

## Court Ruling Changes How Movables/Immovables are Determined

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The Louisiana Supreme Court issued a ruling in the case of "Willis-Knighton Medical Center vs. Caddo Shreveport Sales and Use Tax Commission" 2005 WL737481 (La. 2005) on April 1, 2005. This case substantially changes the test for the determination of whether an item in a property is considered a component part of the house or building or is considered a movable that the seller may take with him when he leaves. For example, is the chandelier in the living room of the house part of the house (an immovable) or removable by the seller (a movable)?

**Facts of the Willis-Knighton case:** Willis-Knighton Medical Center brought a suit against its local sales and use tax commission demanding a refund of taxes it believed it overpaid based on the premise that various medical equipment owned by it were component parts of the hospital building and thus exempt from sales and use taxes due to such medical equipment's classification as immovable property. The local tax commission denied Willis-Knighton's claim arguing that such medical equipment, while physically attached to the structure of the hospital building, remained movable property and thus subject to sales and use taxes.

**Louisiana Supreme Court Holding and Analysis:** The Louisiana Supreme Court held that Louisiana Civil Code Article 466 was the applicable provision to determine whether or not the medical equipment was attached to the building and therefore were indeed immovable property.

Louisiana Civil Code Article 466 provides as follows:

### **Art. 466. Component parts of buildings or other constructions**

Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, are its components.

Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached.

The Louisiana Supreme Court relied upon a "strict" reading of article 466 and a strong adherence to the concept established by Louisiana Code Article 9, ("when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature"). The Supreme Court held the "societal expectations" test previously applied by some courts to be an improper method of determining the status of property as immovable or movable. The Court found the second paragraph of Article 466 was applicable and that the medical equipment could be removed without substantial damage to the medical equipment or to the immovable to which it was attached. Therefore the medical equipment was not a component part of the building.

**Louisiana Supreme Court Rehearing and Analysis:** In a rehearing of the Willis-Knighton case for the sole purpose of considering the retroactivity of its decision, the Louisiana Supreme Court concluded that while its decision in Willis-Knighton did not represent a new principle of law and thus would normally be permitted retroactive application, the frequency with which the Louisiana Appellate Courts applied the "societal expectations" test had created sufficient uncertainty as to the definition of a component part of an immovable, and thus to apply the Louisiana Supreme Court's ruling in Willis-Knighton retroactively, would undoubtedly result in inequity and potentially invite undesired litigation subjecting previously consummated transactions to unnecessary attack.

**Problematic Issues considering the Willis-Knighton Decision:** The court's holding that for movable property to become a component part of an immovable, it must be permanently attached to the immovables such that it can not be removed without substantial damage to either itself or the immovable, created much discussion in the state legislature. Formerly, the "societal expectations" test allowed numerous items such as doors, light fixtures, windows, sinks, toilets, flooring, carpeting, etc. to be properly classified as component parts of an immovable whether or not there would be substantial damage to immovable or the item if removed. Thus, an act of sale or mortgage covering immovable property described therein also covered those items formerly classified as its component parts (example doors in the building). However, today, in light of the Willis-Knighton holding, such items would not be classified as part of the immovable property being sold or mortgaged and thus a bill of sale properly conveying such items and/or granting a security interest therein would be necessary in order to effectuate those transactions which were previously completed through the execution of a single act of sale or mortgage.

**Proposed Solution** In the latest legislative session, several bills were proposed designed to address the problems raised by the Willis-Knighton decision. The following Act No. 301 of the 2005 Regular Legislative Session was recently passed and signed into law by the Governor on June 29, 2005, becoming effective immediately. Act 301 provides in part:

Section 1. Civil Code Article 466 is hereby amended and reenacted to read as follows:

### **Art. 466. Component parts of buildings or other constructions an immovable**

Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, **an immovable** are its component parts.

Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached: **Things, such as plumbing, heating, cooling, electrical or other installations, are component parts of an immovable as a matter of law.**

**Other things are considered to be permanently attached to an immovable if they cannot be removed without substantial damage to themselves or to the immovable or if, according to prevailing notions in society, they are considered to be component parts of an immovable.**

However, due to the fact that it may be difficult to state with certainty what "prevailing notions in society" are, we strongly recommend consider our previous recommendation that any purchase agreement@REALTORS include language that all installed movable property located in the property shall be sold to the buyer and not removed by the seller. Depending on the terms of the sale, sample language for this clause could state after the legal description of the property to be sold:

..... including all buildings, structures, component parts, and all installed, built-in, permanently attached or otherwise attached improvements, together with all fences, all security systems, all installed speakers or sound systems, all landscaping, all outside TV antennas, all satellite dishes, all installed and/or built in appliances, all ceiling fans, all air conditioning or heating systems including window units, all bathroom mirrors, all window coverings, blinds and associated hardware, all shutters, all flooring, all carpeting, all built-in desks and shelves, all insulation, all millwork, all fireplaces and fireplace mantels, all cabinets, all cabinet tops, all cabinet knobs or handles, all doors, all door knobs or handles, all windows, all roofing, all electrical systems and electrical fixtures, all plumbing systems and plumbing fixtures, all water heaters or water supply or conditioning systems, and all installed lighting fixtures, chandeliers and associated hardware. All items listed herein are included in the property sold no matter how they are attached or installed.

The exact wording of this paragraph will vary depending on the exact items in the house to be conveyed by the seller to the buyer. If specific items in the house are to be excluded and not sold, these items should also be specifically listed as excluded items.

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