

# LAWYERS LINK



## FIRPTA Basics: Understanding the Foreign Investment in Real Property Tax Act

### What is FIRPTA?

FIRPTA stands for "Foreign Investment in Real Property Tax Act" of 1980. FIRPTA imposes a tax on capital gains derived by foreign persons from the disposition of U.S. real property interests.

### Who is responsible for the FIRPTA withholding?

In closings involving a foreign seller, the IRS designated the buyer as the withholding agent. It is the buyers responsibility to withhold 15% of the gross purchase price, at the time of closing, and send the monies to the IRS.

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### Who is considered a foreign person?

The IRS defines a foreign person as a non-resident individual, a foreign corporation that has not made an election to be treated as a domestic corporation, a foreign partnership, a foreign trust, or a foreign estate. A resident alien, electing to be treated as a U.S. resident, is NOT considered a foreign person according to FIRPTA regulations.

### What if the buyer determines the seller is not a foreign person?

A seller can complete a Certification of Non-Foreign Status. The buyer will retain this certification for their records. Withholding is not required for this type of transaction.

### What if the buyer determines the seller is a foreign person?

The buyer should withhold 15% of the gross purchase price unless an exception applies and the withholding may be reduced. All funds must be submitted within 20 days following the day of closing, or be subject to penalties.

### What if the funds are not submitted on time?

Interest and penalties will be assessed beginning on the 21st day after the date of transfer and ending on the day the payment is received by the IRS. These fees are payable by the buyer.

### Are there exceptions to the 15% withholding?

No withholding is required if the final purchase price is \$300,000 or less and the buyer will reside in the property 50% of the time it is in use during each of the first two 12-month periods following the date of transfer.

If the purchase price is \$300,001 to \$1,000,000 and the buyer has definite plans to reside in the property, the 15% can be reduced to 10%. If the purchase price is over \$1,000,000 the full 15% is required regardless of the buyer's occupancy declaration.

Sellers can also obtain a Withholding Certificate from the IRS, reducing or excluding the required withholding.

For more detailed information on exceptions from FIRPTA withholding, visit: <https://www.irs.gov/individuals/international-taxpayers/exceptions-from-firpta-withholding>

Foreign sellers and the real estate agents for foreign sellers need to be informed and prepared for FIRPTA prior to listing the real property for sale.

For more information visit [www.irs.gov](http://www.irs.gov)

*This information is deemed reliable but not guaranteed, and is for informational purposes only.*



## MONTHLY INDUSTRY TERMS

### Trustor

The borrower, owner and guarantor of the property conveyed in a deed of trust.

### Loan-To-Value Ratio

The relationship between the amount of the mortgage loan and the appraised value of the property expressed as a percentage.

### Equity

The difference between the fair market value and current indebtedness, also referred to as the owner's interest. The value an owner has in real estate over and above the obligation against the property.

