AN AGENT'S GUIDE TO FIRPTA

OVERVIEW

The United States continues to be a desirable location to own real estate for people from all corners of the globe. With the increase in foreign buyers and sellers, it is important to understand U.S tax laws which require that everyone, foreign or domestic, must pay income tax on the disposition of U.S. real estate. The Foreign Investment in Real Property Tax Act of 1980, commonly known as FIRPTA, may impact your clients' real estate transactions.

For background, FIRPTA requires the withholding of settlement funds from a real estate settlement where the seller (individual or entity) is a "foreign person." According to the Internal Revenue Code, a "foreign person" is defined as a person who is:

- Not a U.S. citizen or U.S. National
- Does not hold a "green card" or meet "substantial presence" test to be treated as a resident alien.

BUYER AND SELLER RESPONSIBILITIES

- Buyer is responsible to obtain proof from seller of exemption to FIRPTA withholding prior to closing.
- If any seller does not provide proof, the FIRPTA withholding forms must be completed by buyer. These forms and the amount withheld must be remitted to the IRS within 20 days after closing.
- Any buyer who fails to comply may be held liable by the IRS for the tax plus penalties and interest.

WITHHOLDING AMOUNTS

In 2016, significant increases were made to the withholding rates of FIRPTA.

- No withholding is required if the buyer receives a seller's Certification of Non-Foreign status (CNFS) or a Qualified Substitute Statement (QSS) as evidence that the seller is not a foreign person.
- No withholding is required if the contract sales price is under $300,000 AND the buyer certifies that the property will be used as a residence by the buyer or a member of the buyer's family (see following residency requirements).
- 15% of the gross sales price must be withheld if the sales price is greater than $300,000 and the buyer does not intend to use the property as a residence.
- The withholding is reduced to 10% if the sales price is over $300,000, does not exceed $1 million, and the buyer certifies that the property is being acquired for use as a residence (see following residency requirements).
- No withholding OR reduced withholding is required if the seller provides the buyer with an IRS "qualifying statement" or "withholding certificate" stating that either no or a reduced amount of FIRPTA withholding is required.

RESIDENCY REQUIREMENTS FOR AN EXEMPTION OR REDUCTION OF FIRPTA WITHHOLDING

For a property to be considered a residence, the buyer or buyer's family member "must have definite plans" to reside at the property for at least 50% of the number of days the property is used during the first two years following the date of transfer. Days when the property is vacant are not taken into account in determining the number of days a property is used by any person.

IMPORTANT NOTE

Clients should seek legal counsel or tax guidance from professionals with knowledge on FIRPTA. Escrow officers, title companies nor real estate agents can provide legal or tax advice on such matters.

Contact your local Burnet Title branch if you are concerned FIRPTA may impact your transaction. Burnet Title has FIRPTA resources available to you and your client should you need assistance.

BURNET TITLE

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IS the seller a Foreign Person under FIRPTA?

NO

- U.S. Citizens
- Legal Residents
- Domestic LLC or Corporation
- Persons who meet the Substantial Residency Test

→ **No withholding necessary!**

YES

- Non-resident alien individual
- Foreign corporation/LLC/partnership

IS the property exempt from FIRPTA withholding?

YES

- If Sale Price is less than $300,000
- Buyer will occupy as primary residence

→ **No withholding necessary!**

NO

- If buyer intends to occupy as primary residence
- Sale price is between $300,000 – $1,000,000

→ **Connect with a CPA or Attorney who specializes in these matters prior to closing ASAP.**