

PREPPING FOREIGN SELLERS EARLY IN THE PROCESS ON FIRPTA Requirements Can Prevent Closing Table Issues



Recent changes to the Foreign Investment in Real Property Tax Act (FIRPTA) have shone a spotlight on the challenges facing real estate agents and settlement service providers when handling transactions for non-U.S. citizens selling their U.S. property.

While there are indeed a few extra hoops to jump through when handling foreign-owned property, the requirements don't have to be closing-table deal-killers, if all parties understand the rules and put procedures in place that will ensure a smooth closing.

The responsibility for educating the foreign seller rests first with the listing agent. It is advisable for the real estate agent representing the seller to discuss the FIRPTA requirements at the first listing appointment. The real estate agent should ascertain whether the client is a foreign seller by simply asking the question routinely as part of the initial interview, or by asking if the seller(s) has a Social Security number.

If a foreign seller's FIRPTA obligations are not addressed prior to the closing table, the sudden realization that 10 to 15 percent of the sale proceeds must be withheld, could well kill the transaction on the spot, a situation no real estate agent wants to entertain. It is also important to choose a closing or escrow agent who is knowledgeable and skilled at handling the FIRPTA requirements at the closing table, such as the professionals at Lennar Title.

**Contact the knowledgeable professionals at
Lennar Title for your next FIRPTA transaction.**

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/ FIRPTA REGULATIONS

Enacted in 1980, FIRPTA legislation established a general requirement on the buyer of U.S. real estate interests owned by a foreign seller to withhold 10 percent of the amount realized from the sale and remit it to the Internal Revenue Service at the time of closing unless certain exemptions are met.

Recently enacted federal legislation included amendments to FIRPTA, increasing the withholding rate from 10 percent of gross sales proceeds to 15 percent of gross sales proceeds for certain transactions. The following provisions now apply:

- ▶ The current withholding rate of 10 percent will still apply in certain transactions (*generally when the property will be used by the buyer as a residence*), provided the amount realized from the sale does not exceed \$1,000,000.
- ▶ If the amount realized exceeds \$1,000,000, then the withholding rate is 15 percent and may be calculated against the entire amount.

Some ways real estate agents can assist their foreign sellers

1. Foreign sellers can get a pre-determination of what they owe, but this process takes at least 90 days. Encourage your seller to start that investigation early in the process.
2. Real estate agents cannot give legal or tax advice and should advise foreign sellers to speak to their attorney and tax professional before beginning the process.
3. The seller has choices and can remit the 10 percent or 15 percent required, and later file a tax return to recoup the overage, but the optimum solution is to file for a Withholding Certificate with the IRS, to get a predetermination.
4. Carefully review contracts, as many state contract forms previously had the 10 percent withholding amount pre-printed, a number that will need to be amended if the property falls in the higher tax bracket.