

FIRPTA Compliance Flowchart

Foreign Investment in Real Property Tax Act (FIRPTA) Compliance – ALL LISTINGS

Notify all sellers at time of listing that, as a condition of any offer on their property, they will likely be required to fill out a FIRPTA Certification of Non-Foreign Status and deliver that completed form to either an IRS qualified substitute (title company closing the transaction or the buyer's attorney) or directly to the buyer no later than closing. This form will include all sellers' SSN or TIN numbers. Failure to complete and deliver a Certification of Non-Foreign Status in a timely manner may allow the buyer to withhold from the seller's proceeds at closing or treat the seller as in default of the offer. All sellers should consult with their attorney or tax advisor regarding FIRPTA.

Is any seller a foreign person or a foreign entity for purposes of FIRPTA?

NO

All sellers must complete a Certification of Non-Foreign Status including SSNs or TIN and deliver it to a qualified substitute or the buyer no later than closing. Sellers may be able to sign the certification along with other closing documents.

Agents do not handle completed forms.

YES

Advise in writing that sellers and buyers should consult with their attorney or CPA regarding FIRPTA.

Personal Residence Exception: Is the buyer acquiring property for use as a residence? (Will the buyer use property for personal use at least 50% of the time the property is occupied for the two 12-month periods after closing?) Vacant days are not considered. The buyer must be a natural person, not corporation or trust. First 24 months are evaluated in 12-month blocks. Parties should verify this or any other exception to FIRPTA withholding with legal or tax advisers.

YES

NO

Total price not more than **\$300,000**

Total price between **\$300,000 & \$1,000,000**

Total price **over \$1,000,000**

Withhold & Pay 0% of gross sale to IRS

The title company may require the buyer to complete a Buyer Occupancy Affidavit.

Withhold & Pay 10% of gross sale to IRS

Parties may consult with their attorneys or CPAs to determine if other exceptions are available.

Withhold & Pay 15% of gross sale to IRS

Parties may consult with their attorneys or CPAs to determine if other exceptions to FIRPTA withholding are available.

FIRPTA compliance may require payment of 10% or 15% of gross sale price to the IRS and the filing of form 8288 with timely remittance. Sellers and buyers should consult with their legal or tax counsel regarding any FIRPTA matters or questions. This chart is a general overview and not intended to provide tax or legal advice to sellers or buyers about FIRPTA. This form is for use only by real estate licensees as a quick general reference guide to assist in basic discussions regarding FIRPTA. There are additional details to the FIRPTA exceptions not included in this overview. This chart is not intended to be a substitute for tax or legal advice that sellers and buyers should obtain from their attorneys or tax advisers.

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