

# What is FIRPTA?

*What you need to know about the  
Foreign Investment in Real Property Tax Act*



## WHAT THE TREC ONE TO FOUR FAMILY CONTRACT SAYS ABOUT FIRPTA:

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

## FIRPTA DEFINED BY THE IRS:

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.

A disposition means "disposition" for any purposes of the Internal Revenue Code. This includes but is not limited to a sale or exchange, liquidation, redemption, gift, transfers, etc. Persons purchasing U.S. real property interests (transferees) from foreign persons, certain purchasers' agents, and settlement officers are required to withhold 15% (10% for dispositions before February 17, 2016) of the amount realized on the disposition (special rules for foreign corporations).

In most cases, the transferee/buyer is the withholding agent. If you are 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.

## LISTING AGENTS SHOULD:

- Confirm if your Sellers are U.S. citizens when the listing agreement is signed.
- Use Independence Title's form, "Listing Appointment Checklist", to easily gather this and other information from your Seller.
- Alert your Escrow Team immediately if your Seller is not a U.S. Citizen.
- Consider adding a note in MLS as to the foreign status of your Seller.

## BUYERS AGENTS SHOULD:

- Confirm the citizen status of the Seller with the Listing Agent.
- If the Seller is not a U.S. Citizen connect your Buyer with a CPA familiar with FIRPTA.
- Contact Independence Title for a list of CPAs that are familiar with FIRPTA and can help you and your Buyers with the process of selecting a knowledgeable professional.
- Prepare your Buyers that they, along with their CPA, will need to handle the paperwork for the withholding and submit the withheld tax funds and filing forms to the IRS after closing.
- Provide Independence Title written instructions (i.e. an email) letting us know if withholding applies. If it does, we will withhold funds on the settlement statement and give the check to the Buyer to remit to the IRS.