

**CERTIFICATION UNDER THE
FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (“FIRPTA”)**

GENERAL COMMENTS:

A. **Reason For Use.** Under the Foreign Investment in Real Property Tax Act (“FIRPTA”), Section 1445 of the U.S. Internal Revenue Code, the disposition of a U.S. real property interest by a foreign person is subject to income tax withholding. Buyer is responsible for finding out if Seller is a foreign person for the purposes of U.S. income taxation and if Buyer fails to do so, Buyer could be held liable for the tax.

B. **Use.** In every transaction, this form (or an equivalent form) should be completed by Seller and provided to the Closing Agent. General Term “j” (Seller Citizenship and FIRPTA) of the purchase and sale agreement provides, in relevant part:

Seller shall execute a certification (NWMLS Form 22E or equivalent) under the Foreign Investment In Real Property Tax Act (“FIRPTA”) at Closing and provide the certification to the Closing Agent. If Seller is a foreign person for purposes of U.S. income taxation, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

C. **Purchase and Sale Agreement.** The purchase and sale agreement requires Seller to warrant that Seller is or is not a foreign person for purposes of U.S. income taxation. The warranty is contained in either Specific Term 13 or 14 (Seller Citizenship – FIRPTA) of the purchase and sale agreement. This provision makes the parties aware of FIRPTA at the outset of the transaction and gives Buyer notice of Seller’s status. Note that even though Seller provides this warranty in the purchase and sale agreement, Seller needs to complete Form 22E (or an equivalent form) and provide it to the Closing Agent at Closing.

D. **Seller Section.** Note that the first “box” in Form 22E, which is always used, is for Seller to fill in.

E. **Amount of Withholding and Buyer Certification.** Effective February 17, 2016, FIRPTA withholding is 15% on the amount realized from the sale (i.e. the purchase price). There are notable two exceptions:

- If the amount realized does not exceed \$300,000 and the buyer will use the property as the buyer’s personal residence – then there is no tax withheld.
- If the amount realized exceeds \$300,000, but does not exceed \$1,000,000 and the buyer will use the property as the buyer’s personal residence – then the tax withheld by the closing agent is 10%.

Buyer Certification is only used if Seller is a non-resident alien. Buyer should check the applicable box and sign the bottom of the form. If neither box is applicable, Buyer should not fill out this section.

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ASSISTANCE FILLING IN THE BLANKS: The following numbers refer to the numbers on the sample form shown in this Manual.

1. **Property Address.** If there is a street address, check the first box and fill it in. If there is no street address, check the second box and attach a legal description of the Property. You could also strike the last word (“attached”) and insert “Purchase and Sale Agreement”.
2. **Seller’s Citizenship.** Seller must check whether he/she is or is not a non-resident alien (which includes foreign corporations, partnerships, trusts, etc.).
3. **Taxpayer I.D. Number.** Seller’s “taxpayer identification number” should be inserted by Seller at Closing. For an individual, this is the social security number. If it is a husband and wife, or there is otherwise more than one Seller, put in each person’s number. For a corporation, partnership, estate, etc. there is a “U.S. Taxpayer Identification Number” (a number usually beginning with 91). A citizen or resident alien (green card holder) will have a social security number. If there is none - it should alert you to the fact that the Seller may be a non-resident alien.
4. **Address.** Insert Seller’s home (residence) address.
5. **Seller’s Signature(s).** Insert Seller’s signature(s).
6. **Date.** Insert the date Seller signs this form.
7. **Buyer’s Signature(s).** If applicable, insert Buyer’s signature(s).
8. **Date.** If applicable, insert the date Buyer signs this form.

FIRPTA CERTIFICATION

The Foreign Investment in Real Property Tax Act ("FIRPTA"), 26 U.S.C. 1445, provides that a buyer of a U.S. real property interest must withhold tax if Seller is a foreign person, unless one of the exceptions in the Act applies. The following will inform Buyer and Closing Agent whether tax withholding is required.

Note: The above law applies to foreign corporations, partnerships, trusts, estates and other foreign entities, as well as to foreign individuals. If Seller is a corporation, partnership, trust, estate or other entity, the terms "I" and "my" as used below means the corporation or other entity. A "real property interest" includes full or part ownership of land and/or improvements thereon; leaseholds; options to acquire any of the foregoing; and an interest in foreign corporations, partnerships, trusts or other entities holding U.S. real estate.

SELLER CERTIFICATION. Seller hereby certifies the following:

PROPERTY. I am the Seller of real property at:

Address _____ City _____ State _____ Zip _____
or (if no street address) legally described on the attached.

CITIZENSHIP STATUS. I AM AM NOT a non-resident alien (or a foreign corporation, foreign partnership, foreign trust, foreign estate or other foreign business entity) for purposes of U.S. income taxation.

TAXPAYER I.D. NUMBER.

My U.S. taxpayer identification number (e.g. social security number) is _____.
(Tax I.D. number to be provided by Seller at Closing)

ADDRESS.

My home address is _____
Address _____ City _____ State _____ Zip _____

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete. I understand that this Certification may be disclosed to the Internal Revenue Service ("IRS") and that any false statement I have made here could be punished by fine, imprisonment, or both.

Seller _____ Date _____ Seller _____ Date _____

BUYER CERTIFICATION (Only applicable if Seller is a non-resident alien).

If Seller is a non-resident alien, and has not obtained a release from the IRS, then Closing Agent must withhold 15% of the amount realized from the sale and pay it to the IRS, unless Buyer certifies that the selected statement below is correct:

Amount Realized (\$300,000 or less) and Family Residence = No Tax. (a) I certify that the total price that I am to pay for the property, including liabilities assumed and all other consideration to Seller, does not exceed \$300,000; and (b) I certify that I or a member of my family* have definite plans to reside on the property for at least 50% of the time that the property is used by any person during each of the first two twelve month periods following the date of this sale. If Buyer certifies these statements, there is no tax.

Amount Realized (more than \$300,000, but not exceeding \$1,000,000) and Family Residence = 10% Tax. (a) I certify that the total price that I am to pay for the property, including liabilities assumed and all other consideration to Seller, exceeds \$300,000, but does not exceed \$1,000,000; and (b) I certify that I or a member of my family* have definite plans to reside on the property for at least 50% of the time that the property is used by any person during each of the first two twelve month periods following the date of this sale. If Buyer certifies these statements, then Closing Agent must withhold 10% of the amount realized from the sale and pay it to the IRS.

* (Defined in 11 U.S.C. 267(c)(4). It includes brothers, sisters, spouse, ancestors and lineal descendants).

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief both statements are true, correct and complete. I understand that this Certification may be disclosed to the IRS and that any false statement I have made here could be punished by fine, imprisonment, or both.

Buyer _____ Date _____ Buyer _____ Date _____