



TODAY IN FLORIDA REAL ESTATE

A Real Estate Newsletter for Florida Property Owners and Realtors

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FIRPTA and Why Foreign Sellers Should Always Have Legal Counsel

Empire Title Services, Inc., is located in Aventura, a South Florida hotbed of international real estate transactions. We regularly handle transactions involving foreign sellers (sellers who are neither citizens nor permanent residents of the United States). If you are a foreign seller, or work with foreign sellers, read on to learn how you can take back control of FIRPTA withholding.

Avoiding the Default Rule That Buyers (Not Sellers) Dictate the Manner of FIRPTA Withholding

Generally, the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) requires that up to 15% of the gross sales price be withheld from a seller's net proceeds at closing and remitted immediately to the Internal Revenue Service (IRS) unless an exception applies. This is to ensure that the appropriate amount of income tax is paid by the foreign seller. Unfortunately, this withholding requirement often comes as an unwelcome surprise to many foreign sellers who may have made plans for the full amount of their net proceeds.

Q: What are foreign sellers' options regarding FIRPTA withholding?

A: Foreign sellers may have the title company or attorney who is handling their closing 1) remit the full 15% to the IRS on or before the date of closing; OR 2) have their accountant apply for a Withholding Certificate from the IRS while their funds are held in escrow pending receipt of a determination from the IRS about precisely how much money the IRS requires be remitted.

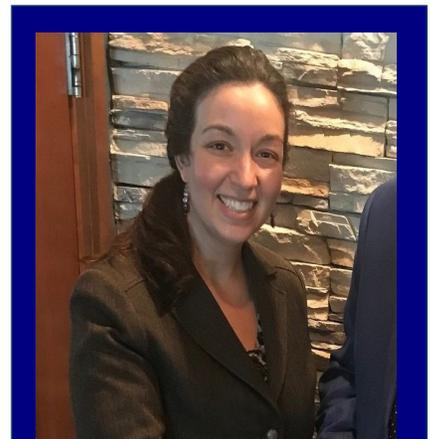
Q: But doesn't the default rule give the buyer, not the seller, the option to chose whether the 15% is remitted immediately to the IRS or whether it may be kept in escrow with the title agent?

A: Yes! This is the default rule because the buyer is ultimately responsible for remittance of the seller's required withholding to the IRS.

THE SOLUTION: Foreign sellers are encouraged to hire an attorney who can modify the terms of their proposed sale and purchase contract so that decisions involving FIRPTA withholding are unequivocally left up to the seller.

"Realtors who take it upon themselves to modify the default FIRPTA provision in a sale and purchase contract may be committing the unauthorized practice of law."

*- Rose Brill, Esq.
In-House Counsel, Empire Title Services, Inc.*



Rose Brill, Esq. has successfully handled numerous FIRPTA issues and provides guidance to foreign sellers.