

NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

December 2019

Q. I'm selling a "Smart Home" and my seller isn't sure which devices need to stay with the property. Are smart devices considered fixtures?

A. It depends. The analysis for determining whether a smart device is a fixture or personal property is not unique. A fixture is typically defined as an item that is permanently attached to the real property, such as a chandelier or window shutters. Items that are not fixtures are considered personal property – or chattel – such as the furniture in the home. Ownership of fixtures transfers with ownership of the house, whereas personal property does not.

Many smart home devices, such as an Amazon Echo, simply plug into the wall – or are entirely cordless – making them easily moveable. These types of devices are likely to be considered personal property of the seller. Other smart devices, such as smart switches, smart thermostats, smart doorbells, and security cameras, may be hardwired, which would firmly place them into the "fixtures" category.

There may be situations where the seller has a certain affection for a fixture and does not want it to remain with the property. In this situation, the seller should remove it prior to listing, or name it as an exclusion in the listing. In situations where a buyer wants a smart device that may be considered personal property to remain with the house upon transfer, the best solution is to have an express statement in the purchase contract that stipulates what items the parties expect to remain in the home upon transfer of title.

If any smart devices are to remain with the property upon transfer, the contract between the parties should stipulate that all accounts that control those devices be fully transferred to the buyer at time of closing.

Q. I referred a listing to an agent at another office who promised me a referral fee, but now that the property has closed, they are saying they do not owe a referral fee – don't we have a contract?

A. While verbal agreements of this sort *may* create a legally binding contract, it is always best to reduce the terms of an agreement to writing. Although referral agreements are not required by law to be in writing to be legally enforceable, having an agreement in writing ensures that all parties to the agreement have the same understanding of the terms. Further, if a disagreement regarding the terms of the agreement arises, having documentation of the agreement may serve as a valuable piece of evidence.

Additionally, salespersons typically do not have the ability to bind their broker to the payment of a referral fee. Any agreements pertaining to the payment of referral fees should be agreed upon in writing by the broker of each company involved.

MAR recommends using the Referral Fee Agreement, Form 521 in the MAR forms library, to memorialize any referral fee agreements.

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