

Beware of FIRPTA!!!

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What is FIRPTA, you ask? FIRPTA is the abbreviation used for the Foreign Investment in Real Property Tax Act of 1980. Although adopted in 1980, withholding rules were not adopted until July of 1984, and those rules can have a significant impact on your life. The government has not forgotten FIRPTA, having amended it on November 3, 2003.

The Act requires that where a foreign person sells United States real property, the Purchaser is required to withhold and forward to the Internal Revenue Service a sum equal to ten percent (10%) of the sales price. You may say, "Gee, that is a shame for buyers when they buy from a foreign person." However, the seller's agent is also responsible, and a definition of agent clearly includes a real estate agent.

The Act specifically indicates that the agent will not be responsible for more than the amount of his commission, but a number of authors have indicated that failure of the agent to cover this problem can result in the broker's civil liability to the Purchaser, and so you may end up being responsible for the entire ten percent (10%) of the purchase price.

What do I do, you ask. First of all, you do not have to worry about the Act if the property is being acquired by the Purchaser for use as his own residence, and the sales price does not exceed \$300,000. Secondly, you are exempt if the seller furnishes an Affidavit that it is not a foreign person. If you look at most title companies' Affidavit forms it specifically requires an Affidavit that the individual is a citizen of the United States. However, I think it is incumbent upon you to make sure that you advise the seller of that language and not just say "here, sign this Affidavit."

The proper form for sending the money to the Internal Revenue Service is a Withholding Tax Return (Form 8288). The IRS will not process the return unless the foreign person has a taxpayer identification number (TIN). If you are involved in the transaction it would be important for you to advise the foreign national to acquire a TIN prior to settlement. The Act goes on to discuss notice of non-recognition transfer where there is not gain, and Section 1031 exchanges and other items which may come into play.

Below is a sample seller's certificate. If you have any questions don't hesitate to contact me at 215-661-0400 or EMullin@HRMML.com.

SELLER'S FIRPTA CERTIFICATE

The undersigned, _____, being the _____ of _____ (the "Transferor") is transferring and conveying certain real property and personal property to _____ (name of buyer) (the "Transferee") pursuant to an Agreement of Sale dated _____. Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor of such interest is a foreign person. To inform the Transferee that withholding of tax is not required upon the transfer of the real property referred to above, the undersigned, on behalf of the Transferor, hereby certifies and warrants the following:

1. The Transferor is a _____ formed under the laws of the Commonwealth of Pennsylvania, and is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and the Income Tax Regulations).

2. The Transferor's U.S. employer identification (or Social Security number, if an individual) number is _____.

3. The Transferor's office address is _____.

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee, and that any false statement made herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I hereby swear or affirm that this Certification, to the best of my knowledge and belief, is true, correct, and complete.

Transferor

Date: _____

ACKNOWLEDGMENT

This is a notary form for an individual or individuals

COMMONWEALTH OF PENNSYLVANIA :

: ss.

COUNTY OF

:

On this, the _____ day of _____, YEAR, before me, the undersigned officer, personally appeared NAME(S), known to me to be (or satisfactorily proven to be) the person(S) whose name(S) IS/ARE subscribed to the within instrument, and acknowledged that HE/SHE/THEY executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC

ACKNOWLEDGMENT

This is a Notary form for a Corporation

COMMONWEALTH OF PENNSYLVANIA :

: ss.

COUNTY OF

:

On this, the DATE day of MONTH, YEAR, before me, the undersigned officer, personally appeared NAME, being duly sworn according to law, who deposes and says that HE/SHE is the TITLE of CORPORATION NAME, a CORPORATION STATE corporation, and that HE/SHE as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by HIMSELF/HERSELF as TITLE.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC