



**TITLE GUARANTY
HAWAII**

FIRPTA

In 1980, the United States passed FIRPTA, which stands for the Foreign Investment Real Property Tax Act. This law allows the United States to withhold some of the Seller's proceeds in anticipation of the tax that may need to be paid. The withholding for FIRPTA is 15% of the gross sales price. There is one exception. If the Buyer is using the property as a primary residence AND the sales price is greater than \$300,000 but less than or equal to \$1,000,000, the amount withheld is then 10%.

Who is Responsible for Withholding FIRPTA?

The transferee, aka Buyer, is responsible to withhold the tax from the sales price. One additional party that is responsible for FIRPTA is the Buyer's real estate broker. The broker would be liable up to the amount of their commission.

What Qualifies As An Exemption from FIRPTA Withholding?

There are multiple ways to qualify for an exemption from the FIRPTA withholding.

1. If the Seller is not foreign, such as a US resident, no withholding is required.
2. If the Seller is a foreign entity registered to do business in the United States, then a withholding would not apply. This is because the tax would be collected when the entity files their regular income tax form.
3. A Seller may be exempt if the Buyer is purchasing the property as their principal residence and the sales price is less than \$300,000.

Note: This list is not all inclusive.

How Does A Seller Apply For a Reduction or Waiver?

If the Seller wants a reduction or waiver, he or she must apply through the IRS and submit Form 8288B – Application for Withholding. An Escrow Officer would be able to assist the Seller by providing the estimated statement for the sale.

Keep in mind that it could take 3 to 4 months for the federal government to approve a request. Most Buyers would not want to wait that long before closing the transaction, so the entire withholding amount would need to be sent to the IRS. If approved the Seller will need to file for a refund.

Another requirement is that the Seller must have a tax identification number if he or she is an individual or an EIN if it is a foreign entity. Your TG Escrow Officer can help your Sellers obtain the necessary forms to apply for the number if they don't have one.

What is Escrow's Role in FIRPTA?

If the Seller does not provide the certification of exemption from withholding or the IRS approved reduction from withholding (Form 8288B), escrow will pay the amount on behalf of the Buyer.

To sum it up, if you have a foreign Seller involved in a transaction:

- A FIRPTA withholding may be required.
- The FIRPTA withholding is either 10% or 15% of the gross sales price.
- Escrow is instructed to withhold this amount if a certificate of exemption or waiver is not received 14 days prior to closing.
- A Seller may apply for an exemption through the IRS.

If you have a question whether you qualify for an exemption or can apply for a waiver, please see a CPA or tax attorney familiar with FIRPTA requirements.

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