



FIRPTA THINGS YOU SHOULD KNOW

WHAT IS FIRPTA?

The Foreign Investment in Real Property Tax Act. Federal legislation passed in 1980 to insure that the federal government (IRS) collects taxes due on the sale of U.S. real property interests by foreign nationals.

HOW DOES FIRPTA AFFECT REAL ESTATE TRANSACTIONS?

If a seller is a **non-resident alien** and the seller is not otherwise exempt from withholding (see below), federal law requires withholding and remittance to the IRS of a percentage of the sales price. A seller is an alien if he or she is not a U.S. citizen. An alien seller is a non-resident if he or she **does not have a green card** or, if he or she **cannot pass the “substantial presence” test**.

- According to the FIRPTA tax regulation, buyers (i.e., “withholding agents”) must determine whether or not sellers (i.e., “transferors”) are subject to withholding.
- The IRS has the power to lien a buyer’s property if the buyer failed to obtain a statement (i.e., affidavit) indicating that the seller is NOT a non-resident alien (or foreign entity) under the tax rule and it turns out that the seller is in fact a non-resident alien (or foreign entity) subject to FIRPTA withholding. NOTE – a buyer cannot rely on an affidavit from the seller that the buyer knows to be false.
- A Seller’s Certification of Non-Foreign Status (or a similar form) is what a seller signs to certify to the buyer that the seller is NOT a non-resident alien (or foreign entity) under the IRS tax rule.
- The seller MAY be exempt from FIRPTA withholding under a list of other “exceptions” listed on the IRS website.
- The buyer and seller should BOTH be advised to seek counsel when analyzing whether or not FIRPTA withholding is applicable.
- If withholding is required, the BUYER is listed as the withholding agent on the tax documents that accompany the funds sent to the IRS.
- The 2019 Colorado Real Estate Contract MAY address the FIRPTA rule.
- The rate of withholding changed in 2015 from 10 % to 15% for individual sellers and can be as high as 35% for an entity transferor.
- Being proactive with communication at the time of contract will help stave off any FIRPTA issues that could come up at the closing table.

For more information on FIRPTA or any other subject, please contact Cindy Relich with Unified Title at 719-687-2178

** Buyers and sellers should consult with their respective legal and/or tax counsel if they have questions about their rights and obligations under FIRPTA and/or prior to signing any affidavit related to FIRPTA withholding.

THIS GUIDE IS NOT INTENDED AND SHOULD NOT BE CONSTRUED AS LEGAL OR TAX ADVICE.