

FIRPTA Information

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests. Per IRS code, a disposition could be for any purpose and includes but is not limited to a sale or exchange, liquidation, redemption, gift, transfers, etc. A U.S. real property interest includes sales of interests in parcels of real property as well as sales of shares in certain U.S. corporations that are considered U.S. real property holding corporations.

Persons purchasing U.S. real property interests (transferee) from foreign persons, certain purchasers' agents, and settlement officers are required to withhold up to 15% of the amount realized. If the purchaser does NOT intend to occupy the property as a residence, the 15% withholding rate applies, regardless of the sales price: unless the seller qualifies for another exemption (special rules for foreign corporations). Withholding is intended to ensure U.S. taxation of gains realized on disposition of such interests. **The transferee/buyer is the withholding agent.** As the transferee/buyer, you must find out if the transferor is a foreign person.

If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax. For cases in which a U.S. business entity such as a corporation or partnership disposes of a U.S. real property interest, the business entity itself is the withholding agent. When the purchaser intends to use the property as a residence and the gross sales price is greater than \$300,000.00 but no more than \$1,000,000.00, the withholding rate shall be 10% of the gross sales price. If the gross sales price exceeds \$1,000,000.00, the withholding rate shall be 15% of the gross sales price.

The amount that must be withheld from the disposition of a U.S. real property interest may be adjusted pursuant to a withholding certificate issued by the IRS.

- A disposition includes the sale of any U.S. real property interests in the United States or U.S. Virgin Islands.
- Generally speaking, in reference to the disposition of a U.S. real property interest, the foreign person disposing of the US real property interest is referred to as the transferor.
- The purchaser of the U.S. real property interest is referred to as the transferee.
- The amount realized is generally the purchase/sales price of the U.S. real property. If the property transferred is jointly owned by U.S. and foreign persons, the amount realized is allocated between the transferors based on the capital contribution of each transferor.
- Generally, the buyer/transferee must determine if the seller is a foreign person. If so, the buyer transferee is responsible for the withholding taxes.
- The buyer/transferee may be held liable for the tax that should have been withheld on the purchase.

For exceptions from FIRPTA Withholding, please refer to the IRS website at www.irs.gov.

This information
provided by the IRS.

More information can be
found at: www.irs.gov

for more information on this topic, contact your

Heritage Title Company Representative

www.heritagetco.com