

FIRPTA: FOREIGN INVESTMENT IN REAL PROPERTY TAX

SELLER'S INFORMATION



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1. Are all real estate sales subject to FIRPTA withholding requirements?

Yes.

2. What does FIRPTA require the seller to do at the closing of their real estate sale?

Remit 15% of the sales price to the IRS unless each seller and each seller's spouse, if any, provides proof of an exemption to FIRPTA withholding to the buyer.

3. What is the most common seller exemption to the FIRPTA withholding requirements?

A seller's Certification of Non-Foreign Status (CNFS) along with a Qualified Substitute Statement (QSS) as evidence that the seller is not a foreign person and is not subject to FIRPTA withholding (see question 4);

4. What is a Certification of Non-Foreign Status (CNFS), an appointed Qualified Substitute (QS) and a Qualified Substitute Statement (QSS)?

CNFS: A form executed under oath by each seller and spouse, if any, disclosing their U.S. taxpayer identification number (TIN) and stating they are not a foreign person as defined by FIRPTA.

QS/QSS: Seller's TIN is personal identifiable information (PII) that should be protected; therefore, a seller may appoint either a closer or attorney as their QS to hold the seller's CNFS and issue a QSS to the buyer without the seller's PII.

5. May an attorney in fact execute a CNFS on behalf of the seller?

No. An attorney in fact may not provide testimony under oath for the principal seller.

6. May a seller who is incapacitated provide a CNFS?

No. Any seller who is incapacitated may not provide testimony under oath.

7. What happens when a seller, who is a U.S. Citizen or U.S. Person, is unavailable or unable to provide proof of an exemption to FIRPTA withholding at closing as required by FIRPTA?

If no exemption to FIRPTA withholding is provided at closing, the buyer directs the closer to remit 15% of the sale price from the seller and forward the funds to the IRS as required by FIRPTA.

8. May a seller who believes they are exempt from FIRPTA withholding apply for a refund after closing?

Yes. A seller may apply to the IRS for a FIRPTA refund after the closing.

9. May real estate agents, closing agents and title companies determine if FIRPTA withholding is required?

No. Real estate agents, closing agents and title companies are not permitted by state or federal law to provide legal or tax advice regarding FIRPTA or any other tax or legal matter.

Information regarding FIRPTA may be obtained at: www.irs.gov

***Buyer and Seller are advised to seek legal and tax advice regarding FIRPTA compliance.
Burnet Title employees are not authorized by law to provide advice regarding any legal or tax matter.***

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