

TitleTalk

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MSC Title

September 2014



Dear Agents and valued customers,

Here at MSC Title, we have seen an increase in transactions that involve foreign sellers. For buyers — and all parties involved in closing these transactions — being aware of the federal withholding requirements is essential. This month, we take a look at those requirements and break down exactly what you need to know.

Sincerely,
Laura Bowers, Managing Director

The Impact of Foreign Sellers on a Sale

- Sales involving foreign sellers are subject to **FIRPTA** (Foreign Investment Real Property Tax Act). Foreign sellers subject to FIRPTA withholding can present challenges if not assessed early and handled properly by the closing agent.
- If the seller is a foreign person under FIRPTA, the buyer is responsible to withhold ten percent (10%) of the gross sales price from the seller's proceeds and it must be remitted to the Internal Revenue Service within 20 calendar days after closing. This is actually handled by MSC Title on behalf of the buyer to ensure compliance with the rules.
- The IRS can hold the buyer personally responsible for the uncollected withholding amount, including interest and penalties. Therefore, both the foreign seller and the buyer need to ensure they have an experienced closing agent who can explain the different options available; and refer them to an experienced tax accountant.
- There has also been some misconception that the 10% FIRPTA withholding is not required on a Short Sale, but that is false. When working with the closing agent on a short sale where you represent the seller, be certain to point that fact out initially, so the 10% can be included on the short sale HUD-1. The result of missing this important withholding can and has caused deals to fall apart and head into foreclosure.

There are some exclusions available under FIRPTA, including but not limited to:

- Exemption rule if the property is under \$300,000. The buyer must intend to occupy the property at least 50% of the time it is being occupied for the first two years. For example, if they stay in the property two months out of the year and lease it out for two months, it would qualify under the rule. Remember however, the buyer can refuse to sign the required affidavit to waive the withholding — unless there is something in the listing stipulating the seller requires a buyer to sign the affidavit.
- A resident alien who possesses a Green Card
- Application for Withholding Certificate — In this scenario, we would hold the funds in escrow pending receipt of a withholding certificate from the IRS that shows the amount due, if any. Once in receipt, funds are then released to the IRS and the seller, if applicable.
- Affidavit of Substantial Presence Test



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Continues on Page 2

Continued from Page 1

When working with a foreign seller or buyer, the best practice is to put them in touch with an experienced tax accountant who is well-versed on the rules and exemptions under this Act. The way the foreign buyer takes title is important and the effect of the withholding can be minimized or even eliminated under certain circumstances.



We highly recommend consulting with Renea Glendenning with the Accounting Firm of Kerkering, Barberio. Renea is very well-versed under FIRPTA and she may be reached at 941.365.4617 or rglending@kbgrp.com.

If you have questions, please reach out to one of the MSC Title team members who are happy to answer your questions.

Michael Saunders & Company
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