VIRGINIA ASSOCIATION OF LOCAL TAX AUDITORS

MAY 2002 MEETING STAUNTON, VA

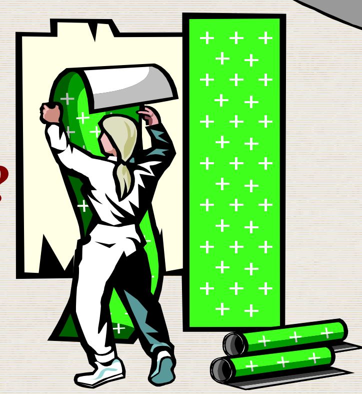
CLASSIFICATION OF LEASEHOLD IMPROVEMENTS

PERSONAL PROPERTY OR REAL ESTATE?

Presented by
Jan Proctor
Deputy City Attorney
City of Chesapeake

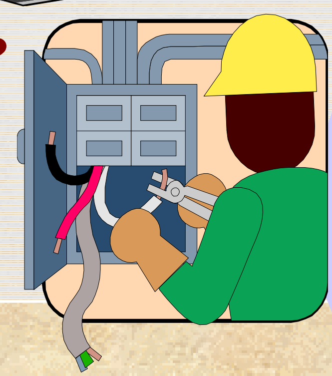
IDENTIFYING THE ISSUE

WHAT ARE LEASEHOLD IMPROVEMENTS?



WHEN DOES THE ISSUE ARISE?

FACTUAL OR LEGAL DETERMINATION?



AUTHORITY TO TAX REAL ESTATE

AND

PERSONAL PROPERTY

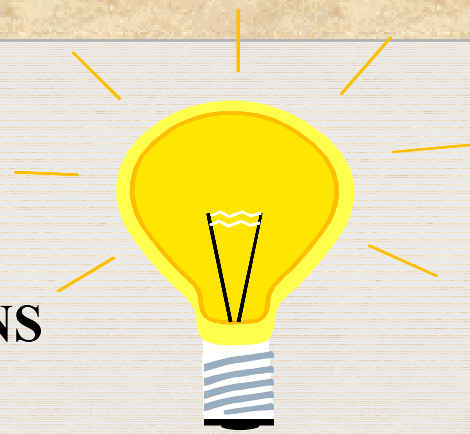
- **ARTICLE X OF VIRGINIA CONSTITUTION**
  - **REAL ESTATE AND PERSONAL PROPERTY SEGREGATED FOR LOCAL TAXATION ONLY**
- **TITLE 58.1 OF CODE OF VIRGINIA**
  - **DEFINITIONS OF "<u>REAL ESTATE</u>" AND "<u>CHATTEL</u>"**

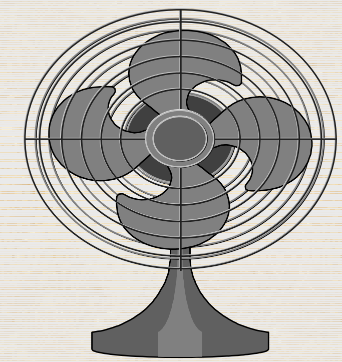
CLASSIFICATION

CHATTEL (PERSONALITY) OR FIXTURES (REALTY)

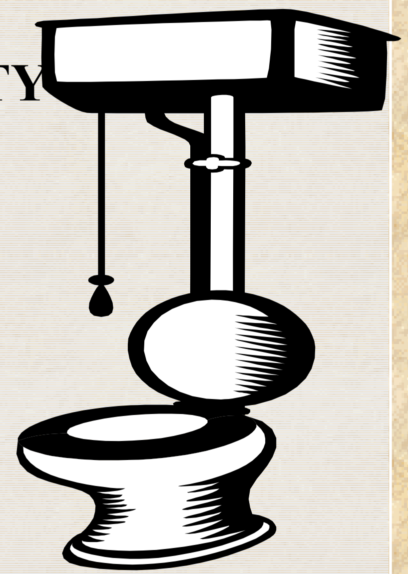
- ✓ CLASSIFICATION BY: DEFINITION
- ✓ CLASSIFICATION BY: AGREEMENT
- ✓ CLASSIFICATION BY: COMMON LAW DOCTRINE OF FIXTURES

CLASSIFICATION BY DEFINITION





- ✓ **COMMON LAW DEFINITIONS**
  - ◆ **CHATTEL – MOVABLE PERSONAL PROPERTY**
  - ◆ **FIXTURE – ANNEXED TO REALTY**



CLASSIFICATION BY AGREEMENT

IS THERE A LEASE?

IS IT CLEAR?

DOES THE LEASE CONTROL?

CLASSIFICATION BY COMMON LAW DOCTRINE OF FIXTURES

- MANNER OF ANNEXATION TO THE REALTY
- ADAPTATION OF THE ITEMS TO THE USE OF THE REALTY
- INTENTION OF THE PARTY MAKING THE ANNEXATION

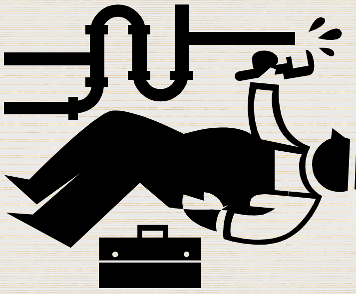
COMMON LAW DOCTRINE OF FIXTURES

MANNER OF ANNEXATION TO THE REALTY

HOW IS THE ITEM ATTACHED?

CAN IT BE REMOVED?

WILL REMOVAL DAMAGE THE REALTY?



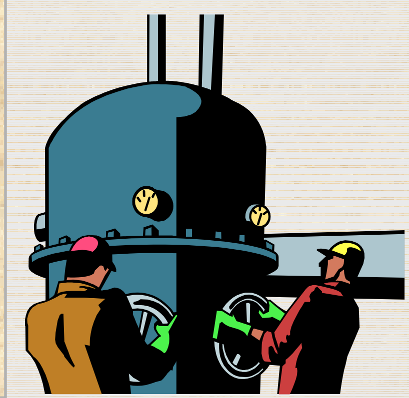
COMMON LAW DOCTRINE OF FIXTURES

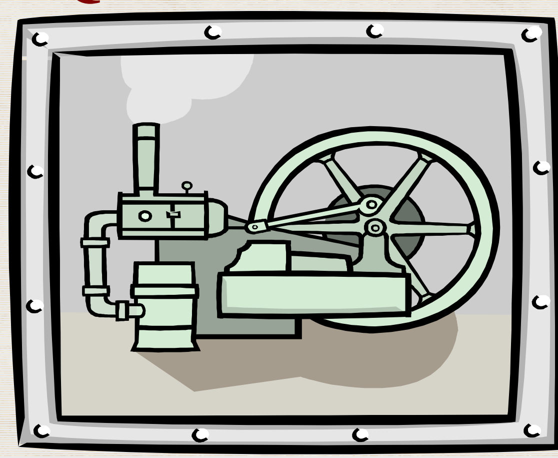
ADAPTATION OF THE ITEMS TO THE USE OF THE REALTY

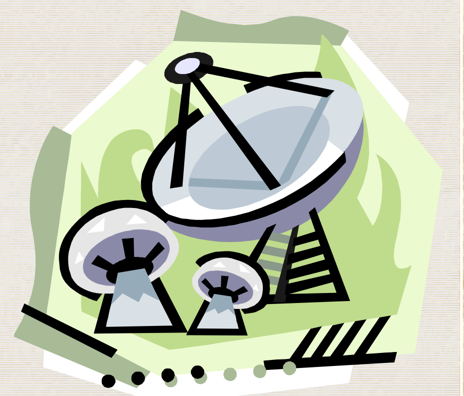
DOES THE ITEM SERVE A GENERAL PURPOSE

OR

IS IT UNIQUE TO THE BUSINESS







COMMON LAW DOCTRINE OF FIXTURES

INTENTION OF THE PARTY MAKING THE ANNEXATION

INDICATIONS OF INTENT INCLUDE:

- ✓ MANNER OF ANNEXATION
- ✓ ADAPTATION TO USE
- ✓ DEPRECIATION SCHEDULES
- ✓ IS IT IN THE MORTGAGE?
- ✓ BEST EVIDENCE IS THE LEASE!

COMMON LAW DOCTRINE OF FIXTURES

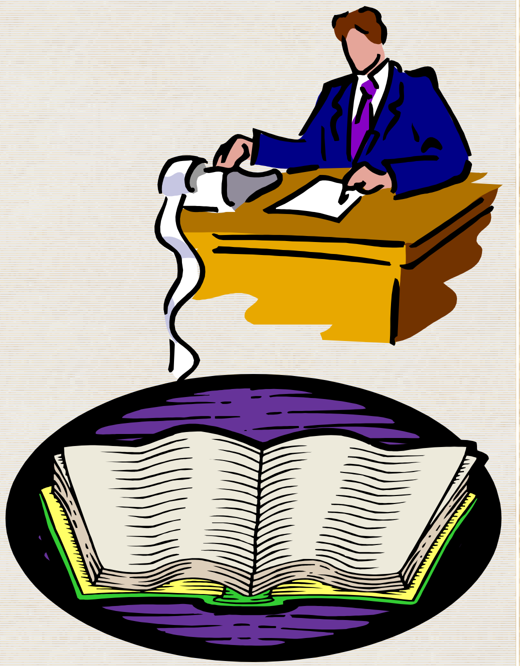
INTENTION OF THE PARTY MAKING THE ANNEXATION

<u>LOOK FOR</u>:

- ✓ **OWNERSHIP DESIGNATION**
- ✓ **TERMS OF INSTALLATION**
- ✓ **TERMS OF MAINTENANCE**
- ✓ **TERMS OF INSURANCE**
- ✓ **RESPONSIBILITY FOR TAXES**
- ✓ **RIGHTS OF REMOVAL**

WHAT YOUR LOCAL ATTORNEY NEEDS TO KNOW

- LIST OF ASSETS
- FULL COPY OF LEASE
- DESCRIPTION OF ASSET
- DESCRIPTION OF USE
- DEPRECIATION SCHEDULES
- ITEMIZATION OF CONSTRUCTION COSTS



SPECIAL CONSIDERATIONS IN TAX CLASSIFICATION

- UNIFORMITY
- PRECEDENT
- DOUBLE TAXATION
- APPEALS

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