

# FIRPTA WITHHOLDING CHANGES

EFFECTIVE FEBRUARY 16, 2016



*The disposition of a U.S. real property by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding.*

## FIRPTA CHANGES

**The changes to 26 U.S.C. § 1445 result in the following:**

1. Unless an exemption or reduced rate applies, the withholding amount has been increased from 10% to 15%.
2. For properties being acquired by the transferee not for use as a residence 15% must be withheld.
3. For properties being acquired by the transferee for use as a residence the following rates apply:
  - a. If the sales price is \$300,000 or less withholding is not required (0%)(See: 26 U.S.C. § 1445(b)(5));
  - b. If the sales is greater than \$300,000, but not more than \$1 million 10% must be withheld (See: 26 U.S.C. § 1445(c)(§)); &
  - c. If the sales price is greater than \$1 million 15% must be withheld.
4. The bill was enacted on December 18, 2015 and the FIRPTA changes are effective 60 days after enactment which would February 16, 2016. (60 days not 2 months)

## So what does the condition that the buyer acquire the property for use as a residence mean?

**The changes to 26 U.S.C. 1445 result in the following:**

It does not mean the buyer must certify he or she will use the acquired property as a primary residence. Under Treasury Regulation Section 1.1445-2(d), the buyer is acquiring the property for use as a if on the date of the transfer the buyer(s) (or buyer's family) has definite plans to reside at the property for at least 50 percent of the number of days that the property is used by any person during each of the first two 12-month periods following the date of the transfer. The number of days that the property will be vacant is not taken into account in determining the number of days such property is used by any person. This is an intent test as of the date of closing - the buyer is being asked to forecast their planned use for the acquired property for the next two years. For example, if the buyer has definite plans that he or his family will reside at the acquired property for two months for each of the next two years, and the buyer has definite plans to rent the property to outside parties for one month a year for each of the next years (and the rest of the year the buyer plans for the acquired property to remain empty), then the buyer is acquiring the property for use as a residence.

Buyer intends to use property as a residence?	Yes	No
\$-0- to \$300,000	0%	15%
\$300,001 to \$1,000,000	10%	15%
Over \$1,000,000	15%	15%



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