leases (wired into the walls, doors, and windows)
- Propane Tank Leases (attached by gas lines to the house and powers household systems)
- Water Softener Leases (attached by water lines to the house)

WHAT IS A FIXTURE?

A fixture is an improvement to real property, generally some type of personal property, that is affixed or fastened in some way that makes it become a permanent part of the real property.

TESTS OF A FIXTURE

A fixture conveys with the real property unless specifically excluded in the contract. There have been many real estate disputes about what is or is not a fixture.

Texas Supreme Court set out three factors that are relevant in determining whether personal property has become a fixture that conveys with the real property:

MODE

the mode and sufficiency
of annexation either real
or constructive

ADAPTATION

the adaptation of the
article to the use or
purpose of the realty

INTENT

the intention of the
party who annexed the
personal property to the
realty

TYPES OF FIXTURE LEASES

SOLAR PANELS



WATER SOFTENER



PROPANE TANK



SECURITY SYSTEM



TYPES OF LEASED FIXTURES

A. Leased Fixtures are those fixtures in or on the Property that Seller leases and does not own, specifically the: ☐ solar panels, ☐ propane tanks, ☐ water softener, ☐ security system, ☐ _____ (collectively, the Leased Fixtures). All rights to the Leased Fixtures are governed by Fixture Leases.

1.

**What Fixture
Leases are there
with the property?**

2.

**What do the Fixture
Leases say?**

3.

**Are the Fixture Leases
Transferable or
Assumable?**

ASSUMPTION OF FIXTURE LEASES & COSTS

(1) Buyer shall assume, and Seller shall assign to Buyer the Fixture Leases at closing, except the following: _____. Buyer shall pay the first \$ _____ of any cost necessary to assume or receive an assignment of the Fixture Leases and Seller shall pay the remainder. Buyer and Seller agree to sign any documents required by the lessor in the Fixture Leases to assume or assign the Fixture Leases.

1.

**Which Fixture
Leases will not be
Assumed or
Transferred?**

2.

**What part of the
costs to Assume or
Transfer is the
Buyer paying?**

3.

**Buyer and Seller
agree to sign any
required
documents.**

REMOVAL OF FIXTURES

(2) Prior to closing, Seller ☐ will ☐ will not remove the Leased Fixtures covered by the Fixture Leases that Buyer does not assume. Seller will repair any damage to the Property caused by any removal. Notice: Any Leased Fixture remaining in the Property are subject to the rights of the lessor under the Fixture Lease.

- Will the Leased Fixtures that are not being Assumed by or Transferred to the Buyer be Removed from the Property?
- If so, Seller will Repair any Damage to the Property caused by the Removal of the Fixtures.

DELIVERY OF FIXTURE LEASES

B. Delivery of Fixture Leases: (Check one box only)

- ☐ (1) Buyer has received a copy of all Fixture Leases Buyer has agreed to assume.
- ☐ (2) Buyer has not received a copy of all Fixture Leases Buyer has agreed to assume. Seller shall provide a copy of the Fixture Leases within 5 days after the Effective Date. Buyer may terminate the contract within 7 days after the date the Buyer receives the Fixture Leases and the earnest money shall be refunded to Buyer.

**Has the Buyer
received a copy of ALL
Fixture Leases they
are Assuming?**

**If not, the Seller has 5
Days from the Effective
Date of the Contract to
Deliver them.**

**The Buyer may
Terminate the Contract
within 7 Days after
Receiving the Leases
and get their Earnest
Money back.**

CONDITIONS AT CLOSING

C. At closing, there will be no liens or security interests against Leased Fixtures which will not be satisfied out of the sales proceeds except for Leased Fixtures covered by Fixture Leases Buyer agrees to assume.

**There will be NO Liens or Security Interests against
Leased Fixtures Unless Agreed upon by Buyer.**

NOTICE

Notice: Seller and Buyer should consult with the lessor and their attorneys regarding the assignment, assumption, or termination of any Fixture Leases.

BEFORE ASSIGNING, ASSUMING OR TERMINATING ANY FIXTURE LEASES

Consult with Fixture Lessor

What are the terms of the Lease?

Is the Lease assumable?

What are the costs for assuming the Lease?

What is the procedure for assuming the Lease?

Consult with an Attorney

It is critical that the buyer and seller fully understand the terms of the Fixture Leases that they are wanting to transfer and assume. The questions of liability, costs and liens are important issues that must be addressed before agreeing to transfer any Fixture Lease.

RECAP

SELLER

Disclose Fixture Leases and
Talk to Lessor(s) about
Transferability, Assumption or
Termination.

BUYER

Inquire About and Research
Fixture Leases and Buyer's
Options for Assumption.

REMOVAL

What Leased Fixtures Stay and Go
with the Sale of the Property?
How will Removal be Handled?

DELIVERY

Have the Fixture Leases been
Delivered to the Buyer? What are
Buyer Remedies for Non-Delivery?

LIENS

Make sure NO Liens or Security
Interests Remain Against the
Fixtures or Property Unless Buyer
is Taking them over.

SUMMARY

THE TAKE-AWAY

CONSULT

WITH THE LESSOR AND
AN ATTORNEY!

FIXTURE LEASES

CAN BE
COMPLICATED!

UNDERSTAND

THE TERMS OF
THE LEASE(S)

AGENTS

CANNOT INTERPRET
THE TERMS OF A
FIXTURE LEASE

AGENTS

CANNOT ADVISE A CLIENT
IF THEY SHOULD ASSUME
OR TERMINATE A LEASE

AGENTS

CANNOT ENGAGE IN
THE PRACTICE OF LAW

PROTECT YOUR CLIENTS PROTECT YOURSELF

KNOW AND UNDERSTAND THE RIGHT WAY TO HANDLE
FIXTURE LEASES IN A REAL ESTATE TRANSACTION