



# WHAT IS FIRPTA?

## WHAT YOU NEED TO KNOW ABOUT THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

### WHAT THE TREC 1-4 FAMILY CONTRACT SAYS ABOUT FIRPTA

#### 20. FEDERAL TAX REQUIREMENTS:

If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to The Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

### FIRPTA DEFINED BY THE IRS

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests. A disposition means "disposition of property" for any purposes of the Internal Revenue Code. This includes but is not limited to a sale or exchange, liquidation, redemption, gift, transfers, etc.

1. Buyers purchasing U.S. real property interests (transferees) from foreign persons, to withhold 15% (10% for dispositions before February 17, 2016 of the amount realized on the disposition (special rules for foreign corporations).
2. A buyer/transferee must file forms 8288 and 8288-A and transmit the tax withheld to the IRS by the 20th day after the date of sale.
3. Under section 7202, the buyer may be subject to a penalty of up to \$10,000.00 for willful failure to collect and pay over the tax.

In most cases, the transferee/buyer is the withholding agent. If you are the transferee/buyer you must find out if the transferor is a foreign person. If a transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

#### LISTING AGENTS SHOULD:

- Confirm if your Sellers are U.S. citizens or U.S. residence with a green card when the listing agreement is signed.
- Alert your Escrow Team immediately if your Seller is not a U.S. Citizen or resident.
- Consider adding a note in MLS as to the foreign status of your Seller.

#### BUYER'S AGENTS SHOULD:

- Confirm the status of the Seller with the listing agent. If the Seller is not a U.S. Citizen refer your Buyer with a CPA familiar with FIRPTA.
- Prepare your buyers that they, along with their CPA, will need to handle the paperwork for the withholding and submit the withheld tax funds and filing forms to the IRS after closing.
- Provide Secured Title of Texas written instructions (i.e. an email) letting us know if withholding applies. If it does, we will withhold funds on the settlement statement and send the check along with the forms 8288 and 8288-A to the IRS.