



Foreign Investment in **Real Property Tax Act**

What is the Foreign Investment in Real Property Tax Act?

In 1981, the Foreign Investment in Real Property Tax Act (FIRPTA) was enacted for the purpose of imposing tax on foreign persons selling real property interests in the United States. The buyer is required to withhold from the foreign seller a percentage of the amount realized on the sale of a real property interest. The tax withholding is considered a prepayment of anticipated taxes due from a foreign person selling any U.S. real property interest.

Who is responsible for withholding requirements under FIRPTA?

The Internal Revenue Service (IRS) regulations place the obligation to withhold required tax amounts on the buyer of the real property from a foreign person. The buyer is responsible for determining whether FIRPTA applies and for remitting the withheld taxes to the IRS. Any penalties for non-compliance with the regulations are also the responsibility of the buyer.

What is the withholding requirement?

Generally, the amount realized for the purpose of withholding is the sale or contract price. Effective February 16, 2016, IRS FIRPTA regulations will change the withholding rate from 10% to 15% for most closings, unless an exception applies.

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The withholding rate remains 10% if the total amount realized is between \$300,000 not to exceed \$1,000,000, and if the buyer will reside in the property.

Are there exceptions to FIRPTA withholding?

Yes. Exceptions are explained on the IRS website at www.irs.gov/Individuals/International-Taxpayers.

How and where is the withholding paid?

When FIRPTA applies, the buyer must prepare a check payable to the IRS for the correct percentage of the amount realized and remit it to the IRS within 20 days of closing. The payment must be accompanied by completed IRS Forms 8288 and 8288-A.

What should real estate agents know about FIRPTA?

Real estate agents representing buyers should advise those buyers that the ultimate obligation to withhold FIRPTA taxes is theirs when purchasing real property from a foreign seller. Also, to avoid surprises at closing, real estate agents representing foreign sellers should advise those sellers of withholding requirements when transferring a U.S. real property interest. The foreign sellers should be encouraged to apply for withholding certifications and taxpayer identification numbers (either "ITIN" or "EIN") as soon as possible. The IRS's 90-day application period should be considered when negotiating the closing date with the buyer.

Can a settlement agent give legal advice with regards to FIRPTA?

Stewart Title will help you through the FIRPTA withholding process. However, settlement agents are not qualified to provide legal or tax advice. If you require legal or tax advice on FIRPTA, please seek counsel from a professional.