

What is personal property?

The term “personal property” is not defined in Form 2-T; however, it may be defined negatively as **all tangible property which is not real estate or part of real estate.**

Personal property is distinguished from fixtures. A **fixture is a thing that was originally personal property but which has become part of real estate because of the circumstances under which it was attached to the real estate.**

Form 2-T provides that fixtures are *included* as a part of the sale unless excluded by agreement of the parties, while items of personal property are *not* included as a part of the sale unless specifically included by agreement of the parties.

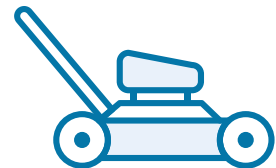
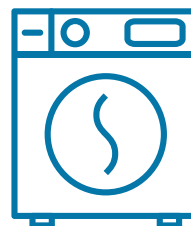
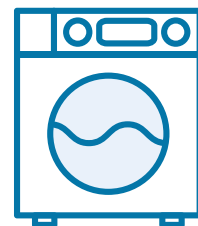
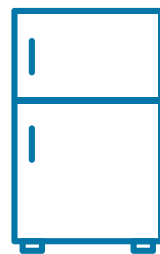
See article on Fixtures for more information on the subject, including how to determine whether something is a fixture.

Any personal property that will be a part of the sale should be identified in paragraph 3.

If there is any doubt as to whether an item that will be included in the sale is personal property or a fixture, the item should be identified in paragraph 3.

If an item of personal property, such as a free-standing refrigerator, is listed as personal property in the MLS, does it become a part of any sale if it is not identified in paragraph 3?

No. The MLS is a mechanism for MLS participants to make and accept offers of cooperation and compensation among themselves. Buyers and sellers are not MLS participants, so nothing in an MLS listing becomes a part of any contract between a buyer and seller. Also, paragraph 20 of Form 2-T specifically provides that “[t]his Contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein.” Thus, **an item of personal property that is not identified in the contract itself is not a part of the contract.**



If an item of personal property is defined generically in paragraph 3 (examples: “refrigerator,” “washer and dryer,” “riding lawnmower”), is it okay for the seller to swap out the item that was present at the time the parties entered into their contract for a different item that meets the same general description?

That likely would not be permitted since it may be implied that the parties intended their agreement to relate to the specific item that was present on the property at the time they entered into their contract. However, to **avoid a possible dispute, the best practice is to describe the item in particular fashion**, including its serial number if there is one.

If, prior to Settlement, the buyer discovers that an item of personal property included in the sale has been removed from the Property, what recourse does the buyer have?

The seller’s removal of an item of personal property that is part of the sale is a breach of contract, and the buyer should consider delaying Settlement and Closing until the item is returned.

If the buyer completes the transaction without insisting that the item be returned, the buyer may lose the ability to enforce the buyer’s right to the item. Thus, it is very important for a buyer to conduct a final walk-through to confirm that all property included as a part of the sale is still present on the Property. See paragraphs 4(g) and 18 of Form 2-T. Also see the article on Settlement and Closing.

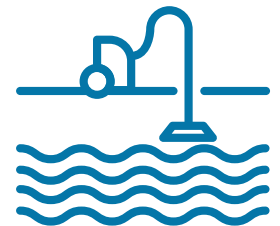
Must any item of personal property included in the sale be in good working condition?

If, prior to Closing, it is **discovered that the item of personal property is not in substantially the same condition as it was when the offer was made, the buyer arguably is not obligated to complete the transaction if the seller fails to fix or replace it.**

According to paragraph 11, the buyer’s obligation to complete the transaction is contingent on the Property being in substantially the same condition at Closing as on the date of the offer paragraph 1(c), and under paragraph 1(c), the term “Property” includes any personal property [listed in paragraph 3.](#)

On the other hand, if the item of personal property was *not* in good working order at the time the offer was made, there is nothing in Form 2-T that requires the seller to fix the item or that permits the buyer to terminate the transaction if the seller fails or refuses to fix it.

Although according to the Uniform Commercial Code, certain implied warranties arise in connection with the sale of goods, it is not clear that those warranties would apply to personal property sold as an incidental part of a real estate transaction.



Why is there a Note at the end of paragraph 3 advising the buyer to consult with the buyer's lender to make sure that any items of personal property listed in paragraph 3 can be included in the contract?

Depending on the lender, the type of loan, the area where the property is located, and the value of the personal property, **some items likely can be included in the contract as a part of the sale.**

For example, a range, refrigerator, dishwasher, washer, dryer, and window treatments might be considered "customary" and includable in the contract. Other items left for convenience, such as pool-cleaning equipment, a lawn mower, or patio furniture, might also be includable.

On the other hand, the lender's guidelines might require that the value of certain items of personal property be deducted from the appraised value of the property, and request that such items be removed from the contract. Examples include, but are not limited to a car, boat, furniture, television, or other valuable items.

The sale of personal property may be handled in a separate contract (oftentimes referred to as a "bill of sale"). Drafting a contract for the sale of personal property is the practice of law, and any such contract must be prepared by an attorney or by the parties themselves. In addition, parties desiring to sell personal property "outside" the real estate contract should be strongly advised to consult with an attorney, especially if the item or item(s) have significant value, since such a sale may be problematic if done without the lender's knowledge or the payment of adequate consideration for the personal property.