

## ADVISORY REGARDING THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

1 This Advisory Regarding the Foreign Investment in Real Property Tax Act (this "FIRPTA Advisory") is only an advisory, and should not be relied upon  
2 as legal or tax advice.

3 **1. FIRPTA LAW SUMMARY:** The seller and buyer are advised upon closing, a federal law known as the Foreign Investment in Real Property Tax Act  
4 of 1980 ("FIRPTA") requires buyers to withhold a portion of a seller's proceeds if the real property is located within the United States and the seller is  
5 a foreign person who does not qualify for an exemption (the "Withholding Requirement"). A foreign person includes a nonresident alien individual,  
6 foreign corporation that has not made an election under Section 897(i) of the Internal Revenue Code to be treated as a domestic corporation, foreign  
7 partnership, foreign trust, or foreign estate but does not include a resident alien individual. Generally, the following rules apply under FIRPTA:

- 8 (a) There is no Withholding Requirement, even if the seller is a foreign person, if:
  - 9 (i) the purchase price of the property is not more than \$300,000; and
  - 10 (ii) the property will be occupied as a residence by a buyer who is an individual, or a member of that buyer's family; and
  - 11 (iii) for at least 50% of the number of days, excluding days the property is vacant, it is used by such person during each of the first two  
12 twelve (12) month periods following the date of closing;
- 13 (b) The Withholding Requirement will be ten percent (10%) of the purchase price when the seller is a foreign person, and the purchase price  
14 is over \$300,000 but less than \$1,000,000, and (a)(ii) and (iii) above apply; and
- 15 (c) The Withholding Requirement will be fifteen percent (15%) of the purchase price when the seller is a foreign person, and the purchase  
16 price is over \$1,000,000, or the purchase price is less than \$1,000,000, and the seller does not qualify for any of the exemptions in (a) or (b)  
17 above.

18 If FIRPTA applies, that is, if the seller is a foreign person, even if there is an exemption, the seller and the buyer must inform escrow to determine the  
19 extent to which escrow can assist the parties in compliance with FIRPTA. Note seller's failure or refusal to comply with FIRPTA requirements  
20 constitutes a material default under the real estate sale agreement.

21 If FIRPTA does not apply, that is, if the seller is not a foreign person, then the seller must complete, sign, and deliver to escrow a form of certification  
22 of non-foreign status provided by escrow complying with the requirements of 26 CFR § 1.1445-2 (the "Certificate") before closing. The seller is advised  
23 the Certificate contains the seller's Social Security Number and other personal information, so the seller may want to contact escrow to determine if  
24 escrow is willing to act as a Qualified Substitute and deliver to the buyer a qualified substitute statement complying with the requirements of 26 U.S.C.  
25 § 1445(b)(9) (the "Qualified Substitute Statement") in lieu of the Certificate at closing, so the seller's personal information is protected from disclosure  
26 to the buyer. Note if the seller fails or refuses to complete, sign, and deliver the Certificate to escrow before closing, the seller will be presumed to be  
27 a foreign person, and the Withholding Requirement will apply to the transaction.

28 If escrow is unable or unwilling to assist with the FIRPTA-related portion of the closing, including, without limitation, providing the form Certificate or  
29 acting as a Qualified Substitute, the buyer or the seller, as applicable, has the right, but not the obligation, to move escrow to another Oregon licensed  
30 escrow agent willing to assist with the FIRPTA-related portion of the closing, in which case the parties will share equally in the cost of any cancellation  
31 fees, if applicable. If, due to moving escrow, the transaction cannot be closed by the closing date, the parties agree the closing date will be extended  
32 for a reasonable period not to exceed five (5) Business Days to accommodate moving the transaction to the new escrow agent.

33 If the seller is uncertain whether the seller is a foreign person or the seller or the buyer are uncertain about whether the Withholding Requirement  
34 applies or how to comply with the Withholding Requirements, the seller or the buyer, as applicable, should promptly consult their own experts familiar  
35 with FIRPTA related law and regulations. For further information, the seller and the buyer should go to [www.irs.gov](http://www.irs.gov).

36 **2. RIGHT TO RELY ON SELLER'S REPRESENTATION:** In submitting their offer, it is presumed the buyer has no knowledge, information, or belief  
37 that the seller is a foreign person or that the transaction is subject to FIRPTA. Furthermore, buyer's and seller's real estate agents, their respective firms,  
38 and escrow, its agents, employees, and representatives, will have the absolute right to rely upon the seller's representations regarding the seller's non-foreign  
39 status as set forth in the Certificate. This right of reliance will commence upon the seller's signing and delivery of the Certificate and continue after closing  
40 unless the seller has disclosed otherwise in writing to the buyer before closing.

41 **3. ACKNOWLEDGMENT:** The undersigned parties acknowledge they: (a) have read and understand this FIRPTA Advisory; and (b) have been  
42 provided with a copy for their own files.

43 Client \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
44 Client \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←

**LINES WITH THIS SYMBOL ← REQUIRE A SIGNATURE AND DATE**

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