



FIRPTA GUIDE

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A person in a red shirt and grey shorts stands barefoot on a rock in the middle of a river. The river flows around the rock, creating a blurred effect. In the background, there are large, steep mountains with patches of greenery and a clear blue sky. The scene is captured in a wide-angle shot, emphasizing the vastness of the landscape.

OBSTACLES TO OVERCOME

OBSTACLE ONE: — 1099 REQUIREMENT

OBSTACLE TWO: — FIRPTA PROCESS

**FIRPTA AND 1099 ARE TWO SEPARATE REQUIREMENTS*

WHAT IS FIRPTA?

What is FIRPTA?

FIRPTA is the Foreign Investment in Real Property Tax Act of 1980. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests. The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to (FIRPTA) income tax withholding.

A disposition means "disposition" for any purpose of the Internal Revenue Code. This includes but is not limited to a sale or exchange, liquidation, redemption, gift, transfers, etc. Persons purchasing U.S. real property interests (transferees) from foreign persons, certain purchasers' agents, and settlement officers are generally required to withhold 15% of the amount realized on the disposition.

If you fail to withhold, you may be held liable for the tax. Transferees should consult with a qualified tax or legal advisor.

Who Is Responsible For Withholding Requirement Under FIRPTA?

As stated above the transferee which is the buyer is the withholding agent. The IRS places the obligation on the buyer to withhold the required tax amount. The buyer does not collect the withholding directly from the seller. The settlement agent helps to facilitate the withholding.

Who is the Withholding Agent?

Generally, the buyer is the withholding agent.

Can the escrow or settlement agent accept the responsibility to withhold?

No. The buyer has the liability for the tax if the transferor is a foreign person.

What are the most common exceptions?

1. The sales price is less than \$300,000
2. The buyer will use property as buyer's residence.

Required Withholding Amount

BUYER INTENDS TO USE PROPERTY AS A RESIDENCE?	YES	NO
\$300,000.00 and Under	-0-	15%
\$300,001 - \$1,000,000	10%	15%
Over \$1,000,000	15%	15%

*FIRPTA and 1099 are Two Separate Requirements

SOURCE: www.irs.gov/individuals/international-taxpayers/firpta-withholding, 8/24/2017

WHAT IS FIRPTA?

"KEEP FOR YOUR RECORD"

COMMON EXCEPTIONS

- 1) If the property acquired for use as an individual transferee's residence and the amount realized (sales price) is not more than \$300,000, withholding may not apply. A transferee seeking to avoid withholding for these reasons should consult a qualified advisor.
- 2) A seller may have a withholding certificate from the Internal Revenue Service that excuses withholding.

These and other exceptions are explained more fully on the IRS website: www.irs.gov. It is recommended that suitable tax or legal advice be obtained.

SETTLEMENT AGENTS and REAL ESTATE AGENTS

A Settlement agent will help you through the withholding process, however settlement agents must not complete or assist with W-7 or 8288-B forms or provide legal or tax advice.

Real Estate Agents representing buyers should advise that the obligation to withhold FIRPTA taxes is their responsibility when purchasing real estate from a foreign person.

Real Estate Agents representing a foreign seller should advise of the withholding requirements and encourage them to apply for any necessary withholding certifications and taxpayer identification number as early as possible to avoid delays in closing.

Individual taxpayer identification number is a 9 digit number beginning with the number 9. If your foreign seller has a taxpayer identification number they must call the IRS to determine if the number is still valid.

The fact that a foreign seller has a valid taxpayer identification number does not mean that the seller is exempt from withholding.

Foreign sellers should consult with a CPA or an Attorney regarding the withholding certification and applying for a taxpayer identification number. Real estate agents should not complete or assist with the IRS forms or provide legal or tax advice.

The information provided is for information purposes only and is subject to change without notice.

Again seek legal, tax or other professional advice before relying upon this information.

SOURCE: www.irs.gov/individuals/international-taxpayers/firpta-withholding, 8/24/2017

NECESSARY FORMS

8288: Withholding Tax Return

- When withholding or remitting funds
- Every single FIRPTA transaction
- Withholding Agent to complete/sign (Buyer)
- Identifying Number/Applied For
- Date of Transfer/Close of Escrow
- Number of 8288A

8288-A: A Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests

- 3 parts A, B & C
- Withholding agents completes no signature
- A&B to IRS with funds
- C to Withholding Agent (Buyer)
- D to Foreign Person (Seller)

8288-B: Application for Withholding Certificate

- Seller can apply for a reduction to the amount of taxes due under FIRPTA
- Seller to complete and sign (Hopefully with a Tax Accountant)
- Identification Number/Applied For
- Withholding Agent information (Buyer info with Account Address NOT ESCROW AGENT)
- Send as soon possible by seller's tax account
- Must be sent before the close of escrow
- Send escrow agent proof of delivery.

W-7: Application for ITIN

- Every buyer and seller who does not have a TIN needs to complete application and submit to IRS
- Escrow needs copies of the application.

NOTARIZING FOREIGN DOCUMENTS

DOCUMENTS NOTARIZED OUTSIDE OF THE UNITED STATES

PLEASE READ AS TO AVOID DELAYS IN CLOSING

The Hague Convention of 1961 was held with many of the nations of the world to determine the validity of documents from their countries because of the risk and liability of relying on documents improperly or fraudulently notarized in other countries. If your signature on the documents are not notarized within the US please provide the following information where the notary act will be performed, so as to not cause delays in your closing this information is needed as soon as possible.

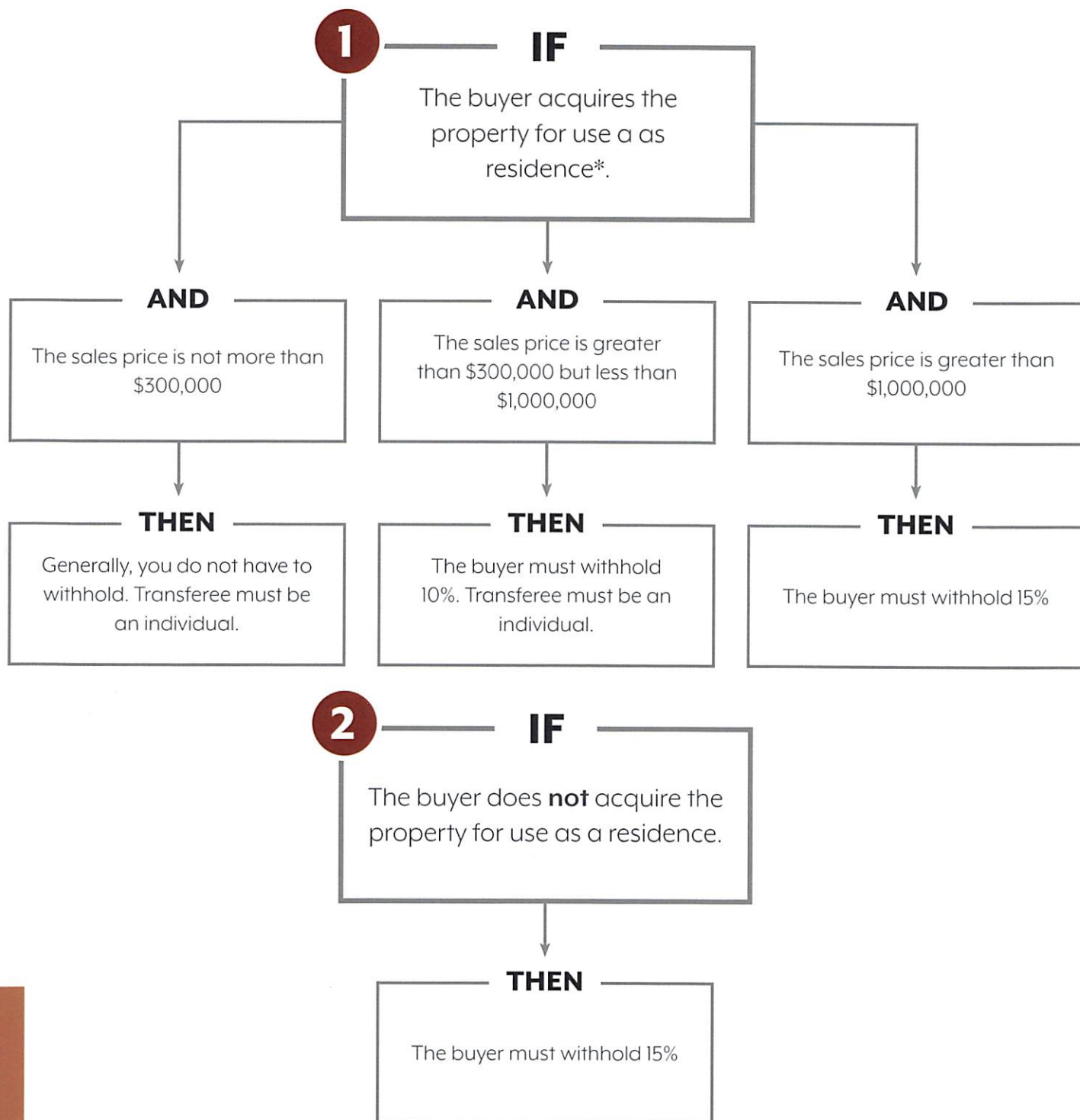
Canada:

1. A notary of the US Consulate; or
2. An attorney whose practice we can verify through Canadian Records. Please provide us the name of the attorney, the name of the law firm, city and Province in Canada where the attorney is practicing to your escrow officer.

Other Countries:

1. A notary of the US Consulate; or
2. A notary authenticated with an "Apostille" issued by a court of competent jurisdiction, if a member of the Hague Convention. Again seek legal, tax or other professional advice before relying upon this information.

FIRPTA FLOW CHART



Please visit www.irs.gov for the most up to date information.

**You or a member of your family must have definite plans to reside at the property for a least 50% of the number of days the property is used by any person during each of first two 12 month periods following the date of transfer.*

Please note the purchase contract and the preliminary title report reference the FIRPTA requirement.

SOURCE: www.irs.gov/individuals/international-taxpayers/firpta-withholding, 8/24/2017

UNDERSTANDING TITLE INSURANCE

The Title Process

Premier Title Agency performs a thorough and vigorous search of public records to eliminate any risks that may affect the title to a property. When the title search is complete, Premier Title Agency issues a Title Commitment.

What is a Title Commitment?

A Title Commitment is prepared prior to issuing a policy of title insurance, and it contains information which can affect the close of escrow. The report lists exceptions and exclusions to the policy of title insurance; it is important to read the exceptions and exclusions set forth. They are intended to provide you with notice of matters which are not covered under the terms of the Title Insurance Policy. The Preliminary Report is not a written representation as to the condition of the title and may not list all liens, defects, and encumbrances affecting the title to the property.

Why do I need title insurance?

Many homeowners assume that when they purchase a piece of property that possession of a deed to the property is all they need to prove ownership. This is not true. You and your lender will want to make sure that the property is indeed yours and that no one else has any lien, claim, or encumbrance on the property. A property owner's greatest protection is an Owner's Title Insurance Policy. Your lender will also seek protection with a Lender's Title Insurance Policy.

What is title insurance?

Premier Title Agency works to identify and eliminate existing claims against a property or discrepancies that cloud title to a property. Title Insurance indemnifies you against loss under terms of the policy. Prior to closing, Premier Title Agency carefully examines public records to identify and eliminate potential claims and defects that may have been created in the past. Premier Title Agency utilizes "Title Plants" that contain information regarding property transfers and liens reaching back many years. However, claims can surface after a property is acquired. Unrecorded liens may surface, missing heirs may claim the property, or taxes might have been unpaid. The Owner's Title Insurance Policy protects the new owner by providing legal and financial redress. It is important to purchase the Owner's Title Insurance Policy because the Lender's Policy only protects the lender.

What protection will I receive from my title policy?

A Title Insurance Policy pays for legal fees in defense of a claim against property covered under your policy. It also contains provisions for indemnification against losses that result from a claim. The title insurance premium is paid at the close of escrow and no additional premiums are paid as long as you own the property.

WHAT IS ESCROW?

Buying, selling, or refinancing real property usually involves the transfer of large sums of money. It is imperative that a neutral third party, known as the Escrow Holder (Premier Title Agency), handles the transfer of these funds and related documents from one party to another. The Escrow Holder impartially carries out all written instructions given by the principals (borrowers). As a neutral third party, Premier Title Agency oversees the escrow process to ensure that all conditions of the loan are met.

The Escrow Holder's Duties

- Serves as the neutral third party and the liaison between all parties involved
- Requests a Title Commitment to facilitate issuance of title insurance
- Prepares the escrow documents
- Complies with lender's conditions and prepares necessary documentation
- Requests payoff demands for anything to be paid through escrow
- Records the Deed and other related documents
- Receives closing instructions, documents, borrower's funds and reviews file to determine that all conditions have been met
- Closes the escrow
- Disburses funds as authorized by the instructions, including charges for title insurance, recording fees, lender fees, and loan payoff
- Arranges for the Title Insurance Policy for the Buyer and the Lender

What Do I Need to Provide?

You may be asked to complete a Statement of Information as part of the paperwork. Because many people have similar names, the Statement of Information is used to identify the specific person in the transaction through such information as date of birth, social security number, etc. This information is considered highly confidential.

ESCROW DELAYS

There are many situations or title issues that can arise during the escrow process that may cause your transaction to be delayed or have unexpected costs. Below is a list of the most common situations that cause problems originating from the buyer. Remember to always advise your Escrow Officer and/or loan officer as soon as you are aware of any of these issues.

- Buyers leaving town without establishing a power of attorney. Use of a power of attorney must be approved by the title insurer and the buyer's new lender. If a power of attorney is not approved, additional outside signing fees may be incurred.
- Additional funds to close may be needed.
- Method to holding title to the property undecided prior to signing.
- Escrow Officer not made aware of various statuses (e.g., marriage, separation, registered domestic partnership, sole and separate property, properties held in a trust, 1031 exchange, etc.).
- Lender requirements not satisfied prior to closing.
- Spouse absent at signing.
- Cashier's or Certified Check missing at closing, or a wire transfer was not arranged.
- Acceptable forms of identification, including current Driver's License, passport, or Arizona DMV Identification Card, not provided at signing.

CLOSING COSTS: WHO PAYS WHAT?

GET TO KNOW WHO CUSTOMARILY PAYS WHAT COSTS	CASH	FHA	VA	CONV
Down Payment	BUYER	BUYER	BUYER	BUYER
Termite (Wood Infestation) Inspection <i>(negotiable except on VA)</i>			SELLER	
Property Inspection <i>(if requested by buyer)</i>	BUYER	BUYER	BUYER	BUYER
Property Repairs, if any <i>(negotiable)</i>	SELLER	SELLER	SELLER	SELLER
New Loan Origination Fee <i>(negotiable)</i>		BUYER	BUYER	BUYER
Discount Points <i>(negotiable)</i>		BUYER	BUYER	BUYER
Credit Report		BUYER	BUYER	BUYER
Appraisal or Extension Fee <i>(negotiable)</i>		BUYER	BUYER	BUYER
Existing Loan Payoff	SELLER	SELLER	SELLER	SELLER
Existing Loan Payoff Demand	SELLER	SELLER	SELLER	SELLER
Existing Loan Prepayment Penalty <i>(if any)</i>	SELLER	SELLER	SELLER	SELLER
Next Month's PITI Payment		BUYER	BUYER	BUYER
Prepaid Interest <i>(approx. 30 days)</i>		BUYER	BUYER	BUYER
FHA MIP, VA Funding Fee, PMI Premium		BUYER	BUYER	BUYER
Assessments payoff or proration <i>(sewer, paving, etc.)</i>	SELLER			
Taxes	PRORATE	PRORATE	PRORATE	PRORATE
Tax Impounds		BUYER	BUYER	BUYER
Tax Service Contract		SELLER	SELLER	BUYER
Fire/Hazard Insurance	BUYER	BUYER	BUYER	BUYER
Flood Insurance		BUYER	BUYER	BUYER
Homeowners Association (HOA) Transfer Fee	BUYER or SELLER	BUYER or SELLER	BUYER or SELLER	BUYER or SELLER
HOA/Disclosure Fee	SELLER	SELLER	SELLER	SELLER
Current HOA Payment	PRORATE	PRORATE	PRORATE	PRORATE
Next Month's HOA Payment	BUYER	BUYER	BUYER	BUYER
Home Warranty Premium <i>(negotiable)</i>	BUYER or SELLER	BUYER or SELLER	BUYER or SELLER	BUYER or SELLER
Realtors®' Commissions	SELLER	SELLER	SELLER	SELLER
Homeowners Title Policy	SELLER	SELLER	SELLER	SELLER
Lenders Title Policy and Endorsements		BUYER	BUYER	BUYER
Escrow Fee <i>(NOTE: charge seller on VA loan)</i>	SPLIT	SPLIT	SELLER	SPLIT
Recording Fees	SPLIT	SPLIT	SPLIT	SPLIT
Reconveyance/Satisfaction Fee	SELLER	SELLER	SELLER	SPLIT

Please note that the above is meant as a guide based on customary practices and subject to negotiation between the buyer and seller.

ARIZONA PROPERTY TAX GUIDE

Property taxes could affect expenses when closing escrow. See below on how this can impact your transaction.


			1st Installment Due Oct 1st			Beginning of Fiscal Tax Year Jan 1st		2nd Installment Due Mar 1st		2nd Installment Delinquent May 1st	
				1st Installment Delinquent Nov 1st							
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
2nd Installment July 1-December 31						1st Installment January 1-June 30					

**Tax amounts will be prorated through escrow based on closing date and next installment due*

NOTE: Penalties for delinquent property taxes include an interest accrual of 16% annually, simple interest, prorated monthly. There will also be advertising fees of \$5.00 or 5%, whichever is greater, and sale fees.

NOTES

[illegible]



FOR THE MOST UP TO DATE
AND ACCURATE INFORMATION,
PLEASE VISIT:

www.irs.gov



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