FIRPTA

How it May Apply to Real Estate Transactions

FIRPTA - Foreign Investment in Real Property Tax Act

- **When a foreign owner gets ready to sell, they could be subject to a 10% withholding (of the sales price) unless the transaction is exempt from FIRPTA.**
  - Most common exemption: Sales price is not more than $300K. The buyer or a member of their family must have plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two twelve month periods after sale.

- **Other exemptions that may apply are:**
  - Seller to provide a certificate showing they are not a foreign seller
  - Seller receives a withholding certificate from IRS excusing withholding or reducing withholding

If applicable, see forms:

W-7 (application for IRS Individual Taxpayer Identification Number)
8288-B (Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests)

Go to **www.irs.gov** and click on Forms and Publications to get copies of these and other forms.

Is Seller a US Citizen or a US Resident?

YES — Complete certification of non-foreign status.

NO → Is Seller recognizing a gain of less than the 10%?

YES

- See your CPA or tax attorney regarding application form 8288-B for an IRS Withholding Certificate.

- Carefully review all documents concerning FIRPTA withholding.

- Closing officer provides an estimated settlement statement.

NO → Does the Buyer have definite plans to use the property as his residence and sale price does not exceed $300,000?**

NO — Buyer should request 10% withholding be remitted to IRS.

YES — Complete buyer's declaration for $300,000 residence exemption form.

***NOTE:** Closing officer will withhold and remit to the IRS 10% pending receipt of Withholding Certificate, unless the parties agree otherwise.

****IRS REQUIRES:** The BUYER acquires the property for use as a home and the amount realized (sales price) is not more than $300,000. The BUYER or a member of their family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant.

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