

FIRPTA WITHHOLDING RULE

The Foreign Investment in Real Property Tax Act (FIRPTA) regulation requires the Buyer of U.S. real estate interests owned by a foreign Seller to withhold 10-15 percent of the amount realized from the sale, unless certain exemptions are met.

The withholding takes place at the closing, and the Escrow Officer or Settlement Agent remits the funds to the Internal Revenue Service (IRS). The Seller's Real Estate Agent also has a critical role to play – encouraging the Seller to address these issues immediately at listing to ensure there are no surprises or hold-ups at the closing table.

CURRENT WITHHOLDING TAX RATE

Buyer Intends to Use Property as a Residence?	YES	NO
\$300,000 and under	\$0	15%
\$300,001 - \$1,000,000	10%	15%
Over \$1,000,000	15%	15%

Attorneys as well as real estate agents are encouraged to direct their clients to engage their tax professionals early in the timeline of the transaction in order to achieve the most beneficial tax treatment. Some tax professionals may also recommend an early application for the refund of excess withholding. This is particularly important as the IRS has reported that refunds filed after withholding may take from six to 12 months to process.

ATTORNEYS AND REAL ESTATE AGENTS ARE URGED TO DO THE FOLLOWING:

- ▶ Verify at the time of the listing whether the owners of the property are foreign owners.
- ▶ Foreign sellers can work with their attorney or tax professional to get a pre-determination of what they owe, but this process takes at least 90 days. Encourage your seller to start that investigation early in the process.
- ▶ The seller can remit the 10 percent or 15 percent required, and later file a tax return to recoup the overage, but the optimum solution is to file with the IRS to get a predetermination.

The Protecting Americans from Tax Hikes Act of 2015 made changes to the law addressing taxation of real property interests held in a real estate investment trust, a real estate investment company or by a qualified foreign pension plan. Make certain your clients contact independent tax professionals for guidance in these matters, as there are both civil and criminal penalties for noncompliance.

Thanks for trusting North American Title to close your transaction LikeClockwork®.



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